Texas Lawyer

THE NEW RACEHORSES

Richard "Racehorse" Haynes isn't quite ready to pass the torch, but a select group of criminal litigators guarantees that his trademark flamboyance in closing arguments won't be a lost art.

Texas' Best: Trying Cases With Old-Fashioned Flair

STORIES BY CLARA TUMA, ASSOCIATE EDITOR

In the rough-and-tumble world of criminal law, Texas is on a first-name basis with only two lawyers: Percy and Racehorse.

Their considerable talents as gunslingers able to sweet-talk a jury or pull a fast one on an unsuspecting judge helped put Texas criminal lawyers on the map.

"There's still some of that Old West flavor in Texas," Richard "Racehorse" Haynes says. "Texas sort of lends itself more of the old-time concept of the hotly contested criminal trial. You get closer to the Perry Mason hypertactical evaluation, hell-fire and brimstone type of cases than in other states."

But Texas jurors, who once made a receptive audience for the magic of Percy Foreman or the eloquence of "Racehorse" Haynes, these days are more likely to hear lifeless -- though legally flawless -- closing arguments delivered by technicians who checked their passion at the courtroom door.

With that in mind, Texas Lawyer set out to find the heirs apparent to the legacy built by Haynes, who now devotes much of his time to civil law, and Foreman, who died last year.

Our goal was simple: To find contemporary lawyers whose spellbinding arguments could rival those of Haynes and Foreman. Though it's still important to devour a witness on cross-examination, blow a case out of court with a devasting search-and-seizure motion or ploddingly set up an appeal that can't lose, those are separate specialties with others in the forefront.

We chose lawyers with pure, old-fashioned speaking ability. We wanted litigators who are, in effect, masters in the art of flamboyance.

The group, which we nicknamed the New Racehorses, is comprised of litigators whose flashy, take-no-prisoners approach to closing arguments gives them a chance to one day replace the legends in Texas criminal law. Here are Texas Lawyer's purely subjective choices:

DEFENSE ATTORNEYS

- Dick DeGuerin of Houston.
- Mike Ramsey of Houston.
- Tim Evans of Fort Worth.
- Gerry Goldstein of San Antonio.

PROSECUTORS

- Rusty Hardin of Houston.
- Alan Levy of Fort Worth.
- Lee Gabriel of Denton.

Anyone questioning the addictive power of closing arguments need look no further: Most of the group say they would leave criminal law if Texas took punishment duties away from juries -- and thereby robbed them of their most flamboyant speeches, traditionally reserved for jury- deciding punishment.

"You can hang a jury on closing," Ramsey says.

SEE THE NEW RACEHORSES, PAGE 2
A Child of the ’60s Makes Good
San Antonio’s Gerry Goldstein Rocks the Boat

Gerry Goldstein is on a roll, and that means you’d need dynamite to shut him down.

Nothing short of that seems to be working, even though he has used the 40 minutes allotted him for closing arguments. He is ignoring the courtroom clock that clearly shows his time is up. Even more daringly, he is challenging the judge who repeatedly is interrupting and demanding that Goldstein take his seat.

“Thirty seconds,” the judge finally commands. “Close it down.”

“May I have a minute?” Goldstein asks, but continues talking for two, three, four minutes more without pausing for an answer.

Finally, Goldstein makes his final plea for mercy, wipes his brow one last time and sits down, casting an innocent glance at an exasperated judge who has been ordering him to be quiet for more than seven minutes.

The man who describes himself as a balding, Jewish cowboy stifies a grin as prosecutors begin trying to rehash his eloquence.

“He is a renowned attorney, not only in Texas, but in the whole United States,” Karnes County District Attorney Alper H. Kendall Jr. tells jurors. “You’ve seen him.”

In this case, an October attempted murder trial moved from Pearsall to Jourdanton, about 30 miles south of San Antonio — instead of the metropolitan city in which he usually works. Second, it failed to draw the widespread publicity Goldstein often attracts, and third, it was in state instead of federal court, where Goldstein does most of his work.

Still, lawyers from throughout Atascosa County dropped by to watch Goldstein work.

Though Goldstein, a partner at San Antonio’s Goldstein, Goldstein & Hilley, says notice from the public, fellow lawyers and judges can be a curse because judges “ride your ass a little bit,” he isn’t complaining.

“Attempting attention hurts, but what’s the alternative? Anonymity?” he confesses.

When listening to Goldstein argue a case, it is not difficult to picture him in the middle of the anti-war movement at the University of Texas in the late 1960s. He is single-minded when he argues, just as he was in college.

“Law school was like that in those days,” Goldstein said. “I was much more concerned with what happened to Martin Luther King and Bobby Kennedy than what was happening in class.”

After graduation, Goldstein joined his father’s firm, then called Levey & Goldstein, and started practicing corporate law.

