

The Power of Prejudice

EXAMINING THE GARMENT, BLEACHING THE STAIN

THE LOCK: Prejudice locks the mind. Nothing can enter, Nothing true can escape.

Peeping into a prejudiced mind is like opening the door to a room packed to the ceiling with junk. Nothing whatsoever can get in, and when the door opens, the junk comes tumbling out.

Those whose minds are jammed with prejudice have room for little else. Growth is dead. Learning is gridlocked. They may understand our logic, but logic makes no difference. The word root of prejudice, *praejudicium*, implies *prejudgment*. People are prejudiced both for and against a philosophy, a religion, a belief system. They are prejudiced for or against a political party, the make of an automobile, a race, a person—you name it. If a person hates Jews or Catholics, probably nothing will ever change him. You can drown the prejudiced person in reason, scream, weep, and beg, but your pleas of fairness and justice will go for naught. You had just as well sing to a bag full of jelly beans.

Understanding prejudice: Our prejudices—we all have them—are part of our personality structure. The problem is that our prejudices may lie lurking at the bottom of the subterranean mind where they slowly ooze up and color our thinking without our knowing it. Prejudice can be derived from a cruel or neglectful father, from a sick or jumble-headed mother, from having been locked in a closet. Prejudice can grow out of one's terror, from being forced to do loathsome tasks, from having endured undeserved punishments. It

can emerge from having been lost, from getting sick on a certain food, or from having one's young brain washed and rewashed with the lye of hatred. Prejudices, like phobias, are so deeply set that even if we become aware of them we are usually helpless to do much about them. If we are aware of our prejudices we can guard against their danger to ourselves and to others, but our prejudices are there as surely as the birthing scar we call our navel. Arguments do not erase prejudice any more than arguments erase scars, whether psychological or physical.

Religion as prejudice: Are not all religions prejudices? Or are we too prejudiced to acknowledge this? Indeed, should one wish to, what chance would one have in convincing a Baptist that Christ was not the son of God, or a devout Mormon that Brigham Young was a pariah with a penchant for the ladies? If you close this book at this point, it will have something to do with your prejudice.

Try to convince a business tycoon that hoarding more than his share of the common wealth is driven by greed and is evil. Instead, he will point to his freshly audited financial statement as evidence of his success, an accounting that makes mention of his struggling workers only as "cost of labor." The notions that children ought not starve, that the sick should be cared for, that our young should be educated, that every man, woman, and child should have a roof over their heads are seen not as notions of humanity, but as the evil tenets of socialism. That we have more concern for starving puppies in the street than starving children under the bridge can only be attributed to a blinding prejudice.

The law and prejudice: The law understands the implacable nature of prejudice. It acknowledges that prejudiced judges ought not sit on a given case, although most prejudiced judges are too prejudiced to recognize or admit their prejudice and to remove themselves. To get a prejudiced judge off a case is like prying a tooth out of a rabid gorilla. The law also permits a potential juror who has been shown to be prejudiced to be excused from service on the case. But, absurdly and paradoxically, as soon as the prejudice is discovered, the juror himself, the opposing party, and usually the judge all conspire to keep that prejudiced juror on the case. But that is another subject.

The ubiquitous nature of prejudice: The question is not, Are we prejudiced?, but, What are our numerous prejudices? We are prejudiced even against the word *prejudice*, for we are taught that it is socially and "politically incorrect" to be prejudiced. I myself am prejudiced against racists, bigots of all types (except those I agree with), bankers, and to a lesser degree golfers. I am also prejudiced against sour cream on my Mexican food. I don't like bankers because legally they rob people. I call them, as some have in the past, "banksters." I respect Dillinger more than I respect most bankers. Dillinger did not rob poor people. He robbed those who became rich by robbing poor people. Bankers are also very snooty. Snooty as hell, and usually quite ignorant of anything except money, which is per se boring. I am also prejudiced against bankers because of their spite toward the poor, which is a reflection of their own deep, abiding, and ugly prejudice. They will pass a starving man on the street, but give generously to the socially correct symphony (but only if their names appear on the evening's program as major contributors). I am prejudiced against golfers because any given group of golfers is likely to include a lot of bankers, or friends of bankers, and because golfers, on the whole, are as boring as bankers. They offer little by way of enlightenment other than their golf scores. I argue (through my prejudice) that if on any given day God should strike all golfers on all golf courses dead—all at once—the world would likely go right on without missing a beat.

I am prejudiced against sour cream because as a child my grandmother churned sour cream into butter. It smelled bad. She fed the sour milk to the chickens. This in turn created a prejudice against chickens because I wondered how anybody could eat anything that ate something as stinky as sour milk. That prejudice never rooted itself fully. But once in a while my grandmother would demand that I drink all of my milk, even though it was beginning to turn, and that formed my lifelong hatred of sour dairy products.

My son hates nuts—I mean, nuts of every kind and character: peanuts, walnuts, cashews, Brazil nuts—any nuts, which is nuts. As we have observed already, prejudices grow out of early experience, as when one's parents hate blacks, or cops, or preachers, or whatever parents hate—be it the Boston Red Sox or the Republican party. Prejudices also stem from our life experience, as when someone is mugged by a Hispanic and thereafter tends to hate all Hispanics. The problem is that prejudices spread out like a bad stain on the tablecloth. The person who was mugged by a Hispanic may

also now hate all who display any pigment in their skin whatsoever. I know a man who suffered horribly as a child from poison ivy. He now hates not only any plant that looks like ivy, he even hates any plant that crawls up buildings, he hates forests where poison ivy abounds, he hates all things living outdoors, he hates the mountains, the prairies—he, in fact, hates the living botanical world.

