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Simple Legal Writing Can Improve Business Outcomes in Latin America

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1. INTRODUCTION

In-house legal counsel can easily impact business outcomes in Latin America by cementing the "simple writing" movement among Latin American lawyers, legislators, regulators, and jurists. A pragmatic way of doing so is to require external legal counsel in Latin America to write clearly and concisely. In-house counsel should reward simple writing and explicitly remind others that written meandering is not permitted. Spending a few minutes to give feedback on legal writing should not be done out of idealism. It should be done to increase transparency and predictability and reduce the costs of doing business in Latin America.

In Latin America, large corporations' external legal counsel tend to belong to the legal profession's elite. They tend to have revolving doors into government offices. They are often elected as legislators, designated to heads of regulatory bodies, and appointed judges. Their writing style influences the drafting of, and ends up in, laws, judicial decisions, and enforcement actions. Simple legal writing begets clearer rules which, in turn, yield more transparent climates in which to do business. As a result, forcing the potential law-makers, interpreters, and enforcers of laws in Latin America to write simply, is an important way of fulfilling in-house legal counsel's central mission of protecting their corporations.

In the remainder of this article, the author explains that today's snippy texting culture demands crisp, concise writing and then describes how Latin America's laws and judicial decisions are anything but simply written. Then, the article commiserates about the pervasiveness of poor legal writing in Latin America and tries to surmise why lawyers in Latin America write in ways that are difficult of being understood. The article ends by giving specific tips for in-house legal counsel to give to their outside legal counsel in Latin America.

2. TODAY'S SNIPPY TEXTING CULTURE DEMANDS CRISP, CONCISE WRITING.

Two trends are clear from the high use of Twitter, Facebook Messenger, Telegram, and other text-based social-media platforms. First, despite the growth of audiovisual means of communicating – the YouTubes, Snapchats, and Facetimes of the world – writing is still alive and well. It is a preferred method of communication for billions of people that are connected, around the globe, through the Internet. So ingrained, in fact, that a dinner party can consist more of sending written messages to distant people than speaking with the folks sitting around the table, next to you. Telegram users alone send each other 12 billion messages daily.[1]

The second trend is that people crave instant gratification. People want to hear the beep, buzz, or wizz that indicates a new message is awaiting review. Newer generations have grown up with the idea that a snappy and punchy sentence is better than a well-thought-out, longer analysis piece. Septuagenarian President Trump gets it. He communicates with allies and pariah states alike 140 characters at a time. Magazines and newspapers have declined, giving rise to the tweet culture. Most blogs are endangered species; their formats are too long, some believe. There has been a proliferation of "digests," "highlights," and even "summaries" at the beginning of news articles distributed in online publications. All to satiate the need for getting to the bottom line rapidly – a quick fix, so to speak.

It is not surprising that the first law on "plain language" in the United States coincided with the widespread use of Twitter and other technology platforms that enabled mass messaging. In 2010, President Barack Obama signed into law the Plain Writing Act; a little more than three years after Twitter gained traction in the U.S.[2]

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[1] Artyom Dogtive, *Telegram Revenue and Usage Statistics,* BUSINESS OF APPS (Feb. 12, 2019, 3:50 PM), http://www.businessofapps.com/data/telegram-statistics/#2.

[2] Nick Douglas, *Twitter Blows up at SXSW Conference*, GAWKER (Mar. 12, 2007), https://gawker.com/243634/twitter-blows-up-at-sxsw-conference; Plain Writing Act of 2010, Pub. L. No. 111-274, 124 Stat. 2861.

3. LATIN AMERICA LAWS AND JUDICIAL DECISIONS LACK CRISP, CLEAR WRITING.

Despite these two marked trends, legal writing in many places has stagnated. In Latin America, laws and judicial decisions are long, wordy, and meander. They are not designed to address the audiences of today. Arguably, old laws and judicial decisions were not designed to address their contemporary non-legal audiences either. They are rarely punchy. They are never concise. They all too often take pages upon pages to get to the point.

a) Latin American judicial decisions tend to be impenetrable. The "Twitter blocking" cases provide a clear example.

In Latin America judicial decisions, there are three "horses of the apocalypse": high word-counts in each sentence, clumsy structure, and unhelpful formatting. Each horse presents itself in different forms:

1) The first horse presents itself as long sentences, often taking up whole pages, which are difficult to follow.

2) The second horse is easy to notice because judicial decisions lack strong introductions that summarize the decision in few words. As a result, judicial decisions tend to bury the conclusions at the end as if they were an afterthought or unimportant. This second horse of the apocalypse also shows up in almost every paragraph, where strong topic sentences are hard to find, making it difficult to understand when an idea or topic ends and another begins.

