

HOW TO
**ARGUE
AND
WIN**

EVERY TIME

AT HOME, AT WORK,

IN COURT,

EVERYWHERE, EVERY DAY

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Structuring the Winning Argument

BUILDING THE HOUSE THE WOLF CAN'T BLOW DOWN

THE LOCK: I couldn't write an argument if my life depended on it.

THE KEY: Don't write. All you need to know is what you already know—how to tell a story.

Every argument, in court or out, whether delivered over the supper table or made at coffee break, can be reduced to a story. An argument, like a house, yes, like the houses of the three little pigs, has structure. Whether it will fall, whether it can be blown down when the wolf huffs and puffs, depends upon how the house has been built. The strongest structure for any argument is *story*.

"Let me tell you a story."

Storytelling has been the principal means by which we have taught one another from the beginning of time. The campfire. The tribal members gathered around, the little children peeping from behind the adults, their eyes as wide as dollars, listening, listening. The old man—can you hear his crackly voice, telling his stories of days gone by? Something is learned from the story—the way to surround and kill a saber-toothed tiger, the hunt for the king of the mastodons in a far-off valley, how the old man survived the storm. There are stories of love, of the discovery of special magic potions, of the evil of the warring neighboring tribes—all learning of man has been handed down for eons in the form of stories.

We are, indeed, creatures of story.

All varieties of creatures inhabit the planet—grazing creatures, hunting creatures, flying creatures, water creatures, burrowing crea-

tures, and parasites that attach to and live on other creatures. But we alone are story creatures. Telling stories and listening to stories are the activities that most distinguish our species. The stories of our childhood remain with us as primary experiences against which we judge and decide issues as adults. They are forever implanted in both our conscious and unconscious. We are entertained by the drama of movies, television, and theater—highly developed forms of storytelling. The most effective advertisements on television are always mini-stories that take little more than half a minute. Jokes are small stories. The great teachers of the world taught with stories. Christ's parables are stories.

When the foreman in the plant discovers that a machine has broken down, the first thing he is likely to ask the people huddling around who are attempting to repair it is, "What's the story here?" When the cop pulls us over and pushes his pugilistic face into the front seat, his first gruff question is likely to be, "What's the story, buddy?" Your response to the boss or to the cop is usually in story form, that is, you tell what happened. "This roller," the factory worker answers the foreman, "was moving along just fine, and then I heard something, and I ran over, and the roller was clogged, and it started grinding itself up. I'm glad it happened while we were over there. Somebody could have gotten caught in it. And I've been thinking about how we can fix this so it won't happen again," which becomes the rest of the story, the argument for proper safety devices in the plant.

Storytelling is in the genes. Listening to stories is also in the genes. It follows, therefore, that the most effective structure for any argument will always be *story*.

The German philosopher Hans Vaihinger, in his important but, in America, little-known book, *The Philosophy of 'As If'*, proposed that in addition to inductive and deductive thought, there exists an original thought form he calls "fictional thinking." Myth, religious allegory, metaphor, aphorisms, indeed, the world of legal fictions and analogy are examples of fictions we use every day in thinking. An ordinary road map is actually fiction, for nothing like the map exists. Yet we can move accurately, assuredly in the real world as a result of our reliance on the fictional representation of the map. An argument that depends upon "fictional thinking," as Vaihinger called it, is the most powerful of all arguments—the parables of Christ, the stories of tribal chieftains, the fairy tales and fables that are the very undergarments of our society. Jorge Luis Borges, who

won the Nobel Prize for literature, Gabriel García Márquez, and Joseph Campbell have all made the same argument, that "fictional thinking" is the original form of human thought, that it harkens to our genes.

visualise the picture Before we can tell an effective story to the *Other*, we must first visualize the picture ourselves. Begin to think in story form. Suppose we want to petition the county commissioners to construct a new road to replace an existing dangerous one. You could argue that the county commissioners have the duty to provide safe ingress and egress for the taxpayers, and that the present road is inherently unsafe and does not conform to minimum highway standards. You could quote the standards and cite the specifics of how the road is in violation of those standards. Or, you could provide the commissioners with the following argument that takes the form of a story.

"I was driving down Beach Creek Road today. I had my four-year-old daughter Sarah with me. I strapped her as tightly into the seat as I could, because I knew the road could be very dangerous, and I strapped myself in as well. Although this was a dangerous road, it was the only one Sarah and I could take to town.

"As usual, I drove very slowly, hugging the shoulder all the way. As I was coming to that first blind curve, I thought, What would happen to us if a drunk comes around that corner on the wrong side of the road? What would happen to us if a speeding driver came barreling around that curve and slid slightly over the center line? There would be no escape for us. The shoulder is narrow. There is a deep drop-off. I looked at my little daughter and I thought, This isn't fair to her. She is innocent. Why should she be subjected to this danger?

"And then when I was well into the curve I saw the approaching vehicle. A lot of thoughts flashed through my mind. I recalled there had been four deaths on this road in the past ten years, and I don't know how many wrecks that resulted in serious injury. I thought, based on the number of deaths per thousand persons in this war zone, a person would have had a much better chance to survive in Vietnam.

"As you can see, this time Sarah and I made it. This time the driver wasn't drunk. This time the driver was attentive. This time the driver was in control of his car, but there wasn't much room to spare when we met. I could have reached out and touched the side of his car. The question is, when will Sarah and I become just another statistic on this road? Will you remember us? Will you re-

visualise the picture

story telling argument to convince

fictional thinking

member me standing here, imploring you to do something about this? Especially for her? Please?"

The argument creates word images of innocent people trapped in inescapable danger. It touches the emotions of the commissioners, who have the power and therefore the responsibility. "Will you remember me standing here imploring you to do something about this?" are powerful word weapons that will not be forgotten.

The story is the easiest form for almost any argument to take. You don't have to remember the next thought, the next sentence. You don't have to memorize anything. You already know the whole story. You see it in your mind's eye, whereas you may or may not be able to remember the structure and sequence of the formal argument.

When you explain the facts to the production engineer at the plant without telling a story, you would probably begin by citing to him the figures that reflect the decrease in worker production. You might reel off the numbers that establish the loss of profit this troublesome situation has created. You could then suggest your remedy. This is the typical argument production engineers hear every day. No word pictures come up. The argument possesses no emotional content. Nothing feeds the imagination.

The argument could better be told in story form:

I went over to Z Area today. The workers looked dead. Their faces were empty. I thought, My God, have I just walked into the morgue? I walked up to a mechanic and said, "How you doin'?" He didn't even look up. He mumbled a reply I couldn't hear. The other people in Z Area were hardly moving. Finally I pulled the mechanic over, stuck a fresh stick of chewing gum in my mouth and offered him one, and said, "What the hell is going on here?" At first he shrugged his shoulders. Finally he said, "Do you really want to know?" That was the first time I saw any life in his eyes. And when I said, "Yeah, I really want to know," he said, "Okay, you asked, so I'll tell you." Here's what he told me...

The argument goes on to outline the cause of the breakdown, the poor communications with the other areas, the feeling of futility the workers experience from trying to get the flaws in the machinery corrected, the endlessly stymied production and the resulting worker apathy. From the story, the production engineer can see the

workers plodding listlessly. He can see their discouraged faces. He can hear the mechanic's story, out of which emerges a clear remedy.

The other day I was reviewing a reply brief written by one of the younger members of my law firm in response to one that had been filed by the other side. The opposing attorney was asking the judge to certify questions of law to the Supreme Court of Wyoming. The brief of our opponent was long and tedious and filled with citations.

Our young lawyer adopted the same lifeless approach as his opponent. He had begun by repeating the several questions that the opponent had already identified. The questions were as interesting as cold cornmeal mush.

"Suppose you were the judge," I said to the young lawyer. "Be him for a moment. Realize that he faces stacks of these briefs, that they are piled to the ceiling, these boring, god-awful briefs he must read. No wonder he hates lawyers. He is drowning in their paper excrement. Can you see him? He wants to burn the piles up. Suddenly something snaps. He goes mad. He grabs the top brief, rips off the cover sheet, lights a match to it and now, laughing, drooling, he feeds the little fire, a page at a time. He drops the burning brief to the floor, and adds other briefs to it until he has a large fire blazing away in the center of his office. You can see him madly feeding the fire with brief after brief until he comes to yours. He picks yours up. This is the last legal paper left. By this time, the drapes in the room have caught fire and the place is turning into an inferno. He stops for a moment to read the last legal words he will ever see. And what does he read?"

This response is made in response to the respondent's assertion that the matter in question constitutes a meritorious question for this court's consideration under Rule 3039 (b) (2) (a) (ii) subpart (zz).

find another way to argue/ to get attention - using other forms

"Can't you see that poor judge? With your brief in hand, he lets out a last horrible scream, throws your brief into the fire, and is about to jump in after it when, just in time, he is rescued by his clerk. Why not save the judge's life in the first place by beginning your brief with a story, perhaps like this:

This story begins with the respondent standing there, looking up at you judges, and what do you suppose he is doing? He is thumb-

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ing his nose at you. He is saying, "I can do as I please. I will destroy the land and violate the law, and by the time you judges discover what this case is about, I will have raped the land and taken my profit. And then you will hear me, as the saying goes, laugh all the way to the bank while you are still reading my lawyer's laborious brief."

I could have said to the young man, "Your brief is a bit too formal and traditional and somewhat bereft of original verbiage," which criticism he would likely forget the next time he sat down to write a brief. But he will never forget the story of the mad judge. Moreover, if the young lawyer will start his argument with a story, the issue in the case will be immediately identified, and the judges themselves will never forget the word picture of the respondent standing there thumbing his nose at them.

POWER
STORY
MENT
Why is the story argument so powerful? It is powerful because it speaks in the language form of the species. Its structure is natural. It permits the storyteller to speak easily, openly, powerfully from the heart zone. It provokes interest. It is an antidote to the worst poison that can be injected into any argument—the doldrums. We are moved by story. A story touches us in our tenders, in those soft, unprotected places where our decisions are always made.

BEGIN A
AT
ENDING
Where do we begin a story? Sometimes I begin a story at its ending. If I want the jury to understand the devastation of defective brakes on a vehicle and the responsibility of the car manufacturer for having loosed such killing monsters on the road for profit, I begin the story with a picture of my client driving along on a pleasant Sunday afternoon.

