The Trial Rhetoric of Gerry Spence

In Silkwood v. Kerr-McGee

by

Dean E. Officer
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Professor ~~in Charge~~

Redacted Signature

Redacted Signature

Committee Members

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Abstract

The text offers a set of reasoned conclusions about the nature of Gerry Spence's rhetoric in the Silkwood v. Kerr-McGee trial; it is an accounting of his attempts to influence the jury during the longest trial in Oklahoma history. The relationship between Spence, his rhetoric, and a case which produced a record verdict are examined: The advocates, special interest groups, jurists, the jury, and the issues at bar. Psychological mechanisms and communication strategies that Spence acquired early in life are illustrated as determining his development of a rhetorical style designed to engage the jury at an intensely personal level. Psychodrama is used as a model for critiquing the trial: The jurors' understanding of the case is presented as their <u>experience</u> of themselves in the scenes and as the characters created by counsel to represent the case. Spence dramatically sets conflicting arguments side-by-side and demonstrates their assimilation into the plaintiff's case in situations which invite the piling up of fear and pity on the plaintiff and direct outrage toward the defendant. The verdict is posited as the result of this empathic identification of juror and plaintiff.

For Fred and Betty.

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The Trial Rhetoric of Gerry Spence in Silkwood v. Kerr-McGee

I. Nature of the Study

Rationale

With the end of the Civil War, the frontier rapidly diminished and along with it went the frontier attitude. The free and easy gambler's outlook and fierce sense of independence of the frontiersman was replaced with the philosophy of the market place, unbridled competition. In this sense, Gerry Spence is anachronistic. Typically topped with a twenty-gallon Stetson, complementing traditional Western garb right down to the boots--always the boots--he personifies that indomitable spirit of the frontier hero and the American trial lawyer. From the dramatics of his courtroom wizardry arise a series of stories wherein the weak prevail over the strong, where evil meets an avenger, or generally, where characters get the best of those stronger than themselves.

During a career spanning over three decades, Spence has fought--and won--some of the most important cases of our time, compiling a tally of record verdicts, both as a plaintiff's attorney in personal injury cases and as an extremely formidable prosecutor. At this writing, nearly twenty years have lapsed since he lost a decision in a jury trial. So, "What makes Gerry Spence's style so persuasive?"

Finding an answer to this question required selecting an exemplary case. In conjunction with his law firm of Spence, Moriarity, and Schuster, Spence's representation of the Silkwood family in their action against the Kerr-McGee Corporation was selected. It seemed a natural choice: The case was intriguing, it had good national press coverage, and a physical record of the proceedings was available.

The Silkwood trial had the national media's attention long before Gerry Spence entered the fray. After Karen Silkwood was killed in an auto accident while trying to deliver material incriminating Kerr-McGee to New York Times reporter, David Burnham, a whole host of cause groups rushed to take up her banner. Rolling Stone proclaimed her the latest victim in a vast government-industry conspiracy. The anti-nuke people heralded her as a fallen angel in the fight against nuclear power; and the feminists, the environmentalists, the unions, and the far out idealists--

> They each claimed this saucy Kerr-McGee lab technician as the heroine in their own causes against all manner of American evils, real or imagined. They had organized, suborganized, committeed, and subcommitteed themselves.
>
> They had sent out letters, collected monies, put on concerts, conducted candlelight services, proned themselves in the streets, marched, and cornered talk show hosts--to raise the money to fight and to preach about the various struggles Karen Silkwood represented.1

An on-again, off-again congressional investigation

finally ground to a halt in late 1976 when the case was filed in Oklahoma City's U.S. District Court by Bill Silkwood, Karen's father, on behalf of the surviving children. A year later, Gerry Spence was brought in as the "old pro" to handle the actual trial proceedings.

Purpose

The primary purpose of our work is to produce a set of reasoned conclusions about the nature of Gerry Spence's communication strategies in the Silkwood trial. We seek an accounting of his courtroom techniques during the weeks of the Silkwood trial when opposing counsel were putting their best persuasive "moves" on each other.

Posing the question, "How did Gerry Spence produce a favorable verdict?" centers our inquiry at the process level; the level of structure, all that was going on. The psychodrama is based on such a process model, and it is used here within the framework of Fritz Perls' Gestalt psychology as the model to explain Spence's approach to the trial.

Psychodrama is a form of the drama in which the plots, situations, and roles--whether real or symbolic--reflect the actual problems of the persons acting and are not the work of a playwright. The courtroom parallels the psychodramatic stage, the advocates, jurists, and witnesses are treated as actors, and the jury serves

as the audience. The dramatic form developed from J. L. Moreno's work with children and improptu play. Moreno assissted children in putting together a plot which they were to act out, spontaneously, with the expectation that the activity would produce a mental catharsis. As this principle was extended to adult patients,

> . . . applied to their actual, intimate problems, the reality of the situations, the earnestness of the participants and the consequences implied for them in the procedure were so great that the suggestion that they were playing a game was abandoned; the word 'drama' seemed much closer to the factual experiences. But the product and therefore the qualifying prefix 'psycho-' was added. 2

This application gave rise to "The Spontaneity Theatre" in Vienna during the early 1920's. A good deal of confusion can be avoided here by briefly examining a somewhat problematic translation from German to English. "Spontaneity" finds its origin in the Latin "sponte" -- of free will--and it is understood as "arising from a natural disposition, without constraint or preparation." Yet, there is clearly preparation involved in psychodrama: The setting is arranged or explained; characters are differentiated and instructed as to their style of response; and the plot, as Moreno indicates, is outlined. This leaves us with an entirely unsatisfactory formulation since a presentation must be at once planned and without preparation. The apparent contradiction may be resolved either by examining the language of the original document, or contextually from Moreno's writ-

ings.

The German language equivalent for spontaneous is "spotan," obviously derived from the same Latin root, which leads us to expect that "The Spontaneity Theatre" is derived from some conjunction akin to "Der Spontantheater." Similarly, butterfly would be translated as "Die Butterfliege." Although seemingly acceptable at first glance, both translations are quite startling and amusing on closer inspection. "Die Butterfliege" is, literally, "the flying butter"--butterfly translates as "Der Smitterling"--and "Der Spotantheater" describes a spontaneous stage rather than a theatrical performance. In the original text, "The Spontaneity Theatre" is presented as "Das Stegreiftheater," a place for extemporaneous performances on the theatrical stage. "Extemporaneous" is used in the sense we distinguish extemporaneous from impromptu speaking, it designates a performance which is considered but not written down or memorized. Contextually, Moreno made the same point when he described "the movement away from written (conserved) drama and toward the spontaneous (psycho) drama. . . ."[3] As originally conceived, psychodrama is a dramatic form wherein the actors are free to develop interpretations of their own problems within the constraints of prescribed character, setting, and plot outline to produce a cathartic effect.

Since its inception, a variety of innovations have been developed in psychodramatic application. Our focus is on the variation Spence used to produce a favorable verdict:

> . . . Here the actions on the stage are produced, instead of by actual subjects, by a staff of auxiliary egos (actors who symbolize the protagonist as a double, or absentee persons) . . . This form of psychodrama is the indirect or nonconfessional type. 4

As in the trial, the actors are not patients. Witnesses, advocates, or jurists actually played themselves; they were participants who portrayed particular types of roles. The director of the traditional drama was replaced by Spence as actor-director. So, in contrast to the traditional theater, the jurors were witness to a performance which was expressly designed to relate to their shared problem of making a decision in light of all the conflicting evidence; they witnessed the problems and conflicts arising between advocates, witnesses, and occasionally the judge. It was a drama of life, in primary form, which through the vehicle of the psychodramatic presentation in the courtroom, came to view.

The success of a psychodramatic approach turns on the production of catharsis:

> The more the spectator is able to accept the emotions, the roles and the developments on the stage as corresponding to his own private feelings, private roles and private developments, the more thoroughly will his attention and his phantasy be carried away by

> the performance. The paradox is, however, that he is identifying himself with something with which he is not identical: the hero on the stage is not he, himself. The spectator can sympathize with acts which take place on the stage just as if they were his own acts, but they are not his; he can experience with the actors all the pain and the torture, all the misery and joy which they go through--and still be free of them. The degree to which the spectator can enter into the life upon the stage, adjusting his own feelings to what is portrayed there, is the measure of the catharsis he is able to obtain. [5]

As Ira Greenberg commented, "The sensory stimulations of the psychodramas, together with the emotional catharsis . . . cause a restructureing of the protagonist's perceptual field (whether he is on the stage or in the audience) and bring insight or understanding to his problems by means of configural learning."[6]

Precisely how the cathartic effect occurred remains paradoxical within Moreno's system. His approach to personality is frequently critisized as more technique than theory. Psychodrama, as it is used here, is simply an action-technique that is effective in bringing about a desired group behavior in the form of a favorable verdict. Perls' formulation of Gestalt psychology, however, allows us to further refine our explanation of the mechanisms operating to produce the cathartic response. From this perspective, psychodrama is a means of conflict resolution.

To resolve conflict, psychodrama uses the <u>expression</u> of contradictory or antagonistic positions to resolve

conflict, not by proving or accepting one and rejecting the other, but by integrating both. Where neither position can be reconciled with the other, through interaction they are both reduced to a form contained by a single concept: Altering context by considering the positions side-by-side changes the way they both appear, how they are related can be determined, and competing claims come to be viewed as elements of a larger whole. The realization--"ah hah"--that occurs as both positions are assimilated, is catharsis.

Antagonistic positions are part and parcel of the legal system. Without conflict, there would be no basis for litagation. Since the verdict is a result of the jury's understanding, resolving these positions into a verdict requires that counsel communicate their interpretation of disputed events within a common-shared-frame of reference with the jury. Jurors' understanding, in turn, is achieved through their interpreting the "facts" presented by opposing counsel. Since jurors' belief systems are their basis for interpretation; and, interpretation requires imposing a belief system on the "facts" of the case; then, what jurors come to believe is the result of projecting themselves--their belief systems--into the scenes and characters created by opposing counsel. Implicitly, the verdict is the product of this empathic identification.