Worse, people who are prejudiced are often not only ignorant of their prejudices, they are usually quite comfortable with them. To them, prejudices are the truth—their truth. My truth is that bankers are empty-souled robots who are morally and socially disadvantaged, who kick poor people out of their houses when they miss a payment, and who haven't read a decent book since they graduated from Harvard Business School. Probably didn't read one then. And although I am aware of my prejudices, I am perfectly comfortable with them. I like my prejudices. I wouldn't be without them.

THE KEY: Information is the key to protect ourselves from prejudice. But how?

So how do we discover the prejudices of the *Other*—whether the *Other* be a juror, a customer, a city councilperson, or our next-door neighbor? One thing we do know: their prejudices will be obvious *after* they decide against our perfect argument. But it would be nice if we could learn of these prejudices to begin with. *Information*. Ah, information! But how do we get information?

Sometimes we can ask jurors if they are prejudiced against a cause or a client and they will admit that they are. Most often they will admit it to avoid jury duty, or, worse, manufacture a prejudice to avoid jury duty. But most jurors will not admit their prejudice. They think their prejudices are simply well-founded opinions. They know in their hearts that they are prejudiced, but they think it is perfectly swell to be this way. Besides, why should they reveal their prejudices and get thrown off the jury when they want to sit on the case and send our client to the frying pan? Moreover, a courtroom full of people is no place to be confessing one's idiosyncrasies, one's antisocial views, or one's politically incorrect attitudes. What banker is going to tell us that he is prejudiced against blacks or Hispanics or the poor? What personnel director is going to admit that he will not hire people over fifty? What homophobe is going to admit, at least to anyone but another homophobe, his prejudice against homosexuals? So, with a nice smile on his face

the juror denies his prejudice, simply denies it—just like that. And so what are we going to do about it?

Identifying personality clusters: I often rely on the “cluster concept.” People’s personalities, their likes and dislikes, their attitudes, their viewpoints, their prejudices come in *clusters*, as grapes come in bunches. If you examine one grape you will know pretty much what the rest of the grapes on the cluster look like. If you taste one you know how the others will taste. There may be minute differences from grape to grape, but you can bet that the grape you didn’t taste does not taste like beefsteak.

For example, take the banker: If you know the *Other* is a banker, you also know he does not live in a ghetto, and likely never did. He does not drive an old junker of a pickup with some fence posts, a roll of bailing wire, and an old cow dog in the back end. He most likely does not belong to the Pentecostal Church, nor does he subscribe to the *Daily Worker*. His friends are not likely members of the Communist party. He probably doesn’t smoke pot. He has never slept on the street overnight, not once. He has likely gone to a good prep school, and he probably has a college degree. It is a good bet that his parents had money. He will likely vote the Republican ticket. He does not buy his suits from J. C. Penney and he has never been out of work for any substantial period of time. He has never written a poem. He has never painted a picture. You can point all day to exceptions to the above, for there are always many.

What about the banker’s attitudinal clusters? He probably thinks that if you are unemployed, you are lazy. He will tell you, “There are plenty of jobs out there. Why, I can’t get anyone to wash my windows. I can’t get anyone to fix the furnace. It takes two weeks to get a plumber down here to the bank. Those who don’t work simply don’t want to.” His views on welfare, although widely shared by others, are absolutely predictable. He will tell you a story you have heard a hundred seventy-five times about how women on welfare have babies simply to get a bigger dole—“Why, those welfare women make money having babies. It’s their business”—although he has never taken to dinner, not once in his life, a poor, uneducated woman with seven kids who lives in a third-story three-room walkup, a flat that is cold most of the winter, and he has never asked her why she has so many children. Why should he?

The banker’s views on the black community are also easily charted. He will tell you he is completely without prejudice against black people, but when you press him, you will discover that black people make up about .00067 percent of his borrowers. His view about the homeless is that they are on the street because they want to be there. His answer for the problem, although he will not likely confess it, is *laissez faire*. We have to “let nature take its course,” which is a euphemism for ridding ourselves of the remnants of society by letting them starve to death.

You can predict his political views without asking him the first question. He is for free trade, he is against any more taxes, no matter how small. He thinks government should be totally out of our lives except that he thinks government should generously underwrite industry and banking. The savings-and-loan crisis is mostly a governmental hoax. Government should protect us against crime on the street, but not against the crimes of bankers against their depositors. The borders of the country should be closed, tight: “We don’t need any more Mexes here” (although he will never use a pejorative word except to fellow bankers in the sauna). The death penalty should be extended, not eliminated. In other words, society should kill more of its members, not fewer. Society shouldn’t be required to house killers for the rest of their lives. We should hang bank robbers and thieves, especially bank robbers. Those who write bad checks should be tattooed on the forehead so we can identify them more easily. In the prejudicial aspects of his personality, if you have met one banker, you have met them all. Exceptions can always be held up to your nose, but if you examine a cluster of purple grapes, you can usually find one that is off-color. I am talking about the clusters, the fifty-seven purple ones, not the one brownish little grape on the back side.

Another example: What, for example, are the personality clusters of the black railroad worker? His views on some subjects are poles apart from the banker’s. Yet on others, you could hardly distinguish them. They both look down on the unemployed. They both resent paying higher taxes. Their viewpoints on welfare are likely identical. But the black railroad worker knows that 70 percent of prison inmates are black, and he suspects that racism is responsible for this disproportionate number. He doesn’t like bankers. (He also doesn’t like golfers.) He is politically correct with respect to his fellow workers, gets along with them, eats with them in the lunch-

room, and considers many to be his friends. I am speaking of *clusters*, now, don't forget. Every person has his or her own cluster, but his or her cluster will most often look pretty much like the clusters of those with similar backgrounds and experiences.

