

## IN PRACTICE

# The Warrior Within

## Tennessee Lawyer Thrives On The Combat Of Trial

By David L. Hudson Jr.

Beneath the down-home demeanor of Tennessee litigator Randall Kinnard beats the heart of a warrior.

Known throughout the state for his ability to spin a good yarn and put ordinary people at ease, Randall starts every trial pacing at the starting gate as he struggles to rein in a surge of unbridled adrenaline.

"At the beginning of every trial, beneath the easygoing exterior is a looming volcano," said the 59-year-old med-mal specialist. "If the jury could see what was really going on in my mind, it would scare the day-lights out of them."

Keeping his inner combatant under control is a persistent struggle, he said.

"The high level of energy and competitiveness is dying to bust out of me. It's like the start of a highly competitive race. I know that, so I have to tone it down – way down," said Kinnard.

Always nervous at the beginning of a trial, Kinnard says he calms himself by going out of his way to put jurors at ease.

"When I see [the jurors] relax and smile, it helps me to relax. Then, I'm off to a smooth start and feel connected to the jurors. I feel like we are a team on a mission together," he said. "Then nothing they do ever bothers me and I believe any mistakes I will make during the trial will be forgiven. I love this 'relationship' feeling, this connection to people that I admire and respect."

Kinnard's combination of good-old-boy charm and controlled com-

petitiveness has helped him become one of the state's most successful litigators – a man known as "the lawyer who never loses," according to Mark Rogers, a past president of the Tennessee Trial Lawyers Association.

"[He] is by far the premier medical malpractice lawyer and absolutely one of the nicest lawyers in the state of Tennessee," Rogers said.

### Out In The Jungle

Kinnard knows a lot about battle – both inside and outside the courtroom.

Before entering law school, he attended West Point and served in Vietnam. His combat experience with the 173rd Airborne Brigade has served him well in the practice of law.

"I was out there in the jungle with my infantry unit," he said. "It was rough work. It was 110 degrees, full of mosquitoes and dysentery. Lawyers defending a case cannot come close to doing what the enemy did to me in Vietnam."

Kinnard said that his military background instilled a sense of discipline, demonstrated the importance of preparation, and taught him how to overcome adversity – qualities that have served him well in his law practice.

Indeed, Kinnard first considered a law career while at West Point. A general survey course on law piqued his interest and he "decided that trial work would be a good combat substitute."

The desire to reconnect in any way with the horrors of war might seem foreign to many people, but Kinnard finds intensity rewarding.



Peyton Hoge

**Randall Kinnard, a natural storyteller with an uncanny ability to connect with ordinary people, loves the adrenaline rush of litigation.**

"The pressures of combat mentality take you to a place which nothing else can," he said. "Combat and litigation cause an enormous release of adrenaline that no other experience can. I thrive on this adrenaline. There is something about my personality, my being if you will, which wants this feeling. I never tire of this feeling."

### A Consummate Storyteller

In spite of his competitiveness, the image people come away with when they meet Randall Kinnard is not that of a courtroom warrior. In fact, it is quite the opposite.

"Randy Kinnard offers a likeable, relaxed and affable personality in the courtroom," said one of his frequent opponents, med-malpractice defense lawyer C.J. Gideon of Nashville. "He is quite good at selecting three to five

basic, easy-to-understand themes which are repeated throughout the plaintiff's case."

Judge Marietta Shipley offers a similar description of Kinnard's courtroom style.

"He has a non-confrontational manner with the court, other lawyers and jurors," she said. "The cases he tries, against equally excellent defense attorneys, make me remember why being a judge is intellectually stimulating and still challenging."

Kinnard credits his success to his ability to connect with ordinary people.

"I've been lucky to have had a lot of contact with good, ordinary people who may not be formally educated to a high degree, such as many soldiers I worked with in the Army and people I worked with at several

odd jobs," he said. "I know how to talk to them. I never try to talk above people, but I talk with them. I am very mindful that many people are not impressed with someone who tries to impress them."

Frank Fly, a Tennessee lawyer who has tried medical malpractice cases as co-counsel with Kinnard, is awed by his colleague's ability to connect with people in the courtroom.

"Randy is the best there is," Fly said. "His sincerity is his strong point. He puts his clients, his witnesses, adverse witnesses and the jury at ease. People feel relaxed around him and, oh my Lord, he's a storyteller. He simply has a natural, God-given talent for lawyering. He also has personality traits and characteristics that were born and bred in him that would make him a success in any business."

Kinnard also has developed a veteran trial lawyer's innate sense of when it makes strategic sense to back off.

"He knows when to concede a point and when to press hard," said Judge Shipley, who sits on the 2nd Circuit Court in Davidson County, Tenn.

It may seem obvious, but Kinnard said that knowing when to argue and when to let something go is one of the toughest skills for a young litigator to master.

"For an inexperienced lawyer, it is very difficult not to argue when you think there is a chance you can win," he said. "The trick is knowing when to shut up. You watch the judge, watch her body language [and] facial expressions, and when you sense she has made up her mind and is going to rule against you, you act honorably and receive the pain."