Like the classic drama from which it was developed,

psychodrama also becomes a story with plot when successfully directed. In a trial, plot is necessarily constructed of characters and scenes representing the interests of a client, rather than the actual events responsible for the trial. The emerging story, then, is correctly--if ironically--categorized in the genre of "fiction," at least in a literary sense. Adopting this point of view, we find expression of the study's specific purpose: Describing Gerry Spence's rhetoric in the Silkwood trial in terms of the setting, characterization, plot, and effect of a psychodrama.

Materials

Information for this study has been drawn from exhaustive interviews with Gerry Spence and his colleagues, holdings from their law library, and from Watson Library at the University of Kansas. Of particular value in understanding Spence's perception of himself and his role as advocate is his book Gunning for Justice. The text of arguments in the Silkwood case was taken verbatim from the trial transcript which is the certified word-for-word record of the proceedings.

There are literally thousands of published articles dealing with Gerry Spence, but few focus on the nature of his rhetoric, being mostly media accounts of various trials. One notable exception is Prof. Richard Crawford's criticism of closing arguments in the Pring case;

Spence considers formal analysis like Crawford's "an absolute abomination, and silly . . . it is this kind of academic effort that destroys young people, has the effect of reducing them to machines and forces out of them other mechanical kinds of conduct which do not communicate."[7] He suggests I introduce the term "horseshit," here, to describe the genre of discourse.

Related Research

How, then, is the "determining characteristics" motif of the current literature to be used in placing the Silkwood verdict? Examining the available methodology suggests it would be unwise to "place" it at all.

Strodtbeck, Jones, and Hawkins emphasize status relationships in selecting jury foremen.[8] High-status corresponded to selection and participation; participation, in turn, corresponded to satisfaction with the verdict. Discussing the implications of their findings, the authors suggest high-status people, especially men, derive more satisfaction from the deliberations.[9]

Kalven and Zeisel attempted to study trial outcomes in diverse areas, including characteristics of defendants, features of the crime, and jurors' perceptions of the law. Their work incorporated information from 3,576 cases, but focused on the 880 where judge and jury disagreed on the correct verdict. They concluded that in only about four percent of the cases did personal

traits play a substantial role in determining the outcome, and then they tended to work for acquitting a sympathetic defendant. Outcomes of even fewer cases were attributed to jurors' perceptions of defendants as victims of circumstance, or acquittals based on penalties disproportionate to the offense.[10]

Results from the London School of Economics "Jury Project" indicate that if the defendant has been convicted of similar crimes, admitting the conviction record is related to an increase in conviction rate.[11] Doob and Kirschenbaum offer further indication of the same phenomenon from a Canadian study.[12] Using simulations to explore the impact of severity of possible punishment on verdicts, Vidmar as well as Hester and Smith also reported similar findings.[13]

Bullock, Broeder, and Thornberry all cite racial factors as determinants in legal proceedings.[14] While Efran reports on the critical effect of an "attractiveness" variable.[15]

Contemporary analysis seems intent on splitting-off some factor or factors without considering the others. This approach is reminiscent of the parable where each of several blind men examine and describe an elephant from different perspectives: The first examines the trunk; the second, a leg; the third explores the tail . . . Since each is confident of his impression, but

the descriptions differ so widely, the notion that they all examined the same creature eludes them. Yet, the overwhelming impression is that trials hinge on a collection of narrow variables, such as: "lines of questioning; lawyers' tactics; the testimony of key witnesses; judges' instructions; rules of evidence; the race or social status of the defendant; the nature of the crime; the class, age, sex, or racial composition of the jury . . .," and the list goes on.[16] Like the blind men, these investigations do not seem so much wrong as incomplete.

The literature describing trial outcomes clearly demonstrates that any factor is likely to be a determining force in only a small percentage of trials. The basic problem is, these factors are abstractions describing some aspect of the trial. The rhetorical form can be abstracted, characteristics of jurors can be abstracted, judges' instructions to jurors can be abstracted . . . but, the abstractions cannot be added together to make up a trial. The trial existed in the first place, the abstractions were then done by investigators. Asking, "Why did the jury reach a plaintiff's verdict?" can only lead to unending inquiries into the cause of the cause of the cause. All kinds of events came together to create the trial--it was overdetermined.

Overview of the Chapters

The purpose of Chapter II is to analyze the development of Gerry Spence as a rhetorical agent, his view of himself, his fellow man, and the world around him. This section emphasizes the communication style Spence developed to interact with the world that equated securing favorable verdicts with support for his self-image. The involved psychological mechanisms are detailed as they illustrate the necessity for Spence's developing rhetorical strategies to engage the jury at an emotional, self-involved level.

Chapter III explores the nature of the situation facing Spence as an advocate, the context of the Silkwood case: Advocates, special interest groups, jurists, the jury, and the issues at bar.

Chapter IV provides a systematic treatment of the trial to illustrate how psychodrama was used to develop a credible interpretation of the case for the jury. The psychodrama is developed in terms of using plot to convert setting and characterization into action to achieve a single, unifying effect.

The final chapter will draw together the salient points of the study and the conclusions they suggest. The conclusions, however, extend beyond the immediate implications suggested and view trial rhetoric generally.

Appendix A is a brief epilogue to the Silkwood

trial. It updates the status of the case--through the U.S. Tenth Circuit Court of Appeals, and the U.S. Supreme Court.

We are never rid of our beginnings.

Gerry Spence

II. Developing Values, Shaping Communication Strategies

Events and processes set in motion at a relatively early age proved instrumental in determining Spence's trial rhetoric. Ironically, the same conditions which made his private life a nightmare for a time, also served to develop a rhetorical style which produced a remarkable string of record verdicts. The existentialist perspective of Gestalt psychology provides a medium through which to describe the distinctive internal dialogue Spence developed and his style of communicating with the outside world; it also provides considerable insight into the impact of these processes as he came to exploit a communication channel, the psychodrama, which is perhaps the hallmark of his courtroom wizardry.

Gerald Lenord Spence was born in Laramie, Wyoming, amid howling wind and mercury plummeting to twenty below zero during a midwinter's witching hour, January 8, 1929. The events of his childhood and youth in the Spence family, while at times unusual, are by no means unique; they generated concurrent adoration and repulsion, affection and underlying disgust--characteristics of many intimate relationships, especially those within the family. The genesis of the most profound impact on

Spence's trial rhetoric may be found in his exposure to his mother's religious fundamentalism and its subsequent effect on the maturation process. This doctrine was so deeply a part of his mother's life, it seems only natural some of the underlying tenets should become engendered in Gerry.

It is well, then, to know something of Esther Pfleeger Spence; for her spiritual life was intimately bound up with that of her son. She was the daughter of sturdy German immigrants who homesteaded in eastern Colorado. They were one of the few things tougher than the jack rabbits, Spence remembers, which were about the only other survivors of the 1930's dust bowls. "Grandpa Pfleeger was always the boss. He had this deep booming voice that sounded like Thor with a German accent."[1] He had become a devout Protestant fundamentalist, a committed follower of the Zion religion whose roots were mostly in the old testament. "He was a man of extremes, of huge commitments, stubborn resignation, and resourcefulness."[2] Despite his grandfather's resolve, however, Esther Pfleeger had gone off and worked her way through college. Spence describes her as "a kind and Godly woman." Under her watchful eye it was one of his great struggles to be "as Christ would have us," which he didn't think was very hard for her. She filled his life with clichés for living:

> "Don't say anything about anybody unless you can say something good." Bless her. I never heard her say an unkind thing about a soul. "Which way the wind doth blow that way is best," she would say, resigning herself to her fate . . . it seemed easy for my mother. She seemed like Mrs. Christ. One thing I was glad of was that God would forgive us, for everything . . . except one thing: God will not forgive you if you kill yourself . . . That is the one and only unforgivable sin. 3

As for her son, Gerry, he keenly remembers being spoiled--he used "spoiled" in the sense of getting something as soon as he wanted it--which, as the incisive reader has discerned, included an answer to any and all questions about effectively coping with life's uncertainties, provided in the cliches of righteous fundamendalism.

Fritz Perls described early development as ". . .the time when a child either grows and learns to overcome frustration or it is spoiled."[4] Gerry was spoiled. As a result, an impasse was created in the maturing process of shifting from environmental support to self-support. Normal amounts of frustration which serve as a catalyst in converting potential into intrapersonal resources were displaced by platitudes. The alternative to using potential for growth was diverting it to control the environment; control by discerning other's weaknesses, by starting to manipulate them into providing support. This was the projective mechanism implemented to compensate for inadequacies in Spence's intrapersonal reper-

toire. However, by manipulating other people into providing support instead of mobilizing his own resources, a dependency on them to determine his self-image was created. Instead of gaining control, by seeking to induce support, he came to be controlled--other directed. Lingering vestiges of this dependency remain visible in his fear surrounding a trial:

> . . . it is my own fear of walking into a courtroom and laying it all down for a judge and jury, all of me. It is I, always, not the client, on trial . . . The jury accepts or rejects me, not my case . . . and when the jury says no, it is the ultimate rejection because they are not saying no to just an idea, but they are saying no to all of me since I have put all of me in the pit. 5

Since the projective mechanism was to play a central role in shaping the nature of Spence's interaction with a jury, it warrants further exploration. In the general sense, projection involved his making assumptions about others based on his own motives; an inability to recognize these assumptions as what they were--only assumptions, not facts--and the failure to recognize their origins as lying within himself. Metaphorically, he gave up his eyes and asked the world to do the seeing for him. Instead of being critical, he would project the criticism and feel criticized; unable to accept his mother's rigid fundamentalism, he would project the rejection and long to be accepted--engaging all manner of activities to induce support. For example, Spence

would like to claim being a precocious youth, but does not. He remembers his father complaining he was "simply a smart aleck . . . I was always admonished for showing off."[6] In school, he acknowledges generally being regarded as a "problem in deportment." He laughed, carried on, interrupted in class, and generally raised hell. By age fifteen, firmly in the clutches of adolescence, he was "outrageous" and "succeeded in terrorizing the entire Spence family . . . In short, I was the worst my parents had ever seen or heard of."[7]

Rebelling against his mother's basic ideals was a rejection of impossible standards, for their foundation rested in perfectionism. Perls suggested perfectionism creates a love of the ideal rather than a love of life; it demands that life fit into a Procrustes bed of expectations and blames it if it does not. Precisely what the ideal is always remains veiled. Now and then there are some stated characteristics, but the essence of the ideal is that it is unattainable.[8] Although Spence determined to throw off many of the expressed tenets of the fundamentalist prescription, the perfectionistic process of seeing himself was reinforced by other events during those early years. It was this process that was emphasized at school.

