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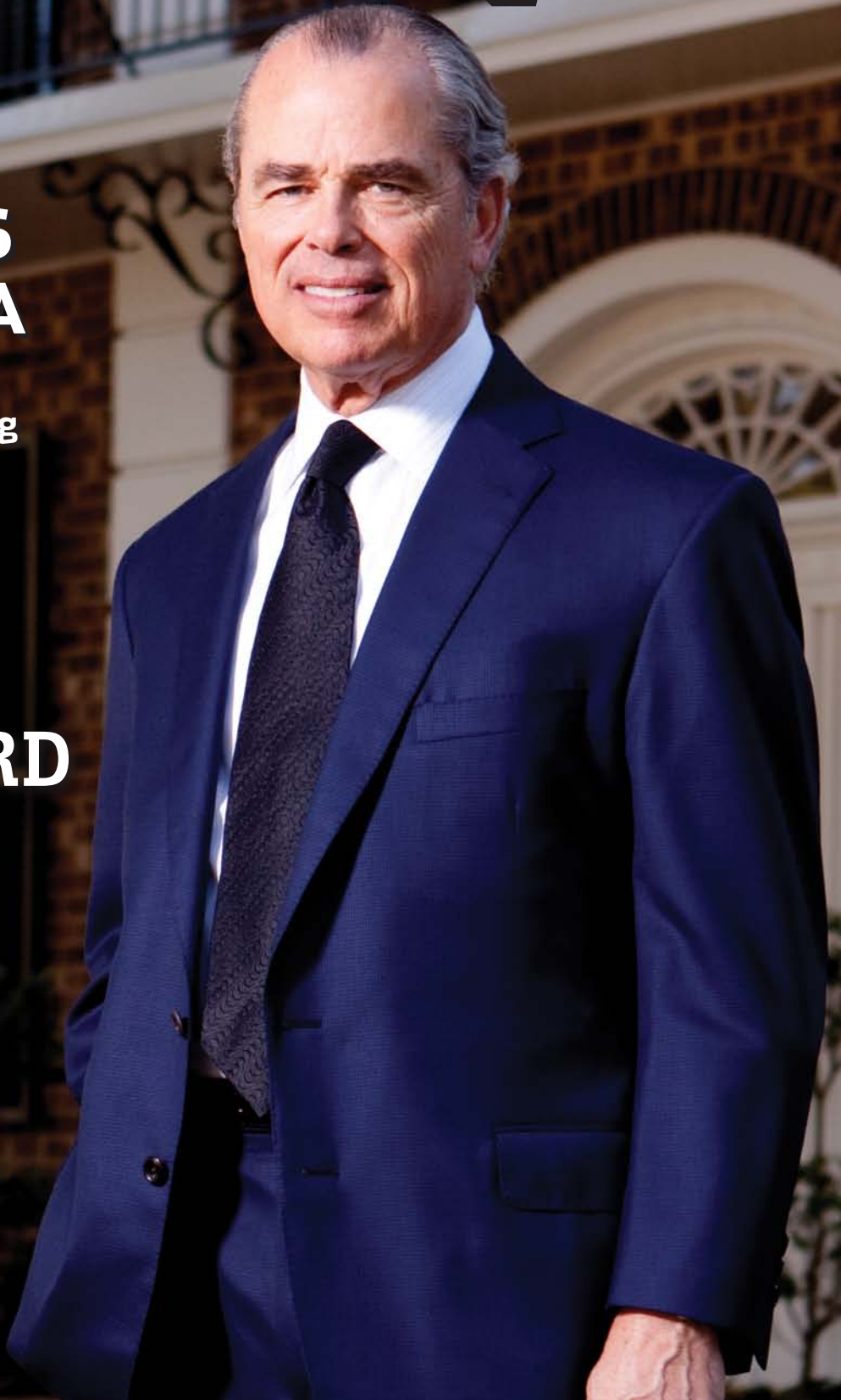
Robert Cunningham wins
historic trials and
fly-fishing trophies



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The Record Setter

Alabama v. ExxonMobil was a defining moment in Robert Cunningham's career, but he'd rather talk about what he's doing today, such as fishing for the 200-pound tarpon

Robert Cunningham's name will forever be tied to ExxonMobil. But for him, "that horse has been beaten to death." Here, the Mobile-based Cunningham Bounds attorney expounds on his legal philosophy, the value of the jury system and what it was like representing the "Idea Man."