The preacher: Take the preacher as another example—here's one that may surprise you. Many, perhaps most, support the death penalty. Many preachers, although they profess to follow Christian doctrine, suffer from "dislocated love," that is to say, they love God but hate man, although God has played more dirty tricks on them than any single person they can point to. It wouldn't surprise me, considering the wide support the clergy have given to our various wars, to see bumper stickers popping up on the cars of preachers that read KILL FOR CHRIST. In short, preachers are becoming politically more and more aligned with the far right, which paradoxically means they harbor less and less love for the human race. When preachers want money they tell us to give of ourselves, as Christ gave. But when some poor twisted soul whose psyche was mercilessly traumatized as an innocent child commits a crime, the preacher is likely to refer to the law of Moses—"An eye for an eye..." Or are we dealing once more with my prejudices?

Others: The clusters for ranchers and blue-collar workers are similar to the clusters of government employees and utility workers. The clusters for writers, actors, musicians, and artists belong in the same group, but be careful. Look at Charlton Heston, who leans so far right one looks to see if his right leg may not be a foot shorter than his left, while Jane Fonda once had a left-leg problem. The clusters for schoolteachers, mountain climbers, nurses, and secretaries are more vague and unpredictable. The second-generation born-rich are dangerous to predict. The best of them often feel guilty for all their undeserved affluence and seek to make amends for this crime of birth, while others, like the Menendez brothers, are as void of moral content as an empty Coors can on the beach. Older housewives will more likely reflect the clusters of their husbands than will younger working wives. And as you read my views of clusters, which are tainted by my own prejudices, you will react as a result of your own. If we see eye to eye, neither of us will seem prejudiced. If we disagree, you are prejudiced—don't you agree?

The danger of ignoring the cluster: It is dangerous, perhaps wrong, to lump people into categories by reason of race, ethnic background, sex, economic status, or profession. But if we are to act in any responsible way to protect ourselves from the ravages of prejudice, the concept of clustering is an available tool. Although it may not be "politically correct," it is significantly better than reading the cards.

Let me tell you a story: Some years ago I was defending a banker in Louisiana in a criminal case in which the banker had been charged with various federal banking frauds. I had been up-front with the banker, who had traveled all the way from Louisiana to Wyoming to convince me I should take his case.

I said, "Listen, I don't like bankers. You look like a nice man and all, but I have never represented bankers and, frankly, I don't know why I should make an exception for you." I tried to say it with a pleasant tone of voice.

"Mr. Spence," he said. "I am a good son of a bitch." That got my attention. He looked at me with extremely sad and serious eyes.

"Well, when I put a lot of my life into a case, I want to get something in return for it. I like to believe that the person I defend will make a contribution to society. Otherwise I have wasted my life. And I don't want to waste my life."

But the banker explained to me that the reason he was in trouble was because he had actually done too many good deeds. He had made loans to the poor that had turned sour; loans he ought not to have made because they did not meet certain rigid government requirements. He had come from a poor family himself. He had worked his way up from nothing. He despised the standard business of banking that operated on the premise that if you don't need the money the bank will loan you all you want, but if you do need the money you can't get it, even if you mortgage your wife and kids. He had tried to help small businesses get started. He had been loyal to his friends, who were not bankers. He had made many contributions to the local black community, including large donations to a black university. As a consequence of his viewpoints and his aggressive stance, he found himself at odds with the regulators and eventually, as he vigorously defended himself, at odds with the United States attorney who had vowed to get him!

He did not fit my banker cluster. Even so, I didn't want to represent him. I discussed the case with Imaging.

"I don't know why you don't represent that poor man," she said. "Bankers are human beings."

"Right," I said. "But so is every other social deviant."

"Bankers are entitled to the presumption of innocence," she said.

"So is every other accused."

"Bankers are entitled to a defense."

"So is every other person who is charged with a crime."

"You are prejudiced," she said. "This would be a good chance for you to work through your prejudice."

She was right, as she usually is. The more I got to know the man, the more I admired and liked him. Something shines in nearly every human being, even bankers. Finally I agreed to take the man's case.

When we got to court I was confronted with an issue I had never faced before: How would Louisiana blacks feel about a white Louisiana banker? As the jury selection process went on, and without being conscious of it, I began to select jurors I felt comfortable with. Although I was born in Wyoming and had little experience with blacks as a child, I feel comfortable with blacks. I maintain a healthy distrust of the dominant white society. I feel the injustices of that society as it imposes itself on the disenfranchised and the helpless. I grew up poor. At school I was rejected by the social elite, the fraternities. I was a pariah who was often willing to incur banishment as the price for independence. Yet I often felt lonely and unwanted. By the 1960s I found myself empathizing naturally with blacks.

As jury selection continued in the banker's case, I decided, if possible, to seat an all-black jury. I thought I understood blacks. If I liked them, they would like me, and if they liked me, they would hear my arguments. And if they heard my arguments they would free my client. That was how my logic went. The banker agreed. He liked blacks as well and was perfectly willing to entrust them with his fate. Moreover, a black jury would surely understand that the banker had chosen them, that he trusted them, and therefore they would more likely trust him. Trust begets trust. I preach that all the time.

The prosecutor, for his own reasons, thought black people would favor the government, so when the jury was finally selected we went to trial with ten blacks and two whites. I had even tried to get the whites off the jury—a white farmer and a white house-

wife—but I had run out of challenges and, much to my disappointment, they were seated.

The case lasted several months. And, as in every trial, a leader on the jury began to emerge, in this case a young black man who sat on the far left in the front row. Among my colleagues I referred to him as "the Dude," because he kept a very large ego on display and he had that certain bouncy swagger that told the whole world that he was in charge. And the Dude liked me. When I would make a point he would give me a big grin, sometimes a wink, sometimes a vigorous nod.

