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## Acronyms

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## **Acronyms**

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# Acronyms

By Douglas E. Abrams

On June 1, 2012, the United States Court of Appeals for the District of Columbia Circuit decided *National Association of Regulatory Utility Commissioners v. United States Department of Energy*.<sup>1</sup> The three-judge panel held that the challenged agency determination violated the Nuclear Waste Policy Act of 1982.<sup>2</sup> Without conducting a valid cost evaluation required by the Act, the agency had refused to adjust or suspend annual fees collected from owners and operators of nuclear power plants to cover costs of the government's long-term disposal of civilian nuclear waste.

The parties hotly contested the case with servings of alphabet soup. On page 48 of its 58-page brief, for example, the Association argued: "Although DOE has not disclaimed its obligation to dispose of SNF, it is undisputed that DOE currently has no active waste disposal program. . . . The BRC is undertaking none of the waste disposal program activities identified in NWPA § 302(d). Its existence therefore cannot justify continued NWF fee collection."<sup>3</sup>

On page 24 of its 60-page brief, the agency countered that "[t]he plain language of the NWPA . . . provides the Secretary [of Energy] with broad discretion in determining whether to recommend a change to the statutory NWF fee. . . . In section 302(a)(2) of the NWPA, Congress set the amount of the NWF fee – which is paid only by utilities that enter into contracts with DOE for the disposal of their SNF and HLW. . . ."<sup>4</sup>

Get it?

## Alphabet Soup

The court's opinion admonished the parties for "abandon[ing] any attempt to write in plain English, instead abbreviating every conceivable agency and statute involved, familiar or not, and littering their briefs with references to 'SNF,' 'HLW,' 'NWF,' 'NWPA,' and 'BRC' — shorthand for 'spent nuclear fuel,' 'high-level radioactive waste,' the 'Nuclear Waste Fund,' the 'Nuclear Waste Policy Act,' and the 'Blue Ribbon Commission.'"<sup>5</sup>

Writing for the unanimous panel, Judge Laurence H. Silberman instructed that "[b]rief-writing, no less than 'written English, is full of bad habits which spread by imitation and which can be avoided if one is willing to take the necessary trouble.'"<sup>6</sup> The D.C. Circuit's *Handbook of Practice and Internal Procedures* flags the bad habit that occasioned the court's instruction here: "[P]arties are strongly urged to limit the use of acronyms. While acronyms may be used for entities and statutes with widely recognized initials, such as FERC and FOIA, parties should avoid using acronyms that are not widely known."<sup>7</sup>

The confusion created by the parties' casual use of acronyms appeared particularly stark because Judge Silberman and his colleagues were not newcomers unaccustomed to the federal administrative thicket. The D.C. Circuit has been called "a de facto, quasi-specialized administrative law court"<sup>8</sup> because it "has exclusive jurisdiction over a variety of challenges to administrative action and hears a disproportionate share of the United States' administrative law cases."<sup>9</sup> The court's "steady diet"<sup>10</sup> of

federal agency review proceedings includes ones involving the Department of Energy. The three judges hearing the Nuclear Waste Policy Act appeal had served an aggregate total of 59 years on the court.<sup>11</sup>

## A Rule of Reason

Lawyers' use of acronyms should be guided by a "rule of reason" that, in the exercise of sound judgment, balances two threshold considerations. On the one hand, when an acronym recognizable by the intended audience is fully identified at its first appearance, the acronym can simplify the writer's message and help readers move more easily from paragraph to paragraph. On the other hand, as the D.C. Circuit intimates, an acronym concocted by the writer or otherwise unknown to most readers can impede that movement, even with initial full identification.

Timing and appreciation for a reader's ordinary attention span may also matter. To be fair to the Association and the agency in the recent D.C. Circuit appeal, the parties' briefs did fully identify acronyms the first time they appeared. In any expository writing, however, even apparently recognizable acronyms fully identified early can leave readers disoriented when the acronym does not appear again until several pages later (perhaps a dozen or more pages later in a brief, and even several dozen in a book). Rather than force readers to refresh their memories by scanning several prior pages to ferret out the full identification, the writer applying the rule of reason might be better off repeating the full name again.

