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## The Perils of Hyperbole

Diane B. Kraft

*University of Kentucky College of Law*, [diane.kraft@uky.edu](mailto:diane.kraft@uky.edu)

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## The Perils of Hyperbole

by Diane B. Kraft  
University of Kentucky College of Law

Think about some of the most quoted lines from movies, books and history. “Go ahead, make my day.” “Reader, I married him.” “Houston, we have a problem.” These lines are powerful because they’re understatements. Dirty Harry could have said, “Go ahead, you rotten scumbag, shoot that hostage so I can blow your brains out.” Jane Eyre could have said, “Reader, I joyfully entered into wedded bliss with the love of my life.” But the writers opted for understatement, and their work was more powerful for it.

Many authors of books on legal writing advise law students not to exaggerate when writing fact statements and arguments in briefs. In their excellent book, *Making Your Case: The Art of Persuading Judges*, Antonin Scalia and Bryan Garner urge advocates to “err...on the side of understatement, and flee hyperbole.”<sup>1</sup> “Authors of legal writing texts warn law students that “[c]ourts are much more likely to be persuaded by a brief that presents forceful arguments” than by “overblown rhetoric,”<sup>2</sup> and that “[e]xaggeration destroys credibility.”<sup>3</sup>

Yet some lawyers continue to exaggerate to make their points, perhaps thinking it is expected of them as zealot advocates. Often, they do so at their peril. Consider the California attorney who described the opposing party as “immoral, unethical, oppressive, and/or unscrupulous.” The court was not impressed, noting that “[c]olorful language, which is not in short supply in the...brief, is not a substitute for facts or evidence.”<sup>4</sup>

An annoyed U.S. District Court judge in Colorado included the following footnote in an order denying the plaintiffs’

motion for class certification: “At various points in their briefing, Plaintiffs resort to rhetorical and inflammatory language to describe Quiznos’ sales practices, e.g., ‘charade,’ ‘dupe,’ calling Quiznos personnel ‘hucksters,’ etc. These discretions from legal civility do not help Plaintiffs’ case and the Court encourages counsel to pause a moment before resorting to the computer thesaurus tool when writing their briefs.”<sup>5</sup>

Sometimes a court is so irked by hyperbolic language that it threatens to hit the offending lawyer where it hurts – the pocketbook: “Further filings consistent with the parties’ previous tone, to include the use of such adjectives as ‘ludicrous,’ ‘eye-rolling,’ and the like, will be treated as a violation of this Order and will subject the responsible attorney to the imposition of sanctions.”<sup>6</sup>

If the facts or arguments are on your side, you don’t need to exaggerate them to win. If they’re not, you’re not going to fool anyone by trying to hide bad facts or a weak argument with exaggerated claims about your client’s or the opposing party’s case. Writers use hyperbole thinking it will bolster their arguments, but it often has the opposite effect of signaling to the reader that the facts or arguments are so weak, the writer can’t rely on them alone to win. The converse is also true – facts and arguments devoid of hyperbole suggest a writer who is confident that the facts speak for themselves and that his arguments are solid.

But you don’t need to call the opposing party’s argument “ludicrous” to be guilty of hyperbole. Even a word as simple as “clearly” or “very” can have the unintended effect of prompting the

reader to wonder, “If it’s so *clear*, why are you and your opponent in court?” or “Is a *very* large semi truck really any bigger than a large semi truck...and are there any small semi trucks?” As the author of a popular first-year legal writing text observes, such words are so overused that they are “virtually meaningless.... So many writers (lawyers and judges alike) have used those labels in place of well-reasoned legal analysis that some readers see these intensifiers as signaling a weak analysis.”<sup>7</sup>

Given the overwhelming view among legal writing professionals that hyperbole is unhelpful at best, why do lawyers use it? Perhaps we are so used to hearing politicians and pundits exaggerate that we sometimes forget the power of a simple fact or valid argument. But we shouldn’t, if our goal is to make the strongest argument we can and win our client’s case. A good legal writer will resist the temptation to rely on hyperbole to do the work of a well-crafted fact statement or argument.

So the next time you’re tempted to write a fact statement or argument that’s long on exaggeration and short on subtle persuasion, pause and remember that the judge reading your brief will likely see right through the fog of hyperbole and perhaps question the strength of your case as a result. When she does, you have a problem. ☹

### REFERENCES

1. Antonin Scalia & Bryan A. Garner, *Making Your Case: The Art of Persuading Judges* 14 (2008).
2. John C. Dernbach et al., *A Practical Guide to Legal Writing & Legal Method* 342 (4th ed. 2010).
3. Kristen Konrad Robbins-Tiscione, *Rhetoric for Legal Writers: The Theory and Practice of Analysis and Persuasion* 205 (2009).
4. *Princess Cruise Lines, Ltd. v. Superior Court*, 179 Cal. App. 4th 36 (2009).
5. *Bonanno v. Quizno’s Franchise Co.*, 2009 WL 1068744 (D. Colo. 2009).
6. *Texas Taco Cabana L.P. v. Taco Cabana of New Mexico, Inc.*, 2004 WL 2106527 (W.D. Tex. 2004).
7. Linda Edwards, *Legal Writing Process, Analysis, and Organization* 229 (5th ed. 2010).