

# “Instant” Litigation; a Bus You Cannot Ride, and a Really Big Switch

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My wife is an executive with a large corporation. Recently she asked me if “instant litigation” was a legal term. I was surprised. I told her no, but I wondered what “instant” litigation might be. Was it a powder or maybe a concentrated liquid? As a commercial litigator, “instant” litigation seemed like it might be handy. I ask her how it was used. She said both her lawyer’s brief and the opponent’s referred to “the instant case.” Then the light bulb came on. I asked her if the dispute involved two lawsuits; she yes; one now and one years ago. Proudly, I gave her the answer; instant meant the current case rather than the older one. I explained that an easier to understand synonym would be “current.”

Lawyers have a penchant for the formal and the archaic: legalese. Why else would lawyers start pleadings with “Comes Now” and contracts with “Whereas”? Instant, as used above, certainly belongs in this category. Why do lawyers use legalese? Is it because they can charge more for fancy words? Hopefully not. Do clients perceive greater value in documents they have difficulty understanding? Not typically. Instead, legalese signals that we are part of the “club”; we are insiders, we know this stuff.

Like all good clubs, however, legalese is as exclusionary as it is inclusive. The lawyers using instant were writing to each other and a judge; all club members. The brief was confusing only to a client, a non-club member.

Lawyers are not alone, however. Every business has its own argot. As a young lawyer, a telephone company client kept talking about a “switch.” I thought the switch was something like an industrial version of what I used to turn on the lights; they explained that in their business a switch was a computer that routed telephone calls. Their switch might fill an entire building.

If you look around these buzzwords, I call it “tradespeak,” are everywhere. We have EBITA and DARO from accounting; cache, bus, ROM and RAM (to name a few) from computing; roustabout and roughneck from the oil fields and a personal favorite gandydancer (somewhat archaic) from the railroads. The list is endless. Every business has its own private language denoting membership in its “club.”

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Some of these terms are simply window dressing (e.g. instant). Others, like cache in computing, are a sort of short hand that compresses a large amount of meaning into a small space if you are in the club.

Should we use tradespeak? Yes and no. If like cache or switch they have meaning and you are using them within your club, absolutely. Club members will be annoyed to hear you constantly explain a term they know. If your audience is wider, however, tradespeak can obfuscate more than it illuminates. Avoiding it altogether may be cumbersome if a technical discussion is necessary. Consider defining it for your audience the first time you use it to bring them into the club. Most of all, be mindful of your purpose. Usually, your purpose is to be clear to all likely readers, if so, consider tradespeak carefully.

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