It is one of those fresh spring days when we are glad to be alive. The sky is a deep Wyoming blue. The sun is warm and the wildflowers are on stage. Suddenly a cow jumps up out of the barrow pit and Sammy slams on the brakes. The rear brakes—something is the matter with them! Sammy's veins are suddenly flooded with adrenaline. His heart is in his throat. His brand-new car begins to swerve and the rear of the car begins to come around. He is trapped! If he takes his foot off the brake, he will hit the cow and be seriously injured or killed. If he doesn't, his car will careen out of control and wreck. He realizes he is about to die.

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By starting the story at its ending I have created a two-pronged suspense: Will the driver be killed? And what was the cause of this horror? The listener's interest will be held until the entire story is told—how the manufacturer's engineering department had discovered this danger the year before, but management chose not to correct it because it was cheaper to defend the lawsuits and pay for the injured and the dead than it was to recall thousands of cars and correct the defect. I will tell how this same nightmare was experienced by countless other innocent drivers who, when they bought their new cars, were entitled to believe they were not inherently dangerous. Then I will bring the jury back to the scene, to the terrible crash, the steel frame and body of the car crushing in on the driver, and tell how his mangled body had to be cut out of the wreckage.

I will tell the jury who Sammy was, where he grew up, the schools he went to. I will show them how he was as a little boy, what his ambitions were, his loves, his triumphs and failures. I will tell the jury how he and his wife had saved for their new car, how proud they were when they brought their new car home to their children. Little did they know that what they saved and scraped for would become the trap that would kill their husband and father. Finally I will introduce his family, the little innocent-faced children, and the frightened wife sitting next to them. This is a story people will not forget. Sammy will be alive in the jury room when the jury deliberates the case for his wife and his children.

operational
idea
← What do I want ↔ (point, thesis) → + argument

Preparing the story—the thesis: The story is always built around a thesis, a point of view that is advanced by the argument. Ask yourself, "What do I want?" I want the commissioners to widen a dangerous road. The thesis that forwards my want is that the commissioners have the duty to protect the people. I want the judge to throw out my opponent's case. The thesis is that my opponent's case is brought so he can rape the land before the court can get around to deciding the case. I want justice for the family whose father was killed by defective brakes. The thesis is that the manufacturer's greed is responsible for the death of my client. We obtain what we want with the core argument, the thesis.

The simple questions of structure: And so, when we begin to prepare our argument we ask these simple questions:

Cops have duty to protect → widen the dangerous road
Manufacturer's greed responsible for the death → want justice

- What do we want?
- What is the principal argument that supports us?
- Why should we win what we want? That is, what facts, what reasons, what justice exists to support the thesis?
- And, at last, what is the *story* that best makes all of the above arguments?

How to get started: Suppose you are dissatisfied with your job and want a change. "What do I *want*?" you ask yourself. Maybe you dream of running a little diner in a small town in Wyoming. Maybe you see yourself making fresh wheat bread every morning and serving a hearty breakfast to the local workers who become your friends. Maybe in your mind's eye you see your kids pedaling down a nearly vacant street with their fishing poles over their shoulders. Maybe this is your dream—to live in a place where your kids are safe, where they can learn to trust, where they can grow up away from the experiential grime of the cities that leaves indelible stains on their tender souls.

And what is the *thesis* for your argument? Begin by writing your thoughts as they come to you. "I'm entitled to be happy and I'm not happy where I am. Life is going past very fast. This morning I squeezed the last out of the toothpaste tube and suddenly I realized that life is like that—the tube was full a short time ago. I don't want to squeeze all of my life out on this job where I feel I am being wasted." In short, the thesis seems to be, "I am entitled to live my life in a more satisfying way."

Looking into it; finding the facts: Before you make your argument to your family, you should also know something about diners. Perhaps you should visit one, get to know the owner, learn about such things as food costs and equipment, about licensing, insurance, and rent. Perhaps you should do a shift or two at your expense to see how you like it. It all has to do with *preparing* your argument.

Go to the library and look up all the articles in the periodicals that deal with restaurants, diners in particular. You will want to investigate where to relocate. Call the Chamber of Commerce to find out what the competition would be. What about schools? Churches? What else?

Selecting the net from the gross: Although you will never read your argument, writing down the facts as you learn them and assembling

this rambling pile of often unconnected ideas provides a fund of *gross thought* from which you will begin to arrive at the *net*. 121

Tightening, outlining: Now review what you have written. Strike out those ideas that no longer fit. Rearrange the ideas, tighten them. Outline them.

—I'M ENTITLED to live my life in a more satisfying way (the thesis)

—Not happy where I am

—Life is a toothpaste tube

—little more squeezed out each day

—soon empty

—*wasting myself*

Go on with the rest of your outline—about the money you need to earn, a better school for the kids, a place to live where they can have more meaningful primary experiences than television and crime on the street.

—I'D LIKE TO BE MY OWN BOSS

—I'm thinking about a diner

—Nine or ten stools

—Small Wyoming town

—THE COST:

—equipment: used, \$2700

—can finance with Jako Restaurant Co.

—rent: \$700 a month, etc.

What about the other side of the argument? What about the fact that you will be giving up a job that provides security, and, some day, a pension? What if you get sick and can't run the business? What if the competition is too severe and the diner loses money and fails? What if, after a year or two, the work is too hard, too restricting, and you end up hating the damn place? What if it becomes your prison? I suspect that many an empty diner stands as a peeling, rotting monument to owners who once lived in the rhapsody of their dreams rather than in a reality revealed by a competent, thorough investigation of the facts. So what are your answers to these questions?

Can't rough
data
by what
I want.

What if
challenge
of your
argument

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Judging the argument (like a trial marriage): We can readily see that preparing our argument also prepares us to make an intelligent decision for ourselves. Preparing the argument is like a trial marriage. I sometimes fully prepare my argument only to discover that I don't want to make the argument at all. Better that I discover this state of affairs on the safety of the written page in my study. The rule, therefore, remains constant. *Every argument begins with us.* If we have not prepared ourselves to make a credible argument, we ought not make it. On the other hand, if our preparation has been thorough we will know it is founded on fact, including the most important fact of all—that *what we argue for is what we want.*

Now we are ready to tell our story: The husband might take his wife out for dinner and, when the time grows ripe and she asks what the occasion is, he might say, "I took you to dinner tonight because it is a special occasion. I want to tell you a story."

"A story?"

"Yes. A story. Would you let me tell you a wonderful story?"

"I guess so." His wife nods.

"The story goes like this: Once upon a time there was a man who had a dream. He dreamed that one day he could leave his inhuman, mind-numbing job in the city and take his beautiful wife and children to a small place in the country where they could live happily ever after."

Although the wife soon knows where her husband is going, she will listen to the story when she might not listen to his ranting and raging at home.

"The man felt as if he were wasting his life," the husband continues, "as if he were dying. He was unhappy. He saw his life like a toothpaste tube that was squeezed every morning, and already it was almost empty. He thought, 'If only I could be my own boss.'"

"Suddenly the man realized what he should do. 'I love to cook,' he said to himself. 'And I'm a good cook. I could start a little diner.' And he began to look into it..." Now he tells his wife the rest of the story, about the small town in Wyoming where the kids could go to school. His wife is a teacher. He has already looked into the possibility of her getting a job in the local school system. He tells her the rest of the facts, and when he is finished, he says, "Could I tell you the end of this story?" And before she can answer, he says, "The end of this story is that this man and his beautiful wife and their wonderful children moved to their dream town. They

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shared their dreams together. He opened a small diner, made pot roast and great chili, and she taught school, and," and he raises his glass to a toast, "they lived happily ever after."

More on preparation: Preparation calls into operation a simple and obvious rule of physics: Unless there is something in the reservoir, nothing can flow from it. "Nothing in, nothing out," as computer people say. To prepare for an argument to a jury on how to survive as a partial quadriplegic (that is, partially paralyzed from the waist up and totally paralyzed from the waist down) and how a jury might translate that devastation into a dollar amount in its verdict, I might spend several days with my client, live in his house, get up with him in the morning, see him struggle to get out of bed, see him fight to get his pants on, see him exhausted before the day begins from performing the tasks we complete automatically every morning. How does he move his bowels, change his urine bag, how does he bathe? What massive part of his life is consumed each day in the enormous effort it takes just to get up, to bathe, to dress?

I'll have talked with him about his most tender feelings: what has happened to the romance in his life; how he can no longer make love; how he feels a black sense of helplessness; how he resents having to enslave his mother into his service; the sense of self-hatred he fights every day; the deep, dark pit of depression into which he sinks and from which he can emerge only by pulling himself up and out by the bootstraps of his injured body and psyche. I'll have learned of his propensity to disease, to kidney and bladder infections; the cost of special medicines and continuous medical attention; the cost of attendants, of equipment—wheelchairs, a specially rigged van he must learn to operate and drive for transportation, ramps to his house, extra-wide hallways for his wheelchair, a bathroom specially designed so he can wheel into the shower. I'll know all about muscle spasms, about the hyperthermia from which he will suffer if left in the heat because he cannot sweat. I will have read the medical literature and interviewed the experts until I find I have begun to double back on myself by learning the same things all over again.

More about writing the argument: Yet after all this preparation, I will still write out the story. Writing is the process by which the computer of my mind is loaded. Writing one's argument in long-hand, on one's word processor or computer confirms that the ar-

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argument is important enough to devote the time and thought to the proposition one wishes to forward. Such an act of preparation is an affirmation of one's self and of the importance of one's argument. It also confirms our respect for those to whom we will deliver the argument so that both we and the *Other* are acknowledged as persons worthy of the effort, for we do not take the time to exquisitely prepare an argument to those who mean nothing to us, or spend our lives preparing arguments on meaningless or empty issues. The fact that we have shown the *Other* respect by careful preparation will be revealed in our immediate possession of the most intimate details of the argument, in the clarity of our thought and the depth of our passion. That we are committed to our argument will be proven by our preparation, and, in return, our preparation will cause the *Other* to respect us. Respect is a wondrous mirror.

