

Politics and the English Language

George Orwell

Politics and the English Language

MOST PEOPLE WHO BOTHER with the matter at all would admit that the English language is in a bad way, but it is generally assumed that we cannot by conscious action do anything about it. Our civilization is decadent, and our language—so the argument runs—must inevitably share in the general collapse. It follows that any struggle against the abuse of language is a sentimental archaism, like preferring candles to electric light or hansom cabs to aeroplanes. Underneath this lies the half-conscious belief that language is a natural growth and not an instrument which we shape for our own purposes.

Now, it is clear that the decline of a language must ultimately have political and economic causes: it is not due simply to the bad influence of this or that individual writer. But an effect can become a cause, reinforcing the original cause and producing the same effect in an intensified form, and so on indefinitely. A man may take to drink because he feels himself to be a failure, and then fail all the more completely because he drinks. It is rather the same thing that is happening to the English language. It becomes ugly and inaccurate because our thoughts are foolish, but the slovenliness of our language makes it easier for us to have foolish thoughts. The point is that the process is reversible. Modern English, especially 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. If one gets rid of these habits one can think more clearly, and to think clearly is a necessary first step towards political regeneration: so that the fight against bad English is not frivolous and is not the exclusive concern of professional writers. I will come back to this presently, and I hope that by that time the meaning of what I have said here will have become clearer. Meanwhile, here are five specimens of the English language as it is now habitually written.

These five passages have not been picked out because they are especially bad—I could have quoted far worse if I had chosen—but because they illustrate various of the mental vices from which we now suffer. They are a little below the average, but are fairly representative samples. I number them so that I can refer back to them when necessary:

(1) I am not, indeed, sure whether it is not true to say that the Milton who once seemed not unlike a seventeenth-century Shelley had not become, out of an experience ever more bitter in each year, more alien (sic) to the founder of that Jesuit sect which nothing could induce him to tolerate.

PROFESSOR HAROLD LASKI (Essay in Freedom of Expression)

(2) Above all, we cannot play ducks and drakes with a native battery of idioms which prescribes such egregious collocations of vocables as the Basic put up with for tolerate or put at a loss for bewilder.

PROFESSOR LANCELOT HOGBEN (Interglossa)

(3) On the one side we have the free personality; by definition it is not neurotic, for it has neither conflict nor dream. Its desires, such as they are, are transparent, for they are just what institutional approval keeps in the forefront of consciousness; another institutional pattern would alter their number and intensity; there is little in them that is natural, irreducible, or culturally dangerous. But on the other side, the social bond itself is nothing but the mutual reflection of these self-secure integrities. Recall the definition of love. Is not this the very picture of a small academic? Where is there a place in this hall of mirrors for either personality or fraternity?

ESSAY ON PSYCHOLOGY in Politics (New York)

(4) All the "best people" from the gentlemen's clubs, and all the frantic fascist captains, united in common hatred of Socialism and bestial horror of the rising tide of the mass revolutionary movement, have turned to acts of provocation, to foul incendiarism, to medieval legends of poisoned wells, to legalize their own destruction of proletarian organizations, and rouse the agitated petty-bourgeoisie to chauvinistic fervor on behalf of the fight against the revolutionary way out of the crisis.

COMMUNIST PAMPHLET

(5) If a new spirit is to be infused into this old country, there is one thorny and contentious reform which must be tackled, and that is the humanization and galvanization of the B.B.C. Timidity here will bespeak canker and atrophy of the soul. The heart of Britain may lee sound and of strong beat, for instance, but the British lion's roar at present is like that of Bottom in Shakespeare's *Midsummer Night's Dream*—as gentle as any sucking dove. A virile new Britain cannot continue indefinitely to be traduced in the eyes, or rather ears, of the world by the effete

languors of Langham Place, brazenly masquerading as "standard English." When the Voice of Britain is heard at nine o'clock, better far and infinitely less ludicrous to hear aitches honestly dropped than the present priggish, inflated, inhibited, school-ma'am-ish arch braying of blameless bashful mewing maidens.

LETTER IN Tribune

Each of these passages has faults of its own, but quite apart from avoidable ugliness, two qualities are common to all of them. The first is staleness of imagery; the other is lack of precision. The writer either has a meaning and cannot express it, or he inadvertently says something else, or he is almost indifferent as to whether his words mean anything or not. This mixture of vagueness and sheer incompetence is the most marked characteristic of modern English prose, and especially of any kind of political writing. As soon as certain topics are raised, the concrete melts into the abstract and no one seems able to think of turns of speech that are not hackneyed: prose consists less and less of words chosen for the sake of their meaning, and more and more of phrases tacked together like the sections of a prefabricated hen-house. I list below, with notes and examples, various of the tricks by means of which the work of prose-construction is habitually dodged:

Dying metaphors. A newly-invented metaphor assists thought by evoking a visual image, while on the other hand a metaphor which is technically "dead" (e.g., iron resolution) has in effect reverted to being an ordinary word and can generally be used without loss of vividness. But in between these two classes there is a huge dump of worn-out metaphors which have lost all evocative power and are merely used because they save people the trouble of inventing phrases for themselves. Examples are: Ring the changes on, take up the cudgels for, toe the line, ride roughshod over, stand shoulder to shoulder with, play into the hands of, an axe to grind, grist to the mill, fishing in troubled waters, on the order of the day, Achilles' heel, swan song, hotbed. Many of these are used without knowledge of their meaning (what is a "rift," for instance?), and incompatible metaphors are frequently mixed, a sure sign that the writer is not interested in what he is saying. Some metaphors now current have been twisted out of their original meaning without those who use them even being aware of the fact. For example, toe the line is sometimes written tow the line. Another example is the hammer and the anvil, now always used with the implication that the anvil gets the worst of it. In real life it is always the anvil that breaks the hammer, never the other way about: a writer who stopped to think what he was saying would be aware of this, and would avoid perverting the original phrase.