As the trial wore on, I came to the conclusion that the Dude would not only be the foreman, he would likely lead the jury to an acquittal of my client. Moreover, we had placed before the jury the fact that my banker client had supported many black causes and was obviously a friend of black people. My cross-examination, so they said, had been stunning. By the end of the trial I had reduced the government's case to reveal little more than a bunch of government bureaucrats trying to show my client who was boss by prosecuting him. They wanted to get even with him for his intransigent refusal to buckle under.

I gave a marvelous final argument, one that exemplified all of the ideals and notions, techniques and skills that I write about in this book, and I hung the jury. The judge declared a mistrial and the jury went home. As I was walking out the front door of the courthouse, I saw the Dude drive by, and he saw me. He gave me a big wave, a big smile, and tossed me a vigorous V for victory signal with his fingers.

Later the judge himself polled the jury, and, to my bewilderment, I discovered that the ten blacks had all voted against me while the two white jurors I had tried to get off the jury had voted with me. I had ignored the cluster phenomenon. It was true: I liked the black jurors and the black jurors liked me. But their deep and abiding prejudice against bankers, especially white bankers, especially those who tried to patronize them by giving large sums of money to black institutions (which none of them could afford to attend) was the controlling dynamic in their decision. Their prejudice, similar to my own, was fully predictable. I simply paid no attention to it, arguing, as I did to myself, that the blacks would be more prejudiced against the authority of the United States attorney and the United States government than against this banker. I should have known better. I did know better. I was prejudiced

for the black people on the jury, and my own prejudice nearly did me in.

The white jurors voted predictably in accordance with their cluster. The farmer had had it up to the tip of his gullet with government regulation. He liked me and he liked my client, who was more generous in his loan philosophy than most bankers with whom the farmer had to do business. The housewife, otherwise alone, followed the white farmer. It was that simple. Any reasonably thoughtful lay person who had never read this book could have predicted the outcome.

In fine, the clustering concept is *prejudgment*, a prejudice itself concerning people who share similar backgrounds, ethnic origins, needs, experiences, values, goals, and occupations. It is the process by which one applies one's own prejudices to predict the prejudices of the *Other*. The process is rife with pitfalls and exceptions. It can never claim more efficacy than to put one on notice—and one must be on notice—that if one finds one grape one is most likely to find others like it. One of the great joys of learning about people is to find the grape that surprises.

Learning about people: I am often asked by young people what courses they should take in school to prepare themselves to become trial lawyers. The question is better put, what do we need to learn to become human beings? Whether we want to be successful trial lawyers or successful in any other calling we must become proficient in understanding our brothers and sisters who occupy this earth. But how? How do we become experts in simply knowing people? Unfortunately one does not learn how to become a person in school.

Those from moneyed parents often are sentenced to private schools where they are dunked in old ink, soaked in Latin and Greek, and suffer the education of the elite. I know the arguments for a classical education. However, the point I labor toward is this: our perception of the people we deal with every day depends upon who we are *ourselves*. When our cluster of experiences matches those of the *Other*, we are more likely to understand and predict the *Other* than if we had not been so enriched. The working man understands another working man better than the scholar understands the working man. Nothing is sadder, yet more amusing, than to watch a lawyer who has been given a stiff Ivy League education arguing to a jury of ordinary people. His choice of words, the syntax

he constructs, the metaphors he chooses, his ideas of what is persuasive to a judge and jury all reflect the pool of experience from which he operates. Often he comes off as snobbish or patronizing. It is hard for the jury to empathize with him or to trust him because its members are not familiar with his clusters.

I tell young people that if they want to be fine trial lawyers, indeed, if they want to be successful in any calling, they should learn as much as possible about every aspect of the human condition, hopefully by experience. I argue that young people, as a part of their education, as a part of preparing for a lifetime of play, should work a lot. They should learn what it is to pinch a penny, to worry about coming up with the rent, to come home at night tired, to do without, to experience the joy of completing small tasks. I want my children to know a wide variety of things: how to clean a latrine, how to frame a house, how to carry a hod, to lay a brick. They should know how to attend the sick, to irrigate a pasture, to climb a mountain, to write a poem, to sing the songs of people, to lie by a stream and dream, to know the joy of love and the pain of loss. I consider the young who have never had to work, worry, or struggle to be seriously underprivileged in much the same way that young people who grow up in the ghettos are underprivileged.

Affluent parents most often make the mistake of sending their children off to some safe place where they are isolated from the rest of the world, after which these children are expected magically to become fully operative individuals in the adult real world. One does not prepare for a fight in the boxing ring by becoming an expert in the highly formalized techniques of ballet (although, I admit, any boxer could improve himself by learning to be a better dancer).

THE LOCK: So having discovered prejudice, how do I deal with it?

Having discovered how prejudice lurks, we must remember what we have already learned—that arguing directly into prejudice is like hollering at the kitchen sink. I have seen many lawyers argue their cases to prejudiced judges or prejudiced jurors, and when they lose, they ask agonizing questions: “Where did I fail? Where was I deficient? I thought I made a perfect argument.” Their failure, of course, was not in their argument. Their failure was in not uncovering the prejudice and learning how to deal with it.

THE KEY: The key here won't unlock many doors once they have been jammed with prejudice.