Still more on the magic of writing: I prepare by writing my argument for yet another reason—to explore what I know. We never know what is hidden in our psychic cracks and crevices until we search for it. As I began to write my thoughts about why writing our arguments is so important, I began to consider the relationship of the physical act of writing—the use of the fingers and the hands—to the creative act—the use of the right brain. Without having thought of it beforehand, I found myself writing the following: *The fingers and the creative portion of the brain are somehow joined by ancient connections, for creativity was always tied to the hands—the shaping of spear points, the fashioning of scrapers and awls, the weaving of baskets, the drawing of petroglyphs on rock walls, the fashioning of pots—all man's creativity seems to have been tied to his hands. And so I think it is today. When we engage in the physical act of writing, a connection is struck between the hands and that portion of the brain where our creative powers are stored, so that we are more likely to produce a new idea while we write or type than while we engage in the simple act of thinking alone.*

How the mind works: Over the years, as I have prepared my arguments, I have discovered a remarkable similarity in the way the computer and the human mind seem to work. Since the former is the product of the latter, it is not surprising they should mimic one another. Data is stored in the mind in such a fashion that it can be sorted and retrieved in various ways. But the computer is able to retrieve merely that which it has been fed, while the mind can not only retrieve whole sentences, but reconstruct them as it pleases,

gild the words with emotion, and play back the words with lyrical sound and oratorical fury, calling into service the entire body to support the argument. It can cause the hands and arms to provide appropriate gestures, the face to take on the correct expression, the eyes to gleam in sync with the message being delivered, and it can do all of this automatically.

The bullshit artist: But if we do not prepare, if we do not know the facts intimately, our only alternative is to fake it or admit we don't know. Those who peddle bullshit (there is no more descriptive word for it) are fixtures of American society. The bullshit artist often occupies important positions, from the White House to the television studio. He abounds on Madison Avenue. His stock in trade is hype, rhetoric, and the verbal mirage. He is sometimes accepted, sometimes adored—but not for long. He is always exposed, and in the end he can win no arguments. He victimizes himself when he fills in factual voids with specious constructions. Eventually he cannot identify fact from fiction, and since the first rule of argument still prevails—that *every argument begins with us*—his argument will finally prove to be as incredible as he.

Bullshit, as some insist, may grease the machinery of society, but it does not ultimately win important arguments, for to the same extent that the bullshit artist may have become expert in delivering it, we have also become exquisitely capable of detecting it. That only 32 percent of eligible Americans go to the polls is proof enough of the malaise from which the electorate of the nation suffers. A kind of numbness has set in. We have become smothered in the bullshit. We feel impotent and angry. In the end bullshit deprives us of the vital political arguments and as a result, we have withdrawn from the critical dialogue.

Selecting the theme: Now that we have written out and outlined the argument, let us go over it again, not once but many times. Let us rearrange and edit it. Let us circle in red crayon the key words. Then let us write a descriptive phrase or metaphor that symbolizes the soul of the case—a refrain, perhaps—and let us call it the *theme*. *The argument's theme supports the argument's thesis.*

In the Silkwood case, I wanted to argue that, despite the fact that Kerr-McGee had not been negligent, it was nevertheless liable for having contaminated Karen Silkwood. My theory was the old common-law idea that if one brings an inherently dangerous sub-

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stance to one's premises, something such as plutonium, and if it escapes, causing injury to others, the company that possessed the dangerous instrumentality is liable. I told the jury the story of a case in old England in which a citizen brought a lion onto his property and, although he had taken all precautions to keep it caged, it somehow escaped and mauled his neighbor. The old common-law court held that the lion's owner was liable, for the beast was inherently dangerous as the owner well knew, and the owner, not the innocent neighbor, should therefore bear the risk of injury from the escaping lion.

In preparing the Silkwood case I outlined the story, but on the opposite page in the notebook I wrote a few words, a slogan of sorts, that stood for the entire argument, my *theme*: "*If the lion gets away, Kerr-McGee has to pay.*" I played and replayed that theme like the recurring refrain in a song. And the jury played the theme as well by returning its verdict in favor of Ms. Silkwood's estate for \$10 million.

In a case that I argued for a small ice cream company against McDonald's, the hamburger corporation, which had breached an oral contract, I chose the *theme*, "*Let's put honor back in the handshake,*" the message, of course, being that a handshake deal should be fully honored by honest businesspeople. In fact, I argued, a handshake deal should carry more honor, more weight than a contract reduced to writing by clever lawyers, for honor must finally become attached to the soul of American business. The jury honored the theme and my client with its verdict: \$52 million.

Several years ago I defended a young man charged with stabbing a fellow worker at a school for the mentally disadvantaged. As I investigated the case, I came to see the victim as I thought the young man must have seen her—a sex goddess, a beautiful young seductress who, to amuse herself, taunted him mercilessly, even to the extent that she made blind dates with truckers over her CB radio. One morning the people on the day shift found the woman's partially nude body in the basement of the school. Her body had been punctured with numerous knife wounds. My client was arrested immediately.

Stab! Stab! Stab! Stab! It was as if the young man had attacked her with the only effective phallus he possessed—his knife. The prosecutor, a man I had trained as my assistant when I was the county's prosecuting attorney, had obtained my client's confession. Prosecutors always secure a confession. From my perspective, the

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prosecutor, to show his old boss who was the boss now, wanted to do in not only my client but me as well. Trials are often gunfights with words.

My client was a skinny, frightened sparrow with glasses that looked like the bottoms of Coke bottles. He froze a queer little smile on his face, and when you looked at him you felt nervous and strange.

But in the course of the trial we proved that the boy was innocent and that the murder had likely been committed by an unknown, nocturnal intruder.

By the time of the final argument I was referring to my client's plea for justice as "*the cry of the sparrow.*" That became the theme. In my argument I turned to the prosecutor, a handsome man in many ways, a good man, but one who possessed an aquiline nose. He reminded me of a hawk. "This is a little sparrow," I said, pointing to my client. "The hawk wants the sparrow. The hawk wants him!" Then I turned back to the jury. "Well, I say give this little sparrow to the hawk! Pay no attention to the cry of the sparrow. Give him to the prosecutor!" I waited and looked each of the jurors in the eyes. The woman in the back row shook her head, no. Then I spoke to her. "No? He is only a sparrow. Who cares for him? Surely we should reserve our caring for someone more important than a mere sparrow." I saw several of the jurors cross their arms. After that, the argument was easy. For although he was a sparrow, he had become the jurors' sparrow. My argument, with its chosen theme, underlined the truth. The kid was small and helpless and unimportant. But justice! What about justice? The feeble cry for justice from the mouths of the innocent is deafening.

Let us select a phrase, a theme, a slogan that represents the principal point of our argument. The theme can summarize a story that stands for the ultimate point we want to make: a saying, as it were, that symbolizes the heart of the issue. In a recent case in which I sued an insurance company for its fraud against my quadriplegic client, a case in which I sought damages for his emotional pain and suffering, I created the *theme*, "*Human need versus corporate greed.*" The jury responded with its human verdict: \$33.5 million, to which a human judge added interest amounting to another \$10 million.

If you are going to argue for a raise in pay, you might use as your theme the Thirteenth Amendment prohibiting involuntary servitude. Given in good humor, the theme might be, "Slavery has been

officially abolished in this country for over a century." (Humor can be one of the most devastating weapons in your arsenal. But, used inappropriately, humor can also be dangerous, as we shall see later.)

If you were going to argue at a city council meeting that a proposed industry would be harmful to the environment, you might borrow as your theme a key phrase from Chief Seattle, who said, "We do not own the earth. The earth owns us." In arguing for a little diner in a small Wyoming town, I might choose the theme "Free at last." The selection of a theme aids us in understanding the nucleus of the argument and creates a mental image more moving than all the words we so carefully choose to describe it.

The magic, the joy of preparation: Ah, preparation! There is where the magic begins! Yet young lawyers seem disappointed when I tell them so. They yearn for an easy formula that will permit them to bypass the stodgy stuff called work. I wish I could explain to them that true preparation is not work. It is the joy of creating. Preparation is wading into life, languishing in it, rolling in it, embracing it, smearing it over one's self, living it. I doubt you could have gotten Mozart to admit he ever worked. But his life, his breath, was his music. His argument, rendered with immortal notes, was the product of intense preparation—preparation that consumed him every day of his life. I would rather be a regular person who has eloquently prepared than a person with an extraordinarily high IQ who hasn't been bright enough to prepare. Preparation is simply the nourishment of the *heart zone*. At last, genius is not some fortunate arrangement of brain cells. Genius is energy, only directed energy. Genius is preparation.

I do not work when I prepare my arguments. I am not working as I write this. I am in play. I am my child when I prepare. As child, I never tire of my play. As child I am self-centered, focused—greedy for the pleasure of my play. As child I am enthralled, delighted, curious, joyous, excited like bees and butterflies and birds busy in the business of play. As Chief Smohall of the Nez Percé proclaimed, "My young men shall never work. Men who work cannot dream; and wisdom comes to us in dreams."

So you want to convince your associates to change a company policy, and you want to win? So you want to talk your spouse into agreeing to a career move, and you want to win? So you want to convince a jury of the justice of your case? I say research it, learn

it, live it, prepare it. I say, go play. Go prepare your argument. Write out your thoughts. Watch new ideas come popping out from magical depths. Learn how it feels to discover not only what there is to know about your argument, but also what there is to discover about the most uniquely interesting person in the history of mankind—namely, you.

Still, lawyers ask me, "What about the magic, the spell you cast in the courtroom, Mr. Spence? Once I was accused of hypnotizing juries by a leading member of the defense bar. His argument to the judge was that I should be enjoined by the court from engaging in this trickery. He argued that he had, in the history of an entire career in court, never seen juries so eager to return verdicts for plaintiffs as were the juries in my cases. He had actually investigated my win-loss record, claimed it could not have been accomplished by proper methods of argument, and, to prove his argument, pointed to the fact that I used my hands in rhythmic ways and employed compelling, authoritative, musical sounds with my voice, arguing that this was nothing more than a cheap trick, now uncovered by him, one that should be barred by the court.

My opponent, of course, did not understand preparation. He mistook me for a Svengali. He had prepared to attack me rather than to learn and prepare his own case. He had little idea of the weeks, indeed, sometimes the months that I spend in lonely isolation preparing my case. What he saw, without knowing it, was a lawyer who had been freed by acquiring a fund of eloquently prepared facts. The judge understood the process and, of course, denied the lawyer's motion. When it came my time to argue to the jury, the lawyer rose on many occasions to interrupt me with objections, hoping to destroy the effect of my argument. Instead, he made himself obnoxious to the jurors who wanted to hear me. The jurors were out only long enough for it to appear that they had not been hasty before they returned a hefty verdict for my client.