Operators, or verbal false limbs. These save the trouble of picking out appropriate verbs and nouns, and at the same time pad each sentence with extra syllables which give it an appearance of symmetry. Characteristic phrases are: render inoperative, militate against, prove unacceptable, make contact with, be subjected to, give rise to, give grounds for, having the effect of, play a leading part (role) in, make itself felt, take effect, exhibit a tendency to, serve the purpose of, etc., etc. The keynote is the elimination of simple verbs. Instead of being a single word, such as break, stop, spoil, mend, kill, a verb becomes a phrase, made up of a noun or adjective tacked on to some general-purposes verb as prove, serve, form, play, render. In addition, the passive voice is wherever possible used in preference to the active, and noun constructions are used instead of gerunds (by examination of instead of by examining). The range of verbs is further cut down by means of the -ize and de- formations, and banal statements are given an appearance of profundity by means of the not un- formation. Simple conjunctions and prepositions are replaced by such phrases as with respect to, having regard to, the fact that, by dint of, in view of, in the interests of, on the hypothesis that; and the ends of sentences are saved from anti-climax by such resounding commonplaces as greatly to be desired, cannot be left out of account, a development to be expected in the near future, deserving of serious consideration, brought to a satisfactory conclusion, and so on and so forth.

Pretentious diction. Words like phenomenon, element, individual (as noun), objective, categorical, effective, virtual, basis, primary, promote, constitute, exhibit, exploit, utilize, eliminate, liquidate, are used to dress up simple statements and give an air of scientific impartiality to biased judgments. Adjectives like epoch-making, epic, historic, unforgettable, triumphant, age-old, inevitable, inexorable, veritable, are used to dignify the sordid processes of international politics, while writing that aims at glorifying war usually takes on an archaic color, its characteristic words being: realm, throne, chariot, mailed fist, trident, sword, shield, buckler, banner, jackboot, clarion. Foreign words and expressions such as cul de sac, ancien regime, deus ex machina, mutatis mutandis, status quo, gleichschaltung, weltanschauung, are used to give an air of culture and elegance. Except for the useful abbreviations i.e., e.g., and etc., there is no real need for any of the hundreds of foreign phrases now current in English. Bad writers, and especially scientific, political and sociological writers, are nearly always haunted by the

notion that Latin or Greek words are grander than Saxon ones, and unnecessary words like expedite, ameliorate, predict, extraneous, deracinated, clandestine, subaqueous and hundreds of others constantly gain ground from their Anglo-Saxon opposite numbers.

The jargon peculiar to Marxist writing (hyena, hangman, cannibal, petty bourgeois, these gentry, lackey, flunkey, mad dog, White Guard, etc.) consists largely of words and phrases translated from Russian, German or French; but the normal way of coining a new word is to use a Latin or Greek root with the appropriate affix and, where necessary, the -ize formation. It is often easier to make up words of this kind (de-regionalize, impermissible, extramarital, non-fragmentary and so forth) than to think up the English words that will cover one's meaning. The result, in general, is an increase in slovenliness and vagueness.

An interesting illustration of this is the way in which the English flower names which were in use till very recently are being ousted by Greek ones, snap-dragon becoming *antirrhinum*, forget-me-not becoming *myosotis*, etc. It is hard to see any practical reason for this change of fashion: it is probably due to an instinctive turning-away from the more homely word and a vague feeling that the Greek word is scientific.

Meaningless words. In certain kinds of writing, particularly in art criticism and literary criticism, it is normal to come across long passages which are almost completely lacking in meaning. Words like romantic, plastic, values, human, dead, sentimental, natural, vitality, as used in art criticism, are strictly meaningless, in the sense that they not only do not point to any discoverable object, but are hardly even expected to do so by the reader. When one critic writes, "The outstanding feature of Mr. X's work is its living quality," while another writes, "The immediately striking thing about Mr. X's work is its peculiar deadness, the reader accepts this as a simple difference of opinion. If words like black and white were involved, instead of the jargon words dead and living, he would see at once that language was being used in an improper way. Many political words are similarly abused. The word Fascism has now no meaning except in so far as it signifies "something not desirable." The words democracy, socialism, freedom, patriotic, realistic, justice, have each of them several different meanings which cannot be reconciled with one another. In the case of a word like democracy, not only is there no agreed definition, but the attempt to make one is resisted from all sides. It is almost universally felt that when we call a country democratic we are praising it: consequently the defenders of every kind of régime claim that it is a democracy, and fear that they might have to stop using the word if it were tied down to any one meaning. Words of this kind are often used in a consciously dishonest way. That is, the person who uses them has his own private definition, but allows his hearer to think he means something quite different. Statements like Marshal Pétain was a true patriot, The Soviet Press is the freest in the world, The Catholic Church is opposed to persecution, are almost always made with intent to deceive. Other words used in variable meanings, in most cases more or less dishonestly, are: class, totalitarian, science, progressive, reactionary bourgeois, equality.

Example: "Comfort's catholicity of perception and image, strangely Whitmanesque in range, almost the exact opposite in aesthetic compulsion, continues to evoke that trembling atmospheric accumulative hinting at a cruel, an inexorably serene timelessness . . . Wrey Gardiner scores by aiming at simple bullseyes with precision. Only they are not so simple, and through this contented sadness runs more than the surface bittersweet of resignation." (Poetry Quarterly.)

Now that I have made this catalogue of swindles and perversions, let me give another example of the kind of writing that they lead to. This time it must of its nature be an imaginary one. I am going to translate a passage of good English into modern English of the worst sort. Here is a well-known verse from Ecclesiastes:

I returned, and saw under the sun, that the race is not to the swift, nor the battle to the strong, neither yet bread to the wise, nor yet riches to men of understanding, nor yet favor to men of skill; but time and chance happeneth to them all.

Here it is in modern English:

Objective consideration of contemporary phenomena compels the conclusion that success or failure in competitive activities exhibits no tendency to be commensurate with innate capacity, but that a considerable element of the unpredictable must invariably be taken into account.

