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Temper Your Jargon

Always ask yourself if the reader will know what you mean

By Kenneth F. Oettle

For persons knowledgeable in an area, one word can convey an entire body of information as, for example, "*Miranda* warnings" in law enforcement, "reservation of rights" in insurance law, or "covenants" in M&A work. Among those in-the-know, shorthand references are a convenience. To the uninitiated, they can be a source of confusion.

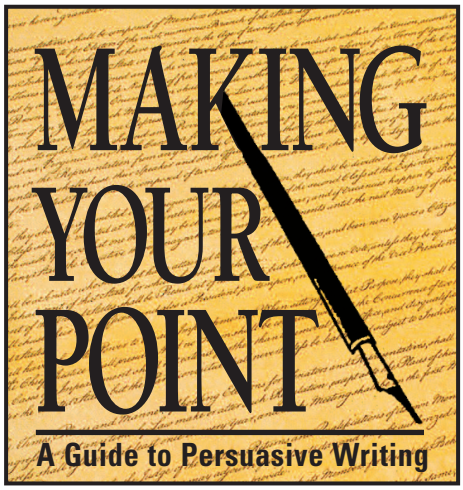
As a writer, you don't want your audience to be confused. If jargon can streamline your message, fine. If it obscures the message, avoid it. Unfortunately, instinct sometimes pushes us to use jargon where we shouldn't, for any of the following reasons:

(a) We are too self-absorbed to put ourselves in the reader's shoes. That is, we do not understand how difficult it is for an uninitiated reader to understand our terms of art. If this is the case, we probably don't know it.

(b) We are embarrassed to admit that we don't fully understand the jargon, so we use it.

(c) We wish to appear to be an insider, and thus appear important, by using insider jargon. We may fool some of the people some of the time, but our purpose is to communicate, not to look important.

(d) We think shorthand references save space and time. They do, but only for insiders. Outsiders have to open the dictionary or turn to Wikipedia to figure out what we are saying, assuming they take the trouble to do so.



Jargon-laden passages can be turgid. The following excerpt from a brief in a patent case was directed to a District Court judge who was inexperienced in patent matters:

> If the parties had intended that the 'phase position' element be construed to be limited to a direct comparison of the received signal to a supply electrode signal, the agreed-upon construction would explicitly include that limitation. Rather, the agreed-upon construction, 'the amount by which the received signal is displaced or shifted in time relative to a supply electrode signal,' does not limit the determination of that amount to a specific way of making that determination — rather it covers all ways of determining that 'amount.'

Maybe patent lawyers understand this passage, assuming they otherwise understand the case, and maybe judges on the Federal Circuit Court of Appeals can understand it because they handle patent cases, but I never understood the passage, you don't understand it, and a District Court judge without an engineering background or substantial patent experience is likely not to understand it. The foregoing example is extreme because patent law is highly technical. Nevertheless, whatever your specialty (and several hours with a knowledgeable client will make you a quasi-specialist in almost anything), you will have to deal with terms of art and thus "jargon."

Disciplines having their fair share of jargon include, but are hardly limited to: utilities rate setting ("cost of capital"), mergers and acquisitions ("reverse triangular mergers"), environmental insurance coverage ("continuous triggers"), mortgage lending (warehouse lenders"), and tax ("501(c)(3) corporations").

As an example of a passage that copes more effectively with jargon, admittedly with less of it, consider the following description of an electroplating process from a brief in an insurance coverage case. The writer took care to help the court understand the process:

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> At plaintiff's plant, chrome plating is added to automobile and household appliance components such as headlight housings, auto window trim, and washing machine control panels by dipping the die cast metal into a series of chemical baths. Each bath either adds metal plating (copper, nickel or chromium, in that order) or rinses away chemical substances used in, or generated by, the plating process. The tanks in which residual chemicals are removed from the metal are called 'overflow rinses,' in that the water from those tanks passes through overflow pipes directly to treatment tanks, where the chemicals in the rinse water are neutralized. The cleansed rinse water (the 'effluent') at all times met State standards.

Note the tactical choices that the writer made:

• providing examples of the metallic components to which chrome plating is added;

• creating a clear dichotomy between the baths that add metal plating and the baths that rinse away chemical residue;

• naming the elements added by electroplating, and in what order;

• explaining "overflow rinse";

• defining "effluent," but in reverse, as it were, so the reader doesn't have to see the technical term before being told what it means (i.e., "effluent," not "cleansed rinse water," appears within parentheses).

To save space and minimize the interruptive effect of asides, the writer made a risk-reward calculation that the reader would know, or could deduce, what "die cast" metal is, or at least that the type of metal was secondary in importance and need not be explained.

Judges appreciate this kind of exposition, and they don't appreciate unexplained jargon, as Judge Richard Posner of the Seventh Circuit Court of Appeals instructed in a case where the court had to sort out the terminology of the reinsurance industry:

> A note, finally, on advocacy in this court. The lawyers' oral arguments were excellent. *But their briefs, although well written and professionally competent, were difficult for us judges to understand because of the density of the reinsurance jargon in them*. There is nothing wrong with a specialized vocabulary — for use by specialists. Federal district and circuit judges, however, with the partial exception of the judges of the court of appeals for the Federal Circuit (which is semi-specialized), are generalists. We hear very few cases involving reinsurance, and cannot possibly achieve expertise in reinsurance practices except by the happenstance of having practiced in that area before becoming a judge, as none of us has. Lawyers should understand the judges' limited knowledge of specialized fields and choose their vocabulary accordingly. *Every esoteric term used by the reinsurance industry has a counterpart in ordinary English, as we hope this opinion has demonstrated*. The able lawyers who briefed and argued this case could have saved us some work and presented their positions more effectively had they done the translations from reinsurancese into everyday English themselves.

Indiana Lumbermens Mutual Ins. Co. v. Reinsurance Results, Inc., No. 07-1823, 2008 WL 141795, at *5 (7th Cir. Jan. 16, 2008) (emphasis added).

Lawyers are inevitably tempted to use jargon once they have mastered it and possibly even before. Be sensitive to this tendency, and be sensitive as well to what the reader knows and needs to be told.

Puzzler

How would you tighten and sharpen the following sentence from a responding brief?

> In its papers, defendant asserts that the court must grant summary judgment on the plaintiff's fraud claim for three essential reasons.

"In its papers" is implicit and therefore unnecessary, and "asserts that the court must grant" can be replaced by "seeks." The reader will know that the application is being made to the court.

Whether to include "plaintiff's" to go with "fraud claim" is optional. Only the plaintiff would be making a claim, so if you say "fraud claim," the reader will know exactly what you mean. You would add "plaintiff's" — or the plaintiff's actual name — if you wish to ingrain the name by repetition or if the name flows well in the sentence.

The writer didn't mean "essential reasons." An essential reason is "of the utmost importance" (*Merriam-Webster's Collegiate Dictionary*, 11th Ed.), suggesting value to the other side's argument. The writer meant "essentially three reasons," in other words, that when the arguments are boiled down to their essence, defendant makes three of them.

> The new version:
> ABC Corp. seeks summary judgment on the fraud claim for essentially three reasons. ■