Self-interest, the impenetrable wall: When the *Other* realizes that his self-interest is at stake, no winning argument is possible. This is so because the core prejudice of any living creature, man or forest fern, is for its continued existence. *No matter how skillfully we may argue, we cannot win when the Other is asked to decide against his self-interest.*

A winning argument that loses: Take, for example, an argument one might be called upon to make to a lumberjack to save the old-growth forest when the lumberjack's livelihood depends upon the availability of trees to cut. Understandably, lumberjacks are prejudiced against the spotted owl, that innocent little bird whose plight is to have become the hated symbol of the environmentalist. To illustrate the insurmountable difficulty we encounter in making an argument directly into prejudice that is rooted in survival, let us, hypothetically, empower our lumberjack with the absolute power to say "yes" or "no" to the cutting of the old-growth forest in question.

The best argument one can make to the lumberjack begins by acknowledging his prejudice. He has a need to survive:

To the lumberjack: "We both understand, of course, that your livelihood depends upon cutting this old-growth forest."

"Right. That's how I make a living. What do you want to do, deprive my kids of supper in favor of some damn hoot owl?"

"You have a point. But you've agreed to listen to my argument against cutting the forest and to try to make an impartial decision about it—that's our agreement, isn't it?"

"Right. I'll give you a fair hearing. Then I'll shoot the little spotted bastard."

One then confronts the lumberjack by inquiring how he intends to put his personal interest aside:

"How you are going to put your personal interest aside so that you can be totally impartial and fair?"

"What do you mean?"

"Well, how are you going to make sure that your decision isn't based on your own self-interest? After all, feeding your family comes first, doesn't it?"

"You bet."

"It even comes ahead of being fair, don't you agree?"

"Maybe."

"Well, how are you going to be fair under these circumstances?"

"I don't know. I can try. That's all I can do."

"Under these circumstances it's really not fair for me to ask you to even try to be impartial. If our positions were reversed I don't know how I could be impartial either. Maybe no one could be when their livelihood and their family's welfare is at stake."

He doesn't answer.

"Could I give you a suggestion on how you might try to be impartial?"

"Yeah, sure."

"Try to pretend you are the 'ultimate authority in the universe.' You have absolute power over all living things on the earth. Pretend that your desire, as the one with absolute authority, is to render pure, perfect justice. Do you think you could imagine this—just for the moment?"

"Well, I don't know. Do you want me to play like I'm God?"

"That's the power you have here, isn't it? But this old forest is a universe itself that took billions of years to evolve and, to millions of plants, animals, trees, and other living things, your decision will be the decision of God to them. Do you think, as God of this forest, you could render a fair decision?"

"You're putting a lot of pressure on me."

"Yes, but as God of the forest you have a lot of responsibility. It isn't easy to be God."

At this point in the argument the lumberjack has been fully *empowered*. He understands that he alone makes the decision. Moreover, he has been forced to see that his interest is in conflict with the interest of the many living entities that make up the forest universe. He has agreed to try to set aside his personal interest, and although he acknowledges that this will be hard, he probably understands something else: if he holds in favor of himself and his family, his decision will be seen not as an impartial decision but as one tainted with self-interest. He's on the spot in deciding the fate of the spotted owl.

Now I might shift my argument to storytelling. "Let me tell you a true story: By 1800, somewhere in the neighborhood of ten to fifteen million Africans had been transported to the Americas as slaves, which represented only a third of the men and women who had been seized in Africa by the slave traders. Two out of three

blacks who were seized died. Blacks were packed into the holds of the slave ships like fish. One observer reported that a slave-deck was 'so covered with blood and mucus that it resembled a slaughter house.'

"In 1637 the first American slave ship, the *Desire*, sailed from Marblehead. Its holds were partitioned into racks two feet by six feet and they were equipped with leg irons and bars. Authorities estimate that Africa lost roughly fifty million human beings to death and slavery in the centuries that followed the discovery of America."

"Well, what's that got to do with the friggin' spotted owl? The spotted owl isn't a human being."

"Right. But the spotted owl, like African slaves, is a living creature *without rights*."

"But the spotted owl is a damn bird. The slaves were human beings."

"I admit that. But do you leave room for the proposition that the slaves were *seen* as things, mere wild creatures that once captured became property, and as such they could be bought and sold or killed at the will of the owners?"

No answer.

"And trees are also wild things, which, when they are cut and taken possession of, *become* mere property, isn't that true?"

"Trees are trees."

"So, whether a slave is property or a tree is property is purely a matter of what we humans *designate* as property, isn't that true?"

No answer.

"I mean, whether human beings are treated as property *without* rights or as citizens *with* rights is purely a matter of who wields power. Isn't the same also true with the forest? Property and power are inextricably interconnected, wouldn't you agree?"

"What do you mean?"

"I mean, since we no longer have power over the black man we can no longer convert him into property. And if you had no power over the forest you could not transform the forest into property either. In the end, whether the forest is or is not property is simply a matter of power."

"So?"

"So today we view old-growth trees as our property, not because they *are* property but simply because we have the *power* to declare them property."

"So?"

"So you have the power. Will you declare the old-growth forest as property, or would you be open to seeing the forest in some other way?"

"Maybe so, maybe no."

"Could we agree on one thing—that mere ownership in itself does not dictate what is right and what is not. I mean, merely because the slave owners had the power to own slaves did not make such ownership right."

"We're a long ways from the spotted owl."

"The power of ownership does not establish what is morally right or morally wrong. What is right and what is wrong exists independent of ownership, isn't that true?"

"I suppose so. But I don't like where you're going."

"So merely because one may own a forest does not provide an excuse or a reason for destroying the forest, wouldn't you agree?"

No answer.

"I mean, if you decided to cut down the forest, you couldn't say it was right simply because you owned it or had the power to decide its fate, isn't that true?"

"You're getting a little far out there."

"With ownership goes responsibility, wouldn't you say?"

No answer.

"If you own a horse, you can't let it starve to death and excuse your conduct on the basis that since you own it, you can do with it as you damn please, right?"

