

# THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

## What if your life was on fire?

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The fact that life is so fragile often escapes us.

There is a great line in a Paul Simon song that says, "...someone could walk into this room and say your life is on fire. It's all over the evening news, all about the fire in your life in the evening news."

It's true that everything you look at, everything you possess, everything you hold dear in your life and all those you love, are all held delicately, in a fragile balance. It could all be changed at any second without your knowledge, or even by any action on your part.

Sometimes that delicate balance tips slightly to one side, and then tumbles down into broken pieces, which are unrecognizable. When that happens, a trial attorney is the only one to turn to for help in resurrecting the pieces, or at least in attempting to reconstruct a life that has just been shattered.

Abraham Lincoln was a trial lawyer. He was proud of that, and has been an inspiration to many of us, not only those of us in a courtroom, but also to the proud citizens of this country who are amazed not only at how this simple man taught himself a high level of expertise, or rose to greatness in the courtroom, but also at what he did for this country during his public service.

Louis Nizer was a trial lawyer's trial lawyer. That was what my Dad told me. He said Nizer was an inspiration to him, unlike many other attorneys of that era who did nothing but look for publicity, self-aggrandizement or merely were, as he would say, "a commercial flash."

I had the honor of being Nizer's guest for dinner in Manhattan some years ago, and had the amazing experience of being able to talk with him without interruption. He generously discussed his approaches to cross-examination in difficult situations, and talked generally about the practice. Even in his later years, his enthusiasm never waned, and he exuded pride for his profession. Either way, for those of you who may be wondering — I never got the chance to have dinner with Abraham Lincoln. I would've loved it.

This week another legendary trial lawyer, Gerry Spence, came to the rescue of a fellow attorney. No one can accuse Spence of being camera shy. On the other hand, he has continually taken cases throughout his life deemed unwinnable by virtually everyone but him. His power comes from his willingness to expose his vulnerability at trial. His power also comes from his belief in the truth in what he says, and in his willingness to search his inner soul, to determine what fears he has about the trial, and to expose those fears in a passionate and truthful manner.

When he agreed to represent Imelda Marcos, everyone knew she was "guilty." Everybody, that is, but Spence. Most people wanted to convict her merely because she had such an ostentatious collection of shoes. Spence knew this going into the trial. Despite the fact that

the entire world believed she was guilty prior to his opening statement, she was acquitted. When Spence declined to represent O.J. Simpson, I was proud of him.

In early April I attended Spence's four-day Trial Lawyers College (TLC), devoted to nothing but opening statements. Spence wasn't there, because on the following Monday he was going to be picking a jury to defend yet another indefensible prosecution of attorney Jeffrey Fieger.

Whether you like him or not, Fieger has been a controversial and ardent advocate for many clients, most notoriously for physician Jack Kevorkian. In August, the 6 o'clock news said Fieger's life was on fire, because he was just indicted on 10 counts of conspiracy and contributing too much money to a 2004 Democratic candidate for president, John Edwards.

If you read Edward's book, you'll understand why fellow trial attorneys might admire him, as well. The U.S. attorneys stated Edwards' campaign was completely cooperative when asked to assist in dissecting the various contributions in question. The theory was that Fieger, who ran unsuccessfully as a Democrat for governor in his home state, improperly reimbursed various people for campaign contributions.

The words "trial lawyer" have taken on a new meaning since Lincoln tried his last case, or even since my dad first told me about Nizer. One of the things a trial lawyer must agonize about is whether to put a criminal defendant on the witness stand. Spence discusses this in his many books, and the various video presentations he has devoted his life to producing, not only for public education, but also for the education of fellow trial attorneys. It's even more troublesome when the defendant is a trial lawyer, because that's a pretty easy target nowadays.

Nonetheless, he put Fieger on the stand, who readily admitted making the reimbursements as bonuses, but he also explained that he researched the law and determined nothing prohibited his actions. He also let it be known that all transactions were kept on the books of his law firm, and appropriate taxes were declared and paid.

Fieger has said he was prosecuted because of his political affiliations, which he claimed were less than desirable to the current administration. He also claimed that fellow attorneys were named and asked to lie about what happened, but when the opportunity presented itself, they told the truth. At one point during the trial, Fieger — the only witness presented by the defense — made comments that included suggestions to Spence, in the midst of the direct examination, which prompted the judge to ask who was the lawyer, and who was the witness? Spence merely shrugged his shoulders and allowed the entire courtroom to laugh at his own expense. The trial lasted until this past Monday, when the jury

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found the government was not able to prove Fieger meant to break the law.

In his closing last week, Spence explained to the jury that they could not, and must not, allow an unbridled abuse of power to take down his client. He told the jury "this man is worth saving." After the acquittal, Spence likened the trial to a death penalty case, since both he and his client explained that the conviction (aside from the years in prison or in the huge fines that could have been imposed) would have ended Fieger's practice and the employment of 60 people working for him, and destroyed the remainder of his life.

Spence also made allusions to the remainder of his own life. He told the jury he would turn 80 in January and this is the last case he would ever try. Even at that age, he was again defending the indefensible. He overcame the impossible and won his case, thereby putting out the fire in Fieger's life.

Spence's TLC has seven separate segments, each devoted to a critical stage of trial. He also has established an entire TLC ranch, which he has supported to allow attorneys to become better and to

remember they were human beings long before they were attorneys.

I'm told that at the ranch, the attorneys shovel out the barn before classes and are given ample opportunity to reflect quietly on what they wish to do with their remaining years. Time to quietly consider the possibility that they may be able to help change the lives of people who have had a horrific experience, when, as Paul Simon says, someone has walked into the room "and says your life is on fire. It's all over the evening news, all about the fire in your life in the evening news"

I leave you to ponder only one question: If someone walked into your room with that news today, would your first thoughts be, "I only hope to God I have the ability to get a great trial lawyer?"

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