This is a parody, but not a very gross one. Exhibit (3), above, for instance, contains several patches of the same kind of English. It will be seen that I have not made a full translation. The beginning and ending of the sentence follow the original meaning fairly closely, but in the middle the concrete illustrations—race, battle, bread—dissolve into the vague phrase "success or failure in competitive activities." This had to be so, because no

modern writer of the kind I am discussing—no one capable of using phrases like objective consideration of contemporary phenomena"—would ever tabulate his thoughts in that precise and detailed way. The whole tendency of modern prose is away from concreteness. Now analyze these two sentences a little more closely. The first contains 49 words but only 60 syllables, and all its words are those of everyday life. The second contains 38 words of 90 syllables: 18 of its words are from Latin roots, and one from Greek. The first sentence contains six vivid images, and only one phrase ("time and chance") that could be called vague. The second contains not a single fresh, arresting phrase, and in spite of its 90 syllables it gives only a shortened version of the meaning contained in the first. Yet without a doubt it is the second kind of sentence that is gaining ground in modern English. I do not want to exaggerate. This kind of writing is not yet universal, and outcrops of simplicity will occur here and there in the worst-written page. Still, if you or I were told to write a few lines on the uncertainty of human fortunes, we should probably come much nearer to my imaginary sentence than to the one from Ecclesiastes.

As I have tried to show, modern writing at its worst does not consist in picking out words for the sake of their meaning and inventing images in order to make the meaning clearer. It consists in gumming together long strips of words which have already been set in order by someone else, and making the results presentable by sheer humbug. The attraction of this way of writing, is that it is easy. It is easier—even quicker, once you have the habit—to say In my opinion it is a not unjustifiable assumption that than to say I think. If you use ready-made phrases, you not only don't have to hunt about for words; you also don't have to bother with the rhythms of your sentences, since these phrases are generally so arranged as to be more or less euphonious. When you are composing in a hurry—when you are dictating to a stenographer, for instance, or making a public speech—it is natural to fall into a pretentious, Latinized style. Tags like a consideration which we should do well to bear in mind or a conclusion to which all of us would readily assent will save many a sentence from coming down with a bump. By using stale metaphors, similes and idioms, you save much mental effort at the cost of leaving your meaning vague, not only for your reader but for yourself. This is the significance of mixed metaphors. The sole aim of a metaphor is to call up a visual image. When these images clash—as in The Fascist octopus has sung its swan song, the jackboot is thrown into the melting pot—it can be taken as certain that the writer is not seeing a mental image of the objects he is naming; in other words he is not really thinking. Look again at the examples I gave at the beginning of this essay. Professor Laski (1) uses five negatives in 53 words. One of these is superfluous, making nonsense of the whole passage, and in addition there is the slip alien for akin, making further nonsense, and several avoidable pieces of clumsiness which increase the general vagueness. Professor Hogben (2) plays ducks and drakes with a battery which is able to write prescriptions, and, while disapproving of the everyday phrase put up with, is unwilling to look egregious up in the dictionary and see what it means. (3), if one takes an uncharitable attitude towards it, is simply meaningless: probably one could work out its intended meaning by reading the whole of the article in which it occurs. In (4), the writer knows more or less what he wants to say, but an accumulation of stale phrases chokes him like tea leaves blocking a sink. In (5), words and meaning have almost parted company. People who write in this manner usually have a general emotional meaning—they dislike one thing and want to express solidarity with another—but they are not interested in the detail of what they are saying. A scrupulous writer, in every sentence that he writes, will ask himself at least four questions, thus: What am I trying to say? What words will express it? What image or idiom will make it clearer? Is this image fresh enough to have an effect? And he will probably ask himself two more: Could I put it more shortly? Have I said anything that is avoidably ugly? But you are not obliged to go to all this trouble. You can shirk it by simply throwing your mind open and letting the ready-made phrases come crowding in. They will construct your sentences for you—even think your thoughts for you, to a certain extent—and at need they will perform the important service of partially concealing your meaning even from yourself. It is at this point that the special connection between politics and the debasement of language becomes clear.

In our time it is broadly true that political writing is bad writing. Where it is not true, it will generally be found that the writer is some kind of rebel, expressing his private opinions and not a "party line." Orthodoxy, of whatever color, seems to demand a lifeless, imitative style. The political dialects to be found in pamphlets, leading articles, manifestoes, White Papers and the speeches of under-secretaries do, of course, vary from party to party, but they are all alike in that one almost never finds in them a fresh, vivid, home-made turn of speech. When one watches some tired hack on the platform mechanically repeating the familiar phrases—bestial

atrocities, iron heel, bloodstained tyranny, free peoples of the world, stand shoulder to shoulder—one often has a curious feeling that one is not watching a live human being but some kind of dummy: a feeling which suddenly becomes stronger at moments when the light catches the speaker's spectacles and turns them into blank discs which seem to have no eyes behind them. And this is not altogether fanciful. A speaker who uses that kind of phraseology has gone some distance towards turning himself into a machine. The appropriate noises are coming out of his larynx, but his brain is not involved as it would be if he were choosing his words for himself. If the speech he is making is one that he is accustomed to make over and over again, he may be almost unconscious of what he is saying, as one is when one utters the responses in church. And this reduced state of consciousness, if not indispensable, is at any rate favorable to political conformity.

In our time, political speech and writing are largely the defense of the indefensible. Things like the continuance of British rule in India, the Russian purges and deportations, the dropping of the atom bombs on Japan, can indeed be defended, but only by arguments which are too brutal for most people to face, and which do not square with the professed aims of political parties. Thus political language has to consist largely of euphemism, question-begging and sheer cloudy vagueness. Defenseless villages are bombarded from the air, the inhabitants driven out into the countryside, the cattle machine-gunned, the huts set on fire with incendiary bullets: this is called pacification. Millions of peasants are robbed of their farms and sent trudging along the roads with no more than they can carry: this is called transfer of population or rectification of frontiers. People are imprisoned for years without trial, or shot in the back of the neck or sent to die of scurvy in Arctic lumber camps: this is called elimination of unreliable elements. Such phraseology is needed if one wants to name things without calling up mental pictures of them. Consider for instance some comfortable English professor defending Russian totalitarianism. He cannot say outright, "I believe in killing off your opponents when you can get good results by doing so." Probably, therefore, he will say something like this:

While freely conceding that the Soviet régime exhibits certain features which the humanitarian may be inclined to deplore, we must, I think, agree that a certain curtailment of the right to political opposition is an unavoidable concomitant of transitional periods, and that the rigors which the Russian people have been called upon to undergo have been amply justified in the sphere of concrete achievement.