In the recent appeal, for example,

the parties fully identified the “Nuclear Waste Fund (NWF)” on page 1 of their respective briefs. Even if some readers might be familiar with the acronym, however, scrapping the shorthand by repeating the full name a dozen or more pages later would have better served the parties’ efforts to communicate effectively with the court.

These basic principles apply not only in briefs and other submissions written for courts, but also in articles, monographs, books and other publications written for a more general readership of lawyers or non-lawyers.

### *Submissions to Courts*

Judges seasoned in administrative review decided the recent Nuclear Waste Policy Act appeal, but judges in general jurisdiction courts may not initially be as familiar as counsel with the substantive law that determines the outcome. As American law has grown increasingly intricate and diverse in recent decades, more and more lawyers have maintained specialty practices.<sup>12</sup> Specialization means that judges may come from private or public sector careers that exposed them regularly to only some of the ever-expanding constitutional and non-constitutional law questions that now shape their dockets. Casual use of acronyms and other jargon comes with risks because, according to one federal district court, writers gamble when they “presuppose specialized knowledge on the part of their readers.”<sup>13</sup>

Reliance on recognized acronyms, like reliance on other professional jargon, may serve a legal writer’s purpose when the audience consists solely of readers trained in the writer’s specialty. But without this foundation of common understanding, warns Judge Richard A. Posner of the U.S. Court of Appeals for the 7th Circuit, “much legal jargon can obscure rather than illuminate a particu-

lar case.”<sup>14</sup>

“There is nothing wrong with a specialized vocabulary – for use by specialists,” Judge Posner explained. “Federal district and circuit judges, however, . . . are generalists. . . . Lawyers should understand the judges’ limited knowledge of specialized fields and choose their vocabulary accordingly.”<sup>15</sup>

Plain English may warrant counsel’s particular attention when, as in the Nuclear Waste Policy Act case, the court reviews a federal agency decision. Intricate administrative rules and regulations, grounded as they often are in sometimes opaque enabling legislation, can create labyrinths most effectively negotiated by specialists. In recent generations, administrative law has grown “extremely complex,”<sup>16</sup> so much so that Justice Scalia has remarked that “[a]dministrative law is not for sissies.”<sup>17</sup>

The practical upshot of administrative complexity, according to the U.S. Court of Appeals for the 5th Circuit, is that lawyers regularly immersed in an agency’s practice may acquire “insights and experience denied judges. The subtleties . . . encased in jargon and tucked into interstices of the administrative scheme, may escape us.”<sup>18</sup> “It is the responsibilities of the parties to properly educate the court,” explains a federal district judge, “not of the court to improperly defer to an agency decision.”<sup>19</sup>

Because effective written communication is a two-way street, judges also should apply a rule of reason when they consider whether to use acronyms in lengthy opinions. Casual use of acronyms may unnecessarily break the readers’ flow because the opinion’s primary audience – the lawyers who handle a particular case or later seek precedents, and the clients whose rights and obligations hang in the balance – may also not be specialists in the field that gives rise

to the decision. Justice Elena Kagan is right that a court preparing an opinion should strive to “figure out how to communicate complicated ideas to people who know a lot less than you do about a certain subject.”<sup>20</sup>

### *Writing for a General Readership*

Most legal writing targets a discrete audience readily identifiable in advance, and early identification may help inform the decision whether and when to use acronyms in articles, monographs, books or other writings that seek to reach a general audience beyond the courts. An audience of lawyers trained in the writer’s specialty may be able to digest acronyms more easily than an audience of lawyers trained in other specialties, or an audience of clients or other lay readers unaccustomed to legal discussion altogether. Analysis that resonates with some readers may create barriers for others.

