

# GARY CARTWRIGHT'S TEXAS



**HIRED GUN:** DeGuerin measures success by winning difficult, media-rich cases.

## The Verdict

THE SAFE MONEY HAD ROBERT DURST GETTING CONVICTED OF MURDER IN SECONDS FLAT. HOW ON EARTH DID HE GET OFF? TWO WORDS: DICK DEGUERIN.

**A FEW WEEKS AFTER HE MASTERMINDED** the acquittal of Galveston's alleged killer-butcher Robert Durst, Houston attorney Dick DeGuerin lectured his second- and third-year students at the University of Texas law school on, you guessed it, the art of self-defense. Self-defense was the textbook strategy DeGuerin had used to win a not-guilty verdict for Durst, the heir to a New York real estate fortune. Durst confessed in open court that after his neighbor Morris Black was shot accidentally during a struggle over

a gun, he cut Black into pieces and dumped his body parts into Galveston Bay. Open-and-shut case for the state, right? Everyone thought so—except DeGuerin and the jury.

The case that DeGuerin's class was studying in late November was similar to the one involving Durst: The prosecution had a 911 tape in which a Thai teenager admitted to shooting four gang members outside his Houston home.

"What's my rule when things look bad for your guy?" DeGuerin

asked the class.

“Embrace the ugly baby!” they called back in unison.

“That’s right,” DeGuerin beamed, pleased that his message had stuck. “Make chicken salad out of chicken feathers.”

Sitting in the top row in the theaterlike lecture hall, I watched the students as they watched the famous trial lawyer. At 62, DeGuerin looked fit, trim, and relaxed, as much at home in the classroom as he is in the courtroom. In his tweed jacket, with a handsome head of graying hair, he was perfectly professorial but commanded the lectern the way a great actor commands center stage, knowing precisely when, where, and how to move. As DeGuerin played and analyzed the 911 tape, the students leaned forward, straining to catch every word. After a time the truth emerged: What the Houston cops accepted as a simple case of multiple homicide was clearly one of self-defense. “*Apparent danger*,” DeGuerin said, emphasizing the phrase. “A person has the right to protect himself from apparent danger, whether it’s real or not.”

DeGuerin won the teen’s case, as he has so many high-profile cases, because he takes the time to know the facts and the law better than the police or the prosecution. No detail is too small to escape his notice, no scrap of evidence without its potential redeeming value. Those were a few of the things he learned from his mentor, Percy Foreman. “I think about Percy every day,” he told me once. “I’m always asking myself, ‘What would Percy do?’” Foreman was arguably the best lawyer in twentieth-century Texas. DeGuerin is less flamboyant, but his knowledge of the law and his ability to bend it to his needs are as skilled as that of any attorney I’ve known. Though he appears naturally compassionate, I suspect there is always a method behind his altruism. Clients who are police officers get a 50 percent discount from DeGuerin, but the goodwill he enjoys from the law-enforcement community is priceless.

For the past ten years, every Friday during the fall semester, DeGuerin has taught advanced criminal defense law at UT, his alma mater. When I suggested that teaching pretty much kills his Fridays, he smiled and corrected me: “No, it lets me take Friday off.” He drives from Houston to Austin, frequently spending a night at his ranch, near Brenham. “This is the most fun I’ve ever had,” he said. “If one or two of these students go on to practice criminal law, I’ve been successful.” For most of his thirtysomething years as a lawyer, DeGuerin has measured success by winning difficult, media-rich cases, usually involving wealthy, famous, or infamous people. His clients have ranged from Senator Kay Bai-

ley Hutchison to David Koresh. None were richer, or presented more of a challenge, than Robert Durst.

“It was a simple case,” he told me as we drank coffee in the plaza outside the law school. “It was complicated because Durst is rich, wore a wig, pretended to be a mute woman, and was suspected of killing his wife in 1982.” Put another way, there was an alleyful of ugly babies, some of them the size of gorillas, to be embraced.

