

One for the Money

By Gene Barton

Money. The word, in today's lexicon, describes the clutch hitter you want at the plate in the bottom of the ninth; the quarterback you want running the two-minute offense; the point guard you want holding the ball with the clock running down. And the attorney you want holding the jury in his hands when there are seven or eight or nine figures riding on the verdict.

Brad Keller is a money lawyer, the go-to guy when all the chips are on the table. Recognized as one of Seattle's leading trial lawyers, Keller gets the big cases because he gets results.

Not one to shy away from controversy, Keller has had his share of press clippings. But no case has been more notorious nor more heavily covered in the media than his most recent high-profile action — one that makes the point guard analogy in the opening paragraph somewhat ironic. In case you hadn't heard, Keller represented Clay Bennett and his Oklahoma ownership group in the lawsuit that ultimately wrested the Sonics away from Seattle. It was, Keller openly admitted, a "real black-hat role." There were more than a few people who didn't want Keller handling the ball in this case.

"I probably had 30 to 40 emails and voice mails in which people expressed their 'displeasure,'" said Keller, whose firm was a 22-year season-ticket holder until the 2007-08 season. The messages included "one not so thinly veiled threat of physical harm to my children and about a dozen menacing ones."

Keller was concerned enough to have an armed, off-duty police officer in his driveway 18 hours a day during the trial. His office was on a 24-hour lockdown with an armed, off-duty officer in the lobby. He and his legal team were escorted to and from the federal courthouse with an armed, private security detail.

The hardest part, though, was having to sit his 9-year-old daughter down "and explain to her why she might answer the phone and have people yell profanities about her dad and have her understand how even though clients are unpopular in a public forum, they are entitled to the lawyer of their choice." His 4-year-old son, Matt, "on the other hand, loved to play with the police officers in the driveway."

"For a civil trial, it was quite an experience," Keller said. "In hindsight, it was a blast: fun, exciting, challenging. ... The media challenges were unbelievable, overwhelming. (The media) wanted to hate us, but by the middle of the trial, they were acknowledging that as lawyers we were doing a heck of a job for the client in the courtroom. I took a lot of pride in that."

A notorious client or an unpopular case, Keller says, merely "enhances the professional challenge. There's nothing quite like standing before a judge or jury and know they substantially dislike or are suspicious of your client, and then put those things out on the table, get them to talk about it openly in voir dire and get them to move beyond prejudice and preconceived notions and decide the case on its facts. It's the ultimate professional challenge."

It's a tactic he used to advantage in the Sonics trial. Keller took a contract case about a lease and focused on the equitable relief the City was seeking: specific performance.

"We had a client who to say they were viewed unfavorably in the public light would be an understatement," Keller said. "We took that case and, turned it into a real horse race, shifting the focus away from the Oklahoma ownership group and putting city government and the local buyer group on trial for the effort to use the lawsuit as leverage to force a sale of the team (by Bennett's group)."

"To be entitled to an equitable remedy, you have to be asserting contractual rights that are consistent

with your contract provisions. The City had no right to try to take that two years (remaining on the lease) and use it as a club to force the team to lose tens of millions of dollars, to capitulate, and force them to sell."

If Keller has one regret about the case, it's that he'll never know how it would have turned out, given the 11th-hour settlement. Judge Marsha Pechman's decision was sitting on her desk when one of Keller's partners entered her chambers "an hour before the opinion was to be delivered" and informed her of the settlement. Judge Pechman turned her written opinion over and said, "I guess we won't be needing this."

"As to what it said, it's anyone's guess," Keller said. "We had put on a very strong case and we were hopeful for a favorable ruling. Beyond that, I'll probably be wondering (what it said) the rest of my career."

As these stories usually go, Keller had humble beginnings. He was born in Queens and went to high school on Long Island, and has never quite managed to lose his New York accent. Those who know Keller only as a fierce trial attorney probably will be surprised to learn that he attended tiny Beloit College, a liberal arts school in the Wisconsin community of the same name, where he earned his bachelor's degree in 1976. "In the 1970s, it was considered a place to go for an alternative education," he said.

During one of his Beloit summers, carrying a knapsack and sporting a ponytail, Keller hitchhiked to Seattle. It was one of those quintessential twists of fate. He fell in love with the city. "I came back five years later in a three-piece suit," he said. "I wouldn't leave here even if the bank would let me."

Beloit also provided Keller with his introduction

to the law. Beloit expected each student to spend a summer in an internship. Keller's was with the Dade County (Florida) Public Defender's Office. There, he worked on capital cases with lawyers who would later be among the "big name" criminal defense attorneys in southern Florida, including Roy Black, one of the nation's premier trial lawyers, who has obtained acquittals for William Kennedy Smith on rape charges in Palm Beach, Florida, and Rush Limbaugh on charges of doctor shopping.