The inflated style is itself a kind of euphemism. A mass of Latin words falls upon the facts like soft snow, blurring the outlines and covering up all the details. The great enemy of clear language is insincerity. When there is a gap between one's real and one's declared aims, one turns, as it were instinctively, to long words and exhausted idioms, like a cuttlefish squirting out ink. In our age there is no such thing as "keeping out of politics." All issues are political issues, and politics itself is a mass of lies, evasions, folly, hatred and schizophrenia. When the general atmosphere is bad, language must suffer. I should expect to find—this is a guess which I have not sufficient knowledge to verify—that the German, Russian and Italian languages have all deteriorated in the last ten or fifteen years as a result of dictatorship.

But if thought corrupts language, language can also corrupt thought. A bad usage can spread by tradition and imitation, even among people who should and do know better. The debased language that I have been discussing is in some ways very convenient. Phrases like a not unjustifiable assumption, leaves much to be desired, would serve no good purpose, a consideration which we should do well to bear in mind, are a continuous temptation, a packet of aspirins always at one's elbow. Look back through this essay, and for certain you will find that I have again and again committed the very faults I am protesting against. By this morning's post I have received a pamphlet dealing with conditions in Germany. The author tells me that he "felt impelled" to write it. I open it at random, and here is almost the first sentence that I see: "[The Allies] have an opportunity not only of achieving a radical transformation of Germany's social and political structure in such a way as to avoid a nationalistic reaction in Germany itself, but at the same time of laying the foundations of a cooperative and unified Europe." You see, he "feels impelled" to write—feels, presumably, that he has something new to say—and yet his words, like cavalry horses answering the bugle, group themselves automatically into the familiar dreary pattern. This invasion of one's mind by ready-made phrases (lay the foundations, achieve a radical transformation) can only be prevented if one is constantly on guard against them, and every such phrase anesthetizes a portion of one's brain.

I said earlier that the decadence of our language is probably curable. Those who deny this would argue, if they produced an argument at all, that language merely reflects existing social conditions, and that we cannot influence its development by any direct tinkering with words and constructions. So far as the general tone or spirit of a

language goes, this may be true, but it is not true in detail. Silly words and expressions have often disappeared, not through any evolutionary process but owing to the conscious action of a minority. Two recent examples were *explore every avenue* and *leave no stone unturned*, which were killed by the jeers of a few journalists. There is a long list of fly-blown metaphors which could similarly be got rid of if enough people would interest themselves in the job; and it should also be possible to laugh the not un-formation out of existence,³ to reduce the amount of Latin and Greek in the average sentence, to drive out foreign phrases and strayed scientific words, and, in general, to make pretentiousness unfashionable. But all these are minor points. The defense of the English language implies more than this, and perhaps it is best to start by saying what it does not imply.

One can cure oneself of the not un-formation by memorizing this sentence: A not unblack dog was chasing a not unsmall rabbit across a not ungreen field.

To begin with, it has nothing to do with archaism, with the salvaging of obsolete words and turns of speech, or with the setting-up of a "standard-English" which must never be departed from. On the contrary, it is especially concerned with the scrapping of every word or idiom which has outworn its usefulness. It has nothing to do with correct grammar and syntax, which are of no importance so long as one makes one's meaning clear, or with the avoidance of Americanisms, or with having what is called a "good prose style." On the other hand it is not concerned with fake simplicity and the attempt to make written English colloquial. Nor does it even imply in every case preferring the Saxon word to the Latin one, though it does imply using the fewest and shortest words that will cover one's meaning. What is above all needed is to let the meaning choose the word, and not the other way about. In prose, the worst thing one can do with words is to surrender them. When you think of a concrete object, you think wordlessly, and then, if you want to describe the thing you have been visualizing, you probably hunt about till you find the exact words that seem to fit it. When you think of something abstract you are more inclined to use words from the start, and unless you make a conscious effort to prevent it, the existing dialect will come rushing in and do the job for you, at the expense of blurring or even changing your meaning. Probably it is better to put off using words as long as possible and get one's meaning as clear as one can through pictures or sensations. Afterwards one can choose—not simply accept—the phrases that will best cover the meaning, and then switch round and decide what impressions one's words are likely to make on another person. This last effort of the mind cuts out all stale or mixed images, all prefabricated phrases, needless repetitions, and humbug and vagueness generally. But one can often be in doubt about the effect of a word or a phrase, and one needs rules that one can rely on when instinct fails. I think the following rules will cover most cases:

- (i) Never use a metaphor, simile or other figure of speech which you are used to seeing in print.
- (ii) Never use a long word where a short one will do.
- (iii) If it is possible to cut a word out, always cut it out.
- (iv) Never use the passive where you can use the active.
- (v) Never use a foreign phrase, a scientific word or a jargon word if you can think of an everyday English equivalent.
- (vi) Break any of these rules sooner than say anything barbarous.

These rules sound elementary, and so they are, but they demand a deep change of attitude in anyone who has grown used to writing in the style now fashionable. One could keep all of them and still write bad English, but one could not write the kind of stuff that I quoted in these five specimens at the beginning of this article.