> I used to be embarrassed at J. S. Taylor School when the superintendent of schools would come around to visit our room. I was the only one she took out of the room to talk to. I

> would follow her like an obedient pup into a private office and then Miss Stolt, who was a big, bony, gray-hired woman with a giant mole on her nose, would tell me, "Gerald, you have a great deal of ability and it is your duty and responsibility to use it all correctly and to its utmost. I expect a lot more out of you. 9

The same dynamic is evident in a favorite analogy Spence now uses to describe visits to Grandpa and Grandma Spence during the summers of his early youth. Grandpa Pfleeger's determined fundamentalism was replaced by Grandpa Spence's sensitivity and curiosity, but the directive to constantly meet an idealized standard remained inviolate.

> I used to wonder at the preciousness of this stuff from the cows. I came to understand at an early age the great respect Grandpa Spence had for the milk. I thought it was like life, that there was only so much of it in any bucket . . . an old-fashioned idea, I suppose, and one that has been a curse to me . . . that one ought not spill a single drop. 10

So, the projective mechanism became intwined with perfectionism, and perfectionism firmly anchored Spence's sense-of-self in feelings of guilt; guilt produced by an inability to meet an imperative that he should constantly be different from what he was. Life became dedicated to actualizing a concept of what Spence thought he ought to be--actualizing his self-image--instead of actualizing himself. This is the curse of the ideal.

As the struggle to meet perfectionistic demands continues, the result is a nervous breakdown or flight

into insanity. Spence described an instance where he was witness to the effect, yet remained unable to see the mechanism at work in himself. Spence was hunting with a friend in Wyoming's back country when a game warden stopped them at a sunny spot in the road. The warden told them Gerry's mother was dead and he ought to call his grandfather. "I think it was Uncle Hunter, my father's youngest brother, who told me about her death. He had a way of saying things to people that had to be said, a way that was kind and yet direct. 'Gerry, your mother took her own life.'"[11]

Now, projection fueled the flames of guilt inherent in the ideology of Spence's youth to produce a sense of responsibility for his mother's death. Why had this angel mother committed the unforgivable sin?

> I thought of all of my sins. It must be because of them, because of the rankness of my life, because of the women, the whores in countless houses around the world, the whiskey and cigarettes.
>
> She must have known about it. She had seen the cigarette hang from my mouth, and she had wept. My father had said so. I must have brought her great sorrow--such sorrow she could not bear it longer. She hadn't said why, but deep in my heart I knew why. I had been unworthy; I had thrown off the church, rebelled against the shackles of my Christian childhood teaching. I had denied her. And the pain of her failure with me, her first son, who was to be her gift to God, the pain of her failure was too great. That was the reason. [12]

Of course, perfectionism served as a wonderful tool to play the game of self-torture--an opportunity to

swing the whip. There was no end to the possible self-nagging, self-castigating. Spence also began to apply the projective mechanism to himself. He began to disown his own impulses, and to disown those parts of himself from which they arose. As Perls explained the phenomenon:

> The boundary between ourselves and the rest of the world is redrawn a little too much in our own favor--in a manner that makes it possible for us to disavow and disown those aspects of our own personalities which we find difficult or offensive or unattractive. 13

For Spence, these personality fragments were inculcated from his mother. At night, he began fighting her ghost--those disowned facets of himself. " . . . in my dreams she had not killed herself. She had only left me, to go off to some distant place, had abandoned me to live some life that must have been shameful and wretched."[14]

The same dynamic is mirrored in his reaction to passing the bar.

> . . I graduated top only because I was so afraid I was going to flunk out . . . and then I flunked the bar. I was the first honor graduate in the history of the state to flunk the bar. It was mortifying. I wept. 15

Of course, the lawyer who was going to give Spence office space was no longer interested. "Nobody wants a smart-ass who flunks the bar."[16]

When Spence did retake the exam, he did not even

bother to study, knowing it was pointless, that he would never pass it, anyway, but he managed. The committee chairman even called to say it was the finest paper he had ever read. "He was proud of me, he said. I wanted to throw up. But now my angel mother would surely smile down on me, and say I had been a good son."[17]

In seeking approval he hoped would be manifest by his fantasized mother smiling down on him, Spence was warring with himself; he was seeking acceptance from disowned facets of himself; not recognizing that the image of his mother and the assumption that he was unaccepted originated in himself; or even that the assumption of his unacceptability was only an assumption--he assumed it as a fact. Reflecting on the struggle to assimilate his mother's death, Spence realized:

> In resolving her death I had not resolved that part of her that was me, in me, open and raw now, like a sore from which a thick scab had been ripped away. [18]

The effect, as Perls remarked, "[is to] make the world the battlefield on which private conflicts must be fought out."[19] This is the touchstone for understanding the impact of perfectionism and the projective mechanism on Spence's rhetorical strategies. Since his self-image was dependent on external support, the allure of the courtroom was as a setting where emotional manipulation could be used to obtain a measure of reassurance or acceptance; in this instance, acceptance by the jury.

This is the projective mechanism directed externally. Each successful verdict equated to becoming a better, more acceptable person; perhaps eventually, a person acceptable to the fantasized mother image. This is the projective mechanism directed internally. But, Spence's self-image was also a product of perfectionism which dictated he attain a level of acceptability whose essence was that it be unattainable. Whatever level of acceptability he achieved was still merely the obtainable. So, acceptance by the fantasized mother image--disowned facets of his own personality--and therefore the criterion for his self-acceptance, was to seek the unachievable. At this juncture, it is the retelling of Hercules attempt to kill Anteos--everytime Anteos touched the ground, he regained his strength.

Spence did not go empty handed to the task of winning verdicts. He brought his means of emotional manipulation. This capacity must already have been highly refined--He had to be pretty shrewd in order to survive since in fact he was lacking, to a substantial degree, one of the essential qualities that promote survival--self-support. He literally had a handicap, and it required considerable ingenuity to get along with it. So, Spence's rhetorical strategies were emotional; they were intensely personal; since his self-image was inextricably linked to winning verdicts, rhetorical strategies

embraced the same psychological mechanisms he was dependent upon to sustain his self-image. Implicitly, his personality determined that interaction with a jury incorporated techniques designed to produce the jurors' favorable response at a self-involved, emotional level.

Trying cases in this fashion proved remarkable successful. In all the years Spence represented insurance companies, he won decision after decision, never losing a verdict; but, expressing the rhetorical strategy in any semblance of formalized rules proved elusive.

Characteristically, Spence selected juries which represented working class people. These were the people he best understood. Spence's own early work experience was among these laboring men. At the Monolith Cement Plant, outside Sheridan, he struggled to carry ninety-four pound cement sacks. He still vividly recalls the weight, the dust and the noise. As a youth of eleven, he spent the summer working as a yard boy on a ranch. At twelve, he learned to manage a team of horses, hand shock grain, stack hay, and do general farm work as a field hand on an agricultural experimental station. Even earlier, he sold his mother's fresh cinnamon rolls door-to-door raising money for the Methodist church. It embarrassed him, but he did it anyway. To earn his own spending money, he sold chokecherries the same way in the fall, and solicited flower sales by telephone spring

through summer. In court, Spence appeared to be a simple, unsophisticated sort of person, in no way intrinsically superior to the average juror; he had only read a bit more and was more eloquent in speaking his mind.

Another distinction of the overall courtroom strategy was Spence's oratorical style which he attributed to an experience which occurred when he had gone off to seek his fortune, "out from under that oppressive place of religious righteousness and regularity."[20] The Merchant Marines seemed a perfect, if temporary, solution. "I drank whiskey at every port, and visited every bordello known or knowable to man--sometimes five or six a night. It was disgusting, wasteful, sinful, wonderful."[21] The National Maritime Union people came aboard in New York for a meeting. A rousing speech deriding the current union president stirred Spence. "It excited me. Joe Curran was a dog . . . Worse than that! I hated him, too."[22] Then, as he tells it, an old creaking voice came from the back of the Hall:

> "Brothers." We strained to hear his voice. "I was with Joe Curran when we fought them for this union. We fought them on these very docks. We bled on these docks together." His words were shaky. There were long, sincere spaces between them.
>
> "Joe Curran loves us. He would lay down his life for us. I don't know about these newcomers with the big mouths and bigger promises. I only know about Joe Curran with a big heart that he's given to you for all these

> years." He was silent, for a moment. Then he said with great power, "I nominate Joe Curran for the president of this union." We were all on our feet, yelling, screaming, chanting, "Joe Curran, Joe Curran, Joe Curran." I had discovered the power of simple oratory. [23]

Still, there was no expression of a general organizing principle, no satisfactory explanation of the requisite emotional chemistry which accompanied winning decisions. The solution came with Spence's introduction to sensitivity training. He and his wife, Anna, attended a couple's group composed of Episcopalian clergy; and if he was at all typical, he felt the therapist was doubtless a fraud and a charlatan, but he was willing, out of the despair of his life and the goodness of his heart, to give him one quick chance. Ostensibly, they went for amusement.

Sensitivity training groups typically begin with everyone sitting around getting uncomfortable with the silence, trying to figure out what they are supposed to be doing. Then, there are introductions and a statement of individual purpose. Spence's communication style made him a volatile participant, but he didn't know it, yet.