The law and Seattle would soon become inseparable in Keller's mind. However, Keller's choice of law schools was as seemingly incongruous as Beloit. Keller elected to return to his New York roots and enroll at Brooklyn Law School. Despite the school's current presence, Keller is the first to admit its lack of cachet. Its most famous graduate may well be Geraldo Rivera.

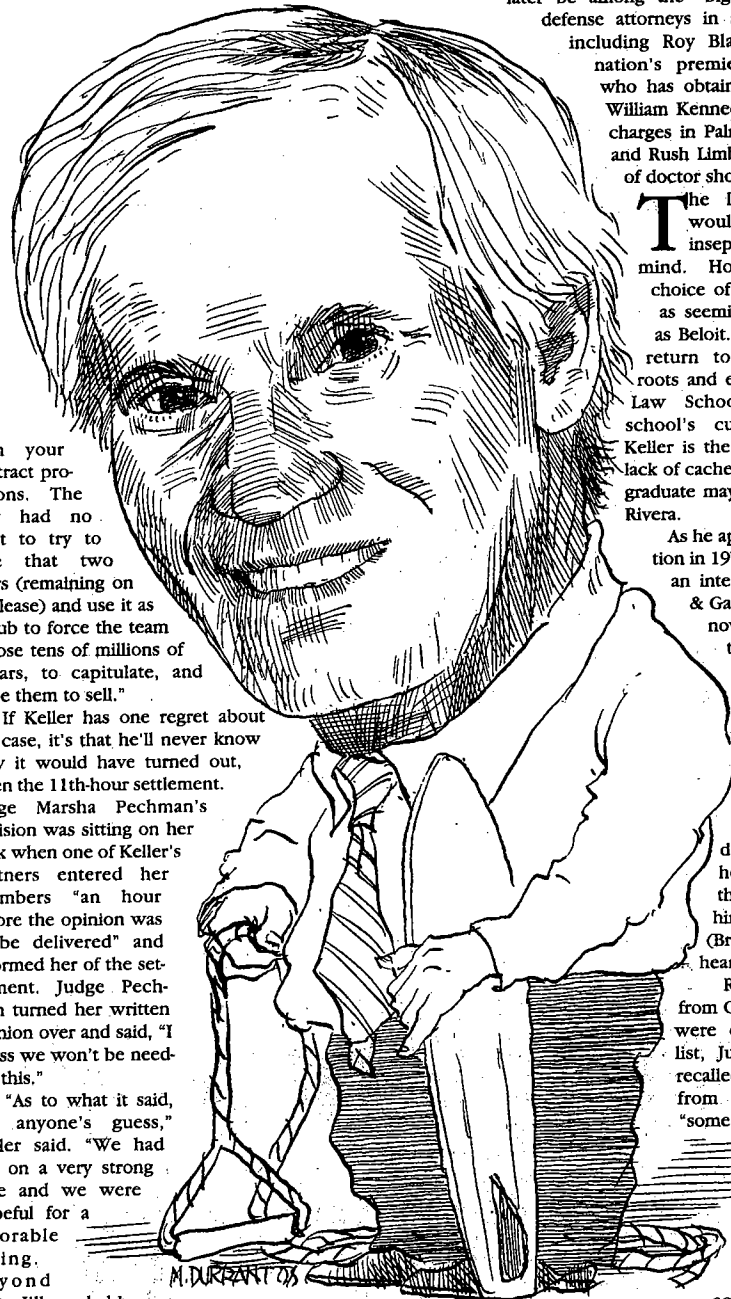
As he approached graduation in 1979, Keller finagled an interview with Bogle & Gates. He heard that now-Senior U.S. District Court Judge John Coughenour and Mike Courtnage (Alston, Courtnage & Bassetti LLP) were in the city interviewing associate candidates. However, he also knew that "they weren't hiring anybody from (Brooklyn), let alone heard of it," he said.

Rather, candidates from Columbia and NYU were on the interview list, Judge Coughenour recalled: He got a call from the office that "some kid from Brooklyn Law School wants to arrange an interview." Coughenour and Courtnage were "jammed," but according to the office, this "kid" was

"insistent" and willing to meet them in their hotel room. "The next thing I know," Coughenour said, "he's somehow gotten the name of my hotel from my secretary and showed up at my hotel room door. I figured I could spare 20 minutes for someone who has that much chutzpah. He interviewed so well, we offered him a position."

A few months later, Keller went straight from graduation exercises to JFK, caught a flight to Seattle, studied for the bar and started work. The rest, as they say, is history.

Keller spent five years at Bogle, mainly under the tutelage of Peter Byrnes, where he "developed into a wonderful trial lawyer," said Coughenour, who credited Keller with "perhaps the



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best civil trial performance I have ever seen" a few years ago.

