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BOOK REVIEW

OF MURDER AND MADNESS. By Gerry Spence. Doubleday Company, Inc., 1983. Pp.1, 463. \$17.95.

Reviewed by Gerald M. Gallivan*

Gerry Spence has done it again!

He has followed the extremely readable *Gunning for Justice*¹ with *Of Murder and Madness*, perhaps even more gripping and better constructed.

While the first book was built principally around the Hopkinson capital punishment case, the Silkwood nuclear energy case and the Cantrell self defense case, *Of Murder and Madness* deals solely with the Esquibel murder case and the insanity defense. "Solely" is not entirely accurate, for a large part of this book is autobiographical, as was the first. Indeed, many of the incidents recounted in the first book are retold here. This is not to level a charge of repetitiveness against the author, because in each book the events play a substantive but different part.

In *Gunning for Justice*, Spence leads the reader through a number of major cases, sharing his perceptions of each case. While the cases differ widely in detail, in the hands of a master storyteller they share a common theme—a morality tale wherein good triumphs against tremendous odds over the rich and powerful forces of evil. The romantic figure of the lone gunfighter is continually invoked, but this is a gunfighter with a difference—this gunfighter knows fear and how to deal with it, and even uses it to his advantage. Yet this is not merely a gun for hire—this gunfighter is as dedicated to doing good and righting wrong as any knight of the Round Table.

The enemy is easy to spot, because laden with symbols. The enemy is corporate America, the establishment or the courthouse gang, represented by big city, big firm lawyers in somber, three-piece suits. By extension, the enemy encompasses the organized bar and its farm system of "hermit crab" law professors and "pansy butt" law students. To be sure, this is not an easily lovable bunch. But does it follow that they have a monopoly on evil, along with power and money, leaving the whole field of justice to the gunfighter Spence?

A trial lawyer with the stature and considerable talent of Spence does not spring full blown from three years on a game preserve called law school. The trial skills, the genius for analyzing and preparing a case, and

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1. G. SPENCE AND A. POLK, *GERRY SPENCE GUNNING FOR JUSTICE* (1982).

the ability to convince a jury of the rightness of a cause are usually painfully acquired over a trial career. (All too often, clients pay the cost of this education). At this point in his colorful career, Spence also has paid his tuition. The natural gifts of imposing presence, rich voice and preacher like oratorical style have all been pressed into the service of this skilled advocate. That may explain Spence the technician, but it does not begin to explain Spence the gunfighter, the people's lawyer. *Gunning for Justice* is true to that larger theme, and reflects the image he presents in public speeches and private conversations. The authentic tone of his books can be tested by imagining Spence speaking the written words.

People often come away from his speeches disappointed because they had expected to learn the secret of large verdicts. Instead, they are given a kind of pop psychological talk on feeling and communicating, and a populist speech against the evils of corporate giants.

That kind of criticism misses the mark. In this persona, style and substance are totally merged. Any attempt to find the source of justice within the covers of this book, must include an analysis of the numerous autobiographical details and introspections. It is from these details—which would be irrelevant unless one tacitly assumes that to some degree Spence is a product of his past—that justice is divined.

And so the reader is provided a panoramic background of the severe Wyoming landscape and even harsher climate. There is a partial genealogy of immigrant forebears and subsequent generations, struggling to squeeze an existence from a sometimes niggardly soil. Religion or religiosity is a recurring theme, but never in too favorable a light. Rather it is in the early years of practice and the struggle for identity and self-worth that the meaning of justice is found. After a morally unsatisfying period as prosecutor, where even the shutting down of a local whorehouse seems to have no moral overtones, Spence enters an equally empty period of defending insurance companies. Parallel to an unsatisfying professional career, chaos reigns on the personal side—a disintegrating marriage, a flamboyant lifestyle, a dropping out from “regular” life for a fling as an artist, a dabbling into psychology and psychiatry, and a feeling of rejection when his bids to become congressman or a judge are unsuccessful.

Amidst such wreckage, salvation comes from the identification of a morally supreme cause and a total dedication to that goal. The agnostic becomes a religious zealot and the gunfighter goes gunning for justice. On this level, the book is intensely personal and partakes of the religious. Gone is the moral ambiguity of the whorehouse. It is replaced with the self righteous claims against the evils of nuclear power, the drug industry, politically motivated grand juries and organized crime. Nor are the clients committing such sins the only villains. Equally guilty are their hired hands—the big firm lawyers. Aiding and abetting the forces of evil is a system of legal education which emphasizes property over people, while anesthetizing moral senses.

