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## GUEST COLUMN

## Legendary trial lawyer Gerry Spence leaves lessons for courtroom and beyond

**Late trial legend Gerry Spence, renowned for his mastery of fear, truth, and justice in the courtroom, leaves a timeless legacy showing that his methods of authenticity, empathy and moral storytelling are just as powerful in mediation and dispute resolution as they were in trials.**

By Leonid M. Zilberman

I have a secret to share. I've been a huge admirer and devotee of Gerry Spence. I've watched hours of his presentations online, read his books, riffed on his themes, and even asked myself when preparing for a trial, "What would Gerry do?" Last week, at age 96, Gerry Spence passed away peacefully after over 65 years as the greatest trial lawyer of his generation. If Clarence Darrow was the Shakespeare of the courtroom, Gerry Spence may well have been its Mark Twain — equal parts philosopher and as he used to refer to himself, "country lawyer" who didn't use \$100 words and wore a Stetson hat and buckskin jacket (with fringe) that could slice through legalese like a Wyoming wind through prairie grass.

Both Darrow and Spence have become legendary for using language not as a weapon, but as a bridge to jurors, adversaries, and — paradoxically — to themselves. Spence never lost a criminal trial (as a prosecutor or defense lawyer), and in his over half century of practice, he only lost one civil trial, in 1969. Spence was known, better than any other trial lawyer, for his storytelling, his candor and his confrontation of fear. His own fear, his client's fear, the jury's fear and even the judge's fear. While it seems counterintuitive, the "Gerry Spence method" he taught for decades at his famed Trial Lawyers College in Wyoming to thousands of lawyers is enormously adaptable to the mediation table with aston-



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ishingly positive results. After all, fear is what drives dispute resolution as much as it drives human nature.

Here's how it works:

I never met Spence or attended his trial college, but I have read his books with the hope of somehow channeling or adopting even a tiny bit of his talent. Among his more famous books are "How to Argue and Win Every Time," "Win Your Case," and "Gunning for Justice." These books are not simply manuals for trial lawyers; they are manifestos

on authenticity, justice, acknowledging vulnerability and the deep psychological theater that plays out in every legal confrontation. For me, the three prime takeaways from Spence's writings: (1) persuasion is rooted in honesty and connection, not bravado or trickery; (2) to win, lawyers must present themselves and their clients as genuine and vulnerable, building deep trust; and (3) legal battles are not won on logic, but rather emotion and battles for the human spirit. Each of these are

directly applicable to "winning" in mediation; in other words, obtaining a positive resolution.

For the first 18 years of his career Spence represented corporations and insurance companies and won almost every case he tried. In the early 1970s he switched sides and devoted the rest of his life to translating the struggles of individuals against the powerful and was the voice of underdogs and defender of the unrepresented. Perhaps one of his most famous trials was representing the family of Karen Silkwood against Kerr-McGee, obtaining a \$10.5 million verdict in 1979. Spence won many "nuclear verdicts" before that phrase was coined.

What were Spence's "magical powers" in the courtroom? He was (and preached to all who would listen) "authentic to a fault" and relentlessly prepared. Even more importantly, as simple as it sounds, he passionately believed in his client's story (whoever it was). His style, from what I've seen in numerous YouTube videos was not like a Perry Mason cross examination, but more like a group therapy circle — with what seem like sermons on humanity and mercy, stripped of hyperbole and adorned with honesty. As Spence would reveal, the true secret to winning was about how the trial lawyers viewed themselves and presented themselves to the jury. He taught that the *core risk in any trial is showing who you truly are* — and that showing fear is the first step toward dispelling it and establishing trust and credibility with the jury.

Spence's genius was figuring out that emotion matters more than logic for people and evoking justice not as a technical term, but as "the face of humanity." Spence's impassioned stories, always based on truth, speak of a broken trust and a revealed villainy that must be avenged by the jury who have the power to do that. Spence often spoke about a trial being first a battle for the soul; where the law is simply the battlefield. Spence elevated his client's struggle from the specific to the typical person — a technique that not only wins cases but wins empathy. In 1986, Spence defended in absentia Lee Harvey Oswald, President John F. Kennedy's assassin, in a televised unscripted mock trial. If you want a masterclass on closing arguments, watch it.

In an interview Spence admitted, *"I am always so afraid! I wish I weren't so afraid. After all these years you'd think I'd get over it... And aren't we all guilty of being afraid?"* His candor transformed universal vulnerability into shared humanity, breaking down the walls between lawyer, client and jury. He also admitted in many contexts that he always sought to "settle" cases and not have to go to battle in the courtroom. He explained he always gave the other side a way out, an off ramp, but they rarely took it.