3) The third horse is not substantive, but equally as damaging. It is a formatting style and look that screams "don't read me": lack of spaces between paragraphs, infrequent use of descriptive titles, inexistence of bulleted lists, and a love of small font sizes.

These three horses present themselves frequently. They are even more noticeable to those who manage legal affairs in both U.S. and Latin American jurisdictions because contrasting judicial decisions between jurisdictions amplifies the problems facing legal writing south of the Rio Grande.

The "Twitter blocking" cases are on point. There are numerous cases of judicial branches, in many countries throughout the Western Hemisphere, adjudicating claims related to social media, which mostly regard Twitter. For example, in August 2018, Mexican judges required an elected official to unblock citizens who had been

prevented from viewing the Twitter accounts that the elected leaders were using in their official capacity to announce matters related to their elected positions.[3] As some secondary sources reported, the judge ruled that the blocking of citizens from Twitter accounts that communicated an official's messages to the citizenry had "violated the right to access information of public interest."[4]

The U.S. judiciary has adjudicated similar Twitter-related cases. In fact, like its Mexican counterparts, a U.S. judge has prohibited an elected official – U.S. President Donald J. Trump – from blocking followers from his account.[5] The reasoning for the decisions is much the same as that cited by her Mexican counterparts. According to the U.S. judge, the President's Twitter account is a "public forum"; therefore, the blocking of citizens from viewing that account "based on their political speech[,] constitutes viewpoint discrimination that violates the First Amendment."[6] As such, the U.S. district court judge ruled that President Trump had to unblock the plaintiffs from his Twitter account.[7]

Compare some of the wording in each decision – the Mexican and the U.S. decision – and the horses of the apocalypse are visible. Two sentences are particularly helpful in contrasting the two writing styles and have powerful hints of the first and second horses of the apocalypse: high word-counts in each sentence and clumsy structure.

In each decision, the judge upheld the respective plaintiff's claims, concluding that the elected official's conduct is illegal. In each decision, the sentence highlighted is comprised of three phrases strung together by commas. The Mexican judge's one-sentence ruling, however, flops: "[Your] right of access to information of public

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[3] *Ordenan a Funcionario Desbloquear de su Cuenta Personal de Twitter a un Seguidor*, LEGIS.PE (Oct. 1, 2017), https://legis.pe/ordenan-funcionario-desbloquear-cuenta-twitter-seguidor/; *see also* Pablo Fierro Serna, *Piden Jueces Federales a Funcionarios Desbloquear Tuiteros,* TIEMPO (Sept. 18, 2018), http://tiempo.com.mx/noticia/150068-twitter_funcionarios_usuarios_bloqueados/1.

[4] LEGIS.PE, *supra* note 3.

[5] Memorandum and Order at 2, Knight First Amendment Inst. at Colombia Univ. v. Trump, (S.D.N.Y. May 23, 2018) (No. 17 Civ. 5205).

[6] *Id.*

[7] *Id.*

interest is violated, which documents in the same through the publications [you] make, which reflect the activities carried out in the exercise of the public position held."[8]

By contrast, the U.S. jurist was clear and concise: "[w]e hold that portions of the @realDonaldTrump account -- the 'interactive space' where Twitter users may directly engage with the content of the President's tweets -- are properly analyzed under the 'public forum' doctrines set forth by the Supreme Court, that such space is a designated public forum, and that the blocking of the plaintiffs based on their political speech constitutes viewpoint discrimination that violates the First Amendment."[9]

This author knows it is unfair to qualify the legal writing of an entire continent's judges based on two sentences. Nonetheless, the contrast in the above-quoted texts is stark. On the one hand, in the Mexican ruling, the judge starts strong, saying that the alleged wrongdoing is, in fact, a breach of law. But then gets lost in two additional phrases that seem out of place. On the other hand, the U.S. judge nicely ties together three ideas. She identifies each legal issue requiring a decision in succession: (i) whether the use of the comment section of the President's Twitter account can be analyzed according to the "public forum" doctrine; (ii) whether that section is a "public forum"; and (iii) whether the reason why the user was prevented from using the comment section violated the First Amendment. In one sentence, the judge rules on each issue. It is such simple writing: logical, plainly-stated, and clear.

This is one of many cases where Latin American jurists have chosen to ride the three horses of the apocalypse, rather than writing in a simple and clear manner. Because the three horses appear so frequently, one starts to think that uncrisp and unclean legal writing in Latin America is not a matter of mistake, but of purposeful and deliberate design.

b) Laws in Latin America are not a model of good legal writing, either.

It seems laws are also made to confuse readers in four ways. First, legislatures tend to write laws in the passive, rather than active,

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[8] Serna, *supra* note 3; *see also* LEGIS.PE, *supra* note 3.