I have not here been considering the literary use of language, but merely language as an instrument for expressing and not for concealing or preventing thought. Stuart Chase and others have come near to claiming that all abstract words are meaningless, and have used this as a pretext for advocating a kind of political quietism. Since you don't know what Fascism is, how can you struggle against Fascism? One need not swallow such absurdities as this, but one ought to recognize that the present political chaos is connected with the decay of language, and that one can probably bring about some improvement by starting at the verbal end. If you simplify your English, you are freed from the worst follies of orthodoxy. You cannot speak any of the necessary dialects, and when you make a stupid remark its stupidity will be obvious, even to yourself. Political language—and with variations this is true of all political parties, from Conservatives to Anarchists—is designed to make lies sound truthful and murder respectable, and to give an appearance of solidity to pure wind. One cannot change this all in a moment, but one can at least change one's own habits, and from time to time one can even, if one jeers loudly enough, send some worn-out and useless phrase—some jackboot, Achilles' heel, hotbed, melting pot, acid test,

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veritable inferno or other lump of verbal refuse—into the dustbin where it belongs.

Appendix 2: Citation Formats

Dick doesn't follow the *Bluebook*, the *Maroon Book*, the *Chicago Manual of Style*, or any other style book, and doesn't want you to get hung up worrying about citation form. (He *hates* the *Bluebook* with a passion.) A few simple rules, however, should be kept in mind:

No parallel citations in cases; statutory provisions do not need years, unless the point is to identify an old law.

Case names

- Avoid abbreviations, with a few exceptions: Ry., RR., Comm'n, Co., Corp., Inc., &, Ass'n, Ins.; sometimes Dist., Mfg., Int'l. Only the most *obvious* abbreviations should be used.
- Omit *Inc.* or *Co.* when it immediately follows *Co.*, *Ry.*, or *RR.*
- *In re Casename*, not *In the Matter of Casename*

The important thing is not to use any nonobvious abbreviation, as otherwise the reader may not know the actual name or other word that is being abbreviated.

State courts

- Highest court: abbreviation for the state (Ill., Cal., N.Y.)
- Intermediate appellate court is Ill. App., Cal. App., etc. New York is an exception: "N.Y. App. Div."
- Regional reporter is preferred, but if the citation is to the official state reporter, do not repeat the state name within parentheses.

Supra cites of cases repeat the full title; *supra* cites of authored materials repeat the author. Use an N-dash (–) for page and date ranges.

Don't just copy blindly a citation from a reporter; reformat it (e.g., by putting a space between court and year, as

West does not do: “7th Cir. 2000” not “7th Cir.2000”, and by putting in non-breaking spaces where appropriate.).

The usual citation order is reverse chronological order, and, for federal cases, Supreme Court, Seventh Circuit, other circuits, districts; for state cases, governing-law state, then federal cases. Sometimes it makes sense to put a seminal case first. Dick is not a stickler about order. Remember, you are not working on a law review. Substance rather than form is paramount in Dick’s chambers (though make sure not to be sloppy!).

The following page contains a cheat sheet of examples. You may note occasional inconsistencies—why name the authors in Nimmer but not McCarthy?—but don’t let that bother you. Do not treat these as gospel. When in doubt, check old opinions or ask Dick.

Green v. Bock Laundry Machine Co., 490 U.S. 504, 527 (1989)
(Scalia, J., concurring, or just concurring opinion without a
judge's name)

Green v. Bock Laundry Machine Co, *supra*, 490 U.S. at 527
[short citation format for cases]

Outlet Embroidery Co. v. Derwent Mills, 172 N.E. 462, 463
(N.Y. 1930) (Cardozo, C.J.)

Fisher v. Professional Compounding Centers of America, Inc.,
311 F. Supp. 2d 1008, 1015 (D. Nev. 2004)

Meyerson v. Harrah's East Chicago Casino, No. 01–1993, 2002
WL 1483222, at *1 (7th Cir. July 11, 2002) [recently published;
no F.3d pagination yet]

Relational Design & Technology, Inc. v. Brock, No. 91–2452–
EEO, 1993 WL 191323, at *6–7 (D. Kan. May 25, 1993)
[district court case not published in a reporter]

J&T Hydro Co., 66 F.E.R.C. ¶ 62,138 (1994) [however, agency
in a case name rather than a reporter has no periods]

42 U.S.C. §§ 1396a(a)(1), (8), (10)(B)(i), (19), (23)

720 ILCS 5/12–15

Ind. Code § 35–48–4–1(a)

Fed. R. Evid. 408

Fed. R. Civ. P. 10(c)

Fed. R. App. P. 28(a)(9)(B)

24 C.F.R. § 3500.14(c)

57 Fed. Reg. 49600, 49605 (Nov. 2, 1992)

U.S.S.G. § 2G1.1(b)(1) Application Note 2

Restatement (Second) of Torts § 772(a) (1977) [previous
opinions reveal uncertainty about the proper date]

2 Fowler V. Harper, Fleming James, Jr. & Oscar S. Gray, *The Law of Torts*, § 7.8, pp. 423–24 (2d ed. 1986)

W. Page Keeton et al., *Prosser & Keeton on the Law of Torts* § 56, p. 376 (5th ed. 1984)

5 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1327, pp. 762–63 (2d ed. 1990) [there are sometimes additional authors—which may make the author “Charles A. Wright et al.” (use et al. when there are more than three authors)—it varies by volume]

Richard J. Pierce Jr., *Administrative Law Treatise* § 3.5, pp. 6–7 (4th ed. Supp. 2003)

7 *Collier on Bankruptcy* ¶ 1109.01[1], p. 1109–4 (15th ed. 2002)

2 *McCarthy on Trademarks* § 17:22, p. 17–44 (2002)

4 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* § 13.03[C], pp. 13–75 to 13–77 (2002)

Matthew C. Stephenson, “Information Acquisition and Institutional Design,” 124 *Harv. L. Rev.* 1422, 1434–35 (2011)

Stephenson, *supra*, at 1435–36 [short citation format for periodicals]

David Strauss, *The Living Constitution* 99 (2010) [long citation format for books]

“Making Cocaine Freebase With Ammonia Methods,” www.drugs-forum.com/forum/showthread.php?t=30174&page=2 (visited May 21, 2010)

Douglas Hold, “State to Investigate Safety at Zion Park; Asbestos Fears Fuel Madigan Action” *Chicago Tribune*, July 3, 2003, p. 1

Other pointers:

- Abbreviations such as EEOC, FCC, and UCC have no periods.
- Always spell out United States.

