

T H E National Association of Criminal Defense Lawyers®

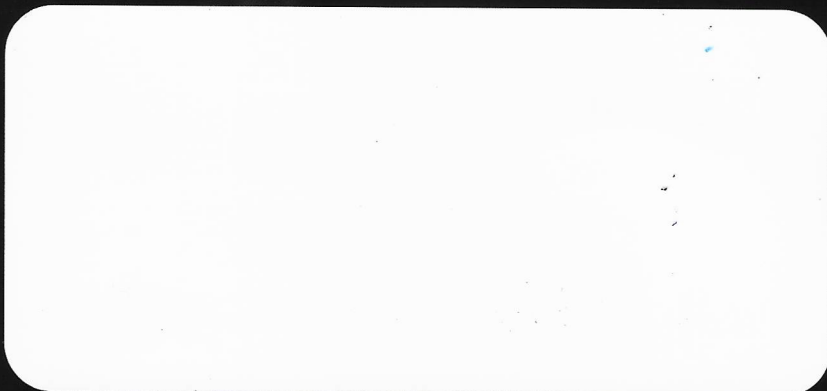
CHAMPION®

December 2022

WWW.NACDL.ORG



Cross-Examination of the Law Enforcement Officer



ALSO IN THIS ISSUE

- ❖ **Is Parent Involvement Enough to Protect Adolescent Suspects During Police Interrogations?**
- ❖ **What Does It Mean to 'Exert Pressure' Under *McDonnell v. United States*?**
- ❖ **Should Cross-Examination Chapters Be Scripted?**

readers who work inside this system. Dybdahl delivers a searing indictment of the criminal legal system, reminding readers that the court consistently values shielding police and prosecutors from “undue burden” over protecting rights. The system is not designed to find truth or achieve justice. It is not fair. It decimates lives, innocent or not. ■

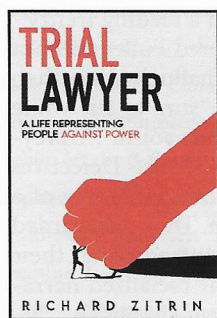
Trial Lawyer

A Life Representing
People Against Power

By Richard Zitrin

Political Animal Press (2022)

Reviewed by Susan Elizabeth Reese



This deeply engaging and important book is more than a memoir. It is a reflection on the trial lawyer’s relationship with his client. It illustrates a clash between the arrogance of advocacy and the essence of personal humility. Finally, it offers thoughtful insights about the racism that not only threads its way through our legal system but also wraps itself around our whole society.

Zitrin spent the first few decades of his legal career as a criminal defender, first handling court appointments, later with retained clients who sought him as their advocate. For a time, he and his partner also were the “divorce kings of Marin County,” a throne they quickly and eagerly abdicated. Over time, he represented people suing big companies before finally, almost accidentally, accepting a job at Hastings as a law school professor.¹ Even in retirement, he remains an author and speaker about legal ethics² as well as a champion of “sunshine in litigation,” exposing to public scrutiny certain documents used in settling some civil cases.

The people who inhabit these pages are the voiceless, the lost, and the dispossessed. Zitrin shares his stories not as a series of battles fought and victories won, but rather to ponder and appreciate the challenges and changes brought by the work done — and frequent friendships made — with those whose lives he touched.

Each chapter is a case study followed by an Epilogue which tracks, as much as possible, “how it all turned

out” and things he learned in the process. Zitrin was a law student when he worked on his first major case, defending Johnny Spain, one of the notorious “San Quentin Six” in the mid-1970s. The prosecution involved an attempted escape from the prison, a murder, the longest criminal trial in American history, and several acquittals. The one murder conviction — that of Spain — was reversed twice, and Johnny was finally freed over three decades ago. As a clerk and then a young lawyer, Zitrin spent endless hours with his client — suffering through prison regulations designed to frustrate the simplest of attorney visits. Over those months and years, he learned from the relationship with Spain “the essential nature of trust ... rarely earned easily, and almost never earned superficially.” He points out that while lawyers can empathize with a client intellectually, we can never fully “know” the experience of a “locked up and locked down, chained, and literally enslaved African American man in a white-run prison system.” (p. 49)

David Ross Mayer, the attorney who brought Zitrin into Spain’s case, became his mentor and, for nearly a decade, his law partner. Zitrin’s respect and love for Mayer flows quietly through the book. He honors Mayer’s brilliance, his dogged preparation, and his mantras:

- ❖ “Leave no stone unturned on behalf of your client.”
- ❖ “Don’t try cases from strength. Rather, figure out the hundred things that can go wrong and try to eliminate all of them.”
- ❖ “In trying cases, there should *be few boundaries* other than the wishes of the client.”