[9] Memorandum and Order at 2, Knight First Amendment Inst. at Colombia Univ. v. Trump, (S.D.N.Y. May 23, 2018) (No. 17 Civ. 5205).

voice. Second, legislators tend to use nouns instead of verbs. Third, there are many redundant words. Fourth, the format is unhelpful. Below are specific examples of each of these ways in which laws are drafted in a confusing manner:

1. Laws tend to be devoid of subjects and written abstractly. This tends to result in legislators drafting laws in the passive voice, which is more difficult to interpret.

2. Nouns, rather than words, drive the action. For instance, legislators tend to use the word "verification" – a noun – instead of "verify" – a verb. So, a phrase like "you must verify something" becomes "the verification of something is needed."

3. Legislators insert far too many redundant words. A simple example is referring to "the rights and obligations of this law" instead of simply "the law." This is visual cluttering with no added value. It does not make a law clearer or more precise.

4. Laws or norms rarely have table of contents. Subsections are not uniformly numbered; instead, some articles may be comprised of various paragraphs that are not numbered.

The regulation implementing Colombia's privacy law offers a microcosm of the four issues identified above. The privacy law is meant to protect people; and therefore, it should be extra clear. But not so. Below is a paragraph that illustrates the issues, alongside a plain-language "translation" proposed by this article's author.

Decree 1377 of 2013, Article 27, last sentence	Plain language "translation"
"The verification by the Superintendence of Industry and Commerce of the existence of specific measures and policies for the proper handling of per-	To impose sanctions for violating the law and this decree, the Superintendence of Industry and Commerce will take into

sonal data managed by a Responsible will be taken into account when evaluating the imposition of sanctions for violation of duties and obligations established in the law and in this decree."[10]	account whether the Responsible has measures and policies to properly handle personal data.

The plain language "translation" is forty percent shorter: fifty-three versus thirty-two words. The "translation" is in active voice, unlike the original. It uses verbs, instead of nouns. It eliminates extraneous words. Together, with little effort to implement, these edits produce a text that is easier to understand and therefore, easier to comply with.

Of course, there are major challenges with laws in Latin America that are not related to the way they are written. In some countries, the laws are not easily available. The law and its implementing regulation are rarely published in the same place; so, it is difficult to ascertain all applicable obligations. When a law is amended by a piece of legislation, that legislation typically only says how the law will be changed. But the legislation rarely sets out the new text of the law, providing a "redline" of sorts. So, to review a law that has suffered amendments, citizens have no choice but to waste time piecing together the old law and the amendment. For companies, these and other challenges add significant costs to doing business in Latin America. Unfortunately, they are outside the scope of this article.

[10] *See* L. 1377, junio 27, 2013, DIARIO OFICIAL [D.O.] (Colom.). This quote is translated from the original text which is in Spanish. *Id.* ("La verificación por parte de la Superintendencia de Industria y Comercio de la existencia de medidas y políticas específicas para el manejo adecuado de los datos personales que administra un Responsable será tenida en cuenta al momento de evaluar la imposición de sanciones por violación a los deberes y obligaciones establecidos en la ley y en el presente decreto.").

4. IT IS DIFFICULT TO UNDERSTAND THE PERVASIVENESS OF POOR LEGAL WRITING IN LATIN AMERICA.

It is not easy to explain why legal writing in Latin America continues to be so harsh and unfriendly, especially in the twenty-first century and especially given the many efforts from within and outside the legal profession to try to institute change.

a) The age of Twitter has failed to improve legal writing in Latin America.

For legislators, drafting laws using outdated verbiage is, put simply, odd. Legislators – almost every one of them – are on social media, especially Twitter.[11] Political speech these days thrives on short messages, which is one way to propel ideas into the forefront of political discourse. Transmitting messages on Twitter also increases the probability of being quoted by the news media. No wonder politicians in Chile, Venezuela, Argentina, and many other countries flock to Twitter to disseminate their messages and platforms – one concise message or rant at a time.[12]

Judges tend to be more reserved. They do not typically seek to actively inject themselves into popular discourse through invective diatribes, which are the bread and butter of Twitter. Nonetheless, they are humans. They live in the twenty-first century and have social media accounts. They, too, are exposed to the benefits of communicating briskly.

Even if they do not have social media accounts, judges are aware of Twitter's usefulness and power. There are numerous cases in

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[11] JOHN H. PARMELEE & SHANNON L. BICHARD, POLITICS AND THE TWITTER REVOLUTION: HOW TWEETS INFLUENCE THE RELATIONSHIP BETWEEN POLITICAL LEADERS AND THE PUBLIC 14 (Lexington Books 2012).