My arguments are always powered by my stories, stories laden with fact. I try to make them rich with the emotional commitment of a lawyer who cares. In the end, my arguments are the product of my evolution in whatever case I am preparing. Indeed, I have watched the reflection of the rising sun on my computer screen many a morning while my opponents have slept their lives away peacefully, so peacefully. "How much should we prepare?" That depends on the volume of one's appetite. I can remember a huge

pink porcelain cup from which my grandfather always drank his morning coffee. It showed the smiling face of a fat man under which were written the words, "I'm not greedy, I just like a lot."

I visualize my arguments: I don't intellectualize them. I don't choose the intellectual words like, "My client suffered grave emotional distress as a result of the evil fraud committed against him by the defendant bank." Instead, in my mind's eye I see my client coming home at night and I tell the story: "I see Joe Radovick trudging home at night to face a heap of unpaid bills sitting on the kitchen table. Nothing but the cold bills greets him in that cold, empty place, the pipes frozen, the heat turned off by the power company. I see my client, a tired man, worn-out, exhausted, a man without a penny, without pride, without hope. An empty man. The bank had it all. Even all of Joe Radovick."

By visualizing the argument in human terms, we tune in to the power of the *heart zone* and avoid dull and empty abstractions. Abstractions are on a second level, a level beyond the action. Let me show you what I mean: If I say, "The blacksmith engages in a variety of physical activities with a variety of tools, all of which result in the product he is making," I am using an abstraction. What I have said is true and accurate, but we know little of what the blacksmith does. On the other hand, I may say, "The blacksmith picks up his heavy steel hammer, and lifts it above his head as if to strike a killing blow. In his other hand, with a pair of tongs, he holds the red hot iron flat against the anvil. Down comes the hammer with a vicious crash. Down it comes, again and again! Down it comes still once more! Now the blacksmith turns the iron with his tongs and strikes it again, blow after blow. The iron begins to surrender, to flatten and to take shape, until at last the blacksmith has fashioned the iron shoe he will fit on old Ned, the dairyman's horse, who stands patiently waiting at the door."

Action verbs, action pictures—the man trudging home to an empty house, the blacksmith fashioning the horseshoe for old Ned—avoid the abstract that tells us so little. When people explain things to me in the abstract, I grow impatient. Give me an example, I most often say. Show me how you do it. Don't tell me. Draw me a map. Draw me an illustration, a chart. Show me a time line of the events that have occurred. Let me *see* what happened and when. Don't tell me the man was hurt and suffered a broken femur. Show me a picture of his broken leg. Show me the X ray. Don't

say he suffered pain. Tell me what it felt like to have a broken leg with the bone sticking out through his flesh. Tell me how it was! Make me see it! Make me feel it! Make me understand! Make me care! If I cannot care, I cannot make anyone else care.

Action, not abstraction: *Stick with the action—avoid the abstraction*, that is the rule. When you prepare your argument, ask, "Am I abstracting or am I *showing* and *telling* as we once learned to do as children?" Remember, the power of the story is in its ability to create action, and to avoid abstraction. When someone abstracts in his argument to me, it requires me to supply the mental images on my own. Often I do not understand the abstraction sufficiently to create a mental image. Often I do not care. Often the words pass through my ears without leaving a trace. But at best, I must translate the abstraction into action and, by the time I have accomplished that, the argument has likely gone on to other abstractions, and I am lost. And so is the argument.

Concession—the power of confession: Concession is a proper method both to establish credibility, as we have already seen, and to structure a successful argument successfully. I always concede at the outset whatever is true even if it is detrimental to my argument. Be up-front with the facts that confront you. *A concession coming from your mouth is not nearly as hurtful as an exposure coming from your opponent's.* We can be forgiven for a wrongdoing we have committed. We cannot be forgiven for a wrongdoing we have committed and tried to cover up. A point against us can be confessed and minimized, conceded and explained. The *Other* will hear us if the concession comes from us. But the *Other* retains little patience for hearing our explanations *after* we have been exposed. Presidents should learn this simple rule. Nixon could have avoided Watergate by simply admitting, "I knew about this whole messy thing. It got out of hand when zealous people, who believed in me, did the wrong thing. I wish to God it had never happened. I hope the American people will forgive me."

An easy example of the power of concession: Many years ago I had a case in which my client George was drunk. He staggered across the street and was run over. But he crossed the street with the green light and was hit by a speeding motorist who ran the red. I conceded my client's drunkenness in this fashion:

132 George had been to a party and he had had a pretty good time. He was, to put it plainly, drunk when he left the party. And he was drunk when he crossed the street. But George was one of those persons who knew when he was drunk. You have seen them—supercautious, superslow people. Well, we can all tell such people are drunk because they are overly cautious and overly careful.

And so George came to the crossing and the green light was with him. There is no question about that. More than half a dozen witnesses saw him crossing with the light. And, when he was helplessly trapped in the center of the street, Mr. Majors here, the defendant, came careening and screeching around the corner at a high rate of speed, nearly tipped his car over, ran the red light, and ran poor George down like a mangy cur.

Now, George was drunk all right. But the laws of this country were passed to protect both the drunk and the sober. One does not lose one's rights as a citizen because one crosses the street with the green light while drunk. As a matter of fact, if you think about it, a drunk man like George needed the protection of the law more than a sober man would under the same circumstances.

I would not have achieved the favorable result in the case for George had I held George's drunkenness back, tried to cover it, and objected like hell to the introduction as evidence of George's blood alcohol level of .18 taken in the emergency room a half-hour after the accident.

For fun—how to run for president and be honest at the same time:

As John Madden, the famous football coach and sports announcer, says, "The higher up the flagpole you climb, the more your underwear is exposed." People who run for public office (their campaigns are nothing more or less than arguments in support of their candidacy) should be up-front about their past. If I were a candidate I might write my opponent a letter that would read something like this:

Dear Henry:

Since we are opponents in the race for the presidency of the United States, and since you may be interested in the major indiscretions and scandals of my life, I thought it only proper to advise you of them myself. I do this because it will save you a

lot of time, energy, and expense in finding out about them on your own. We both know that these campaigns are expensive enough. You will also have the first opportunity to decide whether these disclosures should remain a part of my private life, or, on the other hand, whether the public should know these facts in determining my fitness to serve as president. If you believe these disclosures are matters the public should know and consider, then you are at liberty to disclose them.

On January 6, 1962, I had an affair with Mary Lou Jordanson, my secretary, while I was still married to my first wife. This is commonly known as adultery. I was thirty years old. I offer no excuse for this conduct. Mary Lou was very pretty and very kind. I would hope her name would be kept out of this. She has honored this as a secret all these years. Hope you have never done the same, but if you have, I hope it was with a woman as kind and loving as Mary Lou.

On June 7th, or thereabouts, 1972, I was at a party of young people, some my friends, who offered me a drag off a joint. I took it. And I *inhaled*—not once but several times that night as the cigarette was passed around. Interesting experience. Haven't done it since.

I had an interest in the Peabody Savings and Loan Company. It went broke. My son was the manager. I gave him advice. Told him he had done nothing wrong and to tell the whole truth to the investigators. He did. And he was subsequently indicted. Hurt him a lot. His family, too. I cried with them. God bless the American jury that acquitted him. Hope you have never gone through such an agony.

I left my first wife, gave her half of everything, and married my true love Betsy. If you ever fall in love as I have fallen in love, I hope you never have to also go through the pain I went through to leave my first wife and my family. It was hell. It hurt them a lot, too. But my love for Betsy endures. It is the one monument in my life of which I am most proud.

I have committed other sins. From time to time, as a matter of fact frequently, I use outrageous vulgarities. I have probably been guilty of various forms of political incorrectness. I hope I have fully reformed and have, from my sincere struggle to be properly sensitive to all human beings, become a good, decent, and caring person.

I have tried not to lie, but I probably have from time to time.

I have tried not to be a phony. But a phony streak appears in me occasionally. I am not always brave. I have not always done what was right over what was expedient. But I have been able, over the years, to do the right thing most of the time.

So, Henry, there you have it. I may have forgotten some wrongs, some indiscretions, some scandalous things, but if any come to my attention, you will be the first to know. In the meantime, if you are so inclined, I would be happy to receive a similar letter from you, which, I'm quite sure, I would light a match to. I therefore enclose a match so that you will have one handy should you choose to use it on this letter. If not, I will understand that you release the same to the public not for your benefit in your candidacy but for the good of the American people.

I offer you my best wishes for a clean and relevant campaign that is directed to the important issues that face our beloved country.

Respectfully,
Bill Peabody
Candidate for President

(One kitchen match enclosed.)

If Henry decides to make the letter public, or if it is leaked, well I have a hunch the people will forgive Bill a lot quicker than if these facts were made public, one painful disclosure at a time.

AND SO: Prepare. Prepare. Prepare. And win.

step. Experience the courage to be! Again and again, I can only assure you that it is all right to be afraid, that facing your fear will free you, that facing your fear will permit you to jump and will set you free. I can only ask you to trust the idea of the Magical Argument. In the end I can only admonish you to trust yourself.

Do it!

Jump!

Jump!

The Unbeatable Power Argument

DELIVERING THE KNOCKOUT

THE LOCK: Same old lock—even though I've read these chapters, I still have doubts that I can get it all together.

THE KEY: Same key—same person—in the same hand—your hand. Let's begin by assuming the *power stance*. Listen up.

More about power. Preparing to take the *power stance*: The *power argument* is an argument so powerful in its structure, so compelling in its delivery that when we assume the *power stance* the argument cannot be defeated. The power argument need not fill the air with noise. It need not create pandemonium. It need not destroy the opponent. It can be quiet. Gentle. It can embrace love, not anger, understanding, not hate. It can employ ordinary language. The person delivering the argument need not emulate Martin Luther King Jr. or Churchill or Roosevelt. There is one compelling, overriding reason always to deliver the power argument: Losing is so painful.