> Pretty soon the leader asked each of us to tell why each had come . . . When he came to me I said, "I have come here, brothers and sisters, today for one purpose," I mocked the sound of a preacher orating. "And that is to fuck your wives."[24]
>
> Before the session was over I had learned something about the act of feeling, not talking,

> not thinking, not speaking, but feeling. It was frightening, and explosive. My mother entered the room everywhere I looked. I was feeling the guilt I had hidden by stuffing it away in all of the cracks and crannies of my being. It came flooding out, in hatred against Anna, in pain and hatred against my mother. Perhaps it was the same pain, the same hatred . . . It was the beginning of my very life. 25

Spence described the kind of situations which brought critical life experiences into awareness and enabled their assimilation:

> I talked more of my mother, and to her. We had long conversations together. Sometimes she was represented by an older woman trainer with whom I soon fell in love, and once she was merely a watch, ticking on the floor, to which I had talked:
>
> "Why did you leave me, Mother?" I addressed the watch on the floor. Then I answered for the watch, for my mother . . . "I didn't leave you, Gerry, I had to go."
>
> "Why did you have to go, you never told me, and you never said good-by."
>
> "I left you because I couldn't stand the pain."
>
> "What pain? Was it pain over me? Did I make your life so painful you couldn't stand it?" I asked the watch. Then the watch answered. I heard my mother say . . . through the magic of my mind, through the knowledge of my being, which dispelled the insane demons, "No. You were not my pain. You are my son. I love you. Although you cannot understand my pain it was my pain, and my life, and my problem, not yours." I wept, for the first time since my mother's death." 26

The "magic" Spence described is catharsis of emotion. In the first instance, where he played himself and the therapist assumed the role of his mother, the reaction was being produced psychodramatically. A second version of the psychodrama is illustrated in the conversation of

the extended example where Spence played both roles, shifting from one to the other; sometimes this technique is appropriately titled "shuttling". Psychodrama is anchored in existential psychology; it is an integrative approach which makes use of expression as a means to re-identification with disowned fragments of the personality; the awakening experience--the release--or the "magic" produced in both cases is emotional catharsis.

It was here that Spence began to develop the theory that a trial involved the same experiences; it is analogous, in principle, to the classical drama from which these techniques originated.[27] The verdict, then, turns on assimilating competing claims in a way the jury positively identifies with the plaintiff. The application of dramatic principles to jurisprudence, as the Silkwood trial exemplifies, has become the hallmark of Spence's legal strategy.

As Spence began to understand himself, the effect of a trial's outcome emerged as an overriding concern; it was an echo of attitudes he had encountered at home. His father's friends were the laboring men, not management, even though he was supposed to be a part of it.

> At night he came home, raging about how the company was unfair to the men . . . He believed simple things like a man should do his job right, and sometimes he knew better ways to do his job, but management didn't care about better ways, or about the worth of a man--these men were nothing but the tools of management, the cost of labor. 28

But, Spence had become a stereotypical lawyer: Going to church, parties at the country club, attending the PTA, Kiwanis Club, and the Chamber of Commerce, besides claiming to be a father to his four children. The law became a tool to use as he saw fit. He won the cases, but the broken bodies of the men he had beaten in court only because he was too much for their lawyers began to bother him. He finally decided,

> It was wrong for me to use my talent for these insurance companies . . . Wrong. I was taking on cases against the poor and the injured . . . and there was never enough money for expenses to match the unlimited budgets of the insurance companies I defended . . . It was all a game, the amateurs against the pros, and you know who won. 29

Then, one morning he walked into the office and announced:

> I'm not going to represent another fucking insurance company . . . or another non-human being as long as I live. I'm tired of it. Do you hear me? I'm fuckin' sick and tired of it . . . and the word spread fast. I have never been asked since that day by any insurance company to defend one of their cases. <u>They have seen the enemy and the enemy is me</u>. 30

This is Gerry Spence, attorney at law. The same personality distinctions which severely limited the development of his private relationships also served to enhance the rhetorical power of his courtroom technique. A favorable verdict became central for both his personal and financial survival. This was the man who left the quiet country of Wyoming for the battleground of Okla-

homa City's federal court to produce the Silkwood drama.

III. The Trial in Context

Advocates

When "the enemy" arrived in Oklahoma City, the reporters eyed him the way the good guys eye the hired gun in the B Westerns. The word was out: The Silkwood people were bringing in a gunslinger of their own, even if the various funding groups had waltzed him around his usual fifty percent fee until, intrigued by the case and convinced at the time by their arguments, he relented: "I'm getting my first flat fee in years. I agreed to $50,000. They gave me $25,000 to start, and frankly, I don't expect to see the other half. But you notice that when the 'cause' boys really want to win one, they come to an old whore like me."[1]

So, Nebuchadnezzar sent Shadrach into the fiery furnace and Bill Silkwood's prayer for damages sent Gerry Spence to Oklahoma City amidst the heat of a pitched legal battle. The case was tried in Kerr-McGee's back yard. At the right time, the federal courthouse even sits in the shadow of the Kerr-McGee Tower; and Bill Paul, twenty-three years a member of the oldest law firm in Oklahoma--Crowe, Dunlevy--was corporate council: Spence's opposite, he grew up in an old-line Oklahoma family--his great-great-grandfather settled Paul's Valley, a scant sixty miles outside of

Oklahoma City--he went to the most selective schools, joined the correct clubs, the finest firms and was past president of the Oklahoma Bar Association; at the time, he was in his mid-forty's, slender, dressed in dignified conservative grey, combed-back short dark hair, glasses, and he walks like Richard Nixon, feet turned out, high-gloss shiny black FBI shoes. Antiseptic, and reputed to be one tough attorney. Paul and his co-counsel filed into the courtroom daily wearing "nearly identical corporate attire."[2] They even sounded alike. You needed a scorecard just to keep up. Spence didn't even try, corporate counsel immediately became the "Men in Grey." They provided a marked contrast to the "Silkwood Team."

Daniel Sheehan had leapt into the breech early and orchestrated the four years of proceedings leading up to the trial. As "a boyish, fast-talking Irishman with merry, wild eyes and unkempt hair . . . the quintessence of a cause lawyer,"[3] he was slowly driving the defense attorneys crazy with pretrial motions. Arthur Angel, thirty-one, was a " . . . pint-sized, frizzy haired attorney . . . "[4] who brought to the Silkwood case exceptional legal skills honed at Harvard Law School and the Federal Trade Commission. Prematurely graying Jim Ikard--the gray added a sense of believability, of seriousness, but the long hair and beard "made him come off like a hippie who had been forced into respectability"--

he was a tall, affable lawyer Sheehan cast in the role of the "smart jock," stemming from Ikard's days as a highschool basketball star--the man best versed in mathematics and the physics of plutonium.[5] Father Bill Davis, Jesuit leader in the Catholic reform movement--gumshoe for the Silkwood team for the preceeding two years--preferred skills honed in the confessional to urge witnesses to "come forth and testify," and, along with his counterpart, Capuchin monk Wally Kasuboski, reduced the mountain of accumulated paperwork to manageable proportions. They were certainly quite a contrast to the "Men in Grey."

Special Interest Groups

Special interest groups flocked to the Silkwood proceedings. They were everywhere, but sort of like puppies yapping at the evening shadows, nothing was really getting done. There was also a question of credibility: The last thing Spence wanted was to get linked up with someone's dog-and-pony show--to encourage Kerr-McGee to play the "out-of-town radicals" against the local "Establishment". "And there were enough cause groups involved in this case that one of them would surely offend one of the jurors."[6] So, the special interest groups quickly became Spence casualties. At the end of the first day of the first deposition after his arrival, he laid it out for them, it was simple:

> I represented my clients, not causes . . . I was in the business of making money for my clients . . . I thought any case could be settled and wanted authority to settle this one--even if it robbed the anti-nuke people, the conspiracy theorists, and the feminists of their chance at a public show.
>
> Bill Silkwood said fine. Danny Sheehan said fine, to my surprise. Jim Ikard said fine. 7

That was it: No more meddling, no more manuvering to suit political aspirations, and he made it stick.

Jurists

Before Spence accepted the case, Judge Luther Eubanks had already stepped down, in favor of Judge Luther Bohanon. Judge Eubanks publicly accused Sheehan of "using" the Silkwoods, and creating a "Roman Holiday" atmosphere; Ikard was a "magpie," Sheehan "ran off at both ends," and the case was not worth a "hill of beans."[8] Danny Sheehan was considering filing a motion to have him removed when the judge saved him the trouble.

After Judge Bohanon denied twenty-one of twenty-two motions at his first hearing of the case, it seemed prudent to remove him, too. It did not prove difficult, especially in light of his vigorous efforts in virtually every major political campaign Robert Kerr was ever involved in and his nomination to the federal bench in 1962 by the Kerr-McGee co-founder, then a U.S. Senate power lord. Judge Bohanon very properly removed himself from the case and the Tenth Circuit Court of Appeals

named a renowned jurist subsequently voted American Bar Association trial judge of the year, U.S. District Judge Frank Theis of Wichita, Kansas.

