

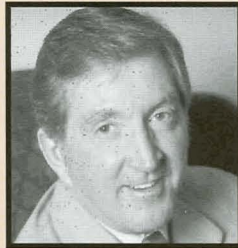
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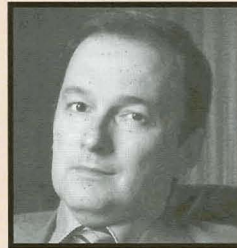
# WINNING

SUCCESSFUL TRIAL STRATEGIES FROM 10 OF THE NATION'S TOP LITIGATORS

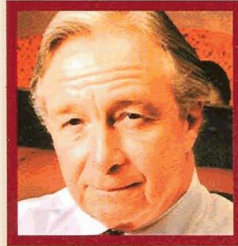
DANIEL J. CALLAHAN



WILLIAM C. PRICE



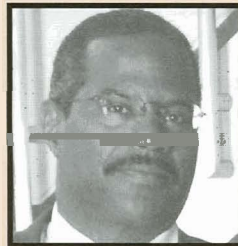
DICK DEGUERIN



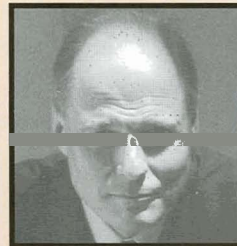
JAMES W. QUINN



EDWARD F. FERNANDES



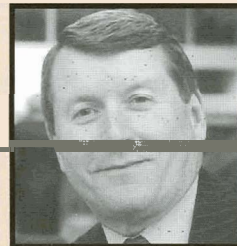
WILLIAM G. SCHOPF



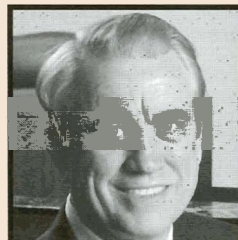
MARTIN R. LUECK



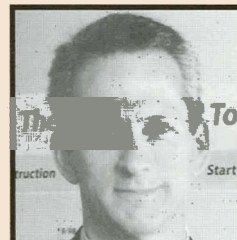
ROBERT C. WEBER



JOHN M. O'QUINN



R. PAUL YETTER



# WINNING

The 10 attorneys featured in the stories that follow tried cases ranging from an Illinois patent infringement claim involving Web-browser technology to allegations of murder and dismemberment in Texas.

Four represented defendants, six represented plaintiffs. One lawyer dusted off a 1916 statute that had never been used before. Another won a billion-dollar verdict in a fen-phen case. A third defended IBM against former employees' claims that they'd been poisoned by workplace chemicals

What the lawyers have in common, in addition to at least one big trial win within the past 18 months, is a track record of success over many years.

Two quick caveats: We do not suggest that these are the 10 best litigators, only the 10 we chose after a necessarily subjective process. And some of the verdicts they won have been—or may yet be—modified by judges or appeals courts.

## Keeping it simple

Despite the diversity of cases, the lawyers' strategies also had a good deal in common. They told simple stories, paid attention to the way they were perceived and treated jurors with respect.

On the way to winning a \$416.9 million verdict for Exxon Mobil from a state-owned Saudi Arabian company, Jim Quinn kept it short. He called 10 witnesses, but none testified for longer than an hour.

Defense lawyer Edward F. Fernandes said he learned the importance of simplifying a complex case early in his career from plaintiffs' lawyers who peppered him with sound bites. A key to his success, said Fernandes, who defended Bank of America against a Mexican pharmaceutical company that claimed the bank misappropriated \$24 million, was learning to bite back.

He also looks for opportunities to show jurors he's a regular guy. If an electrical cord is unplugged, he doesn't hesitate to crawl on the floor and plug it in. "Then the jury thinks, 'He's not a suit like the rest of these lawyers,'" he said.

Bill Price also pays attention to such details. Normally a defense lawyer, Price switched for the first time to represent plaintiffs who did work for Bertelsmann A.G., the German media giant, in a joint venture that created AOL Europe.

He, too, wants to avoid the perception that he's "a suit like the rest of these lawyers"—only he means that literally, Price said. He studiously avoids stylish clothing, preferring the look of a family's trusted accountant.

Paul Yetter said his entire legal team was on display—and not just in court. Yetter represented a Nevada mining company that won a \$137 million verdict from a consulting company it claimed fed it bad information. He and his colleagues moved into Tonopah, Nev., population 1,500, for the duration of the trial.