- Do not note cert. denied.
- Do not use brackets to indicate when a capital letter has been lower-cased within a quotation.
- Do not use pincites in short opinions or opinions that stand for a single point.
- Insert a space between the “n.” and the note number, and if you need to cite both the note and the text on the page, use an “and” instead of an ampersand.
- You can use *Id.* to refer to the last source in a prior stringcite.
- Dick uses two section symbols when he’s citing at least two subsections, even if both subsections are within the same section.
- Dick uses et seq.
- Dick places state court cases in reverse chronological order and not alphabetically by state. Within a state, state supreme court citations are placed before intermediate appellate court citations.
- Dick does not insert “the” in the interior of a case name citation, even if the West reporter has it.
- Dick does not include “of [geographical name]” in a case name citation, even if the West reporter has it.
- Dick uses the word “section” in lieu of the section symbol whenever referring to a section in-the text of his opinion (even if it is not the beginning of a sentence), unless he is full-citing the code in-text. For example, “Section 1124

is...” and “The language in section 1124 is...,” but “The relevant language is in 11 U.S.C. § 1124...”

- In online citations, delete http when it appears right before
www.

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The Wrong Stuff

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The Wrong Stuff

Alex Kozinski*

A member of the *BYU Law Review* called a few months back and invited me to address you today. "Sure," I said, "I'll do it, but what can I possibly talk about that would be of interest to the students and faculty of BYU Law School?" "Why don't you juggle some porcupines or pull a piano out of a hat?" the law review member replied. "The truth is, we don't really care *what* you say; what we really want is the cover boy from *California Lawyer*."

Well, I have my pride. I don't want to be lumped in with the Tom Cruises and Kevin Costners of the world. I want to be loved for my intellect, not just my face. So I decided this is my opportunity to shed that go-go image by giving a speech on the dullest topic possible. *The Mating Habits of the Human Tapeworm* and *The Use and Abuse of "Thou" in the King James Version of the Bible* were among the possibilities I considered. The problem is that I don't know anything about those subjects. Instead, I decided to talk on a totally irrelevant topic that I know a little something about: How to Lose an Appeal.

Now, you might agree that I hit upon the ideal irrelevant topic, for how many lawyers would actually want to lose a case, particularly on appeal? But my law clerks pointed out that there might actually be such cases; history provides at least one well-documented example.

It happened right after Lyndon B. Johnson's Senate primary campaign in 1948. Now we're talking about the heyday of good ole boy politics: when a Texan so cherished his right to vote he exercised it as many times as possible, often in the same election. Anyway, some of LBJ's boys got caught with their fingers in the ballot box and a federal judge issued an

* Judge Kozinski sits on the United States Court of Appeals for the Ninth Circuit. He presented this article as a lecture at Brigham Young University, J. Reuben Clark School of Law on January 21, 1992.

injunction keeping Johnson off the ballot in the general election. Naturally, LBJ was agin it, so he ordered his boys to figure out a way to get rid of that little ol' injunction before the election. The problem was that the Fifth Circuit was likely to sit on the case for a while, so even if they eventually held for LBJ it would turn out to be too late.

One of LBJ's boys, a guy named Abe Fortas, came up with a creative solution: throw the appeal. Why take chances on what some crotchety Fifth Circuit judge might do when you could be pretty sure of getting Justice Black to issue a stay? So old Abe wrote a stinker of a brief and presented it to a circuit judge Abe knew was predisposed to deny the stay. Sure enough, the plan worked and Johnson eventually became president—and appointed Abe Fortas to the Supreme Court.

Now, I know that every one of you out there has Supreme Court ambitions—don't deny it—so when that once-in-a-lifetime career opportunity knocks and you are required to lose an appeal, will you have what it takes to do the pooch? Not to worry; I'm here to tell you that you too can lose an appeal, no matter how good your case. But don't try to improvise; what I'm about to give you is the tried and true stuff, honed over years of bitter experience.

First, you want to tell the judges right up front that you have a rotten case. The best way to do this is to write a fat brief. So if the rules give you 50 pages, ask for 75, 90, 125—the more the better. Even if you don't get the extra pages, you will let the judges know you don't have an argument capable of being presented in a simple, direct, persuasive fashion. Keep in mind that simple arguments are winning arguments; convoluted arguments are sleeping pills on paper.

But don't just rely on the length of your brief to telegraph that you haven't got much of a case. No. Try to come up with something that will annoy the judges, make it difficult for them to read what you have written and make them mistrust whatever they *can* read. The possibilities are endless, but here are a few suggestions: Bind your brief so that it falls apart when the judge gets about half way through it. Or you could try a little trick recently used by a major law firm: Assemble your brief so that every other page reads up-side down. This is likely to induce motion sickness and it's always a fine idea to have the judge associate your argument with nausea. Also—this is a biggie—make sure your photocopier is low on toner or scratch the glass so it will put annoying lines on every

page. The judge won't even be able to decipher what you wrote, much less what you meant.

Best of all, cheat on the page limit. The Federal Rules of Appellate Procedure not only limit the length of the briefs, but also indicate the type size to be used. This was pretty easy to police when there were two type sizes—pica and elite. But these days it is possible to create almost infinite gradations in size of type, the spacing between letters, the spacing between lines and the size of the margins.

Now if you don't read briefs for a living, one page of type looks pretty much like another, but you'd be surprised how sensitive you become to small variations in spacing or type size when you read 3,500 pages of briefs a month. Chiseling on the type size and such has two wonderful advantages: First, it lets you cram in more words, and when judges see a lot of words they immediately think: LOSER, LOSER. You might as well write it in big bold letters on the cover of your brief. But there is also a second advantage: It tells the judges that the lawyer is the type of sleazeball who is willing to cheat on a small procedural rule and therefore probably will lie about the record or forget to cite controlling authority.