Is losing a necessary part of our lives? I remember how losing felt. When I began to practice law, before I had become a prosecutor, and before I had tried any criminal cases at all, I lost civil case after civil case. Winning, when it came, was often an accident, a mystery. Winning was the prerogative of those who sat at the top of the legal totem pole where there was no permanent place reserved for me. No one offered help. I thought perhaps I was beyond helping. And, of course, when I lost, my clients also lost. I witnessed their disappointment, their pain, their unspoken accusation—I had taken their good and just cases and had lost. It was my fault. I felt like

a fraud. I felt dumb and dull and desperate. The pain of losing felt as if a cold, blunt instrument had been driven through my heart. I felt as if I were bleeding slowly to death and no one could stop the bleeding. The pain of my continuous losses was so great. I nearly gave up the practice of law. That was before I had discovered the Magical Argument of which I have already written. In the years that followed, I learned the essential elements of the *power argument* as well. So shall we.

But before I had discovered and understood the ten essential elements of the power argument, I found myself wondering if there were reasons, yet unrevealed to me, that explained my continual losses. Obviously people weren't irresistibly drawn to me. Likely I was not as quick and clever as other lawyers. Maybe I lacked something I couldn't see in the mirror. One day, utterly lost and helpless to discover the reasons for my continuous defeats, I began to consider a simple question: *Is losing a necessary part of my life?* Is there some invisible scorekeeper who keeps tabs on one's losses, so that for every so many losses one earns an occasional win? Over and over the question returned: *Is losing a necessary part of my life?*

Assuming the role of the prey—giving permission to be beaten:

If losing is not a necessary part of my life, then why do I lose? Who gives *permission* to my opponents to beat me? *Permission!* I remember as a child being whipped by the bully on the block every day, until one day being whipped was no longer an acceptable way of life. Once I withdrew *my permission* for the bully to beat me up I was no longer beatable. The *shift in the paradigm* from one who granted permission to be beaten to one who withheld such permission was the magic. The power did not arise out of bolstering myself with false courage. I was still afraid. I did not deny my august failings as a young lawyer. I recognized that I lacked many skills, indeed, most skills, of a competent trial lawyer. The power was in a single word: *permission*.

For there to be prey, the prey must agree to play the role of the prey. Once recognizing my power to give or withhold permission to be prey, I would never again give permission to my opponent to beat me, and I would never again give myself permission to play the role of the vanquished. It was that simple.

Something magically happened when I withdrew my permission to be beaten. How do I describe the changes that occurred? One does not see one's own expressions or observe the way one walks

across the room. One cannot perceive accurately the effect one's energy imposes on others. I can only describe the phenomenon from the feedback of others. People perceived me differently. I looked different. I walked differently. The sound of my voice changed. I thought differently. My attitude, the attitude of a winner, became pervasive. I remember reassuring my client, "We will win. Do you know why? Because they have to kill me before they can get you, and they cannot kill me. They cannot kill me because I will never give them permission to kill me." The change permeated my being. An astounding metamorphosis occurred. I became a winner.

Casting the characters in life's drama—the law of the "I-nucleus": I am still surprised when I am told that as I walk into a room people can feel it. That is *their* perception. But also for me, the room, the territory, is mine, and I am at its nucleus. Everything in the universe begins with me—for me. Let us call this the law of the "I-nucleus." This law is also true for you.

Is this not a childish view? Are these not the blabberings of an infantile personality? For only a child sees the world in this ego-centric way. But I cherish my infantile view of the world. I fight against the adulthood demanded by the therapists. Maturity and death are cousins. I resist the cold, judgmental view of the psychic scientists who label us but do not understand us, who dissect us but do not love us, who can write a cold report in black and white about us, but cannot write a single feeling line about our joy, our love, our sorrow, or theirs.

I vow never to grow up, never to lose my childlike views, never to abandon the child who feels joy, never to give up the child's sublime spontaneity, his magical creativity, his innocence. I shall die (if ever) still clinging to the last of the child in me, for only with the awe and innocence of the child may one experience death.

Look out at the stars. View them from three hundred sixty degrees. Are you not in the center of the universe? Look at the occupants in the room. As you turn, are they not, from your perspective, also turning, with you as the axis? Admit it. Are you not at the nucleus of your universe?

If I do not see myself as the sovereign occupying the nucleus of my universe, then some other person or power occupies this position. And that *Other* occupies my center only because I have given them permission to do so. But, as we have already learned, it was

194 the power to crown one self or at the center of our universe, ought we not give respect to such a person with such a power?

Let us think about this further.

More on permission: No one else, no other power, can seize my position at the center of my universe without my *permission*. Permission, then, becomes the word of power. I give permission, as do you, to whoever occupies my nucleus. I give permission to myself to occupy the center of my universe. I give permission to you or to my mentor or to God. But permission comes from me.

I have the power to give another permission to defeat me. I also have the power to grant myself permission to win. How, then, can we be defeated when permission to be defeated is vested solely in us? Is not the obvious answer that we can be defeated only by our giving permission to the *Other* to defeat us?

Truth and choice: *Truth* in the form of revelation is that which we already know, but have never heard in words before. Truth in the form of discovery is that which we already know but have never before confronted. Truth as judgment is the product of our experience. To a child with an abusive father, the truth is that men are monsters who can never be trusted. To a child with a loving father, men are the opposite.

From the standpoint of our belief system, truth is what we accept out of our history. Truth is what we accept as true. To some, God is truth. To some, Christ or Mohammed or Buddha is truth. To some, quantum physics is truth, while to others it is merely an exercise unrelated to the real world. To some DNA is the omnipotent god that dictates our lives, while to others the structure of DNA is transcended by a universal intelligence. But what is scientifically true today may be scientifically rejected tomorrow. *We choose truth*. Therefore, when I tell you that the truth for me is that I occupy the center of my universe, I have merely told you I have made a *choice*. I can choose any dynamic, any paradigm, any fact, any condition as the truth—the truth for *me*. I do not endow my parents or a priest or a minister or a guru or the Bible with the power to decide what is true for me. For me, truth begins to reveal itself only in proportion to my ability to discard all that has heretofore been presented to me as true. I am the truth, as, indeed, are you. That is why you are at the center of your universe. Let me

say it again: I would rather have a mind opened by wonder than one closed by belief. 195

Choosing our role: Think of it this way: There are two people in a room who are about to put on a play. One will play the part of the hero, who against all odds will win the contest. One will play the part of the victim who, after the same struggle, is unfairly defeated. You are one of the players. Which part will you play? *You have the choice*.

We were not all born with sensuous bodies and magnetic personalities. We are who we are. Yet I remember a small dog in the neighborhood. It was a mutt with crooked front legs. It was not nearly as large or powerful as many of the other dogs. Yet it was *the* dog on the block. It dominated. The block belonged to this crooked-legged cur. The other dogs occupied the territory only at his sufferance. We, too, can cast ourselves in the role of the winner, the loser, the hero, the victim, the insightful, the jerk. I am not speaking of conceit. I am speaking of choice.

The arrogance of power: One must be cautious in assuming such power as I have suggested. It is a very great power, indeed. Do we not understand that by possessing such power we can easily slip over the fine line into arrogance? Unaccustomed to the heady experience of feeling our power, we can easily abandon humility. That one occupies the center of one's universe does not preclude humility. One must remember that. One occupies the center of one's own universe only because one has made the choice, not out of arrogance, but out of truth. Truth is never arrogant.

Trying and winning: I warn you, a winning stance is never achieved by *trying*. I hear some say, "I will try as hard as I can." Trying is for losers. Trying implies the possibility of losing. I will *try* to win. I will *try* not to lose. If after trying they have lost, well, they *tried*, did they not? *Losers always try*. Winners never try. Winners only win.

I remember when a young buckaroo, who had just been thrown from his horse, dusted off his pants and, embarrassed, came limping up to the old cowboy who had witnessed the kid's humiliation.

"Why didn't ya ride 'em?" the old cowboy asked.

"I tried," the kid said.

"Ya tried?" the old boy replied. "Ya see that steer over there?"

As most know, steers are castrated bulls. Their fate is to grow fat and to be butchered.

"Well, ya put that steer in a herd of young heifers and what's he gonna do? He's gonna try. That's all. Steers try. You ain't no steer, kid. Now go ride that horse." And the kid did.

Argument and war: The trial of a case in court is war. The casualties are apparent. People are sent to prison or freed as a result of the war. People die at the hands of the executioner. Others are saved as a result of the war. Children are taken from their parents. Fortunes are lost. The warriors, the lawyers, when defeated are pitied, when they win, they are respected.

The argument of a cause before a city council, or a board or any committee with power, is war. As a result of the war, the use of land will change. An airport will cover the fields and destroy the hedgerows where the meadowlarks nest. As a result of the war, the neighborhood will change. The corner house, where old Mr. Hardesty played his banjo to the children on a warm summer evening, will become a parking lot.

When decision-making bodies with power are gathered to hear our arguments, we must understand that the dynamic is one of war. And to the victor go the spoils. In such a contest, there is usually an opponent who speaks for power, most frequently the government, industry, money. Usually the odds are against us.

When I take on the United States in the defense of a client who is charged with the violation of a federal statute, the government has unlimited resources to wear me into submission. The prosecutor is not interested in justice. He is interested in a conviction. When we contest the city, ostensibly the organ of the people, we most often face the corporate oligarchy behind the city. We face money. The city is not interested in our lives. It is interested in its administration. When we come before the school board, most often we do not face those interested in the education of our children, but those who are interested in the maintenance of power. These contests are war. Any other paradigm is an illusion. It is not a mere contest, like athletes plunging down the hill on skis for the fastest time. It is not a dance in which the most graceful will be rewarded with a medal. *This is war.* Once we understand that the struggle is war, we can wage war and win.

The key to winning any war is to *control* the war. This does not mean I seek to control my opponent. I am not in charge of his

decision-making processes. Although my strategies may indeed influence the decisions of my opponent, I do not dictate where or when he will attack or the method or time of his attack. I do not dictate his defense. But to win, one must always be in control—in control of one's own forces, one's own self, and, hence, of one's own war. We control the war when we are exquisitely in control of ourselves. I do not speak as one who brags or beats the chest or threatens. Bragging is a standard symptom of insecurity, and threatening is a universal display of weakness. The strong do not threaten. They need not.