Why law?

My father was a trial lawyer. I went to court as a kid and watched trials in police court on Saturdays. It was great entertainment. I always knew when a jury was out, when a case was going on, and whether he won or lost.

Like your father, you joined the U.S. Marine Corps.

I joined because I didn't have any better sense. At least I was aware that I wasn't ready for college. I joined the Marine Corps right out of high school at 18 and trained at Parris Island and ended up in Officer Candidate School and flight school. The U.S. was gearing up in Vietnam and the conflict was rapidly escalating. I was eager to serve, probably for all the wrong reasons, thinking that war would be a great adventure. But it was a whole lot more than that.

You were seriously wounded.

I was flying helicopters in Vietnam, and after being shot I was evacuated to Japan and spent a couple of months in Yokohama. The city was loaded with people who had been wounded in the Tet Offensive. The hospitals were full. After a few months, I went to the island of Okinawa for rehab, then returned to Vietnam. [Cunningham was awarded two of the military's highest honors, the Distinguished Flying Cross and the Purple Heart.]

How did serving in the military lead you to law?

If I had never spent time in the Marine Corps, I never would have had the self-discipline to get through college and law school.

How has your practice evolved since joining your father's firm in 1975?

When I started, I thought I wanted to be a criminal defense lawyer. I dove into that, and I quickly realized that it consisted mainly of entering guilty pleas. That wasn't what I wanted to do. Representing plaintiffs was where the excitement was. Most important, it was where you had the satisfaction of representing people who needed help, people who have been run over by more powerful interests—whether an insurance company or a corporation or a medical provider.

What were some formative cases?

In those early years there were no medical malpractice cases pursued in Mobile at all. The city was small enough that

everybody knew everybody. By the 1980s, we had a few medical cases over some very unsafe practices, such as an unsupervised nurse anesthetist handling the anesthesia without a doctor in the hospital. Several deaths resulted in lawsuits and verdicts for patients' families. It changed the practice of anesthesia here, and brought it in line with the practices nationwide in terms of patient safety.

How large were the jury awards?

The results in most of them were multimillion-dollar verdicts, which were very rare at the time. What was important about the amount was the publicity and change it generated, which is what verdicts are often designed to do. That's what the jury has in mind, and it's great when you see that it actually has that effect.

Describe your current practice.

It still includes the traditional death and injury cases, but in recent years it's changed to some extent because we're more involved in business disputes—such as when a small business is victimized by a larger business. There's been a trend over the last five years or so, where businesses who in the past would never dream of hiring a plaintiff's lawyer seek us out. Many have realized that trial skills transfer over to any kind of legal dispute. When their fortunes are on the line, they want somebody who will go to the mat. And they also find contingent fees very appealing in the current economic environment.

Your firm received a fair amount of press in 2002 when you appealed NCAA sanctions imposed on the University of Alabama's Crimson Tide football team.

The university is an important institution in the state. An awful lot of Alabama alumni and fans felt that the sanctions were grossly unfair. We agreed with them and wanted to help the university any way we could.

Unfortunately, the main thing I took away from that experience was that it made me appreciate the rare, bad judges I've been in front of. We went up to Chicago to orally argue the case in front of the NCAA panel. About three to four minutes into the oral argument, they started asking questions, and it rapidly became apparent that they hadn't even read the brief.

But your most famous case has to be *Alabama v. ExxonMobil*, which you and your partners tried twice.

You won \$3.5 billion, and then, after the retrial, a record-breaking \$11.9 billion—reduced after appeals—for underpayment of gas royalties.

