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## THE SMOKING GUN DETECTIVE

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BY JOE MULLICH

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*The understated, underrated Mark Robinson's outrageously creative research pays dividends*

Published in **Southern California Super Lawyers 2010 — February 2010**

People in the know advised Mark Robinson that the case was a lost cause. He was about to ask the California Supreme Court to revive a major class action lawsuit against the tobacco industry, alleging that Californians had been misled with deceptive advertising. This required the justices to overturn the trial judges' interpretation of the 2004 mandate from voters that had resisted half a decade of challenges in lower courts.

When he appeared before the court, Justice Marvin R. Baxter—"a nice and very well-prepared guy who I know socially," Robinson says—immediately pilloried him with questions. Another conservative justice, Carol A. Corrigan, jumped in to ask why Robinson wasn't answering Baxter's questions.

"There was just so much energy!" Robinson says. "I politely disagreed with the justices, but I really liked their sense of teamwork when they tag-teamed me."

The justices ruled 4-3 in Robinson's favor (with Baxter and Corrigan among the dissenters). While defense attorneys decried the opinion, a press release on the case from a supporter noted, "Without a doubt, Mark Robinson's advocacy carried the day."

The release added an adjective that is often put in front of Robinson's name: "legendary."

### Trial of the Century

When you start ticking off Mark Robinson's successes, auto and drug makers around the world wince. In 1978, Robinson served as co-counsel with Art Hews in the historic Ford Pinto gas-tank fire case, *Grimshaw v. Ford Motor Co.* The Association of Trial Lawyers of America (now the American Association for Justice) named the verdict one of the 10 most significant civil trials of the past millennium.

His résumé includes the \$4.9 billion verdict in *Anderson v. General Motors*, the \$3.3 billion Los Angeles County tobacco settlement, the \$69 million *Baycol* settlement, the \$15 million Hyundai seatbelt verdict, and the \$6 million judgment against Ford Motor Co. in the famous Kentucky school bus case. He was the first lawyer to defeat Merck in court over a federal *Vioxx* trial, an arthritis pain drug that was alleged to cause heart attacks and strokes.

Yet, Robinson insists, "judges know my partner, Kevin Calcagnie, because he writes a monthly column for the *Consumer Attorneys of California's Forum* magazine. They don't know me." In his quiet, thoughtful manner, Robinson rarely objects in court, and opposing counsel say they can work out most discovery matters amicably with him. Robinson's pleasant response to the California Supreme Court grilling—"I'd love to do it again. I loved the energy and brilliance of those justices"—is indicative.

"He treats everyone with respect," says San Francisco attorney Stuart M. Gordon, who opposed Robinson for nearly a decade in the high-profile fen-phen diet-drug cases. "A lot of plaintiff attorneys are harsh and antagonistic and you don't want to deal with them. He gets more cooperation from opposing counsels because of the way he treats them."

Gordon quickly adds, "His style is understated—but his success isn't."

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### **Like Father, Like Son**

You might say Robinson was born to be a lawyer. His father, Mark Robinson Sr., was appointed Ventura County's first-ever public defender, and later was founding president of the American Board of Trial Advocates. In his youth, Robinson watched the evening television news with his dad, and the two would debate the issues of the day.

"My dad was not just my mentor, he was everything in my life," Robinson says. "My dad was a complete lawyer. He would argue cases in appellate court and he liked writing briefs. A lot of trial lawyers think that's beneath them, but I like doing it and grew up writing my own briefs. Now the briefs are so thick that I end up doing parts of them and editing the rest."

At that moment, Robinson calls his son Daniel, who just joined the firm, into the conference room of his Newport Beach law firm, Robinson, Calcagnie & Robinson. Robinson asks Daniel, to repeat a story about when Mark Sr., in his sick bed shortly before his death, listened to Daniel's preparation for mock trials at Loyola Law School. After hearing the argument, Mark Sr. snapped, "You can do better!" When Daniel returned with a better argument, his grandfather told him, "Now you have it."

"My dad died with his boots on," Robinson Jr. says. "He was working till the end."

The same diligence applies to Robinson. With the complexity of mass tort cases, he still logs 70 to 100 hours a week. Even opposing counsel thinks he works too hard. "He doesn't have to take every last case, but he has a hard time saying no to anyone," Gordon says.

Robinson has been known to do 50 drafts of an opening argument. "He's one of the best lawyers who's ever appeared before me," says retired judge Daniel Pratt. "He prepares as well as anyone I've ever seen."

### **Looking For 'Smoking Guns'**

Robinson's preparation and zeal for discovery have been the foundation of his most famous cases. The success of the Ford Pinto case hinged on finding a "smoking gun": Ford's own cost-benefit analysis, which showed jurors that the company had put profit over people's lives. Since then, Robinson's working life has been a pursuit of smoking guns.

In 2006, Robinson handed Merck its first defeat in a federal Vioxx trial, when the jury ruled unanimously that the drug maker had been negligent in warning of the risks associated with the arthritis pain medication. Robinson's client—Gerald Barnett, a retired FBI agent who suffered a heart attack in 2002 at age 58—was awarded \$51 million in damages. For the case, Robinson moved to New Orleans and worked until two or three every morning.