After accepting a strategy his mother suggested, as she watched one of his murder trials, Zitrin added another of his own: “Always Listen to Your Mother.”

He is unsparingly honest, sprinkling humility with wry humor as he pulls out all stops on behalf of his clients. In preparation for a murder case, he once spent hours throwing eggs against a bathroom baseboard to test the time it took for them to coagulate, trying to duplicate an obscure remark in the autopsy report. In

another trial, he mistakenly told the jury in closing argument about an item he’d purchased at a hardware store — a fact not in evidence — and he sheepishly admits his error as an ethical lapse.

Zitrin learned from Leonard Sanford not only that winning wasn’t everything, but also that it could destroy a future. Leonard wanted to accept a plea deal that would have allowed him to keep his job and his treatment program. Because the DA insisted on a “package” resolution to include the co-defendant, the case was set for trial. Because of the pretrial delay, and unable to work during the trial, Leonard lost his job. Zitrin got an acquittal, but his client slipped back into addiction. “We had won the case,” Zitrin laments, “but in the larger sense, we had lost the man.”

In the mid-1980s, when public perception was that children never lied about questions of abuse, Zitrin defended a pediatrician charged with molesting a young patient. After the jury deadlocked in the first trial, Zitrin enlisted help from Cathy “Cat” Bennett. One of the pioneers in jury consulting, Cat taught Zitrin how to open up and “become real” to the jurors, a message, he writes, which “was about so much more than lawyering: it was about hubris, honesty, and humility, and the danger of acting like you know it all. It’s a message that I’ve carried with me every day since.” (p. 277)

Civil cases, likewise, held sober truths: a large jury verdict in a slip and fall case for an elderly client changed nothing. The judge reduced the amount; the client never used the money for the mobility aids she needed; and the offending store never installed warnings about the hazardous entry to the customer restroom. Another client took on Chrysler for its cavalier approach to a defective steering mechanism. Zitrin was disgusted by the corporation’s view of his female plaintiff as “some kind of lesser being” who wouldn’t be believed. He noted darkly that the large verdict he won was just the cost of doing business for the company — “a few million in our case was far less of a financial blow

About the Reviewer

NACDL LIFE MEMBER Based in Newport, Oregon, Susan Elizabeth Reese focuses her practice on criminal defense in state and federal courts.

than fixing 1.5 million vans properly.” (p. 340)

Many of Zitrin’s clients were people of color or minorities, and most were poor and underserved. Throughout the book, he grapples with his own heritage of white privilege and examines his approach to the entrenched racism and classism in our country. As the father of a Black daughter, he is both passionate, and acutely self-critical, noting — as he did in a recent article, that “being anti-racist is not enough.”³ As he looks back on nearly half a century of struggle in the trenches — from the San Quentin Six to the death of George Floyd — he observes with dismay that “the arc of justice has done little bending.” (p. 65)

Notes

1. Zitrin taught ethics at the University of San Francisco in 1977 and taught at both USF and Hastings for 11 years before leaving USF.

2. He has written three books on legal ethics, including *The Moral Compass of the American Lawyer* (1999).

3. ABA JOURNAL/Your Voice: Jan. 15, 2021. ■

WE, THE JURY

(Continued from page 57)

- 11. *Fields*, slip op. at 9.
- 12. *Id.*
- 13. *Id.*
- 14. *Id.*
- 15. *Id.* at 15.
- 16. *Id.* at 11.
- 17. *Id.* at 12.
- 18. *Id.*
- 19. *Id.*
- 20. *Id.*
- 21. *Id.* at 13.
- 22. *Id.*
- 23. *Id.*
- 24. *Id.* at 14 (quoting *Brecht v. Abrahamson*, 507 U.S. 619, 637 (1993)). ■

About the Author

Quintin Chatman is Editor of *The Champion*.

Quintin Chatman

NACDL
Washington, DC
202-465-7633

EMAIL qchatman@nacdl.org
WEBSITE www.nacdl.org

GRAND JURY

(Continued from page 47)

“This aggregation of powers and inherently concomitant denial of freedoms were unknown to the common law at the time our institutions crystalized in the Constitution.” *Id.* at 279) (Rutledge, J., concurring).

8. *In re Murchison*, 349 U.S. 133 (1955).

9. 2022 WL 2335397 at *9.

10. The Michigan Supreme Court granted oral argument to all three defendants on their applications for leave to appeal. Peeler and Baird addressed preliminary examinations. Lyon addressed authority to indict.