It was a long, hard case. But that horse has been beaten to death. Talking about cases in the past is kind of like the

Cunningham fly-fishing for tarpon in Carrabelle, Fla.



PHOTO BY CAPT. GENE MONTGOMERY

gunslinger talking about the last guy he killed. It doesn't count anymore. It's the next one you need to be thinking about.

So what cases are you working on today?

We are representing a horribly burned 19-year-old who was the victim of distracted driving. The driver was basically required to use his work van as a moving office. Employers endorsing and promoting distracted driving creates a danger to every citizen who uses the public roads.

The second case involves a 2-year-old who burned to death in a fire. Both of her parents were burned trying to save her. The space heater that caused the fire had been recalled for fire-related defects in 1991. Problem is, the recall only captured about 300,000 of the 4 million space heaters that had been sold. And the Italian manufacturer, after this totally ineffective recall, did nothing.

Since that time, there have been more than 40 wrongful death suits and more than 100 other fire-related lawsuits filed against that manufacturer—all before this child's death in 2009. What I'm hoping is that this case will lead to a further recall of the remaining heaters out there in consumers' hands who don't have a clue.

Which cases were your most difficult?

The most challenging cases are the ones you lose, because they're obviously too challenging to win.

Any you recall?

I try to forget the ones I've lost once I learn my lesson. Through losing, you learn which cases not to take. You learn how to better analyze cases to ensure that you're not taking the losing case. In our business, if you take a losing case, you're losing years of time and usually lots of money, and you've got an unhappy client when it's all over. Nobody wants that.

In 2008, your firm won \$192 million for the "Idea Man," Dr. Sven Peter Mannsfeld, a chemical expert who claimed that international manufacturing company Ineos stole and patented his inventions.

I tried the case along with my partner Skip Finkbohner, who spent a couple of years running back and forth to Germany preparing for trial. It is worth noting that our client was the former president of a large chemical company in Mobile and was also a former president of the Business Council of Alabama, an organization whose interests have always been actively in opposition to plaintiff's lawyers. They are also major proponents of tort reform. I think this case changed Mannsfeld's views on the democratic virtues of the jury system and the importance of not restricting citizen access to the courts.

The case eventually settled after weighing the risks of reduction or reversal on appeal, and the length of an appeal, against the benefits of an early settlement. Our client was getting up in years and wanted to enjoy the fruits of his labor while his health was excellent.

Is it disheartening to know that many of your cases will be appealed? How do you emotionally prepare your client, and yourself, for this common occurrence?

It is certainly disheartening to know that all too frequently in Alabama, the will and good judgment of 12 citizens who have spent weeks listening to testimony will be ignored and disrespected.

It is difficult to emotionally prepare a client for this possible outcome. They do not easily understand how the judgment of a jury can be given so little respect and weight. They do not understand how the constitutional right we all have to a jury trial can appear to become essentially meaningless on appeal. They do not understand why, often after suffering a personal tragedy, they should be required to prepare themselves for the prospect of insult being added to injury.

How have you maintained the energy and spirit throughout all these years for plaintiff's work?

What better way to spend your life than to fight the good fight?

What piece of advice would you give a recent law school graduate?

Ask lots and lots and lots of questions of experienced lawyers and save yourself years of wasted time. You know virtually nothing from your law school education about practicing law.

In some Gulf Coast circles, you may be just as well known for your fly-fishing records as your jury verdicts.

I've spent the last 20 years chasing world angling records, and the fly rod has been a major part of that. [Cunningham is a 57-time International Game Fish Association world-record holder.]

What you need to understand is the fly-fishing that I love is not the scene that you see with the smiling angler decked out in new Orvis fly-fishing clothes, crouching in the mountain stream, holding an 8-inch trout for the camera. Living the Orvis lifestyle is not my deal. The challenge for me is totally different. It's salt-water fly-fishing for big fish, primarily tarpon. I've been chasing the 200-pound tarpon for the last 10 years on fly, and I've come close, but close doesn't count with what I'm doing. ◀

—Interview by Aimée Groth