"Right."

"Let me give you another example. Suppose I own a great painting, say, an incomparable Van Gogh. Do I have the duty to preserve it or could I destroy it if I wanted to?"

"Well, it's your painting, but it's no horse."

"But wouldn't you agree that the whole world has an interest in the preservation of that great painting, and that the rights of all the people in the world to the preservation of the painting is greater than the right of a single individual, under the rules of ownership, to do with the painting as he pleases?"

"I'm not sure about that."

"Well, let's think about it further. Where does the right of ownership come from? Is it a divine right? Does it come from God?"

"I don't know. I doubt it."

"It is merely a rule of man, is it not?"

"I suppose."

"And being a mere rule of man, is it not possible that the rule can also be changed by man for his greater benefit?"

"Sounds right."

"Do we not also believe that rules should be made to benefit the greatest number of people?"

"That's what a democracy is about."

"Applying these ideas to the forest in question, if saving the forest would benefit all of mankind by preserving that unique universe of flowers, trees, birds, and beasts, do you not agree that we might change the rule of ownership so that one man, or a few men, cannot destroy a whole universe for their private gain?"

"What about my job?"

Here it comes!—the impossible wall that stops all reason and justice—the wall of self-interest. No matter how we batter at the wall, no matter how we attempt to climb over it, it remains impenetrable and insurmountable. The survival instinct is stamped in the genes. It overrides every thinking brain cell of the species.

"You agreed not to consider your self-interest, remember?"

"Well, I have rights, too."

"Of course. But as an impartial judge, you would have to set your rights aside and decide this case on reason and justice, isn't that true?"

"I think I have more rights than a friggin' spotted owl."

"Who gave you those rights?"

"They are my rights as an American citizen. As a human being."

"You were born with them?"

"Yes."

"What rights are the creatures of the forest born with?"

"They have no rights."

"Why not?"

"Because trees and bugs don't have rights."

"Who said so?"

"I say so!"

"Are you making your decision as the impartial 'ultimate authority' in the universe or are you making your decision as the lumberjack with a family to feed?"

"In this case, I guess they're the same."

The above argument, when presented to a schoolteacher in Sioux Falls, or to an artist in New York (where neither have close family or friends affected), might succeed. It is possible that both

might find my argument against destroying the old-growth forest both logical and just. But even with them the result would likely be the same. I suspect that most people believe that humans have more rights than spotted owls. That is the prejudice of our species.

Shifting the argument to win: The thrust of our argument can, however, be shifted slightly, so that a winning argument can be made. The shift will be made so that the *Other's* self-interest is addressed. It could now go like this:

"Being a lumberjack is dangerous work, is it not?"

"You got that right."

"Men are killed or injured in the forest every year, and their families have to get by with a pittance, isn't that true?"

"Right."

"And the work is hard. I mean, a man is pretty well done in at the end of a day, isn't that right?"

"Right."

"And the work isn't always steady. Sometimes there's work and sometimes not."

"That's right."

"Do you like the work?"

"It's all I know. I like being in the woods."

"Would you support a plan that would permit us to save the old-growth forest if we could also provide you with safe, steady work that you would like and that pays as well?"

"I'd sure give it consideration."

"Would you become a member of a planning committee to try to work out such a solution?"

"Certainly. Actually I don't like cutting those big old trees. I hate hearing them fall. Sounds like they're crying all the way down."

Placing the lumberjack on the committee is the necessary act of empowering the lumberjack, remembering, as we must, that we cannot win an argument when the *Other* has no power to accept or reject the argument. But suppose he and others like him can be hired by a pharmaceutical company to gather samples of plant growth in the forest to study possible new cures for human disease. Suppose he can obtain work as a guide, or he can get better pay in a plant that produces building material from other sources. Under these circumstances we will likely hear the lumberjack, who

truly loves the forest, now adopt the arguments I have made to save the forest and its symbol, the spotted owl. "Why, that's a pretty little bird," we would likely hear the lumberjack argue. "There's just a few of them left. And there's a lot of us. Human beings can make their houses out of something other than those old trees. The spotted owl can't."

I read the above arguments to a friend of mine. When I had finished he said, "Well, I'll tell you what I think. I think that a single spotted owl is more important to the earth than a single human being, because the spotted owl is near extinction while the human race is so pervasive it is starving to death all over the world."

"That's a good point," I said. "But *which* human being's life would you trade to save the spotted owl?"

"I don't know," he said. "But we have plenty of people hanging around, crowding up the earth, destroying it."

"But the question is, *which* human being would you trade to save a spotted owl? Would you trade a starving child in New Delhi?"

"Probably be better off," he replied.

"Which child in New Delhi?"

He didn't answer.

"How about your child?"

"Come on," he said, "let's go take a good run."

When we are faced with a prejudice, logic and justice are impotent. Still we may have an obligation to argue directly into the face of the prejudice, even though there is no chance to win. If someone argues that all Irish are sloppy drunks or that Hispanics are inherently lazy, or that women, because of their emotional nature, are less qualified than men to hold responsible positions, we incur, as an obligation to ourselves, the duty to argue against the prejudice with all our skill and our power—whether we can win or not. But the *Other's* prejudice—a stain on the cloth of the *Other's* character—will likely take more than an argument to remove. The stain of prejudice is often indelible.

A personal case: Some years ago a very close friend of mine, his wonderful wife, and his eighteen-year-old son, an outstanding athlete, were blown up in their home while they were sleeping. The man responsible for the explosion was a longtime criminal—a dope peddler, who hired a local thug to do the job. Later, after I was appointed special prosecutor in the case, the killer ordered our prin-

cipal witness murdered just before that witness was to testify before a grand jury we had convened to investigate the first murders.

