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## Ironic Quotation Marks Can Be Overused

Ask yourself whether mild sarcasm will help or hurt the presentation

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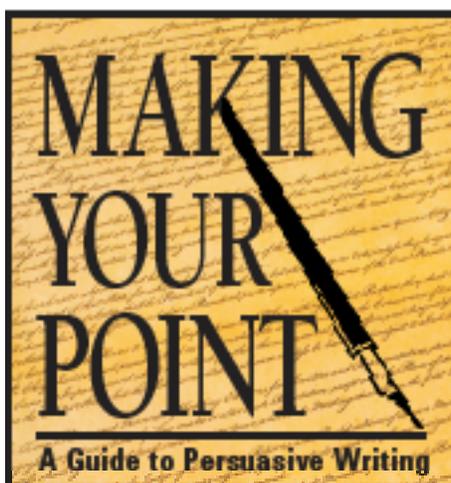
**W**e sometimes place quotation marks around words or phrases whose validity we question, as in, "Plaintiff alleges she was 'severely' injured." The marks around "severely" signal that we doubt the validity of plaintiff's claim. They are called ironic quotation marks because they are mildly sarcastic. One definition of irony is "mild sarcasm."

Obviously, not all quotation marks are sarcastic. The reader can tell from the context. For example, I placed quotation marks around "mild sarcasm" because those are precisely the words that some sources use as a definition for "irony." I intended no sarcasm, though I recognize that hyper-combative types — our profession has a few — might see sarcasm in it.

Here's another example. Suppose

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you dispute the defendant's claim that it responded promptly to your last settle-



ment offer. You write this in a letter to opposing counsel:

ABC Corp. claims that it responded "promptly" to plaintiff's offer. Actually, it took three weeks to respond.

Some advocates would place quotation marks around "promptly" without a second thought, looking to send a pointed message to opposing counsel that the writer is unpersuaded by counsel's characterization of the facts.

I would not place quotation marks around either severely or promptly, nor would most of the members of my Informal Polling Group. I might be tempted, but I would resist. The marks are an editorial — an expression of my disbelief — and I try to minimize editorials because they

intrude on the reader's decision-making process. They also reflect poorly on me.

This particular form of editorial — ironic quotation marks — may create an image in the reader's mind of "air quotes," that is, someone hunching the shoulders, ducking the head, and raising two fingers on each hand in the mock gesture of quotation, saying something like, "John claims he is the 'big cheese' in the office." I don't want the reader to visualize me that way.

One could argue that placing quotation marks around "promptly" is within acceptable rhetorical parameters because the three-week delay shows that defendant did not act promptly. Arguably, you are only "telling it like it is."

That's a fair point, but the perceived benefit of the sharper tone is outweighed by collateral damage. Sarcasm makes the writer look snarky (in the words of my Informal Polling Group), and, as I said, it imprudently tells the reader how to think — a big no-no in my book. It asks the reader to doubt the validity of the thought embodied in a word or phrase simply because the writer doubts it, not because the facts refute it.

### Confusion Is Another Negative Consequence

Ironic quotation marks can also confuse the reader. Suppose, for example, that you contend that waiver of the attorney-client privilege as to a memo voluntarily supplied in discovery resulted in a subject matter waiver, that is, waiver of all privileged communications with respect to the subject matter discussed in the memo. You write the following:

The "general rule" in this Circuit is that disclosure of a privileged document waives the privilege not only as to the specific communication in the document but

also as to the same subject matter in other communications.

The marks around “general rule” suggest that the writer may not be entirely on board with the phrase, but we can’t be sure. Maybe the writer thinks the rule has so many exceptions that it shouldn’t be called general, or maybe the writer is just quoting a court that used that phrase. It’s probably the latter because the writer would be unlikely to undermine his own position, but quoting a phrase like “general rule” seems pointless unless a subtext is intended. Either way, the marks draw attention to the writer and away from the point.

The following sentence was written by counsel to an insured who was suing his insurer:

In response to every claim for coverage, Insurer sends a form letter refusing payment until the policy holder “complies” with a long list of demands.

I asked the associate who drafted this language why he placed quotation marks around “complies.” He couldn’t explain. I suggested that the marks constituted his disdain for the arrogance of an insurer that would create a long list of required but unnecessary demands and then deem an insured “noncompliant,” much as a totalitarian regime might create arbitrary rules and then accuse its citizens of breaking them.

The associate agreed. It was a good guess, and the puzzle was solved. But persuasive legal writing shouldn’t create puzzles. It should solve them. Poetry may thrive on ambiguity, but persuasive legal writing does not.

Later in the same draft, the associate again used ironic quotation marks:

Insurer’s “review” of the information results in further delay.

I asked the associate what his point was about the insurer’s review. Did he mean that the review would be superficial or perhaps nonexistent? Did he mean that the review would be biased? I could not tell from the context. The associate said he meant the insurer’s review would be cursory and biased.

For circumstances like this, I recommend articulating the thought rather than delivering it as a semi-secret message by means of ironic quotation marks. The marks don’t convey enough information, and they evoke too many possibilities.

I am not against ironic quotation marks *per se*. I use them when an adversary takes a truly ridiculous position and when the language is particularly vulnerable, as in the following sentence from a brief in support of a motion for sanctions:

Defendant claims to have made “every effort” to comply with plaintiff’s discovery demand. That’s hardly true. Defendant neglected to pull key documents from employee laptops, as we know from the deposition testimony of defendant’s Chief Information Officer.

“Every effort” is particularly vulnerable because in this context it is both a careless cliché and a gross exaggeration.

Using ironic quotation marks is a matter of picking one’s spots along a continuum

of appropriateness, each case turning on its own facts. I haven’t identified the beginning and end points of the continuum, but “I know them when I see them.”

## *Puzzler*

How would you tighten and sharpen the following sentence?

A hearing on the cross-motions to compel discovery was held on August 8, as well as plaintiff’s motion for sanctions.

“As well as” is often used to tack on loose ends. As of the comma, the thought seems to be complete, so the reader doesn’t know quite what to make of the motion for sanctions. Was it also heard on August 8? Try grouping the cross-motions and the motion for sanctions as follows:

A hearing on the cross-motions to compel discovery and plaintiff’s motion for sanctions was held on August 8.

This clarifies that all motions were heard on August 8. You can improve the sentence further by substituting active (“The court heard . . .”) for passive (“A hearing . . . was held”). For transitional and rhythmic purposes, you could also begin the sentence with “On August 8.”

The revised version: The court heard the cross-motions to compel discovery and plaintiff’s motion for sanctions on August 8. ■