"I made certain we behaved as good guests," he said. "How the community sees your team is how they see your client."

## The word is 'authenticity'

The most important way to be real with the jury, several of the winning lawyers said, is to be honest. Especially if your case has problems.

William G. Schopf represented a manufacturer of newspaper printing presses that won a \$32 million verdict against a Japanese company that "dumped" its competing product in the U.S. market at artificially low prices.

Though it didn't come up in this case, Schopf described others in which clients made mistakes. One of his core strategies, he said, is admitting wrongdoing. Fortunately, he added, his adversaries had even more to explain. And weren't as effective doing it.

Robert C. Weber, who defended IBM against its former employees, seconded this approach. "I think it comes down to the word

'authenticity,'" he said, adding that it's important to speak honestly about weaknesses in cases.

Several lawyers spoke of respecting jurors, and giving them what they need.

"People say to keep it simple," said Martin R. Lueck, who represented the plaintiff in the Web-browser case, "but you have to give the jury enough detail and evidence, even if it's highly technical...to understand why you are right."

It also helps, said John M. O'Quinn, who won the big fen-phen case, if you speak their language.

"Most lawyers would say, 'I want to talk to you about punitive damages,'" he said. "Right then they are starting to lose the jury....I say, 'I want to talk to you about punishment.' That's a word people can understand."

Dick DeGuerin, defense lawyer in the Robert Durst murder trial, used a consultant to help pick jurors "smart enough to intellectualize the case," he said. Durst testified that he and a friend struggled for a gun and it accidentally discharged. He acknowledged that he panicked and dismembered the body before dumping it. The case hinged on the jury's willingness to ignore everything but the moments before the shooting, said DeGuerin.

Daniel J. Callahan took respect for a jury to a whole new level. His client manufactured blood analyzers used to diagnose illnesses, and it claimed it was defrauded by a firm that supplied its circuit boards. The jury returned a verdict of \$934 million. After it was over, he invited jurors to a party at his home. And sent limousines to pick them up.

"Oh my God," some of his friends said. "You did that?"

"Yeah," he told them. "It's legal."

—DAVID HECHLER

# DICK DEGUERIN

## Using your most valuable asset: the client

ATTORNEY: *Dick DeGuerin*

FIRM: *DeGuerin Dickson & Hennessy, Houston*

CASE: *State v. Durst, No. CR-1901 (Galveston Co., Texas, Dist. Ct.).*



TOM COLLINS

DICK DEGUERIN: *Durst "didn't wow" the jury, but he didn't alienate them, either. Some jurors believed him, some didn't.*

By June D. Bell

SPECIAL TO THE NATIONAL LAW JOURNAL

TWO MEN VIED for a .22-caliber gun. It discharged, leaving one dead.

"It really was a very simple case," said Houston attorney Dick DeGuerin, who defended Robert Durst on a first-degree murder charge.

Pressed, DeGuerin will admit to a few complications standing between Durst and an acquittal. First, Durst was something of an eccentric. At the time of the shooting, the wealthy 60-year-old New Yorker was passing

himself off as a mute woman named Dorothy Ciner and living in a shabby apartment in Galveston, Texas.

Then there were Durst's actions after the gun discharged. Durst said he panicked. Instead of calling the police to report an accident, he drank a fifth of Jack Daniels and then spent 18 hours dismembering Morris Black's corpse with a bow saw. He wrapped the bloody parts in plastic and heaved them into Galveston Bay. He then drugged himself for days on pot, booze and sleeping pills.

Durst triggered a 45-day national manhunt

when he skipped bond, only to be arrested in Pennsylvania for shoplifting a chicken salad sandwich and a newspaper.

Obtaining an acquittal, DeGuerin said, hinged on finding a jury willing to decide the case based solely on what happened in the moments Durst and his on-and-off friend Black struggled for the gun.

DeGuerin, a member at DeGuerin Dickson & Hennessy, which handles criminal trials and appeals and general litigation, did exactly that. A Galveston jury in November 2003 refused to convict Durst, saying the state hadn't proven

the slaying was deliberate. The case was named one of *The National Law Journal's* top 10 defense verdicts of the year.