So, if you do things just right, you will submit an enormous brief with narrow margins and tiny type, copied with a defective photocopier onto dingy pages, half of which are bound upside down with a fastener that gives way when the judge is trying to read the brief at 35,000 feet. You can lose your appeal before the judge even reads the first word.

But what if you think the judges might nevertheless read your brief and find a winning argument? You go to step two. Having followed step one, you already have a long brief, so you can conveniently bury your winning argument among nine or ten losers. I saw a wonderful example of this recently. It was the duel of the Paul Bunyons; who could fell more trees in pursuit of their cause? There were several appeals, motions and petitions for extraordinary writs—the whole shebang. What there was not was a winning argument, until a diligent law clerk searched through the rubble and found an issue that stood a good chance of winning.

Now, eager beaver law clerks like that don't come along in every case, but still there's a risk: What if a clerk—maybe even the judge—should happen to stumble onto your winning argument? To guard against this, winning arguments should not only be buried, they should also be written so as to be

totally unintelligible. Use convoluted sentences; leave out the verb, the subject, or both. Avoid periods like the plague. Be generous with legal jargon and use plenty of Latin. And don't forget the acronyms in bureaucratese. In a recent brief I ran across this little gem:

LBE's complaint more specifically alleges that NRB failed to make an appropriate determination of RTP and TIP conformity to SIP.

Even if there was a winning argument buried in the midst of that gobbledygoop, it was DOA.

But let's face it, a good argument is hard to hold down. So what you want to do is salt your brief with plenty of distractions that will divert attention from the main issue. One really good way of doing this is to pick a fight with opposing counsel. Go ahead, call him a slime. Accuse him of lying through his teeth. The key thing is to let the court know that what's going on here is not really a dispute between the clients. No, that's there just to satisfy the case and controversy requirement. What is really going on here is a fight between the forces of truth, justice, purity and goodness—namely you—and Beelzebub, your opponent.

The reality, you see, is that most legal disputes are dreary dull, but everyone loves a good fight, particularly when the gloves come off. I often find myself chortling with delight when I read a passage such as this from a recent appellee's brief:

With all due respect for my colleague, I have to tell this court that it's been told an incredible fairy tale, packed with lies and misrepresentations.

Of course, the other lawyer responded in kind. Pretty soon I found myself cheering for the lawyers and forgot all about the legal issues.

But let's say your opposing counsel is too smart to get into a hosing contest with you. No matter. You can always create a diversion by attacking the district judge. You might start out by suggesting that he must be on the take because he ruled against you. Or that he is senile or drunk with power, or just plain drunk. Chances are I'll be seeing that district judge soon at one of those secret conferences where judges go off together to gossip about the lawyers. I find that you can always get a real chuckle out of the district judge by copying the page where he is described as "a disgrace to the robe he wears" or as

“mean-spirited, vindictive, biased and lacking in judicial temperament” and sticking it under his nose right as he is sipping his hot soup. District judges love to laugh at themselves, and you can be sure that the next time you appear in his courtroom, the judge will find some way of thanking you for the moment of mirth you provided him.

But let's say you have such an excellent case that despite all of this, you are still likely to win, if only the judges read the relevant statutory language. Well that's easy: Don't quote the language; don't append it to your brief. In fact, don't even cite it. What you want to do is start out by discussing policy. Judges love policy; it gives us a sense of power. So instead of talking about what Congress did, talk about what it *should* have done. Then cite a bunch of floor statements, particularly from those Senators or Representatives who opposed the legislation. Finally, include large block quotes from the testimony of witnesses before a committee considering similar legislation but in a different Congress.

Block quotes, by the way, are a must; they take up a lot of space but nobody reads them. Whenever I see a block quote I figure the lawyer had to go to the bathroom and forgot to turn off the merge/store function on his computer. Let's face it, if the block quote really had something useful in it, the lawyer would have given me a pithy paraphrase.

Now, assuming you have taken my advice to heart and done everything just right—or rather just wrong—pretty soon you'll get confirmation of the fruit of your efforts. Sometime after the briefing is completed, you'll receive an order notifying you that your case has been submitted on the briefs. Once you get this notice, you can kick off your shoes, relax, and start working on your cert petition; an unpublished disposition flushing your case is practically in the mail.

But let's say the unthinkable happens and you get notice the case is scheduled for argument. Well, then you have to start sweating. In our court, cases get taken off the argument calendar only if all three judges agree. So getting an oral argument notice indicates that, despite your worst efforts, at least one of the judges thinks there might be a spark of life in your appeal. This means you'll have to move to phase three, and this time you can't take any chances.

Now most lawyers will say, “Look, you don't have to tell us how to make a bad argument: you just get up and stutter, or insult the judges, or ignore their questions.” Well, those might

be good ways of getting you chewed out, but it won't necessarily kill your case. No, bad oral advocacy takes preparation and practice; like doggerel poetry, it also requires some imagination.

The first thing you must do at this stage is know the record like the back of your hand. There is a quaint notion out there that facts don't matter on appeal—that's where you argue about the law; facts are for sissies and trial courts. The truth is much different. The law doesn't matter a bit, *except* as it applies to a particular set of facts. So you will find that judges at oral argument often have a lot of questions about the record. Which makes sense. After all, we can read the cases just as well as you can. Often, one or another of the judges has written the key case, so what can the lawyer really contribute to the panel's understanding of it?

But each case is different insofar as the facts are concerned; where the lawyer can really help the judges—and his client—is by knowing the record and explaining how it dovetails with the various precedents. Familiarity with the record is probably the most important aspect of appellate advocacy.

Now this is all good and well, you will say, if you're trying to *win* on appeal, but why bother knowing the record if you're trying to lose? Well, it's simple: you have to know where the gold nuggets are hidden so that you can skillfully divert the judges' attention away from them. By the same token, if the judges start delving into an irrelevant portion of the record, you want to keep them talking about that.