Gunning for Justice is a strong moral statement. This is not Spence the shyster lawyer using every sleazy trick to extort a large settlement or larger verdict. At one point Spence deals directly with the issue of his ethics and the charge that he operates too close to the limit. He asks rhetorically: "Is it ethical for me to hang back, give the margin to the insurance company in the trial, to hang back from the edge and let some poor helpless miserable injured man lose because I hung back? That was ethical?"² This language is not reassuring to his opponents or welcome to the trial judge, but it is consistent with his total identification with his client's cause. To understand Spence as a lawyer requires feeling (there is no more exact word) the total empathy that is his support system for the difficult case. His initial move is toward the client, but through the process of identification, he pre-empts the area until it is his case. It is Spence who wins or loses, never the client. The Silkwood case is the prime example. Confronted with cause oriented people who wanted to use the case as a vehicle for a public statement on the dangers of nuclear power, Spence dictates the strategy that narrows the conflict. Winning is concrete—his clients will be compensated, the message will be from the jury, and the lesson will be in the form of punitive damages.

Spence rails against a bloodless, unfeeling professionalism, that cautions against this kind of identification. This is akin to his justifiable but overstated attacks upon the established bar and legal education. *People* are his concern, not legal persons—those corporate non-organisms he sees as essentially evil who control the fate of all of us until a champion such as he might appear.

Of Murder and Madness, however, is a work of an entirely different order. Chronologically, it relates to an earlier period in Spence's career and its tone of moral ambiguity seems to imply an earlier stage of moral development.

There are at least three separate chronologies running through the book. The principal setting is the course of the Esquibel matter: from the first phone call from fellow lawyer, Ray Whitaker, to the curiously hollow epilogue.

Joe Esquibel killed his ex-wife in front of eight witnesses including a deputy sheriff in the welfare office in Rawlins, Wyoming; a crime seemingly without a defense committed by a perfectly despicable defendant.

Why would Spence and Whitaker take such a case, without a fee?

"And you and I will hold up the system so it can see itself - its own filthy blemishes and its ugly fat wrinkles. We shall . . ." [Whitaker speaking].

"We shall take the case, twist it, form it, mold it into that infamous surgical tool and do a proctological examination of the very system itself," I said, mocking Whitaker's style.

"Yes, yes" Whitaker said. "We shall do just that."

2. *Id.* at 111.

“Why?” I asked.

“Why?” Whitaker seemed shocked, “Why, we will do that to amuse ourselves, of course.”

“Yes, of course,” I said.³

This is not gunning for justice, unless we permit the pun that justice may well be the victim. This is a resurrected moral nihilism where the law is a game, winning is the only goal. The book's development of the Esquibel case does little to relieve the tension inherent in this attitude. Spence's usual identification with the client, and defense of the virtue of his position, is absent. There is no assertion of the rightness of the insanity defense; there is only the assertion of the existence of reasonable doubt.⁴

The other two chronologies play a significant role in developing the theme of moral ambiguity. The sometimes parallel development of Spence and Esquibel pose the questions: to what degree are we masters of our own fate and to what degree are we victim of circumstances? The question of determinism versus free will is not sharply framed, but the legal defense of irresistible impulse indicates its subtle presence. The classic rebuttal to the defense of irresistible impulse is to ask whether the defendant would have acted as he did with “a policeman at his elbow.” Frequently the defense is lost when the expert opines that the defendant would have acted differently. But Joe Esquibel murdered in front of a deputy sheriff and seven witnesses.

The grinding conditions of Esquibel's upbringing are contrasted to the essentially solid homelife of white America. Central to this comparison is the role of mother and mother love. Agnida Esquibel is pictured as a loving, but hardly competent, head of the family forced into prostitution by the economic necessities of raising a large number of children in a ghetto environment, constantly hounded by an insensitive and stingy welfare system. Little Joe is both victim and witness to this sordid state of affairs, torn between his childlike adoration of Agnida and the continual exposure to a parade of paramours with a few dollars to spend. This conflict extends to his relation to his ex-wife, who will be the unfortunate victim of an Oedipus complex out of control. The burden of the state is to demonstrate Joe's responsibility for the murder, but in the hands of Spence, the responsibility is not Joe's—rather it seems to lie in the facts of his background and the peculiar force of mother love.

The message is less clear as to the author. The book is dedicated, “To my angel mother,” so one should be justified in placing some emphasis upon this factor in his history. Besides, there is the obvious structuring of the parallel lives of Spence and Esquibel. Of course, a mere law professor is not authorized to attempt a long distance psychoanalysis based on such limited and selectively incorporated data. Perhaps even Spence doesn't even know the answer. Perhaps he is merely posing an intriguing question.

The previous discussion should not be taken to detract from the overall effect of a story well told or from the insights into a spectacular case with

3. G. SPENCE, OF MURDER AND MADNESS 5 (1983).

4. *Id.* at 450.

success against apparently overwhelming odds. The difficulties in conducting an insanity defense are always considerable, but are nearly impossible in a sensational and brutal murder. The Esquibel case is very instructive on that score, and the book is worth reading for that alone.

However, a note of emptiness is felt at the end of the book as Joe Esquibel is in turn shot down in a senseless street affray. Is this poetic justice, or the ultimate irrelevance of courtroom justice? The optimism of *Gunning for Justice* is lacking here. The idealism of the gunfighter is preferable to the cynicism of the lawyer who takes the case for the fun of it—to demonstrate that the justice system doesn't work or that we cannot judge because we do not know what justice is.