

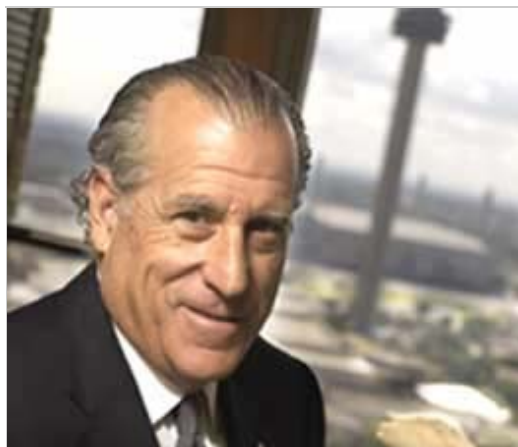
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A Texan's Take on the First Amendment

By Jared Jacang Maher

The term "Texas-style justice" has taken a beating in recent years. Once coupled with hip-shooting politicians and rough-riding sheriffs (Walker: Texas Ranger, anyone?), the pop phrase is now associated with the state's string-'em-up criminal justice system and a former governor's penchant for preemptive global chess. In fact, it has evolved to mean any reactionary, unjust implementation of law.



Gerald H. Goldstein in San Antonio

Enter, Gerald H. Goldstein, a Texas civil rights attorney who spoke at the First Amendment Luncheon at the Association of Alternative Newsweeklies convention in San Antonio June 26. With his boots buried deep in the city's tradition of scrappy progressive figures, this former president of the National Association of Criminal Defense Lawyers demonstrated how justice Texas-style -- fast, loose, hard, with a little bit of swagger -- can be played from both ends of the hanging rope.

Goldstein has defended an array of clients that includes journalist Hunter S. Thompson, rap group 2 Live Crew and former Panamanian President Manuel Noriega. Along the way, he has accumulated many entertaining anecdotes about the area of law in which free speech and culture often collide head-on.

Goldstein's mentor guided him on obscenity case

In 1974, Richard Dexter was arrested for showing the pornographic film "Deep Throat" at a San Antonio theater. The late Maury Maverick Jr., got his protégé, Goldstein, involved in Dexter's defense. Hailing from the home of the Alamo (or the "birthplace of liberty," as one gift shop key chain puts it), Maverick came from a long line of San Antonio iconoclasts, including his father, a former mayor and hardcore New Deal Democrat. His great-grandfather, Samuel Augustus Maverick, was the Texas cattleman who refused to brand his livestock and thereby coined another Texas-born term. Maverick: one who is stubborn, independent and hard to define.

The prosecutor in the Dexter case decided that a 16-millimeter projector, like a printing press, constituted a criminal instrument when used in a subversive fashion, and he could therefore charge the theater manager with a felony. Maverick, understanding how morality can muddle a First Amendment case, advised Goldstein to ask potential jurors a straightforward, yet similarly thought-provoking question.

"If you saw a film where there was semen dripping out of the corner of a woman's mouth, could you ever find that to have redeeming social value?"

Then look for the smirks, Maverick said, and those are your jurors.

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The case was appealed all the way up to the Supreme Court, which remanded the case to the District Court.

It was through cases like these, Goldstein said, that he learned two things from Maverick that he now holds as truisms: "Never pick a juror whose mouth puckers smaller than a chicken's asshole." And "never write briefs for judges. They don't read them. Write briefs for the press. They read the newspapers."

Another story Goldstein told involved a group of 30 rabbis who were determined to protest the Soviet Union's treatment of Jews in Russia, even if it meant getting arrested. The problem? Across town a group of celebrities was protesting apartheid at the South African Embassy. Goldstein got a call from the Washington, D.C., assistant police chief, "We don't have enough buses," the officer said. "If your rabbis want to get arrested, they're going to have to reschedule." So Goldstein dutifully prearranged to have the rabbis arrested on an agreed-upon day.

Goldstein's wit and roadhouse persona must make him a commanding presence in the courtroom. At the AAN luncheon, his speech was marked by an easygoing rhythm, a bit of mumbling and lengthy, conversational asides. While Goldstein has defended many profanity cases, he has gone beyond the smut-peddler posturing of Larry Flynt, having also represented the First Amendment rights of farmers and religious organizations.

