

CRIMINAL COURTS BAR ASSOCIATION NEWSLETTER

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MAY 2016



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MAY MEETING

*The Criminal Courts Bar Association
cordially invites you to the May Dinner Meeting
with Guest Speaker*

CRIMINAL DEFENSE ATTORNEY
and AUTHOR OF NEW BOOK

**M. GERALD
SCHWARTZBACH**



*"Leaning on the Arc: A Personal History
of Criminal Defense"*



TUESDAY, MAY 10, 2016

Cocktails / Reception - 6:30 p.m.

Dinner Meeting begins promptly at 7:00 p.m.

\$40.00 per person

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CCBA WELCOMES CRIMINAL DEFENSE ATTORNEY M. GERALD SCHWARTZBACH AND AUTHOR OF NEW BOOK AS OUR FEATURED DINNER SPEAKER

“Leaning on the Arc: A Personal History of Criminal Defense”

Timed to the anniversary of the acquittal verdict for actor Robert Blake, criminal defense attorney M. Gerald Schwartzbach's new book, *“Leaning on the Arc: A Personal History of Criminal Defense,”* will be published on March 16, 2016, 11 years after this internationally publicized trial was won.

Book Details His Defense of the Famous, the Infamous and the Penniless During His 45 Year Career Actor and writer Peter Coyote has written the following about Mr. Schwartzbach and his book:

“Gerry Schwartzbach’s fascinating book is not only packed with great tales of injustice subverted by intelligence and passion, but it reminds us how the litany of prosecutorial injustices we read about daily, can be overthrown by the old industrial-age values of diligence, deep thought, and a burning commitment to justice. Though many of the cases in this book are about the famous, I met him when he was defending a penniless and unknown close friend of mine. I know a stand-up man when I see one, and you should read this book to gain an introduction.”

Robert Helman, Partner, Mayer Brown LLP and Adjunct Professor University of Chicago Law School has written:

“This is the fascinating memoir of an excellent, highly accomplished, practical and idealistic criminal defense lawyer, as committed to his clients, the proper functioning of the criminal justice system and the rule of law as any lawyer could be. The lesson to be drawn is that thoughtful and the most thorough preparation is the key ingredient for success in the practice of law, regardless of one’s specialty.”

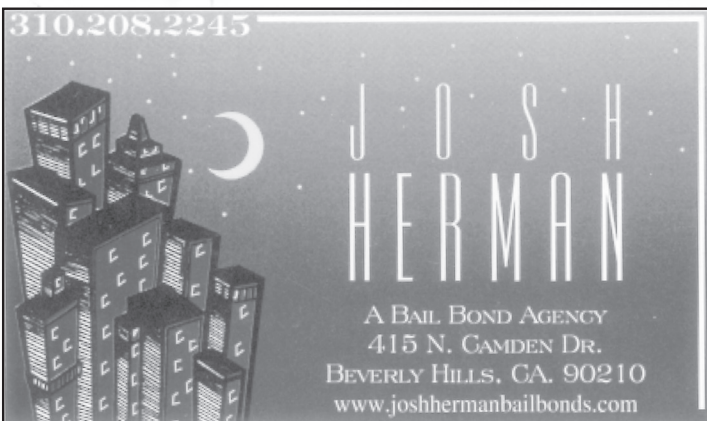
Robert Blake after his acquittal, March 16, 2005 said:

He will never be rich and he will never be famous...but by God he can save lives and that will keep him warm on any cold night in his life.

Part memoir, part case history, Mr. Schwartzbach demonstrates why and how true justice can only happen when we refuse to objectify the defendant—whether it be Hollywood legend Robert Blake, civil rights activist Stephen Bingham, or Dr. Hootan Roozrok, the youngest organ transplant surgeon in the United States -- regardless of his or her alleged crime.

Mr. Schwartzbach often gave up his own comforts, including going into debt in order to provide quality representation to his clients, whether rich or poor. Among his many high profile cases for the less fortunate, including those wrongfully convicted, Mr. Schwartzbach argued before the California Supreme Court that all indigent defendants facing a potential death sentence were entitled to be represented by two attorneys. The court agreed, significantly increasing the quality of representation in all such California cases.

Mr. Schwartzbach, a trial lawyer for over 45 years, is a San Francisco Bay area criminal defense attorney who is listed in “Best Lawyers,” “Super Lawyers,” The Martindale-Hubbell Bar Register of Preeminent Lawyers and the Marquis publications “Who’s Who in the World,” “Who’s Who in America” and “Who’s Who in American Law.” He has received the Skip Glenn Award, presented for outstanding service in defense of a client by California Attorneys for Criminal Justice, a statewide organization of over 2,000 criminal defense attorneys. Mr. Schwartzbach has also been a recipient of the Outstanding Service Award by the Northern California Innocence Project. In addition, he was named Distinguished Advocate by the Advisory Board of the Heafey Center for Trial and Appellate Advocacy at Santa Clara University School of Law.



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☺ DINNER MENU ☺

The main entrees will be:

Short Ribs Provencal

Braised with carrots, tomatoes and celery.

A house favorite.

Chicken Cordon Bleu

Stuffed with ham and Swiss cheese.

Entrees include relish trays, soup du jour, fresh sourdough bread, garden salad with house vinaigrette dressing, fresh vegetable, rice or potato, sherbet and coffee or tea.