Again, I am speaking of a simple mind-set. The mind-set does not make room for loss. The mind-set is one that extends permission, but only to win. The mind-set is alert, creative, aggressive. It is willing to take risks, but unwilling to act foolishly. The mind-set is willing to accept fear as a necessary step in the preparation for battle. If given a choice in which all potential consequences are equal, the choice will be to attack, for attacking establishes control. It is *our* attack, is it not? If there is no clear strategy available, the choice will likewise be to attack, for attacking will require the opponent to alter his position in relationship to the attack, which places us in control. The attack creates the opportunity for our more decisive and focused strategy. If the opponent has attacked, we may retreat, but we do not relinquish the initiative. We retreat only to take a better position for the counterattack.

Many lawyers are afraid to ask the telling question, to make the definitive statement in court, to attack, for fear the opponent will respond in some way. "What if he objects?" the lawyer asks me. "What then?" He is, of course, afraid that the judge will sustain his opponent's objections, that he may even be admonished by the judge and suffer embarrassment in front of the jury—that the jury will hold him in disfavor.

But whenever my opponent objects to my attack, he sets in motion a dynamic that will only lead to my victory. I will respond to his objections, or let them pass as I choose. I will reveal his unfairness. I will show that he is attempting to hide facts from the jury. When he objects, he takes the risk of a new attack from me. When he objects, his position is not well calculated, for he has not had time to analyze his objections carefully. His objections may be overruled. His objections may spotlight his weakness. If his objections are sustained, the judge's bias may become apparent to the jurors, who decide that the judge is unfair. Whenever someone

responds to my attack with objections, that is, when they are willing to engage me, they take the risk of making serious strategic errors, of opening up their vulnerable places.

Therefore, when we refuse to take the initiative because we are afraid that our opponent will respond, that is, when we are afraid the opponent will engage us, we operate in a safety zone. But we can do no damage to the opponent in the safety zone. Operating well back from the line and delivering the margin of safety to the opponent is a common cause of loss. In the end, we lose the war because we are unwilling to win.

When does one attack? Sun Tzu, in *The Art of War*, declares, "Invincibility lies in the defense; the possibility of victory in the attack. One defends when his strength is inadequate; he attacks when it is abundant. The experts in defense conceal themselves as under the ninefold earth; those skilled in attack move as from above the ninefold heavens. Thus they are capable both of protecting themselves and of gaining a complete victory."

When in doubt, take the initiative, release the attack, institute the offensive. Such is the best strategy. And let our attack be relentless. The relentless attack creates invincibility. When a small boy and a bully meet, it is better for the small boy to strike first. He will get up and attack again. When he is knocked down again, he will get up and again he will attack. When he is knocked down, he will get up, over and over, until at last he will win. Nothing in the world is as fearsome as a bloody, battered opponent who will never surrender.

When attacking is the wrong strategy: I have spoken of the strategy of control, of the strategy of attack. I am speaking of strategies in war. Although it may seem so, we are not at war with our loved ones or with our children. We cannot be at war with our friends and employers. I have, therefore, devoted separate chapters to the art of arguing at home and at work.

There are other times when we also must forego the attack. As we shall see, we cannot attack the person wearing the white hat. We must wait until our white-hatted adversary has been revealed as the villain who misappropriated his white hat. Before we launch our attack, the decision-maker—most often the jury, the city council, the school board—must see our opponent as wearing the black hat. Were we to attack before our adversary has been revealed as

the true owner of the black hat, we would be attacking the decision-maker, because the decision-maker is always aligned with the wearer of the white hat. And, of course, we never attack the decision-maker. 199

As a consequence, we obviously do not attack a mourning mother. But if the mourning mother, under the gentle prodding of a good cross-examination, becomes an angry, vindictive shrew, we may then attack, but gently. We do not attack an overtly nice person until the nice person's story, again through a gentle cross-examination, takes on an air of apocrypha. We do not attack a weaker opponent, a child, any person obviously frightened, any person who, for any variety of reasons, is unable to defend.

That we attack does not necessarily mean we attack the *persons* representing the other side. We may attack their case. We may attack their view of justice. We may attack the truth of their witnesses. We may attack motives. But we do not attack them, except when it appears, frequently from our cross-examination, that they have been untruthful in their testimony. Then it is often better that our attack reveal our sadness rather than our anger that they are unable to tell the truth. And the attack must always be fair. *Fairness is the tiny voice that thunders from behind every argument.*

Arguing when our side wears the black hat: One who commits a heinous crime is hard to care about. But we must make the decision-maker care about our client, about our errant son, about our daughter who has stepped over the line in some unfortunate way. The crime, the wrongdoing, whatever it is, becomes the *bare facts*. We, and the rest of the world, most often judge those who are charged with wrongdoing merely on the *bare facts*. We judge the man charged with murder on the bare fact that he killed. We do not ask why. We judge one who has been charged with a rape or with child abuse or with any scandal on the bare facts of the charge. We do not ask if the charge is true.

But there is no such thing as a set of "bare facts" that tell the whole story. Two worlds *always* exist: one is the world that is apparent, the one we see, the bare facts; the other is the world we do not see, a world that is personal, sometimes secret, the world in which the respondent lives and acts. In defending the actions of one who wears the black hat, we must discover that world, understand it and reveal it.

I once defended a Hispanic man from Rawlins, Wyoming, Joe

Esquibel, who was charged with murdering his white wife. On the "bare facts" there was no defense. He shot his wife between the eyes in the presence of two of his children, several welfare workers, and a deputy sheriff who had drawn his gun. The "bare facts" provided an open and shut case of first-degree murder. The prosecutor sought the death penalty.

If we were concerned with only the "bare facts," in most cases we would have nothing to try. But mitigating facts always lie beneath the bare facts. In every case they lie there waiting to be discovered and presented. That is why Americans cherish the presumption of innocence. Citizens cannot be convicted on "bare facts." They can be convicted only after the jury has heard the whole story.

Let me show you what I mean. The following excerpt reveals but one day in the life of my client Joe Esquibel. These are among the secret facts behind the "bare facts," as I reported them in *Of Murder and Madness*, a book that chronicled the murder as well as my defense of Esquibel.

A distant yard light shone on the face of the kid sitting in the corner of the boxcar, fat-faced little kid, big brown eyes as wide as dollars, scared, shinning in the dark, his black hair stubbing out all over, making him look like a little animal who needed to have his hair licked down smooth. Kid looked crazy. But he was mostly dirty and afraid of the dark. The light shining into the boxcar occasionally caught the naked white ascending ass of a man, and there were the noises, like animals fighting, panting noises, and the groans of animals struggling. The trainman gave the woman a dollar. Enough for a boxcar woman.

The woman, of course, was Joe's mother. The scene depicts his earliest memory. By the time the jury got the case, they knew every facet of Joe's life, his degradation, his humiliation, his wretched pain, mostly inflicted on an innocent child by an unjust, insensitive system in that small railroad town. By the time the jury passed judgment on Joe, they had no choice but to see him *from inside his hide*. They came to care about him, and, in the end, acquitted him of the murder. The defense, of course, was insanity.

When our side of the case wears the black hat, we must always *crawl inside the hide* of the person accused. There is always wretchedness there. There are always miserable, pitiable pain and con-

fusion and sorrow. There are always the scars of injustice, the deep slashes of abuse across the soul, the evil mangling of the mind of the once innocent. It is too easy to point and accuse and to hate on the "bare facts." To do so relieves us of the responsibility of understanding. We would not punish a child for crying out, even striking out, against the power of a father who has brutally beaten the child. But we refuse to hear the child, now a man, still crying out when he flays against another power, a power against which he feels equally helpless—a power that may be equally cruel.

Always I hear the self-righteous, the arrogant, the mighty, the haughty, the privileged, the lucky decrying even the smallest of our gifts—the gift of human understanding. I hear their hateful preachments against their fellow man, their callous judgments. "They did wrong. Punish them!"

Punishment! Ah, yes, punish them! Born with less fortunate genes, some are punished. Born into poverty, they are punished. Born into an environment of filth and disease, they are punished. Born into neighborhoods of crime and hate, they are punished. Born to a twelve-year-old girl cook on crack, they are punished. Judged and then banished as unworthy to participate in the fruits of the system, they are punished. Deprived of an education, they are punished. Deprived of opportunity, they are punished. Deprived of simple human respect, they are punished. Most have done no wrong, but they are punished. And those who judge them from their lofty places now look down on them with hate, with spite, with fear. Those who judge them shake their haughty heads adorned with crowns of good fortune, and with disdain and scorn demand that they be further punished. Punish them!

We cannot permit those who must wear the black hat to be judged, not ever, on the "bare facts." We must crawl inside their hides, and from that dark and frightening place shout to the world what we see.

Revealing the liar: When our opponent presents what we believe to be a nontruth, do we call him a liar? To call another a liar is seen by most as bad manners. People do not like to hear someone called a liar. When one points a long finger at another and calls him a liar, one reveals a part of oneself that is equally ignoble. Yet, as the old saw goes, a man must sometimes call a spade a spade. In the Karen Silkwood case I dealt with the issue in this way:

I have been taught from the time I was a little boy in Sunday school that you should never call anybody a "liar" even if he is one. I do not like people to be called liars. We use all kinds of words to keep from saying the word. I have even used a fancy word for it, like "this is the worst *mendacity* I have ever heard." The word *misrepresentation* is also a word that lawyers use in place of the word *lie*. But, if I am going to demand in this case that we speak the truth, the plain old truth in ordinary English, if we are to demand that the nuclear industry tell the truth—and I ask you to make them speak the truth—then I, too, had better start speaking in ordinary English—as Dr. Gofman did. He called this "the big lie." He said this was a "license to murder." And so, following his guide, I'm going to call it, in plain old three-letter English, what it is: "The big lie." ...

But note, the attack is on the issue, on the argument of the nuclear industry. The attack is not against the lawyer who represented the defendant in the case.

THE LOCK: I need something more concrete. Give me rules. Give me a formula. This is who I am—a formula person.

THE KEY: All right. Here are the ten elements that make up the great power argument.

1. *Prepare. Prepare until we have become the argument.*

Prepare until you know every scale on the hide of the fish.

Having prepared, next understand that good preparation is like writing a script for a screenplay. Proper preparation requires one to tell the story and to assign roles to the parties. Cast your side as the good guys, as the side that is unjustly accused, wrongly despised, gravely misunderstood. Cast your side as the underdog. And, when those for whom we argue cannot wear the white hat, argue their case from *inside their hides*.

