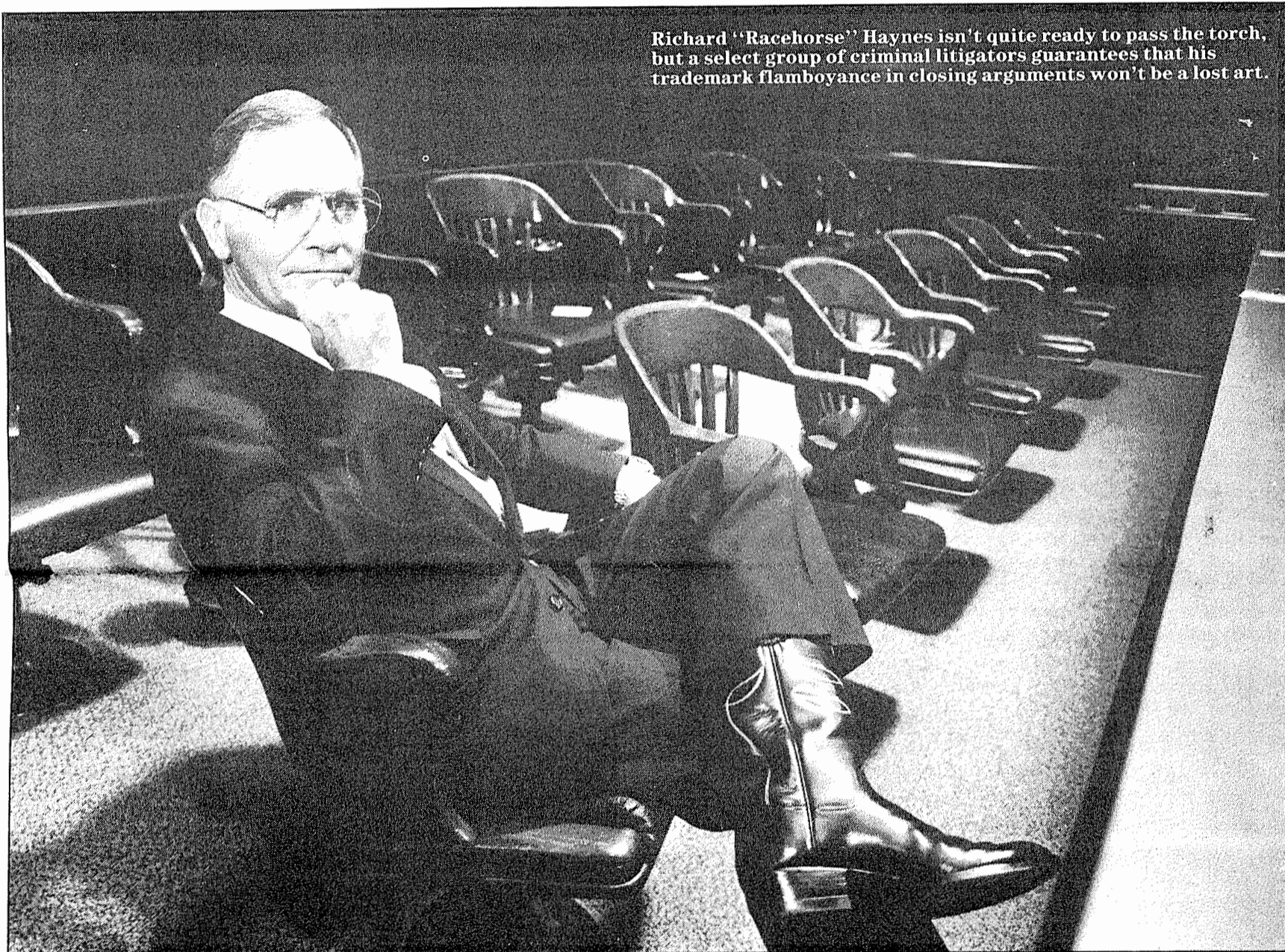


## THE NEW RACEHORSES



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.

NURI VALLBONA

## 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 to more of the old-time concept of the hotly contested criminal trial. You get closer to the Perry Mason hypertechnical 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-

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examination, blow a case out of court with a devastating 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 ar-

guments 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 juries deciding punishment.