[12] Ana Ruiz, *Personajes Políticos Más Influyentes en Twitter – Chile*, BRANDWATCH (Nov. 10, 2016), https://www.brandwatch.com/es/blog/politicos-chile-mas-influyentes/ (studying Chilean politicians with most Twitter followers preceding the 2017 presidential election in that country); *Ranking de Twitteros más seguidos en Venezuela (1 al 50) #twven,* TWITTEROS EN VENEZUELA (last visited Feb. 17, 2019), http://twven.com/r/top-50/ (listing the top 50 most followed Twitter accounts of Venezuelans, of which 10 are from political figures and legislators); Ana Ruiz, *Políticos Argentinos más Influyentes en Twitter*, BRANDWATCH (Jan. 30, 2017), https://www.brandwatch.com/es/blog/politicos-argentinos-twitter/ (listing most-followed Argentinian political figures in Twitter, which collectively amassed more than 12 millions followers).

many countries throughout the Western Hemisphere of judicial branches adjudicating claims related to social media and Twitter specifically. The two Twitter cases cited above are a good example.[13]

Social media sometimes becomes a sound box for the judiciary. Some judges' rulings receive feedback through social media. In the early summer of 2018, an Ecuadorian judge issued what amounts to a temporary restraining order against a Chinese miner operating in the Rio Blanco minery,[14] which the Ecuadorian national government had classified as a top-five strategic mining operation in that country.[15] So, the ruling was significant. The order had been sought by the Ecuarunari, an organization representing ethnics groups that belong to the Kichwa nation.[16] Upon issuing the ruling, a representative of the plaintiffs posted on Twitter a one-minute video summarizing "the meaning of the judge's ruling."[17]

b) Some Latin Americans have encouraged plain writing.

Some credit must be given to the lawyers in Latin America that have tackled head on the issue of poor legal-writing. One in particular, Manuel Atienza, has clearly understood that laws are meant to communicate messages. "A law is irrational . . . if and to the extent it fails as an act of communication," believes Atienza.[18] His belief describes the crux of the plain-language movement.

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[13] *See e.g.*, Memorandum and Order at 2, Knight First Amendment Inst. at Colombia Univ. v. Trump, (S.D.N.Y. May 23, 2018) (No. 17 Civ. 5205); *see also Ordenan a Funcionario Desbloquear de su Cuenta Personal de Twitter a un Seguidor*, LEGIS.PE (Oct. 1, 2017), https://legis.pe/ordenan-funcionario-desbloquear-cuenta-twitter-seguidor/.

[14] Lineida Castillo, *Juez de Cuenca Ordenó la Suspensión de la Explotación Minera en Río Blanco*, EL COMERCIO (June 2, 2018), https://www.elcomercio.com/actualidad/juez-cuenca-suspension-mineria-rioblanco.html; *see also* Valentina Leotaud, *Judge Orders Chinese Company to Stop Mining Activities in Ecuadorian Town*, MINING.COM (June 3, 2018), http://www.mining.com/judge-orders-chinese-company-stop-mining-activities-ecuadorian-town/.

[15] Castillo, *supra* note 12.

[16] Leotaud, *supra* note 12.

[17] *Id*. (containing a Twitter post where plaintiff's representative explains what the implication of the judge's ruling is – *"qué implica la sentencia del juez?"*).

[18] *See* MANUEL ATIENZA, CONTRIBUCIÓN A UNA TEORÍA DE LA LEGISLACIÓN 39, 77 (1997). This quote is translated from the original text which is in Spanish.

In 2015, the Peruvian congress published a study on the law and "legislative techniche."[19] That study describes ways in which laws should be written in order to be easily understood. Meanwhile, during the presidency of Juan Manuel Santos, the Colombian government began to make a concerted effort to write in plain language. In 2015, the National Program of Citizen Services in Colombia's National Department of Planning published a guide entitled "Guide of Plain Language for Public Servants of Colombia," which in Spanish is stated as "Guía De Lenguaje Claro Para Servidores Públicos De Colombia").[20]

c) International pressure to adopt plain language does not go far enough.

Poor legal writing in Latin America is so pervasive, and negatively impacts cross-border business to such an extent, that the U.S., Canada, and Mexico addressed the issue in their new trade deal: the US-Mexico-Canada Agreement, or USMCA. In Chapter 28 (titled "Good Regulatory Practice") of that multinational treaty, the parties specifically committed to drafting laws using plain language:

Each Party [i.e., the U.S., Mexico, and Canada] should provide that proposed and final regulations are written using plain language to ensure that those regulations are clear, concise, and easy for the public to understand, recognizing that some regulations address technical issues and that relevant expertise may be required to understand or apply them. (emphasis added)[21]

But this effort is not impactful enough because it has no real teeth. On the one hand, the cited text is a commitment and not an obligation. The text says that each party "should provide," rather than "must provide." On the other hand, each party will not assert claims against other parties for not using plain language, "except to address a sustained or recurring course of action or inaction that is

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Id. ("[U]na ley es irracional . . . si y en la medida en que fracasa como acto de comunicación.").

