

Media Personalities Boost Ratings By Mocking The Presumption Of Innocence

As certainly as the Earth rotates around the Sun, when a person's prosecution becomes a media event, the weight of public commentary invariably mocks that person's presumption of innocence. The prosecution of actor Robert Blake for his wife's 2001 murder was no different. Blake is best known for his lead role in the 1970s *Baretta* television series. Prior to and during Blake's trial he was the butt of comedian's jokes and media pundit's speculation about how and why he murdered his wife — not whether he did it. In Blake's case the jokes and speculation about his guilt continued after he was ac-

quitted, even though, as Law Professor Anthony D'Amato explains in the following article, it is physically impossible for him to have committed the murder. Thus it was only because the Los Angeles District Attorney mimicked the media by ignoring Blake's presumption of innocence that he was even indicted. Blake spent \$10 million defending himself during the three years from the time of his arrest to his acquittal. Without having the money to spend on the investigators who uncovered the evidence that sealed his acquittal, Blake may very well have wound-up a wrongly convicted person languishing in prison. Which of course wouldn't have bothered comedians and pundits, since it would have provided more fodder for them to mock Blake. Just as they mocked the presumption that Michael Jackson, O.J. Simpson, and most recently Phil Spector, are innocent.

All through the trial of Robert Blake for allegedly shooting and killing his wife, the former "Baretta" TV star was the constant butt of the late-night TV talk shows. On Feb. 2, Groundhog Day, Jay Leno reported that Blake came out of his murder trial, saw his shadow—and it was Scott Peterson's. Ha, ha. On Feb. 16, Leno said that Blake started crying and ran out of the courtroom because he was all alone on Valentine's Day. Leno smirked and said: "Well, whose fault is that? Hel-lo!"

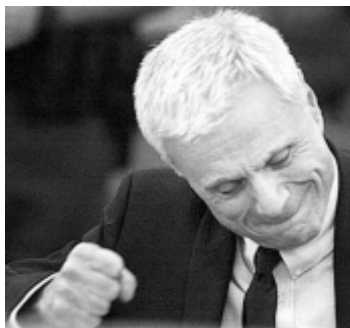
Too Much Late-Night Buffoonery At Robert Blake's Expense

By Anthony D'Amato

Leno and David Letterman, among others, will pick on anyone who is well-known, even themselves, thus demonstrating how evenhanded they are. Robert Blake brought excitement to millions of "Baretta" fans during his TV days. He is well-known, so now he can be smeared. Of course, talk-show hosts are tapping into the public's latent envy of stars. Everyone enjoys seeing them get their comeuppance.

To be sure, if Blake murdered his wife he deserves the smears. But let's look at the salient facts in the case. Blake had taken his wife to dinner at Vitello's, a popular Italian restaurant in Studio City, Calif. When they got to the car after dinner, Blake remembered he had left his gun in the restaurant. He went back to get it. When he returned to his car, he found that his wife had been shot and killed.

The three necessary ingredients to prove a felony are



The moment of Blake's acquittal

motive, means and opportunity. Did Blake have a motive? He did. The prosecutor had no problem proving that Blake intensely disliked his wife. Did he have the opportunity? Yes; he was in the vicinity of the crime when it occurred.

But the means was conspicuously missing. The gun that Blake retrieved from the restaurant was not the murder weapon. If Blake had shot his wife with a pistol at that close range, traces of its gunpowder would have been all over his hands and coat. But meticulous forensic testing turned up no gunpowder traces on Blake that matched the gunpowder traces all over the victim and in the interior of the car.

Could Blake have rigged up a clever mechanism to shield himself from the gunpowder as he fired the murder weapon? It's hard to think of what it might be, but in any event, he would have had to get rid of it and the police couldn't find the gun.

What about the murder weapon? The police covered the entire area with metal detectors and sniffing police dogs. Every investigator would have loved to find the weapon, but no one did.

Any fair-minded observer would have to conclude that it was impossible for Robert Blake to have committed the crime. Not just improbable, but impossible. He never should have been indicted. But prosecutors like to get on television, and the best way to do that is to prosecute a

notorious case. If they lose the case, they can blame the jury or the high-priced defense team. What they never mention is the fact that their decision to prosecute a person like Blake means that the police will give up investigating the crime. The trail will grow cold and the real killer will get away with murder.

Does anyone feel sorry for Blake? He lost his wife. He was wrongly indicted. He probably spent his last dime on his legal defense. Thanks to the friendly TV hosts, his reputation is being cemented as a murderer who beat the justice system by hiring a slick attorney.

No sooner had the jury returned its verdict of not guilty than Jay Leno commented: "His lawyer was very clever. The defense was based on the premise, 'What kind of idiot kills his wife after buying her dinner?'" Then with perfect timing as the uproarious laughter starts to die down, Leno adds in a softer, thoughtful voice: "I think this whole thing has mellowed Blake. Like today, he said he would kill again if he met the right woman."

Not to be outdone, David Letterman joined in on his show, "Blake says he doesn't know who killed his wife, which would make him the only one in the world who doesn't." Again, lots of laughter. As it dies down, Letterman more thoughtfully remarks: "But he's grateful for his acquittal. He thanked his team of legal warriors and the jury of 12 dumbasses." Ho-ho-ho. Even a child would laugh at that one.

Indeed, the age level of the humor is descending rapidly. Here's one of Leno's most recent, strictly for the schoolyard crowd: "Robert Blake is still out there looking for acting jobs. Did you hear the news today? He could be the new host of 'eliminate'"

Leno and Letterman are multimillionaire funnymen. But when they make a living off innocent victims of our justice system like Robert Blake, their humor is a lot less funny than it is sad.

Reprinted with permission of the author. Anthony D'Amato is a professor at Northwestern University School of Law. His extensive writings on domestic and international legal issues are on his website, <http://anthonydamato.law.northwestern.edu>

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