63RD ANNUAL AWARDS DINNER A GREAT SUCCESS

The Criminal Courts Bar Association celebrated the 63rd Annual Awards Dinner at the Biltmore Hotel on Saturday, April 23, 2016. The event was a great success and those who attended were rewarded with great presentations and great acceptance speeches by the award winners.

Congratulations to president Lou Sepe and his lovely wife Stephanie Watson for putting on a spectacular presentation. The drinks were flowing, the food was great, and the conversations were heartfelt as over 300 members of the criminal justice community gathered together.

Congratulations once again to our award winners:

**JERRY GIESLER MEMORIAL AWARD
STEFFENY HOLTZ**

**JOSEPH M. ROSEN JUSTICE AWARD
MICHAEL ADELSON**

**ROBERT M. TAKASUGI
JUDICIAL EXCELLENCE AWARD
THE HONORABLE GREGORY DOHI**

**MORT HERBERT SERVICE AWARD
CAREY CARUSO**

**JOHNNIE COCHRAN AWARD
MARILYN BEDNARSKI
RON KAYE
KEVIN LAHUE**

**PRESIDENT'S AWARD
GOVERNOR JERRY BROWN**



CCBA NEWSLETTER CASE DIGEST

By Gary Mandinach

Caetano v. Massachusetts (2016)_U.S., reported on March 22, 2016, in 2016 Los Angeles Daily Journal 2663, the United States Supreme Court held that the Second Amendment precludes a state from rendering it a crime to possess a stun gun. The court found that its holding falls within the dictates of District of Columbia v. Heller (2008) 554 U.S. [171 L.Ed.2d 637, 128 S.Ct. 2783].

People v. Aguilar (2016)_Cal.App.4th_, reported on March 23, 2016, in 2016 Los Angeles Daily Journal 2762, the Second Appellate District, division 8 held that the trial court did not err in permitting testimony, for purposes of impeachment for carrying a concealed firearm in a vehicle; said crime is a crime of moral turpitude within the meaning of *People v. Castro* (1985) 38 Cal.3d 301.

CCBA NEWSLETTER CASE DIGEST

(Continued)

People v. Bush (2016)_Cal.App.4th_, reported on March 23, 2016, in 2016 Los Angeles Daily Journal 2772, the Fourth Appellate District, Division 2 held that the trial court did not err in denying the defendant's petition under Proposition 47, section 1170.18, subdivision (a), since his conviction for theft from an elder (§ 368) is not specifically covered by the act. On the other hand the court found that he would be eligible for resentencing for his conviction for receiving stolen property (§ 496, subd. (a)), if the property received does not exceed \$950; however since the trial court denied resentencing without making a factual determination as to the value, the matter was remanded for the court to make that determination. The court distinguished *People v. Sherow* (2015) 239 Cal.App.4th 875, as the petition in this case was lost, and the record indicated that the value of the property was less than \$950 because the property stolen that is subject to reduction was a single identification card.

People v. Solis (2016)_Cal.App.4th_, reported on March 25, 2016, in 2016 Los Angeles Daily Journal 2819, the Second Appellate District, Division 3 held that the trial court did not err in failing to reduce the defendant's conviction for unlawfully taking or driving a vehicle in violation of Vehicle Code Sec. 10851(a). The Court of Appeal held that the offense, as a matter of law, is not eligible for resentencing under Proposition 47 as it is not an enumerated offense within Proposition 47. Review has already been granted on this issue, and I suspect that this will be a grant and hold behind *People v. Page*, formerly cited as: (2015) 241 Cal.App.4th 714.

People v. Kelly (2016)_Cal.App.4th_, reported on March 25, 2016, in 2016 Los Angeles Daily Journal 2843, the Fifth Appellate District held that where the same act of kidnapping supported both aggravated kidnapping circumstance (§ 667.61, subd. (d) (2)) and a simple kidnapping (§ 207), the simple kidnapping is stayed pursuant to section 654. The kidnapping occurred after the forceable sex acts. Here, the defendant was convicted of 2 counts of forceable oral copulation, and the aggravated kidnapping circumstance, and as a result of the sex acts and the kidnapping, he was subject to the one-strike law and an alternative penalty of 25-life under said act. (See *People v. Jones* (1997) 58 Cal.App.4th 693, 709, 712-713.) In coming to its conclusion the court relied on the rationale of *People v. Ahmed* (2011) 53 Cal.4th 156, 163-164, and distinguish and disagree with the holding in *People v. Byrd* (2011) 194 Cal.App.4th 88. As the Ahmed court stated, section 654 bars multiple punishment for the same "aspect" of a criminal act. (*People v. Ahmed*, supra, 53 Cal.4th at p. 164.)

People v. Arellano (2016)_Cal.App.4th_, reported on March 28, 2016, in 2016 Los Angeles Daily Journal 2805, the Fifth Appellate District held that the trial court erred when, having found an inference of discrimination in the prosecution's striking of three African American women from jury panel, it should have ordered a mistrial after the prosecutor explained that one of the three was stricken because she worked for "a liberal political organization" and could have "political motives." The explanation was contrary to the evidence, which was that she had worked for the Department of Commerce and had no ties to any political party or group. Denial of a mistrial following the striking of a single potential juror in violation of the Batson/Wheeler rule was reversible per se error. (*Batson v. Kentucky* (1986) 476 U.S. 79; *People v. Wheeler* (1978) 22 Cal.3d 258.)



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SAVE THE DATE

*June Dinner Meeting will be held on
Tuesday, June 14, 2016.
Big presentation to be announced.*