[19] *Id.* at 77.

[20] Jorge Mora, *Guia de Lenguaje Claro para Servidores Publicos de Colombia,* DEPARTAMENTO NACIONAL DE PLANEACION (2015), http://www.portaltributariodecolombia.com/wp-content/uploads/2015/07/portaltributariodecolombia_guia-de-lenguaje-claro-para-servidores-publicos.pdf.

[21] United States Mexico Canada Agreement, art. 28.8, Nov. 30, 2018, Office of the U.S. Senate Trade Representative.

inconsistent with a provision of this Chapter."[22] That bar – sustained or recurring course of action or inaction – is too high to be meaningful. Because it is highly unlikely that the U.S. or Canada will ever be able, or even have reason, to prove that Mexico had a "sustained or recurring" inability to use plain language in drafting laws, the USMCA will likely not push Mexican legislators to write laws using simpler language. Furthermore, such a claim would be the first of its kind that the author is aware. And international arbitral tribunals tend to shy away from dictating how a nation should or should not create domestic laws.

5. WHY ARE LATIN AMERICAN LAWYERS AFRAID OF BEING UNDERSTOOD EASILY?

There is no simple answer as to why Latin American lawyers tend to avoid simple writing.

One possibility is that of language; "good" Spanish is written in a verbose and less comprehensible manner compared to English. Anecdotally, this argument rings true. Some lawyers in Latin America have mentioned that basic tenets of the simple-writing movement are "how you write in English": shorter sentences, strong topic sentences, and stating conclusions up front.

Historically, that argument also appears true. Spanish-speaking lawyers have had less time to be exposed to simple writing in their own language and therefore, less time to adopt simple writing in Spanish. This even appears to be the case in English, where simple writing has taken decades to spread. The appearance of "simple writing" in the United States predates its appearance in legal writing in that country. Lawyers, it appears, are predisposed to follow rules, and writing traditions are nothing but rules. The simple-writing movement developed, took root, and flourished in English decades ago; however, it slowly spread to legal writing in English – which is the language of common-law systems. Spanish-speaking lawyers, most of them in Latin America, simply have not had time to develop their own "simple writing" style.

But this argument falls short. Unclear and complex legal writing among judges and legislators may need more time to improve. But

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[22] *Id.*

what about lawyers in private practice? They are subject to fierce competition for business. Their clients value clear and simple answers to complex legal problems. Those same clients have little cost in switching law firms or lawyers. If someone does not deliver, it is easy to find replacements. There are entire publications dedicated to listing and ranking law firms in each country in Latin America. At least in my own experience, the often perilous and grindingly slow practices of sourcing vendors for big corporations are done away with law firms. Switching law firms can be as easy as signing a simple engagement letter.

Yet lawyers in private practice fall short, time and again, in delivering writings in simple Spanish. They lean heavily on nouns, rather than verbs: "the verification" rather than the simple "verify." They bury conclusions at the end of a memorandum or email, instead of stating them up front. Their sentences tend to be longer, rather than shorter. It is as if they are not concerned that their competitors – other law firms and lawyers – will write any simpler or clearer.

An alternative argument is protectionism. Guilds and professions are known for protecting their status and ranks zealously. In the United States and England, lawyers must pass exams to qualify to practice law. Lawyers in one state within the U.S. cannot practice law in another state without first meeting the requirements of that other state, including sometimes taking exams that last several days, which are almost identical to the exams the lawyer already took and passed in order to practice law in the first state. In Latin America, lawyers must attend 5-year university programs. In some countries in Latin America, law schools are few and tend to have competitive admissions. Being a lawyer in Latin America is still lucrative; therefore, lawyers have incentives to erect entry barriers into their profession. A way to build that barrier is by employing a special language; a way to communicate that requires several years of study to master. That special language must be different than the plain, straight-forward way of communicating in a language. It has to be convoluted on purpose. Otherwise, anyone would be able to "write" or "sound" like a lawyer. And that would reduce the barriers of entry into the legal ranks.

Lastly, there is another powerful, yet sinister explanation for why so many lawyers in Latin America are afraid of being understood easily. Complex writing in Spanish allows lawyers to confuse non-lawyers. They can use "legal writing" as an excuse for why a piece of writing is impenetrable or even illogical. Sadly, some – not all – lawyers write the way they do to hide the fact that their arguments are illogical and not well reasoned. Because if they were logical and well-reasoned, simple Spanish would be the obvious choice to explain themselves. In the end, clear messages can be written using simple words, while unclear messages need to resort to writing contortions so that the author can blame the reader for not understanding the message.