I have always been adamantly opposed to the death penalty. It has been my heartfelt belief that we cannot stop the killing in our streets until our government stops slaughtering people at home and around the world. Killing is killing, and it is no more defensible when committed by a government, a conglomerate of individuals—of us—than when the killing is committed by a murderer.

But when it came time to argue my case against the killer who was responsible for the four senseless deaths of people I knew, I found myself following the law and, as a special prosecutor, arguing for the death penalty. The killer was convicted, and after more than twelve years of appeals, he was executed. I can vividly recall the pain of those years, when my moral conviction clashed head-on with the law.

It is easy to remain high and aloof, to remain uninvolved, unconnected, to pass judgments, and to stand up and preach and holler self-righteously in the abstract. It is easy to argue one's strong moral convictions, as I have just done, for the preservation of the old-growth forest so long as it is not my job that is lost or my family that suffers. It is easy to argue that the life of the spotted owl is more valuable than the life of a human being so long as it is not my life, or the life of my child, that might be given in exchange. And it is easy to argue against the death penalty until it's my wife who has been murdered, or my child, or my friend. Only saints can evade self-interest, and even they evade it to preserve themselves—their great and compelling personal need to bring about justice in the world.

Recognizing and dealing with social prejudices: As a member of any social system, we encounter its prejudices, be they noble, principled, evil, or corrupt. We are prejudiced for a profit system and against a regulated economy. We are adamant for democracy and recoil from totalitarian ideals. We think good Muslims are suspect and good Christians upstanding. We accept our prejudices as the norm of the society. Our social attitudes are mostly known, predictable, and controlling.

The forces that dictate that which is politically correct and that which is not can be both beneficial and destructive to a society that struggles for justice. The "politically correct" thinking of Nazi Germany led to the most abhorrent abominations in the history of man-

kind. Yet, were it not for social coercion brought on by politically correct thinking, we could make little advancement against the invidious blight of racism and the scummy injustice of sexism. But for the power of political correctness, we would still be slogging along in the muck and mire of former, infamous times. The point I make is that social attitudes, like individual prejudices, can be both good and bad.

The Marcos case, and conventional wisdom: I have already mentioned my defense of Imelda Marcos in the federal court in New York City. The case became a classic example of the operation of prejudices that become the conventional wisdom of an entire culture. Following the overthrow of Ferdinand Marcos by the Aquino regime, both Marcos and his wife faced scores of indictments that included nearly every conceivable charge known to the FBI in the field of racketeering and fraud. By the time the case got to court, it had become conventional wisdom that Mrs. Marcos, the former friend and benefactor of several of our past presidents and their wives, had suddenly become an avaricious criminal bitch who ought to be strung up by her toes in Times Square.

Conventional wisdom demanded that Mrs. Marcos would and should be convicted, that she should be sent to some ugly place where she could wear none of her three thousand pairs of shoes on her evil feet. Rudolph Giuliani, mayor of New York, then the United States attorney, was aware of the universal prejudice against her. He guaranteed the government a conviction, and his guarantee was in writing. Yet few who condemned her had ever met her.

I took the case, for despite conventional wisdom, I believed the government of the United States had no right to stick one of its many noses into the internal affairs of the Philippines by prosecuting the wife of its deceased president. In the end, her most serious crime turned out to be her undying loyalty to her husband, both before and after his death.

The trial went on for three months before a jury. Not burdened with conventional wisdom, the members of a carefully selected jury returned a verdict of acquittal on all charges. The government's case was so weak I wasn't required to call a single witness in Mrs. Marcos's defense. I didn't even call her to the stand. The government had focused its case on what the government believed the jurors' prejudices must surely be—her alleged wild spending

sprees, her alleged association with the money schemes attributed to her husband—matters calculated to outrage poor New York jurors, many of whom had a hard time paying the phone bill.

During the trial the press, believing its own stories and having fully adopted as true the conventional wisdom it had created—that Mrs. Marcos was an extremely evil woman—continued to belittle and berate her. Every morning I picked up the several New York newspapers to read their stories about my trial. I was bewildered. Reading the news accounts, I thought the reporters must be watching a different trial from the one I attended. One would have thought that the prosecution had won with every witness and had won every skirmish, while in the courtroom witness after witness left the stand without having connected my client to a single act of wrongdoing. As a matter of fact, witness after government witness vouched for the kindness and decency of Mrs. Marcos. As the case progressed, even the trial judge began to wonder aloud what the case was doing in his court.

During the trial, one newspaper sent its reporter around every morning, not to interview Mrs. Marcos, not to gather any newsworthy news, but simply to take a picture of the shoes Mrs. Marcos was wearing. They were all black, very proper pumps, and there is no doubt that she often wore the same pair day after day. Yet this paper intentionally played into the nation's prejudice against this allegedly villainous, depraved woman who owned three thousand pairs of shoes. I stopped the reporter once to tell him that my client owned so many shoes because there are many shoe factories in the Philippines, and, as the first lady, Mrs. Marcos received hundreds of shoes each year from companies who wanted to claim that their first lady wore their shoes. Mrs. Marcos confided in me that most of the shoes didn't fit, but she stored them away in her closet anyway. But this fact, the truth of which collided with conventional wisdom, was never reported.

One particularly cynical member of the media was so captured by his own prejudice that when Mrs. Marcos collapsed in the courtroom, her head falling to the table and blood gushing from her mouth—the result of a ruptured vessel in her stomach—he rushed up to ask me where I got the phony blood capsule for my client to bite at that precise moment. She was rushed to the hospital, where she remained under medical care for several days before she was able to continue in the trial. Today, whenever I am

faced with the conventional wisdom that Mrs. Marcos is a bad person, the conversation goes like this, after the usual opening volley:

The person who knows she is evil: "I used to admire you a lot, Mr. Spence, before you took on that Marcos case. What got into you anyway? Was it the money? Just tell me it was the money. I could forgive you if it was just the money."

