

Acronymonious

By Mark Cooney

I'm defending Northern Food Processing Corporation (NFP) against an Environmental Protection Agency (EPA) Clean Water Act (CWA) claim alleging that NFP's discharges into a publicly owned treatment works (POTW) had higher concentrations of Biochemical Oxygen Demand (BOD); Fats, Oil, and Grease (FOG); and Total Suspended Solids (TSS) than allowed by its National Pollutant Discharge Elimination System (NPDES) permit. If I can convince the EPA ALJ that under the CWA, NFP's BOD, FOG, and TSS levels meet its NPDES permit for POTWs, I'll be a BMOC. (LOL!)

This is a ridiculous example, of course, and our profession is hardly facing a scourge of teenager text-talk in legal documents. Yet we legal writers should think carefully before starting down the acronym path. A HUD here or a CPR there won't stop the earth from spinning on its axis. And some well-known acronyms, like NAACP, can be reader-friendly. But if you pile on the acronyms, you risk exasperating your reader.

I should clarify something before we go any further. Some of the so-called "acronyms" that I used above are actually initialisms, where each letter is pronounced (like CIA or SEC).¹ In a true acronym, the first letters of multiple words are combined and

pronounced as a new word, like HUD or NASA.² For ease, I'll refer to both styles as acronyms in this article.

Acronyms—The Help Readers Don't Want

Any doubts about whether heavy acronym use puts off readers are easily dispelled. Courts have long bemoaned briefs containing an "abundance of pesky acronyms."³ As one judge noted, acronyms are "difficult for ordinary readers to keep straight."⁴ A litigator's overuse of acronyms is the legal-writing equivalent of telling an inside joke. Consider these comments, written by a federal judge presiding over a postal worker's discrimination suit:

Plaintiff (and, to a lesser extent, Defendant) makes reference, without explanation, to certain acronyms and industry jargon that, although likely intelligible to members of the Postal Service community, are not exactly terms of common usage. Unfortunately, included among the Court's powers is not omniscience. The parties should bear this in mind in the future.⁵

Judges sometimes use a bit of sharp-edged humor to vent their vexation over acronym-laced briefs:

Opinions addressing federal environmental statutes customarily employ acronyms. What once was a useful tool now has the force of tradition and acronyms are now used whether they aid or obscure communication....I occasionally daydream of writing an opinion employing only acronyms, patois, jargon and scientific terms. If done properly, such an opinion, like many of the briefs I receive, would not be subject to criticism for being in a

foreign language, but nonetheless, would be utterly incomprehensible.⁶

One appellate court went so far as to strike a brief filled with unfamiliar acronyms, initialisms, and number strings. The court did "not appreciate this heavy reliance on shorthand notation, nor [did it] find such briefing proper under the rules of appellate procedure."⁷ The court complained that it took "[t]remendous effort" to understand the brief because most sentences contained at least one acronym.⁸

Supreme Court Justice Antonin Scalia and legal-writing expert Bryan Garner strike the same tone in their book *Making Your Case: The Art of Persuading Judges*, which includes this briefing tip: "Avoid acronyms. Use the parties' names."⁹ In the text that follows, they point out that acronyms are "mainly for the convenience of the writer" yet burden readers.¹⁰

In short, acronym-filled briefs can drive judges up a chambers wall. So it's not surprising that some courts are reluctant to do the same thing to their readers. For instance, the Missouri Court of Appeals began an opinion by announcing that it would describe the case "[s]hort as many abbreviations, acronyms and jargon as possible."¹¹

Yet some courts, like lawyers, seem resigned to their presumed acronym fate. For example, a New York court deciding a water-pollution case lamented that "[a] wave of environmental acronyms and jargon, and the 'high tech' complexity of this matter, could easily becloud the fundamental issue."¹² But the court nevertheless used seven different acronyms in its opinion.

Another court was downright apologetic for its acronym use: "[T]he Court apologizes in advance for the proliferation of acronyms and jargon, which regrettably is unavoidable in this case."¹³

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But acronyms are avoidable, even in complex cases.

What to Do?

You always want your brief to be the most readable in the pile, so heed the words of frustrated judges and think about strategies for minimizing acronym use.

To start, take your lead from judges who've taken pains to avoid acronyms in their opinions: use real words or shorthand phrases instead. (Or as a leading commentator channeling his inner John Lennon put it, "Give words a chance."¹⁴) Consider the federal judge who was hearing a dispute over phone rates, which involved the "total element long-run incremental cost method" of calculating rates. He avoided the common industry acronym TELRIC by instead referring to this method as the "total element" method.¹⁵

For party references, follow Scalia and Garner's advice and refer to parties by name (or a shortened version of their names) rather than using the "alphabet soup" approach.¹⁶ For instance, they suggest "the Commission" rather than "the CPSC" when referring to the Consumer Product Safety Commission.¹⁷ Notice how the Second Circuit used this approach to simplify its opinion in an environmental case:

Cases under the Act apparently require use of a bewildering profusion of acronyms, which makes it difficult to remember what the unlikely combinations of capital letters actually mean. In an effort to minimize the use of acronyms in this opinion, we will call the Environmental Protection Agency the "Agency" rather than "EPA", The Connecticut Fund for the Environment, Inc. the "Fund" rather than "CFE", and the Connecticut Department of Environmental Protection the "Connecticut Department" rather than "DEP".¹⁸

These choices aren't that difficult, and they can make life much easier for your readers. You'll see some of them at work in the appendix that follows this article.