11. *Mays v. Governor of Michigan*, 506 Mich. 157, 169; 954 NW2d 139 (2020).

12. One class action settled in November 2021 in excess of \$626 million to be shared among 50,000 residents, <https://www.freep.com/story/news/local/michigan/flint-water-crisis/2021/11/10/federal-judge-approves-settlement-flint-lead-poisoning-case/555613001>.

13. *How Government Failed Flint, and the Heroes Who Fought Back*, a Bridge Magazine Analysis, 2015; Mona Hanna-Attisha, *WHAT THE EYES DON’T SEE* (2018); ANNA CLARK, *THE POISONED CITY — FLINT’S WATER AND*

THE AMERICAN URBAN TRAGEDY (2018).

14. *Peeler*, 2022 WL 2335398 at *6 - 7.

15. *Id.* at *10.

16. *Id.* at *11.

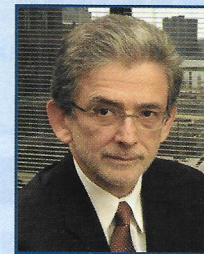
17. *Id.* at *10.

18. *Peeler*, 2022 WL at 2335397 at *11.

19. *Id.* ■

About the Author

Harold Gurewitz represents individuals



NACDL MEMBER

in a range of federal and state criminal proceedings, including former mayors of the city of Detroit and the defendant in *Carpenter v. United States*, 137 S. Ct. 2211 (2016). He is

counsel for defendant Nancy Peeler in *People v. Peeler*.

Harold Gurewitz

Gurewitz & Raben, PLC

Detroit, Michigan

313-628-4733

EMAIL hgurewitz@grplc.com

WEBSITE detroitcriminaldefenders.com

THE CHAMPION® ADVISORY BOARD

Co-Chairs ■ Lawrence Goldman | Ephraim Margolin | Ellen Podgor

James A. H. Bell	Betty Layne DesPortes	Elizabeth Kelley	John T. Philipsborn	Russell Stettler
Iris Bennett	Daniel Dodson	G. Jack King	Mark P. Rankin	Ed Suarez
Barbara Bergman	Joshua L. Dratel	Richard G. Lillie	Marc S. Raspanti	Kristina W. Supler
Anthony Bornstein	Patrick J. Egan	Thomas F. Liotti	Susan Elizabeth Reese	William R. Terpening
Stephen B. Bright	James E. Felman	Edward A. Mallett	Norman L. Reimer	Susan J. Walsh
C. Justin Brown	Ian N. Friedman	George H. Newman	Gabriel Reyes	Lisa M. Wayne
Alexander Bunin	Tova Indritz	Steve Oberman	Jon Sands	C. Rauch Wise
Todd Bussert	Richard S. Jaffe	Cynthia Hujar Orr	Charles M. Sevilla	William P. Wolf
Tom Conom	Evan A. Jenness	Timothy P. O’Toole	David M. Siegel	Ellen Yaroshesky
Kari Converse	Ashish S. Joshi	Diego M. Pestana	David B. Smith	Rachel Zysk
Anthony R. Cueto	Kathryn M. Kase			

THE CHAMPION®

THE CHAMPION® (ISSN 0744-9488) is published monthly, except for January/February and September/October, which are bimonthly, by the National Association of Criminal Defense Lawyers®, Inc. Printed in the United States of America. Basic subscription rate \$65 per year when received as a benefit of NACDL membership. Non-member subscriptions are \$100 annually in the U.S. or \$125 if mailed outside the U.S. Periodicals postage paid at Washington, DC and additional mailing offices. Postmaster: Send address changes to *THE CHAMPION*®, 1660 L Street, NW, 12th Floor, Washington, DC 20036.

THE CHAMPION® is published in the interest of the members of the National Association of Criminal Defense Lawyers® to inform and educate the membership and to improve communication within the criminal defense community. See www.NACDL.org for details.

Statements and opinions expressed in *THE CHAMPION*® are those of the authors and are not necessarily those of the NACDL®. The information contained in *THE CHAMPION*® should not be construed as client-specific legal advice.

Publication of advertising does not imply endorsement. All advertising is subject to the approval of the Publisher. Advertiser and advertising agency assume liability for all content (including text, representation, and claims arising therefrom against the publisher).

Absent prior written agreement, material published in *THE CHAMPION*® remains the property of the NACDL®. No material, or parts thereof, may be reproduced or used out of context without prior approval of and proper credit to the magazine.

© 2022 National Association of Criminal Defense Lawyers®, Inc.