

The Badger

No one digs up and chews details like trial lawyer Gerald Schwartzbach—just ask Robert Blake

by JOHN McCLOUD
photography by LARRY MARCUS

Gerald Schwartzbach clearly didn't go into law to get rich. Though the 65-year-old Marin County attorney now lives comfortably, the first half of his professional life was a challenge, made bearable by the loyalty of an understanding wife and the knowledge he was helping those who needed help most.

"When our son was born, I couldn't afford a new crib," he says. "I remember being so upset about that. I had worked so hard for so many years, and my son was born and I had to buy him a used crib."

He survived primarily through the generosity of his more practically minded brother, who loaned him money to see him through the toughest times (he's since paid his brother back, with interest). He also refinanced his home a couple times, a home he only managed to acquire in the first place through an unexpected fee for a referral that he made with no expectation of recompense.

But lack of wealth has hardly meant lack of success. Schwartzbach's professional résumé includes wins in a large number of high-profile cases that helped advance the cause of civil rights, women's rights and, perhaps most importantly, the rights of the poor. It also includes acquittals in several extremely well-publicized murder cases, including the 1986 trial of attorney Stephen Bingham and the 2005 trial of actor Robert Blake.

His newsworthy record began with a 1971 dispute in which the young lawyer, just two years out of law school, convinced Michigan Gov. William Milliken to deny a request by the governor of Arkansas for the extradition of a black prison escapee, who, at the age of 15, in a one-day trial, had been convicted by an all-white jury of the murder of his physically abusive father. The story made national news, including an article in *Time* magazine.

Other cases with political overtones followed. In probably the most famous case from the first half of his career, he served as chief trial counsel for Bingham, a San Francisco legal services attorney and civil rights activist who was acquitted of conspiracy and multiple murder charges in a trial arising out of Black Panther George Jackson's alleged attempted escape from San Quentin. The incident resulted in the death of Jackson and three prison guards, and two other inmates.

"As trite as it sounds, the reason I wanted to be a lawyer was to work for the disadvantaged, to try to right wrongs," Schwartzbach says. "For the first 25 years of my career, my

clients were overwhelmingly poor and people of color. I took cases regardless of money. What mattered was if I was attracted to the person or the issue involved."

Schwartzbach, born and raised in the Wilkes-Barre, Pa., area, didn't plan to become a lawyer. His real passion was sports, and he was good, he was the captain of the baseball and basketball teams in high school, but at 5 foot 6 inches, his career options were limited. It was at the urging of his brother that he applied for and won admission to George Washington University Law School in Washington, D.C. He earned his B.A. at Washington & Jefferson College.

"I really didn't know I wanted to be a lawyer until I was in law school, and initially not even then," he says. "They were talking about how important it was to get good grades so you can get the good jobs and you can make money, earn prestige. And the impression I got was that being a lawyer was about making rich people richer, and that's wasn't anything that particularly appealed to me."

His doubt was so great that when his old high school offered him a basketball coaching position, he was prepared to drop out and take it. What stopped him was flunking a course in his second semester.

"I thought to myself, 'You're not going to flunk me. I'm going to show you,'" he says. "Obviously my attitude was the result of immaturity, but that immaturity ultimately ended up changing the course of my life."

From that point on, he knuckled down and thrived in his classes. Still, he was far from sure he wanted to go into practice. It wasn't until he got involved with poverty law that he developed a passion for the profession. In a pilot program involving the five D.C.-area law schools, Schwartzbach was appointed to represent poor people in D.C.'s small claims court. The injustices he witnessed, not just in the courts but in the lives of his clients, sparked his determination.

"When I saw how poor black people lived and how they were treated, I was outraged. When I saw how the legal system worked to take advantage of these people, I knew I had to be on the other side," he says.

His ethnicity played a role in shaping his desire to fight for underserved communities.

"I think most Jews, as members of a people that have historically been discriminated against, have a tendency



to identify with people who are victims of mistreatment or injustice. I certainly did,” he says.

Though Schwartzbach has never abandoned his commitment to the underserved, the skills he honed over the years eventually enabled him to take on more lucrative clients as well. In a case that not only brought him notice once again in *Time* magazine but also found him on *Larry King Live*, he successfully defended Robert Blake, the Emmy-winning actor best known as the star of the television series *Baretta* and the film *In Cold Blood*, against charges that he attempted to solicit two separate men to murder his wife, and charges that he murdered her.

More recently, in the first criminal prosecution of its kind in the United States, Schwartzbach won acquittal for transplant surgeon Dr. Hootan Roozrokh, who was charged with attempting to hasten the death of a potential organ donor. Roozrokh’s exoneration has been widely viewed as both restoring confidence in the system of organ transplantation and making a significant contribution to the treatment of suffering in end-of-life care. (The publicity spurred people to take themselves off donation lists. After the case finished, more people went on them.)

In Schwartzbach’s view, what makes him a good lawyer is a combination of hard work, minute attention to detail and the willingness to pursue every possible piece of evidence, no matter how small or difficult to pin down. He describes a murder case appeal in which he and a criminalist scrupulously reexamined the crime scene five years after the incident. Even

though the room had been completely repainted and recarpeted, they found a nick in the floor that looked as if a bullet had hit it. The evidence led to a reversal of the conviction.

In Bingham’s trial, Schwartzbach forced a Department of Justice witness to concede on the stand that a pipe recovered from a prison cell could not have functioned as a zip gun as the prosecution claimed. He achieved the acknowledgement when the witness, at his prompting, was unable to fit a bullet used at the scene into the pipe.

In the Roozrokh case, he and his team subpoenaed records of a key prosecution witness from “every part of the country where he had been educated, trained or worked.” The search uncovered information that seriously undermined the witness’s testimony.

“It was extremely tedious and time-consuming work, but it played a big role in winning the case,” he says. “It’s all that preparation more than anything else that makes the difference. Boring as it is, you’ve got to put the effort in.”

Blake nicknamed him “The Badger” for his dogged efforts to dig out the tiniest shred of evidence and chew at it endlessly till it had given up all its clues. At the same time, Schwartzbach cautions that such diligence makes it easy to lose sight of the big picture.

“I consider a legal case a piece of abstract art,” he says. “Every time you come back to it, you’ll see something you didn’t see before. If you have other people look, they’ll see something you didn’t see. The more you come back to it, the more people you involve, the more it will offer up its secrets.” ◀