A trial lawyer himself before an appointment to the federal bench in 1966, Theis describes himself as "a little loser than his fellow judges,"[9] garnering a reputation for a quick wit--preferring humor to hammer in keeping opposing attorneys in tow. The reputation is well earned: On one occasion, a contentious "What do you think, judge?" was answered with a reflective silence, then, "If this were next week, I'd tell you all to go home and paint Easter Eggs."[10] And, again during the second day of a cross-examination Spence describes as a "pit fight" with Allen Valentine, Kerr-McGee's health physicist who had originally designed the health and safety program, when the jury was bleary-eyed and slipping away,

> "Gerry! Jesus, Gerry, come here!" Ikard whispered as I got up to resume my examination after a recess. I hated the interruption.
> "What d'ya want?" I hissed.
> "Your pants, they're split. Sit down."[11]

Spence says his hand went instinctively behind him, no underwear . . . His honor granted the request for a recess, but resumed after lunch with:

> I think you know that one of the principle duties of the judge, ladies and gentlemen, is to see that material error does not enter a case and so far we have been very fortunate to have avoided that legal and judicial occur-

> rence. However, I am now compelled to tell you that material error has crept into the case from an outside and extraneous source in the form of garment failure to one of the participants in the trial. Steps had to be immediately taken to remedy the material defect, and I am now happy to tell you that the cause which gave vent to the early luncheon recess is now a closed incident. 12

The Jury

Judge Theis would typically be responsible for selecting a jury of six, and alternates, to hear the case. As the trial judge in a Federal civil action, he would usually be the only person questioning potential jurors and determining their ability to serve, even though the general areas covered and, occasionally, some specific questions could be prepared from lists submitted by the opposing attorneys. Spence argues the whole process is backwards. It does seem a lot like having a father pick your wife--he may know all the right questions to ask, but he doesn't have to live with her. His Honor was a little more forward looking: He voir dired the prospective jurors to his satisfaction, then allowed both sides to make a limited inquiry. Bill Paul wanted to ask how each possible juror felt about Karen Silkwood's abandoning her husband and children, her prolific sex life, and suicide attempts--he knew his Bible Belt juries well--but, Judge Theis ruled that "Motherhood and the 'Joy of Sex'" were not going to be a part of the trial. Spence preferred, "What ought to be

done with management officials who order workers to undertake tasks that are likely to injure them, in order not to be fired? What responsibility does a company have that recklessly trucks radioactive waste around the country? or, Did Kerr-McGee have Karen Silkwood killed because she knew too much?"[13]

They compromised by dispensing with both lines of questioning and, instead, covered five basic areas: Could each potential juror devote four-to-six weeks to hearing the case without suffering an undue hardship? Did they hold strong opinions about nuclear energy? Was there a connection between the prospective jurors and Kerr-McGee, its subsidiaries, or sub-contractors? What was the degree of their exposure to press coverage of the proceedings? and, Did they have any strong sentiments concerning union activity.[14]

The day-long process ended with an impaneled jury of four men and two women.[15] There was Richard Ford, a telephone repairman; Myrtle Blan, a retired school teacher; a young structural engineer, Robert Guyer; Bert Long, a retired diesel mechanic; a homemaker, Martha Hodges, and Richard Royce was a city utility lines maintenance supervisor. One or two alternates are usually selected, but the Judge attempted to vaccinate the proceedings against a flu epidemic produced mistrial by naming four: Doris DeWitt Estus, a middle-aged woman

who worked as a clerk-typist for the state highway department; homemaker, Cathey Freeman; a self-employed electronic engineer retired from the Air Force, Maxwell Hall; and homemaker, Helen Roberson. During the lengthy trial, Bert Long became unable to continue and was replaced by first alternate Doris DeWitt Estus, producing a jury of three men and three women to render the final verdict.

Gerry Spence hoped they fairly well represented a cross-section of middle-America. His desire grew from experience. He understood that bringing in a favorable verdict requires that the jury act as a single entity, they must be free of internal conflict: There was no sexual conflict--no Casanovas or raving beauties to contend with. "They were people who could sit together and keep their minds on business."[16] Nor were there any apparent conflicts with Spence: " . . . you could sit down and have an afternoon's conversation [with the women] . . . or spend [it] fishing with the men--no macho problem of control."[17]

Of course, he was looking for jurors with a social conscience, but realized that by the time it became apparent during voir dire, the defense would probably have them removed. So, the strategy became more subtle: "For example, people who talk a great deal about the organizations that they belong to . . . surprisingly

indicates to me a person who has a very limited social conscience."[18] They tend to accept social norms and permit society to dictate values and behaviors. Spence was satisified with the panel, they were independent thinkers, "people who would rather go fishing than go to church on Sunday."[19] Jurors with a sense of themselves.

Issues at Bar

Wading through the nearly 11,000 pages of the trial transcript searching for form and structure in the arguments and supporting evidence, initially seemed like trying to read the Talmud at the wrong end of a paper shredder. What framework had the judge and jury constructed?

The Silkwood attorneys claimed the action was to recover damages for injuries Karen Silkwood suffered as the result of being contaminated by plutonium on three consecutive days--November fifth, sixth and seventh, 1974. Plutonium was found in her apartment on the seventh, and both sides agreed it came from the Cimmaron plant.

Gerry Spence maintained the operation of the plant is what the law defines as an "ultra-hazardous" or abnormally dangerous activity. Therefore, under a legal doctrine termed "strict liability," Kerr-McGee Nuclear Corporation could be held responsible for Silkwood's

injuries and her anguish and suffering.

The theory of strict liability is designed to protect people who may be affected when someone else creates an abnormal risk of harm to them. In this instance, processing plutonium for profit constitutes the risk, with death from radiation induced cancer or leukemia the harm from contamination. Because the venture creates such an extreme risk, Kerr-McGee Nuclear Corporation has the responsibility of compensating anyone injured as a result of their operation. In other words, the corporation is required to pay its way by compensating for the harm it causes because of the especially dangerous nature of its business. The responsibility has absolutely nothing to do with any intent to do harm or any negligence in carrying out the activity. Kerr-McGee Nuclear Corporation would still be responsible even if it exercised the utmost care. The court agreed that the precedent was applicable and eventually instructed the jury that as a matter of law "the operation of the Cimmaron facility constitutes an abnormally dangerous act."[20] Therefore, if damage to Karen Silkwood or her property resulted from plutonium taken from the plant, then the corporation would be responsible for the damage, unless she removed it herself.

Spence represented Kerr-McGee Nuclear Corporation as negligent concerning Karen Silkwood in six respects:

First, informing itself of plutonium's true danger; second, educating and training employees regarding the same danger; third, protecting against the hazard created by plutonium escaping the facility; fourth, employing too few qualified health and safety personnel; fifth, a similar lack of security personnel, procedures, and equipment; sixth, precautions to avoid and minimize harm from contamination incidents, and properly keeping track of all its plutonium so any escape could be immediately detected.

The action sought $1,505,000 in actual damages and argued that Kerr-McGee's conduct was "so grossly negligent, malicious, and wantonly reckless toward Ms. Silkwood, and others, as to entitle [the plaintiff] to recover"--well, it began with a few thousand dollars, but by the time Spence was through amending the petition, he was asking for seventy million, with Judge Theis instructing the jury the amount they could award was unlimited.[21]

Counsel for Kerr-McGee denied all manner of allegations except for $5,000 in actual damages both sides agreed represented the amount of property damage to Karen Silkwood's apartment. They also contended Ms. Silkwood intentionally removed the plutonium from the Cimmaron plant, took it to her apartment and through whatever circumstances, managed to contaminate herself.

Thus, the corporation was in no way responsible for any damages.

In terms of who had to prove what: The Silkwood team had the burden of proof to establish every essential element of their case by a preponderance of the evidence--by showing that the allegations were more likely so than not so. In civil proceedings, "burden of proof" essentially means burden of persuasion. So, having the burden of proof on an issue means illustrating it is more likely true than not true. If the evidence is evenly balanced, there is no preponderance of evidence and the side having the burden of proof loses that issue.

To secure a favorable verdict, Spence would have to persuade the jury: 1. Plutonium escaped from Kerr-McGee Nuclear Corporation's Cimmaron facility. 2. As a result, Karen Silkwood suffered actual injuries, either to her person, her property, or both. 3. The nature and extent of her injuries. 4. Kerr-McGee Nuclear Corporation was grossly negligent in conducting operations at the Cimmaron plant. 5. The assets of Kerr-McGee Corporation should be considered in awarding exemplary damages because Kerr-McGee Nuclear Corporation was simply its puppet.

Since both sides agreed the plutonium belonged to Kerr-McGee and was found in Karen Silkwood's apartment,

that left only Silkwood's injuries, and their nature or extent to be established by the evidence before some recovery for damages could be made. Once these issues were established, liability for the injury would exist regardless of the intent or degree of care with which Kerr-McGee operated the facility. Establishing gross negligence was necessary to have the jury impose exemplary damages. Attaching the parent company's assets would dramatically increase the financial worth considered in fixing punitive damages, and as a consequence, the size of the judgment itself. Unless, Kerr-McGee was successful in demonstrating their affirmative defense--that Karen Silkwood contaminated herself.

IV. Analysis and Criticism

It should be apparent that Gerry Spence's effectiveness in the Silkwood trial could not wholly be a matter of rhetorical skill. The influence of childhood, personality characteristics, and the context of the trial; all of these effected his life and helped determine his communication strategies. However, the application of these strategies illustrates a unique persuasive style, which is well worth examination.

A week prior to the conclusion of the Silkwood trial, a "vision" wrenched Spence from a fitful sleep--as he described it for the jury, ". . .it is not a dream, it is a nightmare," which appears in the closing arguments as a purple patch. It is an excellent example of his strategic approach to the trial. This piling up of tricks in Spence's stylistic bag combined story elements from the previous two months into a synopsis of the trial through the recurring motif of a frame story. It demonstrates his use of setting in creating perspective; development of conflict as the universal theme of good versus evil, particularized to plaintiff versus defendant; and psychodramatically produced catharsis. The form is philosophical or artistic rather than scientific in that the emotional element is equal to or surpasses the rhetorical. The emotional element is more than ornamentation or sugar coating for the pill of fact or concept; like the trial, this story is concerned with conceptualizing events

in images that evoke an immediate emotional response from the listener. It is a "Tale of Effect."[1]

> Twenty years from now--the men are not old, some say they're just in their prime, they're looking forward to some good things. The men that worked at that plant are good men with families who love them. They are good men, but they are dying--not all of them--but they are dying like men die in a plague.
>
> Cancer, they say, probably from the plutonium plant. He worked there as a young man. They didn't know much about it in those days. He isn't suffering much, but it is just a tragedy. They all loved him. Nobody in top management seemed to care. Those were the days when the standards were a thousand times higher than they are today. Those were the days when nobody in top management in the plutonium plant could be found, even by the AEC, who knew or cared. They worked the men in respirators. The pipes leaked. The paint dropped from the walls. The stuff was everywhere.
>
> Nobody cared very much. Only seventy-five level two and three AEC violations. They said only seventy-five. The place was run by good money men. They were good money men--good managers. The company, well, it covered things up. Profits were up eighty-three percent in '79. No one was committed to the "as low as possible" standards. Some people in the company didn't even know what it meant when they were asked what the ALAP standard was. It was a joke. He coughed his lungs out--he and two hundred others. They called it the Cimarron Syndrome. A dr. Gofman told them. A Dr. Martel told them. A Dr. Morgan, the Father of Health Physics told them, but they called them quacks. They criticized them. The children are crying. It is a horrible sight. And, pale, sad faces of widows. Such a pity for strong, proud men to be this way. It is such a waste for cheap labor, $3.50 an hour for eighteen year olds.
>
> The training. What training did they get? They kept the information from them, like letting an Army of soldiers walking through a field of land mines without telling them, except that the explosion doesn't happen for twenty years.
>
> I continued to write in the middle of the night. It goes on:
>
> What training? More dangerous than war. It is more dangerous work than combat, and yet they told them nothing. Put them in the respirators. The sweat and the beard. And, the information was kept from them, or they wouldn't have worked.