Former King County Superior Court Judge Robert Alsdorf first faced off against Keller during his early Bogle days. "He was fresh out of law school and didn't have a single gray hair, but he never acted like a new attorney," Alsdorf said. "From the start, he was confident, professional and well-prepared, and even though he vigorously represented his clients I found him very pleasant to deal with."

In 1984, when Byrnes decided to leave Bogle to set up his own law firm, he surprisingly tapped the young associate to join him. "It was a big deal when Peter left," he said. But at the same time, "It was a kind of, 'So who's that person he's leaving with?'"

Alsdorf was one of those surprised by the move. "At that point, Brad had practiced a far shorter time than it takes most attorneys to attain partnership, but here he was, equal to one of Seattle's most accomplished litigators," Alsdorf said. "The wisdom of Pete's move is now evident."

Their partnership lasted 23 years. Byrnes' death last year after a four-year battle with multiple myeloma still visibly affects Keller; even so, he likes to talk about his longtime friend and mentor. "We had a great ride together," Keller said. "We tried some great cases. We had fun." Over the years, they had only two disagreements and "one of them was about whether I could put a Jewish star at the bottom of his Christmas tree in the lobby."

"I think more than anything he taught me that sincerity and genuineness are far more effective in a courtroom than bashing heads with a baseball bat," Keller said. "He was a very effective cross-examiner and I learned a lot about that aspect of trial practice from him."

It's a skill Keller has put to good use on more than one occasion with marked effect. Alsdorf recalled a case over which he presided in which Keller might very well have been the first attorney to ever "Google" a witness and turned up facts of which the attorney presenting the witness appeared to have been unaware.

"Brad has the rare gift of being able to take extremely abstract and technical issues and to describe them to judges and juries alike in the most human of terms," Alsdorf said. "What makes him a force in the courtroom, however, is that he doesn't rest on storytelling alone — even when he has entered a case only a month or two before trial, he somehow manages to take the time to learn the facts and the law as well as or even better than lawyers who may have been on the case for years. No angle is left unexamined."

Byrnes also taught Keller "that you can always get another client, but you can't get another license to practice law and there are times in your career when you have to be able to say no to clients." Some might say that Keller hasn't said no often enough.

Clay Bennett, surprisingly, was not Keller's most infamous client. In 1998, he represented "Big Tobacco," i.e., R.J. Reynolds, in the State's lawsuit accusing the tobacco industry of violating antitrust and consumer protection laws. The nine-week trial ended without a verdict when the nationwide settlement covering 48 states was negotiated.

In 2002, Keller represented Honeywell in a suit brought by Alaska Airlines flight attendants, who alleged that design flaws in MD-80s and DC-9s let harmful chemicals into aircraft cabins. Honeywell manufactured the auxiliary power unit blamed for the leaks. The 11-week trial ended in a defense verdict.

In 2004, Keller and Jeff Tilden represented an unnamed ("John Doe") law firm and its attorneys in a \$300-million legal malpractice case, which also resulted in a defense verdict after a trial of almost two months.

And just to prove that he is not a "total defense hack," one of Keller's favorite cases is his representation — along with others in consolidated cases against Holland America Line — of the families of 16 UW Husky fans who were killed in the 2001 crash of a Mexican charter excursion flight during a Gulf of Mexico cruise.

"It was extremely challenging because these cruise lines set excursions up as being offered by independent contractors and disclaim liability on tickets ... everything," Keller said. "We had to establish a case of

negligent selection. It was a tough battle, but with hard work we dug up some 'Deep Throats' — former employees of the excursion operation and cruise line — who 'told all' regarding the operations of this particular tour operator."

When the team heard that a witness had been located in the Yucatan, Keller was "down there in a heartbeat, meeting in some of the most ungodly places." He got the witness a passport and a visa, and flew him to the U.S. for a deposition. Keller's clients received the largest settlement of those paid. "I'm proud of this case," he said.

In his spare time, Keller is a down-home family man. His wife, Michelle, and daughter, Mikaela, are equestrians. His 18-year-old stepson, Mark, who started community college this year, is a hockey player. His son, Matt, may well be an aspiring police officer.

The kids, he said, "are a real joy. They help you keep your life in perspective. To them, you're just the guy around the house." Keller's own recreational passion and "therapy" is water skiing, which will find him out on Lake Washington at 6 a.m., three days a week, between June and September.

Last week, he was scheduled to be back in Oklahoma, where he was last seen attending serial depositions. This time, however, he had a courtside seat at the Oklahoma City Thunder's first-ever home opener. It was an anxiously awaited, once-in-a-lifetime thrill. "How often do you get the experience of the first home game in a new city?" he said.

Well, once too often, if you ask some. But rest assured, for Brad Keller, the consummate trial lawyer, such concerns are in the past and he is looking forward to the next horse race. ■

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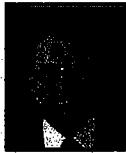
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