2. *Open the Other to receive your argument.* You have already learned how: empower the other to receive or reject your argument.

3. *Give the argument in the form of story.* As we have seen, we are genetic storytellers and listeners to stories. Remember, fables, allegories, and parables are the traditional tools of successful argument. Every movie, every soap, every sitcom, most lyrics in popular songs, all operas and plays, most successful television commercials are in story form. So do not forget what you have learned already: jurors, the boss, the family, the *Other* are conditioned to listen to stories.

4. *Tell the truth.* With ordinary words you have learned the incredible power of credibility. Being who you are is powerful. Saying how you feel is powerful. To be open and real and afraid, if you are afraid, is powerful. The power argument begins and ends by telling the truth. Truth is power.

5. *Tell the Other what you want.* If you are arguing before a jury for money, ask for money. If you leave the *Other* to guess what you want, their guessing may be wrong, and guessing spoils your credibility.

Remember the power of justice. Jurors will circumvent the law to mete out justice. People will break the law to obtain justice. People will die in wars to win it. People can live without food or shelter or love. This is a species that can bear every kind and character of pain except one pain—the pain of injustice. Discover the natural justice of your argument and ask for it—demand it.

6. *Avoid sarcasm, scorn, and ridicule. Use humor cautiously.* Hold back insult. No one admires the cynic, the scoffer, the mocker, the small, and the petty. Giving respect to one's opponent elevates us. Those who insult and slight do so from low places.

Remember: Respect is reciprocal.

The employment of humor can be the most devastating of all weapons in an argument. Humor is omnipotent when it reveals the truth. But beware: attempting to be funny and failing is one of the most dangerous of all strategies.

7. *Logic is power.* If logic is on your side, ride it—ride it all the way. If logic is not on your side, if logic leads to an unjust result,

it will have no power. As Samuel Butler said, "Logic is like the sword—those who appeal to it shall perish by it."

Logic does not always lead to truth—or justice. Logic defeats spontaneity. Logic is often dull and is more comfortable with the dead, for it is often without spirit.

Do not give up creativity for logic. However, the creative mind will soon see that creativity is often served by logic.

8. *Action and winning are brothers.* The worst of head-on attacks is often better than the most sophisticated defense. Never permit your opponent to take control. Do not defend when you can attack. Counterpunching is for boxers, and counterpunchers most often lose. The great champions of the world take control. The great generals attack first, and attack again. Take the initiative. Do *something*. But with those we love, the best attack is often to attack with love, and, as we shall see, winning is often accomplished by the art of losing.

9. *Admit at the outset the weak points in your argument.* You can expose your weaknesses in a better light than your opponent, who will expose them in the darkest possible way. An honest admission, having come from you, not only endows you with credibility, it also leaves your opponent with nothing to say except what you have already admitted.

10. *Understand your power. Give yourself permission—only to win.* But remember, arrogance, insolence, and stupidity are close relatives.

Take the winning stance. Turn on the Magical Argument. Open up and let the magic out. Trust it. Take the risk. Jump.

And how do we get this all together? Let us think about it in this way: Suppose you have never seen an automobile before. One day you are shown one. You are told this is a machine that weighs more

than two tons. It has the capacity to hurl itself down a road in excess of sixty miles per hour creating hundreds of thousands of foot-pounds of energy. Suppose you are told that you will be required to drive this machine down a narrow roadway at sixty miles an hour and that oncoming like machines will be speeding at you at a similar speed. You are told that if you let the steering wheel veer to the left but an inch, and hold it there for more than a second, two at the most, your vehicle will cross over the line and strike, head-on, the oncoming vehicles. In such a head-on crash the likely result will be the death of all occupants in all cars. You are advised that some who drive these automobiles at the very moment you are also driving will be blind drunk, some nearly blind, some blind and drunk, some inexperienced, some aged, quite a few will be crazy, countless will exhibit the mental capacity of a demented slug, some will be asleep, some will be awake but sleeping, some will be ill, and most can, at any moment, be guilty of such negligence that a Sherman tank would be at risk. Under such circumstances, would you not conclude that to get into a car and drive it on any highway would exhibit the approximate intellect of a multilobular water organism?

What interests me here is the *mind-set* that permits us to overcome these seemingly insurmountable odds and to safely drive our cars to work every morning and home again every night. We do not consider the apparently overwhelming probabilities that we and everyone else on the highway will wreck. When we decide in the morning to drive to work it does not occur to us that we cannot get to work safely. The possibility of impending injury or death is simply not factored in. We will get to work. We will undertake that goal and win. We do not cower in fear as we enter the automobile. We do not tense up and clutch the steering wheel as if driving to our doom. We make no other alternative available to ourselves except to drive easily, successfully to our destination.

The other alternatives to safe driving are eliminated from our assessment because we have the experience and skill. We have a long history of driving that reduces the risk so that it is seen as minimal. Yet we know the risk is real. We know the facts I have outlined above are true. Still, none of us could drive if we reacted to the potential dangers of driving and as a consequence froze at the wheel. Although we are aware of the underlying dangers, our mind-set assumes no other result but a safe trip.

Taking on the power mind-set: How do we accomplish such a winning, *power* state of mind? We have already trained and prepared to accomplish this feat. We have taken driving lessons to begin with. We have driven thousands of miles. We have had a close call or two, perhaps a wreck. We have learned from these experiences. However, there comes a time when we feel in control. At that moment the act of driving the car is no longer an act of pure madness.

So it is in making the power argument. We have prepared. We know our case, our argument. We know it so well that its presentation will become as automatic as driving. We have learned and understand the elements of argument in the same fashion that we have learned to steer or shift or brake our cars. We know the rules of argument and we will follow them in the same way that we obey the rules of the road. We have learned to analyze the traffic ahead and to create a strategy that will take us safely through our journey. So, too, will we begin to analyze the arguments we make before we make them.

On the road, as well as in our arguments, a cast of characters exists. We are the heroes in the highway drama—the good guys. If you don't believe me, see how we react when someone cuts in front of us too closely. In our universe, the only cars on the road that have relevance to us are those that *we* are encountering. We are at the center of our universe. We give permission to no one to run into us. We give ourselves permission only to win by achieving our destination safely. No other alternative exists. And we win. We win every day. That we drive safely many hundreds of thousand of miles is nothing short of miraculous. Yet the miracle is but the result of mind-set. So, too, with making the power argument.

The making of a power argument: Let us see if we can compose a power argument together. Suppose we find ourselves arguing before the school board for the reinstatement of our son Jimmy after he has been expelled from school for misconduct.

When ours is the black hat: The facts were these: The boy was causing a disturbance in the back of the room, talking to Sally and laughing while the teacher, Mr. Lamb, was attempting to lecture. The teacher stopped the lecture and asked Jimmy to come to the front of the class. He obeyed. When he got there he stood em-

barrassed, waiting for the teacher to say something. The teacher said nothing. Still Jimmy stood there. Still Mr. Lamb said nothing. Finally Mr. Lamb said, "Now, you have been wanting to talk so much, why don't you tell us what you were talking to Sally about."

The boy, his hands in his pockets and an embarrassed grin on his face, didn't answer. He didn't know what to say. He'd been talking to Sally about a date.

"Tell us," Mr. Lamb insisted. "What were you talking about?"

"Nothing," Jimmy said.

"Well," Mr. Lamb continued, "it must have been a good deal more important than today's lesson or you wouldn't have disturbed us. So tell us, what was so important that you were talking about?"

"Nothing," Jimmy said again.

"We can't accept that for an answer," Mr. Lamb said. "You have brought us to this place and you can now tell us what it was that you were talking about with Sally."

Still the boy said nothing.

"Well?" the teacher said, "Speak up. We're all waiting." Now you could hear the snickers.

No answer.

"What did you say to Sally?" Mr. Lamb shouted.

Finally Jimmy blurted out, sotto voce, "It is none of your business what I said to her."

Mr. Lamb's voice grew stronger. "When you disturb an entire class it becomes all of our business. We are entitled to know if what you said was more important than the day's lesson."

"It was more important to me," the kid said, with growing defiance.

"All right, let's hear it."

"No," the boy said. His face was crimson. "It was between me and her."

"Well, maybe we will have to bring Sally up here too. Shall I call Sally up here?" Sally is slumped down at her desk as low as she can get.

"Leave her alone," the kid said. "It wasn't her fault."

"Come up here, Sally," Mr. Lamb said. "If he won't tell us what he said, maybe you will."

"You leave her alone," Jimmy said.

"Come up here, Sally."

"I said, leave her alone."

"Sally. Get up here this minute," Mr. Lamb demanded. Sally got up.

At this point Jimmy said, "You go to hell," and walked out of the class.

Jimmy did not come back to school for a week and refused to apologize to the teacher. With no other choice, the principal expelled him. Under the school's rules he could be reinstated only if the board, for good cause, agreed to reinstate him. At last, the heat of the thing having cooled, Jimmy wanted to apologize and go back to school. He wanted to get on with his life.

The casting of the characters in this drama must be carefully considered. We cannot cast the school board's faithful teacher in the role of the villain or the board, the ultimate decision-maker, will throw its protective cloak around the teacher and reject the student's appeal. Although we traditionally want to wear the white hat, we must recognize that the school board and its teacher have already appropriated this role.

Jimmy really had no choice. But his conduct left the teacher with no ready choice either. When the boy told the teacher to go to hell and walked out of the room, the teacher's position of power in the classroom was at stake. An apology or expulsion was the only course that could follow. And when the boy refused to apologize, he stripped the school of any choice but to suspend him.

Who should we cast in the role of the villain? *Circumstance* is the villain, is it not? Circumstance would dictate this same result in every case in which a similarly competent and authoritative teacher came in conflict with a similarly proud and sensitive student. Both teacher and student are victims of *circumstance*. Since we cannot be cast in the role of the hero because the white hat has already been taken by the teacher, we cast ourselves, *along with the teacher*, as victims of *circumstance*, thereby hoping to find room for ourselves under the broad white brim of the teacher's white hat.

All power arguments should begin from a position of power. By power, as I use it here, I mean the argument must begin from a position that generates acceptance or approval. We must be right, or justice must be on our side, or we must be the fighting underdog seeking redemption, or we must be the victim who struggles, smiling through our tears. We must evoke admiration, at least respect, at least understanding, at least sympathy—the latter being the weakest of the power positions. (I often say to a jury, "Do not give

my client sympathy. He does not want sympathy. He asks for your *understanding*. He asks for *justice*—not sympathy.")