> And, one had the oxygen cut off and gasped, and the plutonium filled the air, and filled his lungs. And, one had the stuff spilled on him while he was welding. And, once it was a foot deep in production on the wet side, and they never shut it down--never. Production went on as usual. They used up one hundred gallons of paint on one spill. And, the plutonium cracked off everywhere, off the valves, the table tops in the lunch room, and it was in the air. The filters. Five hundred forty three exposures in five years. That's one hundred a year--one every three days. This, by their own records, I wrote. Lord knows what they didn't report. Lord knows what they covered up.
>
> The training: Well, it was as bad as telling children that the Kool Aid, laced with poison was good for them. A hidden danger--they never knew. Some read about plutonium and cancer in the paper for the first time during a trial--the trial called "The Silkwood Case"--but it was too late for them--Karen Silkwood was dead, the company was trying to convince an Oklahoma jury that she contaminated herself. They took two and a half months for trial. The company had an excuse for everything. Blamed it all on the union. Blamed it all on everybody else--on Karen Silkwood, on the workers, on sabotage, on the AEC. It was a sad time in the history of our country. They said the AEC was tough. Seventy five violations later they hadn't even been fined once.
>
> It was worse than the days of slavery. It was a worse time of infamy than the days of slavery because the owners of the slaves cared about their slaves, and many of them loved their slaves. It was a time of infamy, and a time of decit and corporate dishonesty. 2

Setting

From the outset, Spence presented the facts with the context of history as a backdrop, thereby altering their significance: In the vision, he spoke of a time in the future "twenty years from now." "Men dying like men die in a plague," stretches the imagination back to the stench of a rat infested borough of medival Europe. "More dangerous than combat," adds the horrors of war; and, a simile where

plant conditions are "worse than the days of slavery" implies that although some slaveholders were compassionate, Kerr-McGee was not: It conjures an image of a corporate Simon Legree with a black, snakelike whip of profit flailing the unsuspecting workers into the production rooms and certain death. All serve to extend the proceedings beyond the present. The same strategy was apparent during the trial, Spence told the jury:

> Two hundred years ago, there was a group of people meeting in a dingy little room, in a little town that they called Philadelphia . . . one was named George, and one was named John, and one was Thomas--ordinary folks. They knew each other like you know each other . . . They only had each other, and a dedication, as I ask that you have. And, they probably didn't know that what they were doing was going to be historical . . . And I doubt that any of us, you and me, are prepared to realize how important what we are doing is. And, yet we were chosen in this case. 3

On another occasion, Spence relates, "the case ultimately may be about the survival of the American people."[4]

> You know, they talk about the Scopes Trial, and the great lawyers that were in the Scopes Trial, Clarence Darrow and William Jennings Bryan, and all they were doing was poking fun at each other--it's supposed to be the greatest trial of the century. All it was, was a "word game" -- a game about "if we could teach our children about monkeys and evolution." It was an important trial because it had to do with the freedom of our mind. But how many more times important is this case? 5

Strategic use of setting was not restricted to creating historical perspective. In the middle of the trial, Bill Paul and co-counsel were forced to contend with a series of Acts of God, all of which Spence took advantage of. The

Nuclear Regulatory Commission ordered five nuclear plants in the East closed, and at Spence's urging, Judge Theis again warned the jury to refrain from reading anything about the industry. The movie "The China Syndrome" opened in Oklahoma City. The Judge was forced to repeat his previous warning and admonished the jury not to see the film. Another major incident occurred twelve days later: Three Mile Island. The repeated warning to jurors not to read newspapers, listen to the radio or watch television if the topics involved the nuclear industry was becoming increasingly difficult to comply with. Then, killer tornados ripped through Texas and Oklahoma; one, only a mile from Kerr-McGee's Cimarron facility, On cross-examination the same day, Spence extracted a sobering admission: The designer testified that plutonium disbursed by the impact of a twister on the plant would result in the death of thousands, even millions of people. A final opportunity to have Judge Theis address the jury in the context of the nuclear industry's dangers presented itself when a Kerr-McGee radioactive-waste disposal truck left Wyoming (Spence's home state) on its way to Oklahoma (Kerr-McGee's home state) and overturned on the highway, spilling contaminants on the streets of Wichita, Kansas, (Judge Theis's home town).

With Arthur "Angel" and two priests on the Silkwood team, Spence quipped, "How can we lose?" Cause for speculation grew when one of the jurors, Myrtle Blan, was

admitted to the hospital over a weekend to have a possible malignancy biopsied. She returned on Monday with first hand experience on how Karen Silkwood must have felt when convinced she was dying of cancer.

Spence launched a constant stream of motions in chambers asking the judge to ". . .warn the jury not to draw any parallels between the disaster portrayed in the 'China Syndrome' and the implications of this case." With each new directive presented to the jury by Judge Theis, Spence capitalized on the use of setting to underscore the potential dangers of the nuclear industry.

Characterization

Spence's "nightmare" pits "fine men, open-faced, honest men, hard-working men, men who had hopes, whose lives were stolen from them for $3.50 an hour," against "The Company," where "Nobody cared very much," except to insure "Profits were up, one hundred thirty-eight million dollars profit in '79." This method of characterization persisted throughout the trial. Plaintiff and defendant are seen as two dimensional characters, opposites in the good versus evil confrontation. Spence is content to reveal their natures through the patterns of action in the drama. Hence, the plaintiff's position was introduced to the jury as:

> . . . a case brought for the benefit of three children, who are sitting here in the courtroom . . . in the front row you will see the three children sitting with Mr. Silkwood and they are his grandchildren and the persons that he represents as the administrator for them. He's an officer of this court. He's appointed as

> administrator to provide for their needs and to collect the sums that are due to them under the law. And, so, he functions here in that capacity. And the children that he represents are Dawn . . . who is eight . . . Beverly, who is twelve . . . Michael, who is ten . . . these are the parties in interest. 6

The position was then expanded to include Karen Silikwood, it emphasized her honesty, altruism, and generally ordinary qualities.

> Now the case is also about a human being, a young woman, who you will be relieved to discover wasn't perfect, and who, you may be shocked to discover, didn't view things the way many human beings do, who had a different lifestyle than many. But the bottom line about Karen Silkwood was that she was a very ordinary woman. And, by "ordinary" I don't mean "common," I mean she was a plain, ordinary human being like you and me. 7

> She was a happy child, a good child, she was reared correctly in the church--she loved church--and she was a scholarship student, a chemistry major. She was bright, she could understand. But more than anything else, she cared. 8

This was the Karen Silkwood who "risked her life and lost it," and therefore, ". . . she was a heroine. I think her name will be one of the names that go down in history. . . ."[9]

On the other hand, Kerr-McGee remains some blackly evil force throughout. Defense counsel are merely the depersonalized agents of evil, they are the "men in Gray." Kerr-McGee Nuclear Corporation is the instrumentality of Kerr-McGee Corporation. Its management officials "either lied, or bought the company lie and didn't know" the dangers of plutonium.[10] They "cheated employees out of their lives."[11] Kerr-McGee Corporation pulled the strings

of its puppet:

> Although it has no mind it makes decisions with its corporate mentality, which is the mentality of the shareholder in the marketplace. . . It is a slow, uncreative, unfeeling, not too bright non-brain that makes decisions affecting millions of people. Its first thought is not for the innocent children destroyed. Its blood is profit. Its soul is money. It is insane. 12

All of these descriptions incorporate static characters, nearly caricatures, since their basic make-up remains unaltered throughout the trial. Events are seen as happening to them, rather than happening within them. Such characterization was largely dictated by hamartia. The heroine's tragic flaw was damagingly apparent at every turn in Karen Silkwood's personal life. At issue, here, is not the morality or immorality, sanity or insanity of a lifestyle, only the emphasis that counsel on both sides determined the introduction of Silkwood's personal life in the context of a jury trial at the buckle of America's Bible Belt could prove the turning point of the case. Judge Theis had ruled it was immaterial to the circumstances surrounding the contamination incidents, hence inadmissable--unless Spence opened the door. The problem became illustrating $1,500,000 in damages for "pain and suffering" without reference to Silkwood's life before she was contaminated as a basis for comparison. With no prior reference point, Spence had to demonstrate changes in Silkwood produced by the actions through which she passed. This he managed to do through a plot device, the frame story.

Plot

The raw material out of which plot is constructed is conflict; it is the struggle growing out of the interplay of opposing forces that Spence particularized from a universal theme of good versus evil. The protagonist is Karen Silkwood or her posture relative to the worker's concerns, Kerr-McGee represents the antagonist, with its management personnel cast in the role of counter players. Since plot is the vehicle to convert characterization into action, it allowed Spence to simplify the elements of the trial by imposing order on them. He focussed attention on key issues in the trial through a series of frame stories.

The "vision" is an example of a story within a story used to summarize the plaintiff's position, one which could be described in terms of its organization. It begins with Kerr-McGee's operation identified as the cause for suffering and death, the death of "good men with families that love them." The development of four supporting issues followed: 1. The extent to which Kerr-McGee violated prescribed operating rules--seventy-five violations are mentioned; 2. The motive--Kerr-McGee's emphasis of profit over safety, the managers knew little or nothing about the nuclear industry, but they were "good money men," profits were up 83 per cent to 138 million dollars;" 3. Warnings to company officials from medical experts concerning the dangers of plutonium were withheld from employees; and, 4.