New laws strike fear in people

Now, First Amendment rights are imperiled again, this time by the so-called war on terrorism. The erosion of tolerance and civil liberties since September 11, 2001, is the cause for the greatest alarm, Goldstein said. "And I will tell you that when I go to courtrooms across the state and across the country, the same kind of fear that I felt as a little hippie lawyer in La Salle County -- that little wet spot in the bottom of my pants -- I feel today. People are afraid. People are afraid of foreigners, they're afraid of outsiders, they're afraid of people who are different."

He doesn't underplay the tragedy that precipitated the changes. "Let me tell you, if you watched those buildings crumble and that senseless loss of life and you didn't feel like going out and ripping somebody a new asshole, you don't deserve the freedoms we have," he said. "But if anybody thinks for a minute that giving up those freedoms is somehow going to preserve our freedom in this country, they've got another think coming as well."

Goldstein criticized the USA Patriot Act as an "Orwellian nightmare" that wasn't even read by members of the Senate before they passed it by an overwhelming majority. Sneak-and-peek search warrants, roving wiretaps and the monitoring of attorney/client communications, are all powers granted by the Patriot Act that must be withdrawn, Goldstein said. But it was the extension of U.S. secret courts' jurisdiction over domestic crimes that disturbs him the most.

"The USA Patriot Act, if it does one thing that ought to send chills up your spine, it says that from now on we can issue these secret surveillance warrants for general criminal investigation," he said. "It no longer is limited to foreign intelligence situations."

On Dec. 4, 2001, Goldstein testified at a Senate Judiciary Committee hearing on how the Department of Justice can preserve freedom while defending against terrorism. In testimony that included criticism of the Patriot Act, Goldstein described the plight of one of his clients, a fifth-year radiology resident at the University of Texas Health Science Center in San Antonio. Al-Badr Al Hazmi was taken into custody the day after the World Trade Center attack and held for two weeks before being cleared of any connection to it.

"For two weeks I attempted to locate my client and was put off by everybody from the top -- from the Attorney General's office -- all the way to the [officers] here in [San Antonio] that I've known all my life."

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Al Hazmi had been transferred to a facility in lower Manhattan, interrogated without being advised of the charges against him and denied the right to speak with co-counsel later retained by Goldstein's firm. "It was a very bizarre concept, going down there two weeks later," Goldstein said. "The proceedings are still sealed."

Responsibility to spark change falls on alternative weeklies

Goldstein, who was one of the original investors in the San Antonio Current, said that in the fight for civil liberties, the alternative voices in the press are just as important as voices in the courtroom.

"We all have some responsibilities. I have some as a lawyer. The Fourth Estate, what you all do day in and day out is probably the most important catalyst in this country for good. And it is the only place we can look to where character, where individualism, where ideas flourish and blossom," he said. "It's not coming out of our government. It's not coming out of lawyers. And it's not coming out of our courts. The seed for this has to come from each of you."

But there was one other thing Goldstein said he learned about the media, this while representing Hunter S. Thompson against drug charges in Aspen, Colo. The Aspen Times had brought in Ralph Steadman to do the courtroom drawings. Goldstein proudly displayed the caricaturist's illustration. It identified the lawyer, contorted by Steadman's manic, nightmarish hand, as "Maestro." Goldstein laughed at the art and flattering news reports he projected on the screen, then turned back to the audience to reveal that the judge had ruled against him the next morning. Rule number one, he said. "Never ever believe your own press."

Recordings of 24 AAN convention presentations, including Gerald Goldstein's First Amendment luncheon speech, are available from Professional Programs in Santa Clarita, Calif. To download a PDF order form, [click here](#). You can also hear [Goldstein's speech here](#). For information, call 661-255-7774.

Jared Jacang Maher was a 2003 fellow at the Academy for Alternative Journalism. He is an editor of the literary anthology "Life and Limb: Skateboarders Write From the Deep End," coming out with Soft Skull Press this summer. In August he will begin a fellowship at Denver's Westword.

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