Therefore, we might begin the argument for Jimmy's reinstatement as follows:

"Honorable members of the Board,

(Now in a conversational tone) "When you go home tonight, no one will tell you you have done right. No one will give you any public acknowledgment for having saved a boy. No one will reward you for your caring and your wisdom. But I thank you now. This is a model board and you have intelligent, skilled, and caring teachers. Mr. Lamb is among the best of them."

(In a few beginning words we have opened the school board to our argument. Although the words are patently complimentary, perhaps even patronizing, they set a friendly tone. Next we have aligned ourselves with power—theirs. At this point the board members' silent sighs likely express their relief that there is to be no serious confrontation. Already the argument is well on its way to being won. We won before we began the argument by analyzing who the cast of characters would be and why. Think where we would be if the argument had started in this fashion:

"Well, you all know why I am here tonight. Jimmy was railroaded out of school by one of your know-it-all, power-hungry teachers, who had him kicked out because Jimmy wouldn't get up in front of the class and spill his guts.")

Now our argument continues:

"I am Jimmy's father. I have come here tonight to ask you to give my son another chance. I pray that when we leave here tonight Jimmy will be one of your students again. *(Being up-front in what we want.)* Jimmy is a good boy. I believe that Mr. Lamb would tell you so. The question then is, how did this horrible mistake come about? How were two good people like Jimmy and Mr. Lamb drawn into such an affray? *(We are now trying to share Mr. Lamb's white hat.)* The answer is that neither Mr. Lamb nor Jimmy are the villains here. Circumstance is.

"You, of course, know the facts. We merely need to review them briefly to see how circumstance became the real villain. Jimmy was at fault. But perhaps we could understand. Jimmy wanted a date for the movie with Sally. This shouldn't have occurred in class. But they are teenagers. Have any of us forgotten?" *(The question elicits further understanding and perhaps a quiet chuckle.)*

"But Mr. Lamb was entitled to the class's undivided attention, including Jimmy's, was he not? And what greater distraction can

there be than a talking, laughing teenager in the back of the room while one is trying to lecture? I thought it proper that Mr. Lamb should call Jimmy to the front of the class, if for no other reason than to embarrass him slightly as punishment, as well as to set an example for the rest of the students. Children cannot learn in an atmosphere of pandemonium." (*The argument to this point is open, frank, reasonable, and truthful. It has credibility. The argument further takes the position of Mr. Lamb, thus depriving the board of that position. The board will continue to listen with approbation if we get to the point very soon now.*)

"But circumstance did intervene. Jimmy, because of the circumstance of his tête-à-tête with Sally, could not, without humiliation, tell Mr. Lamb what they were talking about, and he could not betray the confidences that existed between him and Sally. On the other hand, Mr. Lamb, the teacher, was entitled to be respected and to be obeyed. He had, under the circumstance, no choice but to insist that his command be obeyed. Jimmy could not obey him. Circumstance was the villain. I believe that you could put a hundred good teachers in Mr. Lamb's shoes facing a hundred proud, but misbehaving, boys under these circumstances, and the result would be the same in all hundred cases. No teacher could back down. No boy worth his salt would betray his friend."

(*The principal thrust of the argument has now been made. "Circumstance was at fault." There are no winners or losers. It was just one of those unfortunate things that sometimes happens. How much better this argument than another possible scenario:*

"But wasn't Jimmy talking? Wasn't he causing a disturbance?" one of the board members asks.

"Yes, he was, but he wasn't causing much of a disturbance. Only a power-hungry dictator like Lamb would kick a kid out of school for whispering to his girlfriend."

Under this circumstance the argument between the board members and Jimmy's father is just beginning and will grow more heated when the board member responds, "You throw a student out when a student tells a teacher to 'go to hell' and walks out of the classroom. I'll guarantee you that!" But when we admit fault simply and openly at the beginning, the argument is over.)

Now the argument comes to its close:

"What I want for Jimmy is an opportunity for him to tell Mr. Lamb how very sorry he is. He didn't go back to school for a week because he was too embarrassed over his misbehavior to face Mr.

Lamb, whom he respects very much. He was wrong, and he knows it. He has learned his lesson. He will be a model student, one you can be very proud of. And so I say, on behalf of Jimmy, let him come face to face with the man he respects so much. Let Jimmy make this right. Let Jimmy learn and grow from this. Give Jimmy another chance. You won't be sorry."

This close openly empowers the board. It beseeches power. It is not arrogant. It permits the board to do what the speaker has asked for, and in doing so, the board can feel good about what it has done. We all want to feel good about what we do. The argument addresses the feelings of the board in a simple but direct way. The argument will win.

Compare this close to another possible close the board might have heard.

"This whole thing has been unfair to Jimmy. If you were in his shoes, you would have told Mr. Lamb to go to hell too. And why should he come back to school? To be further embarrassed in front of the whole class? I think Mr. Lamb owes Jimmy an apology. The principal owes Jimmy an apology and this board, if it does not reinstate Jimmy, will owe him his education for the rest of his life. Mark my word!"

Where the teacher wears the black hat: But suppose the facts in the case were slightly different. Suppose when Jimmy said, "You go to hell," Mr. Lamb, in a fit of rage, attacked Jimmy, struck him in the face and bloodied his nose slightly. The issue here will probably be the teacher's job, not Jimmy's reinstatement into school.

Suppose we argue for the teacher under these unfortunate circumstances. Again let us cast the characters in this drama. Where does the power lie? With this set of facts the power position is now shifted. The teacher wears the black hat and Jimmy, although at fault himself, can wear the white hat. The power to decide, of course, still rests with the school board, but the emotional power, the power of empathy, is with Jimmy. He was attacked and injured. Mr. Lamb broke a cardinal rule that abhors the abuse of children and the use of violence.

The person who violates a firmly established social rule loses his power unless we can cause those with the power of decision to empathize with him and to care about him. But first, we have to care about Mr. Lamb ourselves. Unless we care we will be unable to cause anyone else to care.

Let us crawl into the hide of Mr. Lamb. Let us ask ourselves these questions: How is it to be a teacher and to daily suffer students who confront you? How it is to be challenged in front of an

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entire class? Isn't there a danger there? If the challenge is not immediately and firmly put down, the teacher can lose control of the class, can he not? How is it to have witnessed students physically attack and injure a teacher? There is a danger there too.

If we investigate, if we ask questions from Mr. Lamb's side of the case, we will discover that, as in many schools, a war was in progress—students against the school. It was an unfortunate war, but, like all wars, it created casualties.

Our questions will reveal that Mr. Lamb's reaction was too strong for the circumstance, but his reaction can be understood. He was challenged. He was confronted by open hostility. He was shown the ultimate disrespect. The teacher was wrong, but he was human.

Further questions might reveal that Mr. Lamb's brother or friend was beaten to death on the streets by a gang, and that gangs daily threaten the discipline and safety of the school. Mr. Lamb may have been exhausted from trying circumstances at home. Perhaps he was in serious financial difficulty. Perhaps his wife had threatened to leave him. Perhaps his child had been sick and the doctor bills were mounting and the creditors were screaming. Nothing screams louder and is more deaf than a creditor. If we look, we can almost always find some mitigating circumstance in a person's life that helps explain the person's conduct.

Mr. Lamb had been a respected teacher in the school district because he was tough. He was known for his fairness, but he gave no quarter to any student who threatened hostility or violence. In the end, this policy had proven the most successful in keeping the peace. Mr. Lamb, who had been strict but fair in the classroom, had been a model for the other teachers. His policy had been encouraged by the board.

Now that we have gone beyond the *bare facts*, now that we have viewed the case from inside the hide of Mr. Lamb, we will be better able to defend him. Perhaps we can even make Mr. Lamb a hero of sorts without making Jimmy the villain. Perhaps we can put Mr. Lamb on the side of power—the school board—and again make "circumstance" the villain. Remember, "circumstance" cannot argue back. "Circumstance" is unrepresented before the board.

Suppose we began Mr. Lamb's defense by concentrating on that part of the case that seems the strongest—Mr. Lamb's policy, which was not only lauded by the board but emulated throughout the school system. Several teachers in the past had swatted students. One had shaken a student in front of the class, and once a

teacher actually punched a student who had called her an "asshole." These incidents were well known to the school board and the teachers alike, and tacit approval had been given. With this additional information we begin to think of a story that will illustrate this argument. There are many. Here is one.

"As I think of Mr. Lamb, I think of a story about a man who went to war. He had been commissioned a lieutenant. After many months of combat and under heavy enemy fire, he struck one of the soldiers in his command who had cursed him in response to his commands. Later the lieutenant found himself in front of a court-martial. His defense was, 'This was war. The soldier cursed me. I had to keep the ranks disciplined or, in the onslaught, we would all perish.' In war or peace we must possess our soldiers' respect, and if we cannot gain their respect except by striking them, perhaps we ought not lead. *(This passing remark disarms the opponent who would make the very observation we have made, but having made it first, there is little for the opponent to say.)*

"But this was a good lieutenant, a brave soldier. The lieutenant overreacted. *(Again, the admission that disarms.)* But the lieutenant had redeeming qualities. He was loyal, obedient, caring, and loved by good soldiers. *(Note: That he was "loved by good soldiers" implies what we cannot say in direct argument—that those who do not like our teacher are not "good soldiers." There is no ready response to this subliminal argument because we have not made the argument directly.)* The lieutenant was a model for the rest of his division, for although he was strict and stern, he was fair, and if he were severely punished for his conduct under the stress of war, it would greatly demoralize the rest of the division.

"A wise and caring court-martial understood that their lieutenant was not perfect. He was under extreme stress. He was entitled to be understood. To the same extent that the army expected him to treat his troops as human beings, so did the court-martial treat the lieutenant. They acknowledged that he did wrong. But the court-martial recognized his value to the army. They understood that the very characteristic that made him a good leader was also the characteristic that had gotten him into trouble. The board weighed his positive attributes against the one occasion of his overreaction under stress and dismissed the case with an appropriate reprimand to the lieutenant.

"We are not an army, of course, and we are not at war. *(Again this remark disarms. "We are not at war" permits the board to disagree.)*