Closing Thoughts

Courts and commentators have debunked the notion that readers appreciate acronyms and that there's no way to avoid them.

And now that you see how courts view acronym-filled briefs, isn't it worth considering other approaches? Often, this style choice comes down to a question of writer convenience versus reader convenience. And when your reader is a court deciding your case, a boss reading your memorandum, or a client paying your bill, the choice should be easy, IMHO. ■



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FOOTNOTES

1. Garner, ed., *The Redbook: A Manual on Legal Style* (Berkeley: West Group, 2006), 2d ed, p 45.
2. *Id.*
3. *Natural Resources Defense Council, Inc v BP Products North American, Inc*, unpublished opinion of the US District Court for the Northern District of Indiana, issued June 26, 2009 (Docket No. 2:08-CV-204); 2009 WL 1854527 at *2.
4. *TDS Metrocom, LLC v Bridge*, 387 F Supp 2d 935, 939 (WD Wis, 2005).
5. *Phongsavane v Potter*, unpublished opinion of the US District Court for the Western District of Texas, issued June 24, 2005 (Docket No. CIVASAO5CA0219XR); 2005 WL 1514091 at *1 n 1.
6. *Louisiana Pacific Corp v Beazer Materials & Services, Inc*, 842 F Supp 1243, 1246 n 1 (ED Cal, 1994).
7. *Cognata v RW Johnson Const Co, Inc*, unpublished memorandum opinion of the Court of Appeals of Texas, issued April 13, 2006 (Docket No. 13-05-234-CV); 2006 WL 949964 at *1.
8. *Id.*
9. Scalia & Garner, *Making Your Case: The Art of Persuading Judges* (St. Paul: Thomson/West, 2008), p 120.
10. *Id.*
11. *Missouri v Public Service Comm of Missouri*, 897 SW2d 54, 55 (Mo App, 1995).
12. *Industrial Liaison Comm of the Niagara Falls Area Chamber of Commerce v Williams*, 527 NE2d 274, 275 (NY App, 1988).
13. *Constellation Power Source, Inc v Select Energy, Inc*, 467 F Supp 2d 187, 190 (D Conn, 2006).
14. Joseph Kimble, *A Modest Wish List for Legal Writing, in Lifting the Fog of Legalese: Essays on Plain Language* 151, 155 (2006).
15. *TDS Metrocom*, 387 F Supp 2d at 939.
16. Scalia & Garner, n 9 *supra*.
17. *Id.*
18. *Connecticut Fund for the Environment, Inc v Environmental Protection Agency*, 696 F2d 169, 171 n 1 (CA 2, 1982).

Appendix

The example below compares a case excerpt to a possible revision. This paragraph appeared near the end of the court's opinion, and it shows how acronyms and initialisms accumulate and litter the text long after the author's explanatory parentheticals have come and gone. To keep the same feel as the original, the revised version likewise has no explanatory parentheticals.

Original (an excerpt from the court's opinion in *Constellation Power Source, Inc v Select Energy, Inc*, 467 F Supp 2d 187, 201 (D Conn, 2006)):

Following execution of the Select/CL & P Letter Agreement, CL & P filed an action with the DPUC to allow CL & P to recover from its customers the increased costs associated with the LMP Differential Amount. The DPUC authorized CL & P to recover the LMP Differential Amount from its customers for sixty days and directed CL & P to file a petition for a declaratory order with the FERC. CL & P filed this petition on May 27, 2003, requesting FERC to order Select and other suppliers to bear SMD-related congestion costs and losses charges incurred in transmitting to its retail purchasers the energy CL & P purchased from suppliers. The petition bore Docket No. EL03-129-000 (the "FERC Proceeding"). See Def.'s Ex. 609. Thereafter, the DPUC allowed CL & P to continue to collect the LMP Differential Amount from its customers while the FERC Proceeding was pending and ordered that the monies be held in escrow pending resolution of the FERC Proceeding.

Revised Version (with the acronyms replaced and a few other judicious edits):

After Select and Connecticut Light signed the letter agreement, Connecticut Light filed an action with the Department to recover from its customers the increased costs associated with the pricing-differential amount. The Department authorized Connecticut Light to recover that amount for 60 days and directed Connecticut Light to file a petition for a declaratory order with the Federal Energy Regulatory Commission. Connecticut Light did so on May 27, 2003, asking the Commission to order Select and other suppliers to bear market-design charges for congestion costs and losses that Connecticut Light incurred in sending to its retail purchasers the energy purchased from suppliers. The petition bore Docket No. EL03-129-000. See Def.'s Ex. 609. After that, the Department allowed Connecticut Light to continue collecting the pricing-differential amount from its customers—but ordered that the moneys be held in escrow while the case was pending.