"Mark accumulated every inch/ounce of discovery there is available in the country," Jeffrey Robinson, his younger brother and partner, told a reporter. "There is no one who will do more and go to every length of the earth to obtain everything that is out there."

As Robinson says, "You have to turn over a hundred rocks to find a snake."

That may sound trite until Robinson, and the people around him, start telling stories of all the rocks he flipped.

For one automotive accident case, Robinson had his mechanics strip down a '78 Oldsmobile Omega. They found a number of welds missing. Unable to understand why, Robinson put up an ad in the General Motors locker room asking if anyone could explain the missing welds. A welding inspector called shortly thereafter, saying he may have been involved with the car. Robinson convinced the welding inspector to fly out to Los Angeles (the first time he'd stepped foot out of Michigan). When the inspector looked at the car, he merely said, "Deer hunting season."

"He explained that every November 15th and 16th, half the GM plant goes out deer hunting," Robinson says. "But the lines didn't close down, so sweepers and radio-knob installers were switched to the welding lines, and this was the kind of job they did."

The welding inspector became the star witness, and Robinson won the case.

### **Enter the Detective**

In another case, Robinson represented a woman who became a paraplegic after the seat on her old Nissan car came loose during a crash. Oddly, Nissan couldn't provide the date of manufacturing for the car. That lack of information sent Robinson on an investigation worthy of Raymond Chandler. He spoke to his neighbor, who had recently been fired from Nissan. The neighbor directed him to another Nissan worker.

It turns out the car in question was shipped into the United States while the port of Long Beach was on strike. That meant the car came through Ensenada, Mexico, and, during his investigation, Robinson heard stories of Mexican teenagers who took joyrides in the cars before they were sent into the United States. A month before the trial, Robinson went down to Ensenada and located a welding shop in the hills, where the cars driven by the teenagers were repaired.

In his opening statement, Robinson set out his theory that the car had been damaged before it entered the U.S. The defense attorney's opening statement refuted the Ensenada story since his case rested on the idea that the jury-rigged seat was the work of the plaintiff or a previous owner.

Immediately, one of the jurors requested to speak to the judge. He told the judge and attorneys he had often gone surfing in Ensenada and remembered seeing the young boys driving new cars in the hills. "The defense didn't want him on the jury, of course," Robinson says. "So I made him my first witness."

Robinson won that case, too.

Robinson tends to describe such happenings as "luck." However, much of his continual luck stems from relentless prowling, making phone calls, chatting up cab drivers and searching for links in information. Take one recent case, where he represented a 14-year-old boy who was struck by a woman driving home drunk from a bar late at night. The boy was helping a friend push a stalled car and his leg was crushed when the drunken woman struck him from behind. His leg eventually had to be removed.

After talking to doctors, Robinson found out the woman had started drinking heavily after becoming a sales rep for a pharmaceutical firm. Instead of looking at the case as a simple drunken-driving accident, Robinson convinced the judge to order up the business expense records of this woman—and all the pharmaceutical firm's sales reps in California. He found "mind-boggling" receipts for wining and dining physicians—\$9,300 in one case, \$4,000 in another, many four-figure bills. There were e-mails from the woman's boss complimenting her efforts, Robinson says: "Good job—you took doctor so-and-so to the local tavern."

The theme of Robinson's case turned into "Even though the accident happened after the woman was drinking with a friend late at night, it was foreseeable the pharmaceutical firm would turn this woman into an alcoholic by making it part of her job to drink with doctors so often."

Robinson checked all the previous jury verdicts for accidents resulting in lost legs. The judgments ranged from \$5 million to \$13 million. The case was settled with the pharmaceutical firm on the eve of the trial, awarding the boy \$22 million.

#### **'Out of Left Field' Stories**

But what really sets Robinson apart, colleagues say, is his human touch. "So many times, we'd be at a tough settlement conference where everyone was about to leave when he would suddenly tell an out-of-left-field story about his dad or his brother's football team," Gordon says. "I'd always think, 'That doesn't pertain to anything we're talking about.' But it always lightened the mood and made us refocus and decide to stay around a little longer. He has very good timing with his stories."

Robinson puts a human face on a case. Once in motions court, the clerk issued a preliminary recommendation that the case be thrown out. "I wanted the judge to know what he was doing," Robinson says. "I brought the little brain-damaged boy into court in a wheelchair. I said, 'Let the court of appeal make this decision.' The other lawyers thought I was nuts, but it hit the judge in his heart. He let it go to trial and we won the case."

In another case, Robinson prepared for a mandatory settlement conference with a judge who had issued a number of rulings against him. Robinson put a picture of the client's badly burned face on the settlement conference brief. "It's important to know what we're standing up for," he says. "Like everyone else, I can get caught up in the battle and forget the human part of this."

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Even after winning cases, Robinson often goes to the Food and Drug Administration or National Highway Traffic Safety Administration (NHTSA) to complain about the products in question. "I've been back three or four times to the NHTSA and I always get stonewalled," he says. "They are immersed with the car makers, and have coffee with these people every day. The FDA and NHTSA are not set up for us to have any traction. We're one voice crying out."

He adds: "Maybe it's better to simply get a verdict, because then it gets in the papers and people make changes."

**Published in Southern California Super Lawyers 2010 — February 2010**

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