That, he soon discovered, wasn’t as exciting as trying to keep draft resisters from being jailed, so he changed his focus.

“It was perfect,” he says. “For one, it was something I agreed with at the time. And two, [I] got to try federal criminal trials. One thing led to another, and all the sudden I started getting the experience.”

Maverick, a former state legislator who trained Goldstein in the ways of federal court, remembers the days when Goldstein discovered that civil law wasn’t to his liking.

“At the time, he was talking about taking his wife and going to the Caribbean and opening a bar,” Maverick says. “I said, ‘I’ve got some of the conscientious objector cases. Why don’t you come and try them with me?’”

“He did, and in time, I got a little jealous,” Maverick says. “He left me in his dust. But I got over that. I’m very proud of him.”

THE ANARCHIST IN A BLUE SUIT

Goldstein now acts as general counsel for the Texas Civil Liberties Union. Unlike many other attorneys of his stature, he maintains a healthy number of pro bono cases and accepts court appointments, even though his privately retained cases are far more lucrative.

“There’s a glint in my eye and an empathy for those that still put up the fight, but our profession is essentially one that takes the sting off the steamroller,” he says. “We’re part of the system. We’re part of the establishment.”

Goldstein says his TCU work has decreased to about 15 to 20 percent of his practice as he becomes more successful and other lawyers — perhaps lured by the promise of being awarded fees for civil rights work — are willing to take such cases.

“But the truth of the matter is if you do get paid [in civil rights cases], you don’t get paid well,” he says. “By and large, the promise of compensating lawyers to perform civil rights work was a hollow promise.”

That he now is perceived as part of the “establishment” clearly bothers Goldstein, but it is a problem without a solution. Successful defense lawyers by definition win big cases, and winning big cases brings attendant publicity and, most of the time, growing paychecks.

“We lawyers all are victims of greedy and avarice to some extent, and I think the public sees that,” he says. “Why they see that in lawyers and not in doctors, I don’t know. I think many lawyers are overpaid, myself included.”

But if the paychecks are some of the unexpected rewards of a burgeoning career, the unexpected disappointments clearly is seeing clients sent to prison.

“(Watching people be convicted) is a lot sadder than what people think

CONTINUED ON NEXT PAGE
Gerald H. Goldstein
B.C.Jan, 29, 1944, in Santa
Maria.Calif.
Occupation: Name partner in San
Antonio’s Goldstein, Goldstein &
Hilley.
Education: B.B.A. from Tulane
University, New Orleans, and
University of Texas at Austin, 1967.
Career Highlights: Has worked at
his father’s firm, now called
Goldstein, Goldstein & Hilley,
since graduating from college.
Personal: Married to Christine
Goldstein.

***Continued from preceding page***

is the hard thing — which is, how can you represent those people?” he says.

“I don’t see my role as deciding who among us is without blame. I see
my role as an advocate, as part of the system, just as important as the
prosecutor and the judge. That sounds like bullshit, but it’s true.

“I guess the other answer is I’m an anarchist,” Goldstein says with a
giggle. “In spite of my lifestyle and having succumbed to greed, I’m still
a child of the ’60s. It’s fun to go up against that system.

And going up against the system typically means trials, where Gold-
stein says he enjoys trying cases before a Texas draw to impress juries.

“I see a curly headed, balding Jewish cowboy, and I’ve got enough
problems with that,” he says.

“Getting into it [trial work] is rough, but once you’re in the boat, it’s fun paddling downstream,” he says.

“It’s your wit against theirs — one on one. I think cross-examination
is as much fun as anything you could do. You’re dealing with theater and
that’s usually more interesting.”

“It’s pretty good drama,” he says.

“You can sense the moment. You are there. So many things we do, we
are removed from it. For us little Spock bums, there’s no imagination.”

Maverick, who describes Goldstein as a surrogate son, says Goldstein
has managed to stay respectable despite his penchant for representing
underdogs because he is part street fighter, part college professor and
part competitor.

He’s smart as hell,” he says. “I just think, by God, he’s tough and yet
he’s scholarly.

“You can be a radical in your political viewpoints and be half-a-bum
lawyer and get in trouble,” Maverick says.

“But if you are an extraordinary lawyer, the rich will forgive you because they might want to use
you sometime.”

Goldstein now teaches a class at the University of Texas and says the
students he sees are far different from when he was in law school.

“I think the Vietnam War caught a lot of us by surprise and made a lot of
us find our consciences, probably for the wrong reasons,” he says.

“Kids [today] aren’t concerned about the same things. They are more
concerned about how many people IBM is going to take on next semester.

“It’s good for me because they’re bright kids. The only sort of
develop a myopia about what we do and if I’m refreshing and raising
question we do what question from a different perspective who haven’t been poison-
ized yet.”