Employees were paid $3.50 an hour to contribute their lives to the company's pursuit of profit. Then, a series of examples, bracketed on either end with a simile, was presented which illustrated plant operating procedures resulted in serious contamination incidents, but the company kept employees ignorant of the probable consequences. The four supporting issues are restated and the nightmare concludes with these same operating practices associated with the death of Karen Silkwood, as she was "doomed to cancer."

Such an outline, or further operations based on rhetorical form, are only apparently meaningful. In a sense, they are meaningless simply because they are factual; form is only a skeleton on which the living flesh can hardly be imagined; it is like trying to describe a minstrel's song from his footprints left in the snow of a forest trail.

Noteworthy, however, is the vision's presentation late in Spence's closing arguments; it is the final summary before the jury's deliberations and it is easily imagined as the catastrophe in an overall drama, the point where the true magnitude of the tragedy was revealed. Also remarkable, is the de-emphasis of Karen Silkwood's role in the whole affair. She appeared almost as an afterthought in the closing lines. As Spence claim emerged as the trial's focus, which suggests that here-in lay the strength of the plaintiff's case.

The most distinctive plot characteristic is the use of frame stories, per sé; the plot is a collection of short stories combined to produce a dramatic response. Spence portrays the nature and extent of Silkwood's injuries by introducing the jury to the harvester ant.

> I want to illustrate what I'm talking about with a story . . . If you fly over Wyoming and look down, you'll see big round spots all over the landscape like big polka dots . . . and those are the homes of the harvester ants. They are a very wise creature . . . They tried to get rid of them because they claim the . . . ant hills take up about a third of the State--and if they could just get rid of the harvester ant, there would be more land for grazing the sheep, and there would be more sheep for the coyotes to eat, and so forth . . . They developed an extraordinary poison . . . and the ants would go out and eat the bait, but in three or four days, they would stop eating. They found out what was causing them to die--and they wouldn't go near the bait. And, so [they made] a poison that would get on their feet and would be absorbed through their legs, and they would put the poison in a round circle around the ant hill, and the ant would walk across the poison and then die. Guess what the ants did. Hill after hill, without exception, they built bridges across the poison . . . The next thing they did . . . was to make the male impotent . . . when he ate the poison he was no longer able to reproduce. Pretty soon, the harvester ant found that out, and also quit eating the poison--just in the nick of time. But they finally found a poison that would kill the harvester ant. It was a poison that . . . did not kill him for four or five weeks after he ate it--and then one day, after they all had eaten it, they all died. And that is how we kill the harvester ant in Wyoming today. 13

A now famous apothegm was introduced as a corollary for the negligence claim: "If the Lion got away, Kerr-McGee has to pay." It too, was presented as a frame story:

> You've wondered what the legal principles are that you have to follow . . . they're simple . . . They've got to be simple or most lawyers that I know couldn't learn them. You'll hear the court

> talk about "strict liability," and it simply means: "If the Lion got away, Kerr-McGee has to pay." It's that simple--that's the law. It came out of the Old English Common Law . . . Somebody brought a lion in a cage [onto their property]--the lion, everybody knows, is a wild animal and dangerous--and without any negligence on the part of the man who had the lion in the cage, the lion got loose and clawed and hurt and killed some peoplew, and the lion owner said: "It wasn't our fault. We didn't turn him loose." And the old common law says when you bring something dangerous, a dangerous instrumentality onto your property, and permit it to escape to the injury of others, it doesn't make any difference whether you are careful or not, you're liable, and that . . . will be the law in the case--except the lion is the plutonium particles, which are more dangerous--one small particle is more dangerous than all the lions in the world. And, those lions, those dangerous particles, escaped from Kerr-McGee, and that is sufficient for our recovery. We don't have to explain how they got from the plant to her apartment. 14

Each frame story corresponded to a critical issue in the case: Since it was stipulated that the plutonium belonged to Kerr-McGee and was found in Karen Silkwood's apartment, the "harvester ant" underscored the nature and extent of Silkwood's injuries; the "lion getting away" reduced a tremendous amount of information into a concise form which depicted the basis of the liability claim; and, Spence's "vision" graphically portrays the degree of negligence and its effects as a basis for exemplary damages.

This motif necessarily employs the two-dimensional style of characterization Spence used in polarizing the positions of plaintiff and defendant. As a plot device, combining a series of stories into an overall drama also solved the problem of demonstrating Karen Silkwood's pain

and suffering. Psychiatric testimony prepared after the contamination incidents was introduced by Kerr-McGee's attorneys to the effect Silkwood was emotionally unstable. Spence explained to the jury that her emotional disorganization was the natural result of knowing that she was contaminated.

> Now, they rest their case on her emotional state. They say -- "This woman was in an emotional state, and therefore she doctored her own urine samples" -- that is what they say. How did she get in such an emotional state? How was it that she was nervous and moody? She couldn't find the contamination. How would you like to come home all clean, go to your own bed, and come back [to work] the next day and find you're contaminated again? And be cleaned up again, and come back to go to your own bed, then go to work the second day and find you're contaminated again? How would you like that? Would it upset you? Would it scare you? 15

So, whether or not Silkwood experienced substantial mental anguish, by portraying her first in isolated situations where she is "heroic," then in situations where she is emotionally disorganized, Spence created the appearence of Silkwood's changing--of her pain and suffering--in response to the contamination incidents by revealing her character a bit at a time.

Effect

Poe masterfully demonstrated producing a single, unifying effect was the primary purpose of a short story. The production of a specific effect also served as the controlling purpose behind Gerry Spence's rhetoric in the Silkwood trial. Produced psychodramatically, this totality

of impression Spence sought to create was an emotional catharsis for the jurors.

Through Spence's use of psychodrama, the jury came to experience the case as the plaintiff: Competing claims were assimilated into the plaintiff's position to create scenes which invited the piling up of fear and pity on the plaintiff and direct anger or outrage toward Kerr-McGee.

Initially, jurors looked to the trial's judge and advocates for support in resolving competing claims: They looked to the advocates' interpretation of disputed events as the informational basis of decision making; and, they looked to both advocates and judge for direction on how to weigh the information in light of applicable legal precedent. "What happened?" and "How do I determine what is the right thing to do?"

By expressing the position the jury found itself in, Spence created a basis for empathy:

> You don't expect the only people that take the stand are experts that all agree. Experts don't all agree. And, you're going to be called upon to decide which expert to believe. That seems quite a terrible responsibility, because you will be listening to people of world renoun positions, but you have to decide. And, some of you may feel that you aren't qualified to decide, but the experience of the American judicial system has been that jurors are best qualified . . . 16

Spence has told the jury, "See, I understand how you feel. We are alike." Having established a common ground, he continues, telling them how to make the right decision and, he implemented a new language strategy:

> . . . That you will listen, and you will rely on your own common judgment, and your own common sense . . . My job is going to be to make these experts talk English to us so that we can all understand them . . . You will hear me admonish these experts to talk to us straight so that we can understand what they say. 17

The position of plaintiff and jury had been equated by virtue of the implied common goal of understanding. By demonstrating a similar purpose and changing his use of pronouns to embrace plaintiff and jury as "we" and "us," Spence again invited empathic identification.

Arguments of safe versus negligent operating practices, and effective versus ineffective AEC regulation, are combined in Spence's vision to provide support for the plaintiff's case. Defense counsel claimed Kerr-McGee carefully decontaminated work areas by scrubbing and repainting exposed surfaces, which Spence interpreted to the jury as:

> They used up one hundred gallons of paint on one spill. And, the plutonium cracked off everywhere, off the valves, the table tops in the lunch room, and it was in the air. 18

The apparent conflict was resolved when Kerr-McGee's diligence" became an illustration of their negligence. A second example appeared as Spence's summarized response to the claim that the AEC enforced tough standards. "They said the AEC was tough. Seventy-five violations later, they hadn't even been fined once."[19]

Merging these two positions was first developed during cross examination:

> Q: How many violations of your regulations

> do you suppose that Kerr-McGee has committed in its operation here?
>
> A: Oh, maybe 75.
>
> Q: What, you mean to say 75 violations?
>
> A: Yes.
>
> Q: And that's sort of like the highway patrolman who stops a citizen on the highway for having violated a traffic ordinance, and gives the citizen a citation, isn't that true?
>
> A: Yes.
>
> Q: And after the first citation was given, I suppose you gave them sort of a warning, didn't you?
>
> A: Yes.
>
> Q: And after the second violation came along, you warned them further, didn't you?
>
> A: Yes.
>
> Q: And after the third, you warned them further, did you not?
>
> A: Yes.
>
> Q: And after the twenty-fifth you were still warning them, weren't you?
>
> A: Yes.
>
> Q: And after the fiftieth, you were still warning them them, weren't you? And after 75 violations, it is fair to say that you never once fined them a penny, isn't that true?
>
> . . . and the answer was, "Yes." 20

Of the numerous examples during the trial, three others appear especially effective. Bill Paul told the jury Karen Silkwood suffered no physical injury:

> . . . in order for an award of damages for mental anguish and emotional suffering you must first find that Ms. Silkwood did sustain some physical injury from her exposure to plutonium on November 5th, 6th, and 7th . . . Let's talk about the extent of the exposure . . . both the in vivo testing on November 11th and 12th, and the tissue analysis done post-mortem . . . [indicated] the extent of the exposure was five nanocuries to the lung, 3.6 nanocuries to the liver, .2 nanocuries to the bone, and overall less than 10 nanocuries to the body as a whole . . . Now, this is less than 25 percent of the permissible body burden under the standard recommended by ICRP, NCRP, and put in force or regulation by the AEC. 21

These same figures, Spence demonstrated, were proof of her eventual death from exposure:

> "Was she injured?" Gofman said--and you don't have to get involved in number crunching games to believe what he said--Gofman said, "I'm telling you unequivocally that a person like Karen Silkwood exposed to that amount of plutonium is married to lung cancer." Dr. Morgan said: "She got more plutonium in one week than the AEC permitted in a year." And, they're using those figures, the Volez figures--even with those figures these are the answers of the experts. 22
>
> I guess people just stand and say, "Exposure, exposure, exposure, exposure, exposure -- cancer, cancer, cancer, cancer, cancer, cancer, cancer, cancer, cancer, cancer," until you don't hear it anymore. I tell you, if it is throbbing in your breast -- if cancer is eating at your guts, or it's eating at your lungs, or it's gnawing away at your gonads, and you're losing your life, and you're manhood, and your womanhood, and your child, or your children, it then has meaning -- they are not just words! 23

The second example is, again, drawn from a cross examination. A radiologist was called to tell the jury that he had examined Karen Silkwood's x-rays after exposure, and that they were perfectly normal, as were her blood and urine samples; that there was no visible medical injury.