Losing a battle may help win the war, Kinnard said.

"Allow the judge to exercise her authority. Do not hassle her [when you know you're going to lose]. Later, when you have a point you do not believe is close and your client definitely must win the point, then the judge will know your sincerity and will listen carefully to you – out of respect for you," he said.

#### 'Wanted To Be Own Boss'

After completing his military service, Kinnard attended Memphis

State Law School (now the University of Memphis School of Law).

"It was a great practical school," Kinnard says of his alma mater, from which he graduated in 1976. "Some schools are good for producing academics, while others are better at preparing good trial lawyers. Memphis was very good at providing a good practical foundation for litigation."

Kinnard's interest in medical malpractice began early. While in law school, he interned for a now-retired

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**'I think I convey to jurors that I believe in my cases,' said Randall Kinnard. 'In my younger days, I learned one couldn't manufacture sincerity. You either believe in your case or you don't, and jurors can tell the difference.'**

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Memphis attorney, James S. Cox, whom Kinnard called the best medical lawyer in Tennessee at the time.

"I saw that the work was hard, challenging and required enormous preparation and study," he said. "The patient was definitely the underdog in the battle against huge hospitals and health care corporations. The little guy is whom I wanted to represent in the first place. It was natural for me given my background."

Like many law school graduates, Kinnard's first stop after law school was a large firm. He quickly decided that it was not a good fit.

"I didn't see myself growing professionally as fast as I wanted," he explained. "I was more of a gofer and I wanted to be my own boss."

"I was a bachelor with no obligations and I decided to take the

plunge," Kinnard said of his foray into self-employment in his hometown of Nashville.

"I begged judges to appoint me to criminal cases so I could obtain needed trial experience," he said. "I also had to buy groceries."

Ultimately, Kinnard moved toward civil trials.

"Over time, I started winning civil lawsuits and lawyers started referring cases to me," he said.

By his own count, he has had 25 jury verdicts of \$500,000 or greater – the vast majority of them in medical malpractice. He has also settled many cases in that range over the years, but Kinnard said he cannot provide an exact number of them.

Clients have included: a 32-year-old woman who was permanently brain damaged when a doctor cut her intestine during a tubal ligation; the family of a man who died from an accidental overdose when a nurse misread the doctor's instructions; a man whose penis had to be amputated; and the family of a 6-year-old girl who died during a tonsillectomy.

One of his most satisfying trials was when he represented George Brown, an African-American man shot in the leg during a bar fight during the 1980s.

Brown was taken to the emergency room of the local hospital, where his leg was wrapped, but left untreated. He was transported to Vanderbilt University, but it was too late. Brown had contracted gangrene and the leg was amputated.

"The insurance company didn't offer a nickel," Kinnard said of the 1985 case, which was tried in Lewisburg, Tenn. It was a time and place where race still mattered considerably.

"We tried this case ... not far from KKK country, and my client was the only black man in the courthouse," Kinnard recalled.

Given the racial dynamics, Kinnard questioned potential jurors carefully during voir dire to detect any evidence of bias. Later, he defused the issue in his opening statement to the jury:

"Ladies and gentleman, as you can see, there is only one black person in this courtroom – my client. My client said to me this morning

when we came in this building. 'Mr. Kinnard, I'm the only black person here. Do you know if a black man can get a fair trial in this courthouse?' Well, ladies and gentleman, I told George Brown I didn't know, but I would ask. So, ladies and gentleman, let me see a show of hands of anybody who can't give a black man a fair trial in this courthouse."

According to Kinnard, addressing the issue up front helped him make the necessary "emotional bond" with the all-white jury, which eventually deliberated for just three hours before delivering a verdict for Kinnard's client.

"That was one of the greatest moments of my life when that all-white jury rendered a verdict in favor of my client," Kinnard said. "I will never forget Mr. Brown going outside the courthouse after the verdict and standing in front of an oak tree, crying. I asked him what was wrong and he said, 'Mr. Kinnard, they used to hang people like me from this tree years ago.' It was a wonderful moment. I was so proud of that jury."

#### Last Minute Prep

Kinnard said that he doesn't develop the final theme of a case until the Saturday before a Monday trial, though he works on many themes during the course of discovery.

"I wait that long for a lot of reasons. I have learned that the theme for me will not come together until [the] Saturday [before trial]," he said. "I continue to learn about the case long after discovery is complete. I learn during a third or fourth reading of the defendant's deposition, for example."

Kinnard said he practices his craft in front of his family, other lawyers in his office and his entire staff.

"Paralegals and secretaries have tremendous ideas and judgments that I rely upon in preparation," he said.

He also stressed that part of selling the story to jurors is believing it yourself.

"I think I convey to jurors that I believe in my cases," he said. "In my younger days, I learned one couldn't manufacture sincerity. You either believe in your case or you don't, and jurors can tell the difference."