### Controversial clients

DeGuerin, 63, has built a reputation as an exacting criminal defense attorney skilled at representing controversial clients. He represented U.S. Senator Kay Bailey Hutchinson, R-Texas, on misconduct charges, which were dropped just before trial. He rejected the FBI's offer of body armor when he went to the Branch Davidian compound in 1993 to persuade—unsuccessfully, it turned out—leader David Koresh to surrender. He secured probation for a battered mother of six who tried to drown her children in a Houston bayou. Four survived. He handled that case pro bono.

Durst, though, could easily afford to pay, and he needed DeGuerin's expertise. As is the case for most of his clients, "the general public believed he was guilty as sin," DeGuerin said dryly.

The Texas lawyer listened as Durst described in a monotone voice his soured friendship with Black, their battle over the gun, the accidental shooting and the gruesome fate of Black's remains.

"One of the most valuable assets a criminal defense lawyer has is the client," DeGuerin said. "You owe it to the client to listen, to understand what happened. Sometimes he doesn't understand what happened. You can

**'You owe it to the client to listen, to understand what happened.'**

talk to him and the other side can't."

Nonetheless, putting Durst on the stand was a risk. He was a multimillionaire thanks to his father's development of high-end New York real estate, and he had lived a luxurious life. But suspicions dogged him. His first wife vanished in 1982 in New York under unusual circumstances, and his best friend was found dead in her Los Angeles home with a bullet in the back of her skull.

But Durst's tale made sense to DeGuerin, and he sensed it would ring true to the jury, too. "He had to tell the story," said DeGuerin. "There was no one else who knew how Morris Black died."

### The right jury

Finding a jury that would be receptive to that story was critical. DeGuerin hired jury consultant Robert Hirschorn to help select a panel "smart enough to intellectualize the case."

Jurors had to be able to take Durst's cross-dressing and subsequent bond-jumping in stride and not be swayed by the horrific autopsy pictures of Black's bloody limbs. They also had to accept that Durst's dismemberment and disposal of Black's body was triggered by panic, not guilt.

DeGuerin split the direct examination of Durst between himself and another lawyer "to draw a distinction between the death and the aftermath," he said. DeGuerin questioned Durst about the incidents leading to the gun's firing, and Michael Ramsey of the Law Office of Michael Ramsey in Houston took over from there.

Houston attorney Chip Lewis of the Law Office of Chip Lewis was also part of the defense team.

Durst spent four hours on the stand. His testimony about firing the gun in self-defense was consistent with the physical evidence recovered at the scene, so he appeared credible, if not necessarily likeable.

"He didn't wow 'em," DeGuerin said, but he didn't alienate them either. "Some of the jurors believed him. Some didn't believe him."

The defense team benefited from the state's strategy of charging Durst only with first-degree murder because the jury was precluded from convicting him of any lesser crimes.

DeGuerin had previously told *The National Law Journal*, "We saw it as an all-or-nothing gambit because if the jury had a compromise position, given all the stuff before and after,

they might have gone with that." Durst faced a 99-year prison sentence if convicted.

### Money matters

DeGuerin won't comment on a *Texas Monthly* article that put a \$1.8 million price tag on Durst's defense.

But he will say that a client who has millions of dollars at his disposal gives his attorney a better chance of an acquittal.

"Seldom is the defendant as well financed as the state. Seldom do defense lawyers have a level playing field," he said. "When you think of all the resources the state brings to bear—the investigators, the district attorney's office, the power of subpoenas."

Durst's deep pockets enabled his defense team to hire a forensic specialist who found the bullet hole that Durst said Black had fired into the wall of Durst's apartment not long before the

final, fatal argument.

DeGuerin used it to support his depiction of Black as an aggressive, short-tempered man. It enabled DeGuerin to send investigators to North Carolina, where Black had lived, to help paint a picture of a threatening personality with a violent past.

Those deep pockets paid for divers to comb Galveston Bay for Black's head, which remains missing, and paid for the custom clear-walled model of Durst's apartment that was a valuable trial exhibit.

In the Durst case, DeGuerin said, "we leveled the playing field."

Durst remains in jail on \$3 billion bond on two charges of bond jumping and a charge of tampering with physical evidence, filed after the verdict. A trial date is set for February 2005.

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### TRIAL TIPS

■ If you have bad facts, live with them.

■ Don't discount what your client says.

■ Divide direct examination when appropriate.

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