Now a principle very few lawyers seem to grasp is that there are no perfect cases, or very few indeed. By the time a case gets up on appeal, there is usually some validity to each side's position, and there are some holes or flaws in even the best case. Nevertheless, this isn't soccer or hockey; there are no tie scores. In a competition between two imperfect cases, the winner winds up being the case that is second-worst.

A good way to improve your chances of losing is to overclaim the strength of your case. When it's your turn to speak, start off by explaining how miffed you are that this farce—this travesty of justice—has gone this far when it should have been clear to any dolt that your client's case is ironclad. Now the reason this is a good tactic is that it challenges the judges to get you to admit that there is just some little teensy-weensy weakness in your case. So if you overstate your case

enough, pretty soon one of the judges will take the bait and ask you a question about the very weakest part of your case. And, of course, that's precisely what you want the judges to be focusing on—the flaws in your case.

Now, having directed the judge's attention exactly where you want it, you have to press your advantage—or rather your disadvantage—by seeing if you can turn the judge into an advocate for the other side. After all, you know darn well that after oral argument the judges go off to a little room and decide your case. What better way to assure a loss than to get one of the judges to become an advocate for your opponent?

So how do you turn that flickering spark of interest into a firestorm that will reduce your argument to ashes? What I have found works really well under such circumstances is this: once the judge starts to ask a question, raise your hand in a peremptory fashion and say, "Excuse me, your honor, but I have just a few more sentences to complete my summation and I'll be happy to answer your questions." This will give the judge a chance to dwell on the question, roll it around in his mind and brood about it. If you're clever you never *will* get back to the judge's question. Let the judge stew while you keep droning on about how airtight your case is and how silly it is to even be arguing about it.

After a while the judges will catch on that you plan to use up your time by yakking rather than answering questions and they will start getting more insistent. When you feel you've got them good and lathered, move into the next phase: stonewalling. What you want to avoid at all costs is giving a short, direct answer to the question. Instead, tease the judge, equivocate, make him rephrase the question. The point is to get the judge really committed to the question so that the lack of a good answer will take on monstrous significance. A good way to start is by ridiculing the question: "I was afraid the court would get sidetracked down a blind alley by this red herring." Mixing metaphors, by the way, is always a good idea; it makes it look like you're spinning your wheels after you've missed the boat because you went off on a wild goose chase.

An alternative to stonewalling—and one of my personal favorites—is cutting off a judge's question. Doing this gives you several important advantages. First, it's rude, and if you're out to lose your case, there is really no substitute for offending the guy who's about to decide your case. Beyond that, cutting off the judge mid-question sends an important message: Look here

your honor, you think you're so clever, but *I* know exactly what is going on inside that pointed little head of yours. Then again, cutting the judge off gives you an opportunity to answer the wrong question. When I pointed this out to a lawyer one time, he told me, "Well, if that's not the question you were asking, it *should* be." And finally, cutting in with an answer while the judge is still phrasing the question gives you an opportunity to answer without thinking—always a good idea if you want to come up with something really stupid.

The next oral argument ploy involves the record. As I said before, it's important for you to know the record just so you can tell when the judge is getting anywhere near that winning argument. But there is a big difference between knowing the record and sharing your knowledge with the judge. It helps to keep your understanding of the record a big secret; this will give the judge and his clerks a chance to go chasing through the fourteen boxes of documents looking for that needle in the haystack. Here is a good example of how best to handle inquiries about the record if the judge gets too insistent:

JUDGE (exasperated): Look counsel, you claim there is no disputed issue of fact on this point, but isn't it true that the affidavit of Joe Smith, submitted by opposing counsel, directly contradicts your client's affidavit?

LAWYER: Well, your honor, I'm not really sure.

JUDGE: Let's not guess. The affidavit appears at page 635 of the Excerpts of Record. Why don't we read it together and you can explain to me what it says.

LAWYER: Your honor, I don't have the Excerpts.

JUDGE: That's OK, counsel, you can go over to your briefcase and bring it to the lectern. I'll wait.

LAWYER: Well, what I mean, your honor, is I didn't bring the Excerpts with me to court.

JUDGE: I see; well, what did you think we were going to do here today, have coffee and donuts and talk about the weather?

LAWYER: To be truthful, I thought we were going to talk about the law. I wasn't counsel in the district court so I'm not really all that familiar with the record, but if you say the affidavit is in there, how can I deny it?

JUDGE: Well, let's talk about the law then. Isn't it the law that you can't get summary judgment if there is a disputed

issue of fact? And the affidavit seems to establish a disputed issue of fact.

LAWYER: But that's true only if you believe the affidavit. I can tell you for a fact it's a lie. In any event it's hearsay since it describes out of court conduct, and it's not the best evidence.

By this time you can probably see steam coming out of the judge's ears, which is a good time to move onto your next tactic: start making a jury argument. The truth is that oral argument can be tiring and the judges need a little comic relief once in a while. Few things are quite as funny as hearing an appeal to passion during an appellate argument. But if you try it, remember that a jury argument is no good at all unless you have the client (and his wife) sitting in the front row nodding. Of course, a lot of clients are not very sympathetic looking, which is all right because appellate judges have no way of knowing what your client really looks like. So you could just pay some sympathetic looking homeless person twenty bucks to sit in the front row and nod.

When a lawyer resorts to a jury argument on appeal, you can just see the judges sit back and give a big sigh of relief. We understand that you have to say all these things to keep your client happy, but we also understand that you know, and we know, and you know we know, that your case doesn't amount to a hill of beans, so we can go back there in the conference room and flush it with an unpublished disposition.

* * * *

Well, I could go on and on with this topic, but it seems to me that if you win your case after all the pointers I've given you, you ought to give up practicing law and start playing the lottery. But for most of you it *will* work. So when the call comes and you get ready to follow in the footsteps of Abe Fortas, you too can prove you have The Wrong Stuff.