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Chief among them was Jeanine Pirro, the district attorney of Westchester County, New York. The politically ambitious Pirro leaked to the New York tabloids that she was thinking about indicting Durst for murdering his first wife, Kathie, who disappeared from their country home in Westchester County 23 years ago. “She’s the type of DA who would indict a ham sandwich,” DeGuerin deadpanned. Pirro had damned Durst on a number of television talk shows in the weeks before the trial, and she showed up, camera-ready, at the arraignment in Galveston. DeGuerin embraced Pirro by morphing her into the devil. “We made her a part of our case,” he told me. “She was the reason Durst freaked out and fled New York, the reason he had to disguise himself as a woman.” At one point in the trial, DeGuerin waved a copy of a New York tabloid so that the jury could see an example of the screaming headlines that Pirro had provoked. “She continues to be a throw-down expert on TV talk shows,” DeGuerin said contemptuously. That very morning he had declined an invitation to appear on *Good Morning America* after learning that Pirro was scheduled for the same show.

During jury selection, DeGuerin and his co-counsel, Mike Ramsey, disposed of one major problem by reminding the potential jurors that their job was to focus on Black’s murder, not the dissection of his body. “It was like asking them to forget the elephant in the room,” DeGuerin acknowledged.

“But we got their promise that they would separate the facts and put them in their place.” And so they did.

The defense team devised two audacious gambits, and both worked, thanks to some sloppy play by the prosecution. The first was convincing the jury that Black was a violent and dangerous man—he had murdered a soldier in Japan years ago and had threatened any number of people in Galveston—and yet someone whom Durst regarded as his best friend. When I investigated the Durst case in 2002, I couldn’t find anyone in Galveston who thought the two were friends. But the defense successfully portrayed them as the Island’s odd couple, two grumpy old men who lived across the hall from each other and enjoyed watching TV in Durst’s apartment and target shooting with Durst’s .22. Durst trusted Black so much that he gave him a key to his apartment. But things went sour. Short-tempered and erratic, Black thought it acceptable to fire the .22 in Durst’s living room, one time at an eviction notice he had tacked to the wall and a second time at some shadow of his imagination. Durst, of course, recognized apparent danger. He took away Black’s key, but Black had made duplicates. On the day of the shooting, Durst came home from jogging, found Black in his apartment, and confronted him. Black pointed his gun at Durst, they wrestled, the gun went off, and Black was fatally wounded. Or so Durst told the jury.

DeGuerin and Ramsey surprised the prosecution by calling Durst as their first witness. They had already “taken him to the woodshed,” what DeGuerin calls preparing a witness for direct and cross-examination. Durst had told his lawyers that the bullet struck Black to “the left of the bridge of his nose.” DeGuerin thought the description sounded specific enough to be plausible, and plausible was enough: Since Black’s head has never been found, Durst’s story couldn’t be disproved. Likewise, the prosecution couldn’t prove it *wasn’t* self-defense. There were only two witnesses, and one was dead.

The second gambit was trickier. Since the case was weird enough, the defense needed the jury to believe that Durst cross-dressed reluctantly—as a disguise that would keep him from being located by Pirro’s goons—and not for fun. Prompted by his lawyers, Durst took the witness stand and made light of wearing women’s clothes, telling some of the funny things that had happened to him. The wig was hot and uncomfortable, he complained to the jury. Once, while trying to light a cigarette, he had set the wig on fire. Then there was the awkwardness of using public restrooms. One day at the Rosenberg Library, while he was seated at a computer, a woman looking over his shoulder made a remark and Durst, not

thinking, turned and answered her; so much for his mute act. If the prosecutors had done the legwork that former *Texas Monthly* writer Robert Draper did for his story in *GQ*, in April 2002, they might have blown large holes in the defense. Draper found a number of people who recalled seeing Durst happily gallivanting in drag: a black transvestite, two bus drivers, and a couple of cabdrivers. “He wasn’t dressed as a frumpy old woman but as someone going nightclubbing,” Draper told me. But the state couldn’t come up with a single witness to dispute Durst’s story. After the acquittal, one juror admiringly told reporters that the defense told its story and stuck to it, while the prosecution was all over the place.

Like most DeGuerin clients, Durst paid dearly for his acquittal. He shelled out \$1.8 million before the trial started, and he might not be done: He is still in the Galveston County jail, facing two charges for jumping bond. His total bail this time is \$2 billion. In one of his many asides to the would-be lawyers in his class, DeGuerin warned them to get their money up front. “That’s important,” he said. “Once the case is over, money disappears.” Watching students scribble in their notebooks, I knew that that one piece of advice was worth the price of their tuition. ♣