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

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## THE NEW RACEHORSES



# A Child of the '60s Makes Good

## San Antonio's Gerry Goldstein Rocks the Boat

**G**erry 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 and 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 stifles a grin as prosecutors begin trying to rebut his eloquence.

"He is a renowned attorney, not only in Texas, but in the whole United States," Karnes County District Attorney Alger H. Kendall Jr. tells jurors. "You've seen the best."

In this case, an October attempted murder trial moved from Pearsall to Jourdanton, Goldstein both wins and loses. Though his client is convicted of attempted murder, jurors like the clean-cut young man Goldstein presents them.

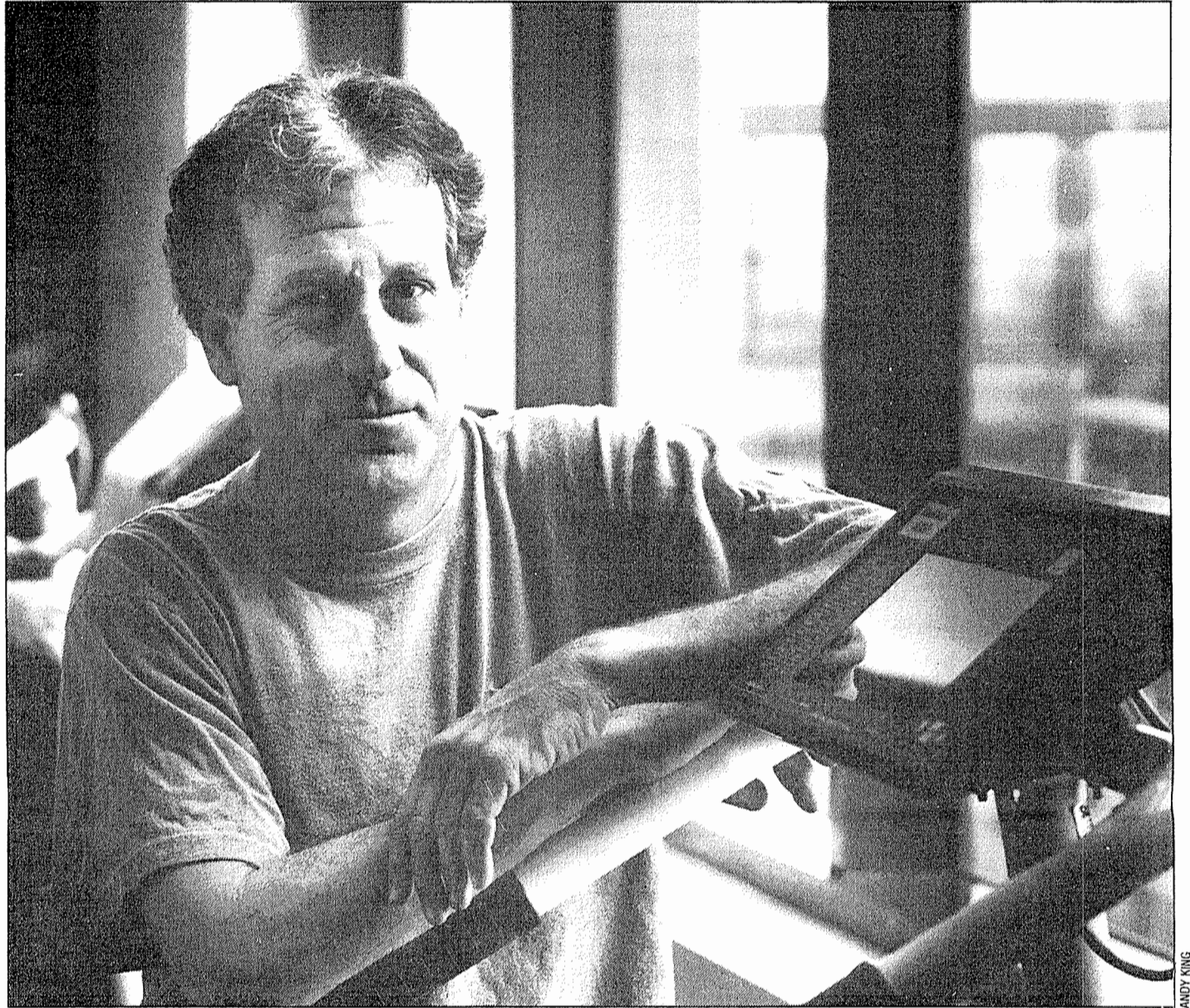
His client, a class favorite convicted of shooting the captain of the football team twice in the head, is given 10 years' probation instead of prison time that could have extended to 20 years.

