

**SMOKING GUN**, a review of *The Smoking Gun – Day by Day Through a Shocking Murder Trial with Gerry Spence*, by Gerry Spence  
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I eagerly accepted the opportunity to read and review an advance proof of *The Smoking Gun – Day by Day Through a Shocking Murder Trial with Gerry Spence*, and then quickly wished I hadn't. It was not for the subject matter – an account of the trial of a real-life murder case, or the author's style. I'd read and enjoyed nearly every book Spence has written, some more than once. But this was different. I felt rushed, hurried, compelled to read the book with a deadline and this review in mind. And I was already familiar with the facts of the case of *State of Oregon vs. Sandy Jones* from watching Spence's videotape series *How to Win in Opening Statement*. (See a review of *How to Win in Opening Statement* and the *Gerry Spence in Trial Videotape Series* in the January 2000 edition of *Trial News*.)

But we are nothing if we make promises and break them. So it was with that motivation in the middle of a rare and gloriously sunny Pacific Northwest summer that I dived in, for better or worse. It didn't take long, once I got going, to get deep into the heart of the story, and to crawl into the weathered hides of Spence, Sandy Jones and her 15 year old son Mikey, Judges Gardner and Haas, the "bad guys" (prosecutors Stapleton, Marquis, Brown and Dawson), and others in this real life-and-death drama of a poor woman's fight against the "good old boy network" of Lincoln County, Oregon.

"This is a true murder mystery, a thriller that portrays the nearly helpless state in which most of the poor of America find themselves when they are confronted with the power of a cruel, and relentless justice system that has only one goal - to convict, whether the defendant in their sights is guilty or not."<sup>i</sup>

In his Introduction Spence writes “*This case, more than any other I’ve tried in an entire career, exemplifies the terrible odds we face when the state launches all of its forces against us*”.

Readers of Spence’s books should not be disappointed in *The Smoking Gun* (there really was a photograph of a “smoking gun” in the hands of the defendant taken at the murder scene and later entered into evidence at trial) and will recognize Spence’s characteristic folksy storytelling. But there is more in these pages than just Spence’s account of another brilliantly tried and hard fought case.

Followers of Spence’s career, ideas and ideals will find more of his brand of commentary on a system where the powerless and penniless get only the scraps and leavings of justice. Spence boldly proclaims “*A fair trial is a cruel, colossal myth*” – the presumption of innocence a “*glorious fiction*”. And after reading *The Smoking Gun* it is easy to believe him.

**“Every trial lawyer worth a damn needs to have a good murder case.”**

With these words we catch a glimpse, some insight perhaps, into Spence’s motivation for taking on the defense of a case on behalf of a poor, different woman that would pay no fee, would doom him and his law partner Eddie Moriarty to spending three-and-a-half years fighting through the gloomy winters in the chill and damp of the Oregon coast (and often chillier courtroom of Judge Gardner), and would take him away from his home, family and office in Jackson Hole, Wyoming.

We get the impression that Spence knows an injustice when he sees it. Maybe he has an acute sensitivity for the difference between what is right and what is wrong and wants to, no “must” do something about it (and never are the stakes so high as when a person stands accused in a murder case). Whatever motivates him, by the time the final verdict is read, we know something of the measure of the man.

**“No one can define truth or justice. They are beliefs. We take a side, and if we are worth a damn, we fight all we can muster for it.”**

Like the matador, Spence stands before the prosecutorial bull as it readies to charge – and charge it does with nostrils of indiscretion flaring, thick head and powerful shoulders lowered and horns of injustice pointed at Sandy Jones and her son Mikey, using all the might, power and unlimited resources of the state office that at times exhibits a shocking contempt for fairness bordering on the unethical.

Still, Spence is mindful that even his adversaries may be good men deep down, but questions whether their prosecutorial zeal leads them to commit acts, omissions and deeds of misconduct so as to override their responsibility that the accused receive a fair trial.

**“A lawyer needs to feel for his client.”**

Spence understands the power of feeling. He exhibits a “shameless passion for justice” and knows that genuine love for one’s client, genuine caring, can be contagious. How, he asks, can a lawyer ask a jury to embrace the injured or the accused if the lawyer himself is removed of such feeling? By the end of *The Smoking Gun*, we know that Spence cares – and cares deeply – for

his client, for his country and for justice. We live vicariously through each and every struggle, hard won victory, heartfelt loss, every twist and turn of plot. And, perhaps because we are lawyers, we can better see this case through Spence's eyes, stand in his shoes and feel as he (and his client) must have felt throughout the three-and-a-half year ordeal of the case.

In summary, few lawyers can tell a story like Gerry Spence, and *The Smoking Gun* is classic Spence. The facts of the Sandy Jones case are new and different than what will be found in Spence's earlier works, of course, but the rhetoric of his message is the same: there is only "*little justice for little people*" who are without resources of their own to fight the awesome power of the state and "persecutorial" offices bent on getting a conviction at any cost.

But for lawyers, *The Smoking Gun* is also a fine example of how a small "tribe" of committed, caring and capable lawyers, with meager resources, can fight skirmish after skirmish, fending low blows time and time again, often losing the battles, yet ultimately prevailing in the war for justice against the mighty powers of the state. There is inspiration here to be sure, and there are also many useful tips for the trial lawyer. The chapter on *voir dire* alone is worth the price of the book, and Spence's six-plus hour opening is remarkable.

Read *The Smoking Gun*. I believe you will be a better lawyer – criminal or civil – for it.

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<sup>1</sup> Taken from the Gerry Spence website.