> Q: Doctor, if Karen Silkwood was injured by radiation to the extent that shw would probably have cancer in fifteen or twenty years, developing from this exposure, that wouldn't be seen in an x-ray would it?
> A: No.
> Q: You couldn't see any kind of radiation injury excepting the grossest kind, that is, excepting where people are actually burned. You cannot see the kind of injury we are talking about here, in x-rays, can you?
> A: No.
> Q: The injury isn't revealed in ordinary medical tests, is it?
> A: No.
> Q: You know that, don't you?
> A: Yes.
> Q: You knew that when you told the jury that

there wasn't any evidence of it, didn't you?
A: Yes.24

Or finally, what happened to the forty pounds of plutonium Spence alleged was missing from the Kerr-McGee facility and Kerr-McGee claimed was actually accounted for?

> Q: I weigh 230 pounds. Now applying your formula, your plus or minus formula, how much do I weigh?
> A: Well, you weigh between 190 and 270 pounds. 25

When a familiar, concrete example was inserted into the formula, the error margin was outrageous. Other scenes were dedicated entirely to producing sympathy for the plaintiff and directing outrage toward Kerr-McGee:

> When she was frightened of dying they were more interested in providing her with attorneys than with medical help. They brought her attorneys. Doctors, no. Attorneys, yes. "I think I'm going to die." Is she talking to a doctor? No. Is she talking to an attorney? Yes. And they send her, by their choice, to Voelz. "I'm dying." "You're not dying." Morgan Moore sneared. It was the most inhuman treatment of a human being I've really ever seen--short of physical torture. 26

Incorporating these incidents within a dramatic framework, besides adding a sense of architectonics, presented the jury with an ongoing series of emotion rousing scenes that invited the piling up of fear and pity on Karen Silkwood--the tragic heroine--and sympathy for the plaintiff's case generally. But, it is a bitter-sweet draught; it also evoked a sense of outrage with Kerr-McGee. The configuration of abstractions and ideas in these arguments delights the mind, but it is the emotions that give the dramatic response. It is here that a

psychodramatic style distinguishes itself. Emotions respond to the personal, and the particular, the concrete. As Spence is "turning the coin over" to illustrate the assimilation of a defense argument into his case, he uses vivid, often highly emotional, concrete language. This is the cathartic ingredient, not merely conflicting positions placed side-by-side and general descriptions of conditions through which Karen Silkwood passed--of themselves, they do not produce such an effect--it is "turning the coin over" and working conditions portrayed in vivid, concrete language that breaths life into the scenes and characters, that allowed the jury to <u>experience</u> the trial. From the combined scenes, the plaintiff emerged as a figure on whom the jury could load up its sympathetic emotions; Kerr-McGee, as an object of disgust. The verdict, then, is a natural result of the jury's empathic identification with the plaintiff.

V. Summary and Conclusion

This analysis began with the observation that Gerry Spence's trial rhetoric seemed to exert an influence on juries which could not be adequately explained within traditional rhetorical models. His courtroom style could best be understood if explained in terms of the process involved in his pleading, rather than a collection of "variables" abstracted from the Silkwood trial. Through looking at his use of persuasive techniques in the trial, we attempted to discover something of the nature of the underlying process and the rhetorical devices through which it was dramatized. Several observations emerged:

1. The single greatest effect on Spence's communication behavior probably resulted from his exposure to his mother's religious fundamentalism during his youth. It served to set in motion psychological mechanisms responsible for developing a highly refined ability to manipulate people. Tragically, the emerging self-concept could not provide adequate self-support; to the contrary, he was busy nagging and disapproving of himself. Spence projected his own ability to accept or reject to such a degree that any pat on the back was welcomed--at the height of his confusion, he was even working with the insurance companies that so thoroughly disgusted him. Having foregone his ability to accept genuinely, no praise was assimilated, and he remained greedy and dissatisfied with what approval he received. This

Sisyphean struggle exhausted him and created the need for environmental support for his self-image; favorable verdicts and self-image became entwined like worms in a thunderstorm. With Spence's introduction to sensitivity training, he was able to devote as much energy to becoming self-supporting as he had to making the environment support him. He became aware that he was manipulating the environment in a way that, no matter how successful, was ultimately self-defeating, and when he became aware of the manipulative techniques themselves, he was able to make changes.

2. Awareness of the manipulative techniques came through Spence's experience of psychodrama as a means to effect cathartic assimilation of conflicting ideas; he also found in this medium a theoretical and practical formulation for techniques he used as a persuasive model in the courtroom. Using psychodrama, Spence was able to juxtapose competing claims in the Silkwood trial and demonstrate their integration into his case through situations producing sympathy for the plaintiff and outrage for the defendant. The verdict was a result of the empathic identification of juror and plaintiff.

3. The resilience of Spence's style to ordinary tools of the rhetorical critic may well be a result of their technical origin in the drama. In this sense, Spence's career reflects a rapprochement of "rhetoric" and "poetics." His manner of pleading is at least as

concerned with composition presenting ideas emotionally and imaginatively as with arranging material for the presentation of truth--it is more artistic than scientific.

4. The Silkwood trial also underscores the courtroom as a place for solving real problems of common men and women. The experience required for lawyers to transform legal precedent into credible interpretations of disputed actions implies the necessity of understanding people, most importantly themselves. This, in turn, is a clear mandate to incorporate far more theoretical and applied psychology, drama, poetry, music, and the fine arts generally in the training of legal professionals.

Appendix A: The Case on Appeal

Everything looked pretty good on paper, the record verdict and all. But, over two years after Kerr-McGee appealed the decision it still had not been decided. Oh, the movie people are doing well; Silkwood was released in 1983-4, and the books have had a moderate reception in the market place. But, no decision. The children have not received anything, and neither have the attorneys. Gerry says, "that is the way of a hunter."

The Tenth Circuit Court of Appeals did finally come to a decision. Actually, a panel of three out of a nine person court reached a decision. With a two to one vote, the jury's verdict was overturned and Judge Theis was ordered to enter judgment for Kerr-McGee.

The court held there was insufficient evidence to prove the contamination was not job-related. They found she had probably been contaminated at home while taking a urine sample. Since taking the sample was required by her job, well, then it is surely obvious that this must be a job related contamination and Kerr-Mcgee was protected by the Workman's Compensation law.

Curiously, a re-examination of the evidence showed no contamination on the outside of the kit. If she had contaminated herself while taking a urine sample, how could the kit be handled with contaminated hands and its outside remain uncontaminated?

The punitive damages were also set aside. The court held:

> The state's punitive damages are "regulatory," in effect. But regulation of the nuclear industry is by the Atomic Energy Act, which says nothing of punitive damages, and, therefore, since punitive damages are not specifically provided for by the act, there shall be none.

Spence explained the ruling means that "if those at Three Mile Island . . . had intentionally spilled their vile nuclear waste on their neighbors--under the rule of this case there can be no recovery for punitive damages! The rights of citizens to punitive damages from this most dangerous of all substances has been, these judges say, 'pre-empted.'"

Nearly a decade after Karen Silkwood's contamination, Kerr-McGee has not missed a step. Its stock has not suffered, only business as usual. But there is no money for the children, no justice. On January 11, 1984, the Supreme Court found in favor of the state's right to impose exemplary damages on the nuclear industry. So, the case is, again, in the Court of Appeals pending a decision to set the amount of punitive damages.

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20. Silkwood v. Kerr-McGee, p. 10667.
21. Silkwood v. Kerr-McGee, p. 10661.

Chapter IV

1. Popularized by publications like "Blackwoods Magazine," tales of effect reached the height of their popularity in American literature during the first half of the nineteenth century.
2. Silkwood v. Kerr-McGee, pp. 10612 - 10616.
3. Silkwood v. Kerr-McGee, p. 10560.
4. Silkwood v. Kerr-McGee, p. 9501.
5. Silkwood v. Kerr-McGee, p. 10396.
6. Silkwood v. Kerr-McGee, p. 10363.

7. Silkwood v. Kerr-McGee, p. 508.
8. Silkwood v. Kerr-McGee, p. 10409.
9. Silkwood v. Kerr-McGee, p. 10588.
10. Silkwood v. Kerr-McGee, p. 10380.
11. Silkwood v. Kerr-McGee, p. 10363.
12. Spence, Gunning for Justice, p. 84.
13. Silkwood v. Kerr-McGee, p. 10366.
14. Silkwood v. Kerr-McGee, p. 10555.
15. Silkwood v. Kerr-McGee, p. 548.
16. Silkwood v. Kerr-McGee, p. 549.
17. Silkwood v. Kerr-McGee, p. 10614.
18. Silkwood v. Kerr-McGee, p. 10615.
19. Silkwood v. Kerr-McGee, p. 10487.
20. Silkwood v. Kerr-McGee, p. 10615.
21. Silkwood v. Kerr-McGee, p. 10487.
22. Silkwood v. Kerr-McGee, p. 10417.
23. Silkwood v. Kerr-McGee, p. 10395.
24. Silkwood v. Kerr-McGee, p. 10417.
25. "The Karen Silkwood Trial," Trial Diplomacy Journal, 2, No. 3 (1979), p. 11.
26. Silkwood v. Kerr-McGee, p. 10417.