The probated sentence came after Goldstein launched a shaky defense, arguing that his client shot in self-defense even though the alleged provocation — a beating with a baseball bat — occurred more than 18 months earlier.

"I think he's one of the best criminal trial lawyers in the country, without question," says Maury Maverick Jr., a semi-retired San Antonio lawyer and one of the state's leading liberals. "He's an extremely competent person in whatever he does, whether he is sailing or running a foot race. He just absolutely cannot stand to lose."

### THE BIG CITY LIFE OF GERRY GOLDSTEIN

In the world of Gerald Goldstein, San Antonio's premier criminal de-



ANDY KING

fense attorney, the attempted murder case is an aberration.

First, it was in a small-town — Jourdanton, about 30 miles south of San Antonio — instead of the metropolitan cities 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.

"Attracting attention hurts, but what's the alternative? Anonymity?" he scoffs.

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 es-

entially one that takes the steam off the steamroller," he says. "We're part of the system. We're part of the establishment."

Goldstein says his TCLU 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 greed 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 disappointment clearly is seeing clients sent to prison.

"[Watching people be convicted] is a lot harder than what people think

CONTINUED ON NEXT PAGE



**Gerald H. Goldstein**

**Born:** Jan. 29, 1944, in Santa Maria, Calif.  
**Occupation:** Name partner in San Antonio's Goldstein, Goldstein & Hilley.  
**Education:** B.B.A. from Tulane University, 1965; LL.B. from the University of Texas at Austin, 1968.  
**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 grin. "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 Goldstein says he never tries to put on a Texas drawl to impress juries. "They 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 wits against theirs — one on one. I think cross-examination is as much fun as anything you could do. You're dealing with theater and the truth, maybe. "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 babies, there's instant gratification." 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 a half-ass 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. . . . But it's good for me because they're bright kids. We all sort of develop a myopia about what we do and it's refreshing to have people question what we do from a different perspective who haven't been poisoned yet."

**'HE'LL RARELY TURN YOU DOWN'**

San Antonio solo practitioner Mark Stevens, who left Goldstein's practice in 1983, says his former boss genuinely is committed to social causes and has "an incredibly 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 colleagues, but juries seem to love him. "In San Antonio, if you hear the name Gerry Goldstein, you think ACLU intellectual, pointy-headed 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 conspire to buy 55 pounds of cocaine. After the acquittal, Goldstein clipped the sergeant's brass police badge back onto the officer's pocket. "See, it's not tarnished," Goldstein told reporters. Goldstein was part of the highly successful Brilab defense team in the early 1980s, when Speaker of the House Billy Clayton, attorney Randall "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, testimony showed. And in February, he put his pre-trial skills to work again to have charges dropped against two men arrested during the biggest marijuana seizure in San Antonio history. Goldstein and co-counsel Robert Price argued that the 5,700 pounds of marijuana worth about \$5.7 million was seized after an illegal search. "He's not as flamboyant as 'Racehorse' 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 assistant U.S. attorney in San Antonio who frequently clashes with Goldstein. "I don't think he has any weak points as a litigator."

**CLOSING WITH FLAIR**

To prepare to argue a case, Goldstein says he tries to spend time meticulously distilling trial testimony. "I like to do it late at night where there aren't any bumps 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 putting it all in perspective. "There are reasons and motivations and good people and bad people," he says. "You're actually participating 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 Antonio office. "This is a late thing in my life," he hastens to add, describing the aerobics (done to "your usual hokey, jump up and down music") as a "mental enema." He also bicycles in the Hill Country in the summer and skis in Colorado in the winter. In between times, he sails a 40-foot boat (named L'Esprelibre, 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-life career change. The answer, so far, is no. "I have always said I don't want to die 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 respected 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 kind of lose sight of that." If Goldstein were to follow the lead of numerous other lawyers, the obvious career change would be to politics. "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.'"



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