A terrifying example is the court order sentencing Leopoldo Lopez to nearly 14 years in prison. Lopez is a top Venezuelan opposition-leader.[23] Because of his stature, both within and outside Venezuela, this order was perhaps the most watched and anticipated judicial decisions in the last two decades of Venezuelan history. In the order, the court agreed with the government that Lopez had incited arson and damages (*determinador del delito de incendio y del delito de daños*), was a public instigator (*autor en el delito de instigación pública*), and was part of a conspiracy (*asociación para delinquir*). Ignoring the political undertones of the order, as a piece of writing, it incarnates the exact opposite of simple writing. Indeed, it ably uses the three "horses of the apocalypse."

First, the order has very high word-counts in most, if not all, sentences. Each sentence is so long that most paragraphs only have one sentence. Case in point are two revealing sentence-paragraphs buried respectively at pages 255 and 267 of the order. They are reproduced below in their entirety. These two paragraphs are illustrative of most the other paragraphs in the order: they are difficult to understand because of how dense they are.

> Given how the previous statements have been, as well as the documentaries, the exhibition of videos and photos, all in accordance with the provisions of article 22 of the Criminal Adjective Text, and based on one of the constitutional principles established by

[23] *Sentencia Condenatoria*, SLIDESHARE https://www.slideshare.net/LeopoldoLopez/sentencia-contra-leopoldo-lpez (last visited Feb. 15, 2019).

> our Constitution of the Republic Bolivariana de Venezuela, which states that Venezuela is constituted in a democratic and social State of Law and Justice, which advocates as higher values of its legal system and its action, life, liberty, justice, equality, solidarity, democracy, social responsibility and in general, the pre-eminence of human rights, ethics and political pluralism, as well as, that the Bolivarian Republic of Venezuela is a decentralized Federal State in the terms enshrined in the Constitution, and governs by the principles of territorial integrity, cooperation, solidarity, concurrency and co-responsibility, similarly taking or as a basis for the Judicial Branch to play a fundamental role in guaranteeing social stability, the events that took place on February 12, 2014 were analyzed, and in the opinion of this Court it was demonstrated in the development of the Oral and Public Trial that a large group of demonstrators, among them the citizens accused today ANGEL GONZALEZ, DEMIAN MARTIN and CHRISTIAM HOLDACK complied with the call made by the citizen LEOPOLDO LÓPEZ and other political leaders of the Voluntad Popular party, for which the citizen Leopoldo López, expressing himself through the different media made calls to the street which produced a series of violent acts, ignorance of the legitimate authorities and the disobedience of the laws, which triggered the excessive attack by a group of people who acted determined by the speeches of the aforementioned citizen , against the headquarters of the Public Ministry, as well as the fire of seven of which six were patrols belonging to the Corps of Scientific, Criminal and Criminal Investigations, likewise, attacked, destroyed, damaged the plaza of Parque Carabobo, these acts vandalism executed with blunt and incendiary objects.[24]

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[24] *Id.* at 255–56. This quote is translated from the original text which is in Spanish. *Id.* ("Vistas como han sido las anteriores declaraciones, así como las

> Clearly it is determined that the citizen LEOPOLDO LOPEZ, did not use the adequate means established in the Constitution, for his demands to be met, but instead he used the art of the word, in order to make believe in his followers that a supposed constitutional exit [i.e., solution] existed, when the conditions that he pretended were not given, which were, the renunciation of the President of the Republic, the revoking referendum that only could be foreseen for [i.e., held in] the year 2016, his purpose despite his calls for peace and tranquility, as a political leader was to find the exit of the current government