SAN ANTONIO LAWYER GUEST EDITOR

HE’LL RARELY TURN YOU DOWN

San Antonio solo practitioner Mark Stevens, who left Goldstein’s practice in 1983, says his former boss
generally is committed to social causes and has an “incredible agile mind.

“If you take a case to Gerry and ask him to do it, he’ll very rarely
turn you down,” Stevens says. “He’s known as an appellate lawyer, but
I really think he’s the best trial lawyer around. He’s able to be eloquent on
short notice.

Stevens says that Goldstein’s trial ability may be underrated by his col-
leagues, but juries seem to love him.

“In San Antonio, if you hear the name Gerry Goldstein, you think
ACLJ intellectual, pot-bellied liberal kook,” he says. “Then when you
see him in trial, I think juries are impressed by his ability not to talk to
them in a pointy headed way.”

Goldstein sports a lengthy list of wins, both in trial work and appeals.

In 1982, Goldstein convinced a San Antonio jury to acquit a police
sergeant of helping an informant con-
tract to buy 55 pounds of cocaine.

In 1983, Goldstein won acquittal, Goldstein helped to free the
sergeant’s brass badge back onto the officer’s pocket.

“See, it’s not tarnished,” Goldstein told reporters.

Goldstein was part of the highly successful Britich defense team in the
early 1980s, when Speaker of the House Billy Clayton, attorney Rand-
all “Buck” Woods and others were acquitted on bribery charges.

Much of his time now is spent on federal drug cases, where he has
scored several major victories, including a win last December when he
convinced a federal judge to throw out 10,000 wiretapped conversations
used as evidence in a bid-rigging case against Alamo Aircraft Supply Inc.

The government paid an informant to steal documents and parts to make
a case against the company, testi-
mony showed.

And in February, he put his pre-
trial skills to work again to have charges dropped against two men
arrested during the biggest mari-
juana seizure in San Antonio history.

Goldstein and co-counsel Robert
Price argued that the 8,700 pounds of marijuana worth $1.2 million was
seized after an illegal search.

“He’s not as flamboyant as Race-
horse” Haynes and he doesn’t try to
be, but at the same time, in federal
court that flamboyance doesn’t get you as far,” says Ray Jahn, an as-
sistant U.S. attorney in San Antonio
who frequently clashes with Gold-
stein. “I don’t think he has any weak
paws as a litigator.”

CLOSING WITH FLAIR

To prepare to argue a case, Gold-
stein says he tries to spend time me-
tically distilling trial testimony.

“I like to do it late at night when there aren’t any lamps and the dog
doesn’t bark,” he says.

“Ideally, you’re the tour guide,” he says. “You’re taking them up the
hill, where perhaps they haven’t had that vantage point before. It’s like,
‘Look, see that tree? Remember when we were down there?’ and put-
ting it all in perspective.

“There are reasons and motiva-
tions and good people and bad people,” he says. “You’re actually par-
icipating in life’s drama, the trial becomes mini-theater. It gives you an
opportunity to play out all of that. In terms of the excitement, even if you
don’t make all the money, it’s a

wonderful arena to be battling in.”

Outside of court, Goldstein spends several hours a week working out in
a gym near his downtown San An-
tonio office.

“This is a late thing in my life,” he hastens to add, describing the aero-
obic to “your subtle hokey, just up and down music” as a “mental
esnema.”

He also bicycles in the Hill
Country in the summer and ski
in Colorado in the winter. In between
times, he sells a 40-foot boat named
L’Esquive, or The Free Spirit he
owns with Corpus Christi lawyer
Douglas Tinker.

Though Goldstein still is young, he says he is contemplating his future and
deciding whether he will one day
be game for a mid-career life change.

The answer, so far, is no.

“I have always said I don’t want to be a lawyer,” he says. “I’ve enjoyed
what I do a lot more than I thought I would. I’ve looked around at the
plight of the people I’ve always re-
spected and admired and envied, and
by and large, dealing with people,
representing human beings, being
the champion of the least of us, has
been a pretty rewarding way to make
a living. I think we as lawyers know of lose sight of that.”

If Goldstein were to follow the lead of numerous other lawyers, his no-
vious career change would be to poli-
tics.

“I’m sure I’d never pass a security
check,” he jokes. “But I don’t think
I’d want to be a decision maker. Like
LBJ once said: ‘I’d rather be on the
outside of the tent pissing in.’”

---

Starting your own practice? Expanding your present practice? Moving your office?

We specialize in equipping law offices with furniture and office equipment.

---

We buy and sell

USED

Word processing Computers
Copiers
Furniture
File Cabinets
Dictation Equipment
Telephone Systems
Fax Machines

Office Automation
Marketing

(713) 457-0575