At its best, writing is a dialog, and not a monolog. Writers may understand what they mean to say, but the key is whether readers will also understand and remain with the text until the end. When a frustrated reader quits in midstream for inability or unwillingness to converse in acronyms or other unfamiliar jargon, the writer fails in the core mission – to finish before the reader does. As stage and screen actress Shirley Booth said soon after winning an Academy Award in 1952, “the audience is 50 percent of the performance.”<sup>21</sup>

## **Conclusion: Bridging the Gap**

In court filings and other expression that applies the rule of reason, the soundest advice for writers is to err on the side of avoiding overreliance on acronyms. Unless the writer publishes with greater grasp of the subject matter than the average reader, the writer should not publish

at all. Freewheeling use of acronyms can create unnecessary, avoidable roadblocks that thwart the writer's effort to bridge the gap.

## Endnotes

- 1 680 F.3d 819 (D.C. Cir. 2012).
- 2 42 U.S.C. §§ 10101-10270.
- 3 *Nat'l Ass'n of Regulatory Utility Comm'rs, Final Brief of Consolidated Petitioners* 48, 2011 WL 5479247 (2012).
- 4 *Nat'l Ass'n of Regulatory Utility Comm'rs, Final Brief for Respondent* 24-25, 2011 WL 5479246 (2012).
- 5 680 F.3d at 820 n.1.
- 6 *Id.*, quoting George Orwell, *Politics and the English Language*, 13 *HORIZON* 76 (1946).
- 7 680 F.3d at 820 n.1; *Handbook of Practice and Internal Procedures, United States Court of Appeals for the District of Columbia Circuit* 43 (2011).
- 8 CHRISTOPHER P. BANKS, *JUDICIAL POLITICS IN*

- THE D.C. CIRCUIT COURT, at xiii (1999).
- 9 John M. Golden, *The Federal Circuit and the D.C. Circuit: Comparative Trials of Two Semi-Specialized Courts*, 78 *GEO. WASH. L. REV.* 553, 554.
  - 10 John F. Manning, *Nonlegislative Rules*, 72 *GEO. WASH. L. REV.* 893, 893 (2004).
  - 11 United States Court of Appeals, District of Columbia Circuit: About the Judges, <http://www.cadc.uscourts.gov/internet/home.nsf/content/judges>.
  - 12 SOL LINOWITZ, *THE BETRAYED PROFESSION*, ch. 5 (1994).
  - 13 *Waddy v. Globus Medical, Inc.*, No. 407CV075, 2008 WL 3861994 \*2 n.4 (S.D. Ga. Aug. 18, 2008).
  - 14 *Miller v. Illinois Cent. R.R. Co.*, 474 F.3d 951, 955 (7th Cir. 2007).
  - 15 *Id.*
  - 16 Testimony of Thomas M. Susman on Behalf of the ABA, *Now More Than Ever: Reauthorizing the Administrative Conference, Reforming Regulation, and Reinventing Government*, 8 *ADMIN. L.J. AM. U.* 677 (1994).
  - 17 Antonin Scalia, *Judicial Deference to Ad-*

*ministrative Interpretations of Law*, 1989 *DUKE L.J.* 511, 511.

- 18 *Watts v. Missouri-Kan.-Tex. R.R. Co.*, 383 F.2d 571, 583 (5th Cir. 1967).
- 19 *Shoshone-Bannock Tribes v. Shalala*, 988 F. Supp. 1306, 1318 (D. Or. 1997).
- 20 Robert Barnes, *Kagan Made Her Mark in Bold Rookie Term*, *WASH. POST*, Sept. 26, 2011, at A1 (quoting Justice Kagan).
- 21 Shirley Booth, *News Summaries*, Dec. 13, 1954 (winner for Best Actress in *Come Back, Little Sheba*; also winner of three Tony Awards, a Golden Globe Award and two Emmy Awards).



**Douglas E. Abrams**, a law professor at the University of Missouri, has written or co-authored five books. Four U.S. Supreme Court decisions have cited his law review articles.

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