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documentales, exhibición de videos y fotos, todo de conformidad con lo establecido en el artículo 22 del Texto Adjetivo Penal, y basándose en unos de los principios constitucionales que establece nuestra Constitución de la República Bolivariana de Venezuela, el cual dispone que Venezuela se constituye en un Estado democrático y social de Derecho y de Justicia, que propugna como valores superiores de su ordenamiento jurídico y de su actuación, la vida, la libertad, la justicia, la igualdad, la solidaridad, la democracia, la responsabilidad social y en general, la preeminencia de los derechos humanos, la ética y el pluralismo político, así como, que la República Bolivariana de Venezuela es un Estado Federal descentralizado en los términos consagradas en la Constitución, y se rige por los principios de integridad territorial, cooperación, solidaridad, concurrencia y corresponsabilidad, de igual forma tomando como base que el Poder Judicial desempeña un papel fundamental para garantizar la estabilidad social, se analizaron los hechos ocurridos en fecha 12 de febrero de 2014, siendo que a criterio de esta Juzgadora quedò demostrado en el desarrollo del Juicio Oral y Público, que un grupo nutrido de manifestantes, entre ellos los Ciudadanos hoy acusados ANGEL GONZALEZ, DEMIAN MARTIN y CHRISTIAM HOLDACK acataron el llamado efectuado por el Ciudadano LEOPOLDO LÓPEZ y otros dirigentes políticos del partido Voluntad Popular, para lo cual el ciudadano Leopoldo López, expresándose a través de los distintos medios de comunicación hizo llamados a la calle los cuales produjeron una serie de hechos violentos, desconocimiento de las autoridades legítimas y la desobediencia de las leyes, que desencadenó en el ataque desmedido por un grupo de personas que actuaron determinados por los discursos del mencionado ciudadano, contra la sede del Ministerio Público, así como el incendio de siete carros, de los cuales seis eran patrullas pertenecientes al Cuerpo de Investigaciones Científicas, Penales y Criminalísticas, de igual forma, atacaron, destruyeron, dañaron la plaza de Parque Carabobo, actos éstos vandálicos ejecutados con objetos contundentes e incendiarios.").

> through the calls to [protest on] the street, the disobedience of law, and the unrecognition of the Public Powers of the State, all legitimately constituted.[25]

In Spanish, the first paragraph reproduced above has 335 words or 2242 characters. The second paragraph has 120 words and 756 characters long. To put that into context, until recently, Twitter only allowed posts that were 140 characters long. And for what it is worth, the Gettysburg Address – arguably U.S. President Abraham Lincoln's most famous speech – has only 272 words.[26] In addition, neither paragraph has a punctuation mark other than commas between their first and last words. They are long, run-on sentences. The second of the two paragraphs – and the shortest – presumably joins two distinct clauses that should be separate sentences. The first sentence should end with the words "the year 2016," and the second sentence should start with the words "His purpose." And, again, the two paragraphs reproduced above are examples that represent most, if not all, of the paragraphs in the entire judicial order. They are not the worst offenders, cherry-picked purposely to prove a point.

The second horse of the apocalypse is clumsy structure. Not only is the structure clumsy, but it is basically non-existent. Of the order's 282 pages, 268 are verbatim transcripts of witnesses' and experts' testimony.

There is no summary up front and close to no signposting. The first paragraph simply states the names of the defendants and lists the names of the alleged crimes. It does not clarify whether the court found the defendants guilty or innocent, nor whether the court has

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[25] *Id.* at 267–68. This quote is translated from the original text which is in Spanish. *Id.* ("Claramente se determine que el ciudadano LEOPOLDO LOPEZ, no utilizó los medios apropiados establecidos en la Constitución, para que sus demandas fueran atendidas, sino que utilizó el arte de la palabra, para hacer creer en sus seguidores que existían una supuesta salida constitucional, cuando no estaban dadas las condiciones que pretendía, como era, la renuncia del Presidente de la República, el referéndum revocatoria que sólo podría estar previsto para el año 2016, su propósito a pesar de sus llamados a la paz y la tranquilidad, como líder político era conseguir la salida del actual gobierno a través de los llamados a la calle, la desobediencia de la ley, y el desconocimiento de los Poderes Públicos del Estados, todos legítimamente constituidos.").

[26] Abraham Lincoln, *The Gettysburg Address*, CORNELL UNIV. (Nov. 19, 1863) http://rmc.library.cornell.edu/gettysburg/good_cause/transcript.htm.

dispensed punishment. None of the paragraphs that follow have any semblance of a topic sentence.

On the upside, there are five major sections clearly identified: names of the defendants (identificación de los acusados), procedural history (enunciación de los hechos y circunstancias que fueron objeto del juicio), facts (determinación precisa y circunstanciada de los hechos que el tribunal estima acreditado), analysis (fundamentos de hecho y derecho), and order (dispositiva). But the longest two sections – titled "procedural history" and "facts" – have absolutely no structure. They are just endless lists and verbatim transcripts of lawyers' speeches and testimonies from witnesses and experts. Most unhelpful of all, the facts section does not narrate events chronologically. Instead, the reader is left to figure out how more than 100 pages of transcripts tie together to form a coherent set of facts that would permit an impartial trier of fact to determine the defendants' guilt or innocence.

Lastly, and relatedly, the judge employs the third horse of the apocalypse with much success: unhelpful formatting.