"I take it you don't like my client."

"You got that right."

"You must have spent a lot of time with her and got to know her really well."

"Never met the woman in my life."

"That's very strange. I know you to be a fair person. You must know a very reliable source then who knew her personally."

"Can't say as I did."

"Could it be that you have read something about her that you didn't admire?"

"Damn right. I read the paper every day."

"That's it, then! You've discovered a basic principle upon which you have relied: If you read it in the paper, it's the gospel."

"I don't buy that."

"I may be the only person in the entire world you have met who knows Mrs. Marcos personally, and who has spent many a day with her under the most difficult and trying circumstances. Sometime, if you're interested, I'd be happy to tell you what I know about her." But such arguments are mostly for my satisfaction. I've never yet had a person confess that after my argument he set aside his understanding of conventional wisdom.

How (sometimes) to argue into social prejudice: How do you argue into the storm of social prejudice? You usually do not steer into it head-on. You tack into it like a sailboat heading into the storm. If, for example, I were called upon to argue against the conventional wisdom that criminal defense lawyers manipulate things so that their guilty clients escape through loopholes in the law, I might argue in this fashion (the conversation always begins with this question, which is truly an assault in disguise):

"Tell me, Mr. Spence, did you ever represent someone whom you knew to be guilty of the crime charged?" (The question sets up a no-win answer.)

"Interesting that you should ask such a question. If I answer

'yes,' I am immediately adjudged a scoundrel. If I answer 'no,' you would adjudge me a liar. How do you wish me to answer the question, as a scoundrel or as a liar?"

"That was a very clever answer. You deserve your reputation."

"Well, let me ask *you* a question. When you see your doctor, does your doctor ask you whether the illness you complain of is the possible result of your having committed a crime?"

"Of course not."

"Wouldn't your doctor treat you whether you had ever been guilty of a crime or not?"

"Of course."

"I take it he wouldn't judge you before he agreed to try to help you?"

"You're getting cute on me."

"You must certainly agree with me that you have a right to be treated without first being morally judged by the doctor."

"Obviously."

"My client has legal rights as well. Until he is proven guilty beyond a reasonable doubt before a jury of his peers, he is *presumed innocent*. Most of us forget that—it has something to do with some stodgy old instrument called the Constitution."

"Now you *are* getting cute."

"Yes. But I am simply trying to establish that my client, like you with your doctor, has the right to be assisted by his lawyer—without first being judged."

"So you have represented people who you knew were guilty, right?"

"If you were charged with a crime and came to me, would you expect me to set up a confessional booth in the rear of my office to hear your confession before I took your case?"

"You are still being cute."

"But you see, the proper question to ask is, What rights does every accused have, guilty or not, that every honest lawyer should defend? If you will ask me that question I will answer it."

"All right. Consider the question as asked."

"Every lawyer understands that before a citizen in this country can be convicted, the state must prove its case against him according to the rules, the most important of which are guaranteed protections under the Constitution. These rules preserve our rights as American citizens and protect us from the tyranny of the state. Every honest lawyer has the duty to see that every person accused

of a crime, guilty or not, is not convicted unless the state fairly and lawfully follows those rules. This very noble ideal is what distinguishes our country from nearly every other country in the world."

"Quite a speech."

"Think about it."

"How about the loopholes you lawyers always find?"

"What is a 'loophole' for 'those criminals' will become *your* sacred constitutional rights if, God forbid, you or a member of your family is ever charged with a crime."

"Oh, well, then who do you think is going to win the Super Bowl?"

The prejudice set in stone: Finally, there are those occasions when one is confronted by sincere people who suffer from prejudices that are set in stone. With them, no argument can be made, none at all. Winning may be simply listening politely. For example, try to convince one who construes the Bible literally that we are the product of eons of evolution, not the creation of the Lord on the seventh day. The great lawyer Clarence Darrow attempted to argue against such prejudices set in stone in the Scopes trial of 1932—the "monkey trial." He failed. I would rather have a mind opened by wonder than one closed by belief.

Winning, as I have previously defined it, is getting what we want. What we *want* in the long run is to preserve our supply of productive life for use in fruitful endeavors. We do not want to be wasted. I reserved for myself the right to determine what wars I will fight, what battles, what arguments I will make and to whom. If I were a general, I would never launch my army into a battle in which the enemy was so entrenched it would be suicide for my troops. We should care for ourselves as much as that general cares for his soldiers. Winning, therefore, is not always winning. Winning is sometimes appreciating the wisdom of a tactical withdrawal, especially in the face of immutable prejudice—in the face of this impenetrable vault that locks the mind.

AND SO: There are always arguments that may be made in the face of insurmountable prejudice. But usually they are made because we must make them. Sometimes, when the self-interest of the *Other* is properly addressed, the argument will win. Sometimes, rarely, the argument will serve to sensitize the *Other* to his or her

prejudice. Sometimes the argument will be heard by people other than the one to whom it is addressed, and it will do great good.

Sometimes we grow strong by making arguments we cannot win, but, at the end of the day, arguments rarely change prejudice. Christ was said to have changed the world with His arguments, but His were addressed to man's greater self-interest of eternal salvation and were, at last, supported by the ultimate fear of eternal damnation if rejected. With such power working behind our arguments, we too could change the course of history.

And so, beware of prejudice. Understand that every argument cannot be won with every person. Were it otherwise, the title of this book notwithstanding, the world would have been conquered long ago by logic and justice, and those of us who strive for their triumph would be out of work, would we not?