How then does Gerry Spence's method of addressing fear, truth and justice translate to mediation — a forum designed not to win, but to reconcile, resolve and compromise?

### Applying fear in mediation

Mediation, like trial, is haunted by the specter of fear: fear of giving in too much, fear of vulnerability, fear that one's story will not be heard. Spence's approach — acknowledging this fear and using it as fuel for empathy — can transform the adversarial battleground of mediation into a communal campfire. A mediator channeling Spence would say, "I fear we won't understand one another. I fear we're protecting our-

selves too well and are not listening to each other." The room shifts: walls lower, stories emerge, possibilities crack open. If Spence were a mediator, during the introductory session, I envision him saying instead of the usual "what's your position?" he might ask, "So, who feels like the only naked person at a pajama party?" In laughter, fear is reduced, and truth and sparks of honesty seep forth.

While fear is a driver of conflict, it is also a significant barrier to settlement. Parties are often afraid of the unknown outcome of a trial, financial cost or the emotional toll. They are also afraid of appearing weak by "giving in." A mediator, in the Spence tradition, can help parties confront fears. A mediator shouldn't be afraid to look at best case scenarios and worst case scenarios. Instead of dismissing fears of the unknown as irrational, a mediator can acknowledge and validate them, just as Spence would with a jury. By helping a party articulate their deepest fears, a mediator can help them see that a negotiated settlement might be a braver, more powerful choice than the uncertain, protracted battle of a trial, where there is always a loser. I have seen these "aha" moments in person and the process of addressing fears builds trust between the parties and the mediator, making them more receptive to a settlement.

### Applying justice in mediation

In mediation, the concept of justice often goes beyond what the law can provide. How many times have you heard a mediator say, "Mediation isn't about justice. If you want Justice, go to trial." A party might feel wronged in a way that is not legally actionable but is emotionally and psychologically significant. Spence's emphasis on "doing what's right" rather than just winning is a perfect fit for this context. A mediator can shift the conversation away from rigid legal rights and towards the underlying sense of fairness and equity.

By encouraging parties to tell their "real story," a mediator can help the opposing side understand the moral, not just the legal, dimensions of the conflict. This humanization of the dispute can unlock empathy and lead to creative solutions that a judge or jury could never order and an individual can never "win" in court.

### Applying truth in mediation

Spence's commitment to truth is arguably the most crucial principle for mediation. In litigation, lawyers are often encouraged to "spin" facts or hide weaknesses. In mediation, however, this approach is counterproductive. A mediator operating with Spence's philosophy would push for a deep, authentic exploration of the facts, including the inconvenient ones that each party must face and acknowledge. This honesty is not about giving in but rather about building credibility and demonstrating a genuine desire to resolve the issue. Only when parties understand and acknowledge the various "weakness" of their case (or defense) are people ready to resolve them.

Spence's thematic approach can guide settlement discussions toward common interest rather than entrenched position. Identifying a moral "villain" — whether it's miscommunication, betrayal, or simple misunderstanding — focuses parties not on each other, but on jointly overcoming the source of conflict. Imagine two neighbors fighting over a fence. A Spence-trained mediator wouldn't simply say "what do you want?" but "what's broken here? Is it the fence, the trust, or both?" Once the parties are truthful with themselves and each other, compromise may happen.

Where Spence turns witnesses into living characters, mediation can use psychodrama techniques for parties to role-reverse, inhabit the other's position, and voice their own truth. While this may sound somewhat "kumbaya" when we put ourselves in another person's shoes,

it permits the expression and healing of emotional truths that often block resolution. Picture a traditional mediation with parties sitting with counsel (in their Zoom room), afraid to utter a word and instructed to let the lawyers do the talking. In Spence-style mediation, the parties might say: "If I were you, I'd be furious at myself!" This honest projection leads to "aha!" moments and genuine dialogue.

While Gerry Spence was a legendary trial lawyer, his methods of dealing with fear, justice and truth are remarkably applicable to the world of mediation. Mediation's goal is not to win, but to settle, and this requires a shift in mindset from adversarial combat to collaborative problem-solving. One of Spence's famous quotes that I live by is that "I would rather have a mind opened by wonder than one closed by belief." Spence's principles, though forged in the crucible of the courtroom, provide a powerful roadmap for achieving resolution. Try it sometime and see what happens.

*The views and opinions expressed in this article are solely the author's and do not reflect the opinions of the firm.*

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