- The titles are descriptive, but there are only five in 282 pages. Those five titles, though, are quite descriptive.
- The only numbered list in the entire order is quite unhelpful. It is used in the facts section to indicate the start of the transcript of each witness' and expert's testimony in which the court considers that the "culpability of the accused is accredited."[27]
- In the analysis section of the order, where numbered lists could be helpful in enumerating the elements of a crime, the judge tries to use a numbering list for just one of the crimes, but oddly numbers only the first element of that crime and then forgets to do the same with the rest of the elements.[28]
- The formatting is inconsistent. For example, the defendants' names are capitalized and bold only sometimes.

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[27] *Sentencia Condenatoria*, supra note 21, at 136. This quote is translated from the original text which is in Spanish. *Id.* ("*[E]ste Tribunal considera que la culpabilidad de los acusados qued'o acreditada, conforme a las siguientes pruebas testimoniales y documentales evacuadas en el debate oral y publico . . . .*").

[28] *Id*. at 274. This quote is translated from the original text which is in Spanish. *Id*. ("La acción comprende los elementos siguientes: a) la asociación de dos o más personas . . . .").

In short, the avid use of the three horses of the apocalypse can be nothing more than to hide the lack of reasoning of the decision. It would have been easier for the judge to state upfront that because she has no legal grounds to rule against the defendants, the 282 pages that follow are filled with run-on sentences, unstructured, and awkwardly formatted to hide the lack of such grounds.

6. WHAT SPECIFICALLY SHOULD IN-HOUSE LEGAL COUNSEL DO?

The writing style pervasive in laws and court rulings in Latin America does not serve anyone. It does not serve the lawmakers. It does not serve the law-interpreters. It does not serve law-enforcers. And it works against the people that live, and the businesses that operate, in Latin America. So, how can in-house counsel help rectify this problem? In-house counsel should require that the lawyers they employ – as outside counsel and direct reports within their companies – write simply. Below are four ways to do so.

1. **Lead with the conclusions**. Authors should not leave their audience hanging. They should state conclusions up front, in the introductory paragraphs of a piece of writing, where readers can easily find them without the need to review the rest of the text. This is especially important for judicial and arbitral rulings. While in-house counsel cannot influence how a judge writes a decision, he could select arbitrators with an eye to lawyers who write using simple language. For example, when selecting an arbitrator for a case, in-house counsel could request or review that arbitrator's public pieces of writing and even request that the arbitrator draft the arbitration award with simple language. Specifically, parties to an arbitration could request that an arbitral award state up front both the outcome of the case and the rationale for the ruling. This practice would help speed up review of awards. It would also speed up review of court decisions if judges did the same.

2. **Make each paragraph a self-contained unit.** It should be short and communicate only one idea. Each paragraph should have a topic sentence and a few supporting sentences. The topic sentence should summarize the idea, while the remaining sentences would lend support to the idea.

3. **Economize word**s.

a. Write short sentences.

b. Either write numbers in Arabic numerals or spelled out, but not both. Preferably, spell out numbers below 14 and use Arabic numerals for all other numbers.

c. Define terms with words, not acronyms. For example, define "Superintendencia General de Finanzas e Instituciones Financieras" as "Superintendencia" instead of "SGFIF"; and define "Advertisement Services Agreement" as "Agreement" and not "ASA." It is easier to know what you are referring to when it is a full word like "Superintendencia" and "Agreement," rather than a collection of letters that are meaningless to those unfamiliar with a subject matter. You should assume that in-house counsel are unfamiliar with everything you advise them about. An exception to this rule is when the actual name of something (say, an institution) is powerfully linked to an acronym. Case in point is the Venezuelan oil company PDVSA. Use your judgement when deciding to apply the exception.

d. Lead through verbs, not nouns. Avoid using nouns – words ending with "tion" or "*ción*" – when verbs may be used. That is, rather than "the verification must be done by the Ministry," say "the Ministry must verify." This economizes words, making sentences easier to understand, rather than "[t]he economization of words makes sentences easier to understand".

4. **Use as many descriptive headings as possible.** Having done so above, I hope the reader agrees that frequently using headings is useful, especially when they describe the content of a section.

7. IN SHORT, SIMPLE WRITING IS GOOD FOR BUSINESS.

By spreading simple writing techniques, in-house legal counsel can improve business outcomes in Latin America. In-house counsel that work in Latin America should require their outside legal advisors in that region to use plain language in their opinions, submissions, and communications. They should do so as a means to protect the corporations in which they work. Not only is it easy to require that outside counsel use simple language, simple writing can have a significant impact. In the short term, it helps in-house counsel do their jobs more easily and efficiently. In the long term, it helps to spread simple writing techniques among judges and legislators. In

doing so, simple writing could help increase transparency and predictability in Latin America, reducing the cost of doing business there.