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Mr. Popularity He's Not

After all, Brad Keller's
courtroom performance
helped send off the Sonics

TAKE THIS JOB AND LOVE IT
Brad Smith wouldn't trade his
Microsoft gig for anything

NEVER A DULL MOMENT
Think constitutional law sounds boring
You haven't met Stephen Smith

BRILLIANT CAREERS
Robert K. Dawson is a high-flying
lawyer—in the courtroom
and from a bungee cor



SOMEbody's GOT TO DO IT...

Defend the 'black hats,' that is. And nobody can do it like Brad Keller, the guy who helped the Sonics skedaddle

by MICHAEL HOOD | photography by RICK DAHMS

When this attorney talks about his law practice, it comes down to black hats and horse races. Brad Keller is energized by taking on the seemingly impossible cases of publically perceived bad guys. His great successes have been in making those cases not only competitive in the high noon of the courtroom, but usually victorious.

"I'd always rather be the underdog," Keller says. "I'd rather come from behind and make a horse race out of a case nobody ever thought could be one." His old friend, U.S. District Judge John "Jack" Coughenour says, "Brad just likes to try cases. He loves the courtroom." *Seattle Times* pundit Danny Westneat is more cynical: "If you're ever in a bind of your own making ... call local attorney Brad Keller."

Keller's latest "bad guy" was Oklahoma City businessman Clay Bennett and a band of investors who, with Keller's considerable help, whisked the SuperSonics away from Seattle after 41 years of professional basketball and turned them into the Oklahoma City Thunder. Some murders may not raise such public ire.

It was a battle between the team and the city over the enforcement of the team's lease to play

at KeyArena. Bennett wanted out, saying it was not a viable venue and the Sonics would lose millions if forced to play there through 2010.

It could have been a slam-dunk lease case. But Keller refocused it, putting the city and potential local owners on trial for trying, as he sees it, to use the lawsuit as leverage to force a sale of the team so it could stay in Seattle.

"Nobody thought that we had much of a chance of winning," says Keller. "They said you'll play the home games there, you'll do it for X number of years, it can be statistically enforced—what's there to have a trial about? By the end, anybody who followed it knew: This is a cliffhanger."

Westneat wrote, "[Keller's] silver tongue somehow transformed Bennett, his client, into a piteous victim." Keller says Bennett was "publicly mugged." A turning point was Keller's relentless grilling of Mayor Greg Nickels, who stumbled and, as noted by *The Seattle Times*, tried to "deny or evade questions at times contradicted by his earlier videotaped testimony."

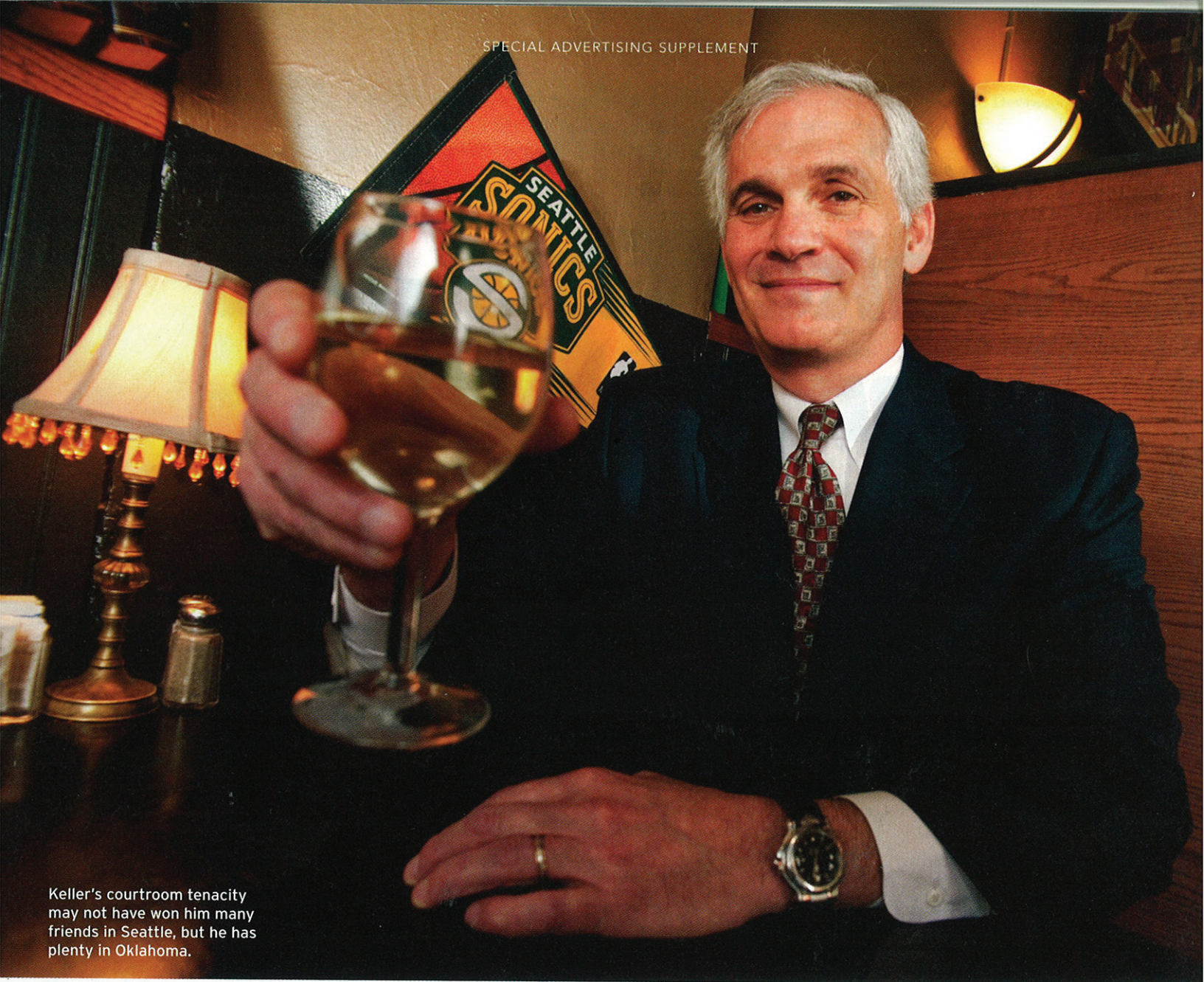
On the day U.S. District Judge Marsha Pechman was to give her decision, there was a stunning, last-minute settlement favorable to the Oklahomans—pay some money, take

their team and go. Would he have won the judgment? Keller smiles. "Clearly, I will never know." Pechman's ruling was on her desk—she was about to hand it out when the settlement came in. She flipped the paper over, saying something like "Guess we won't be needing this now." That tantalizing scenario will have Keller wondering for the rest of his life.

NOT A POPULARITY CONTEST

Plaintiff's attorney Paul Luvera and his law partner Joel Cunningham have squared off with Keller on many substantial cases over the years. Luvera wasn't surprised by the Sonics settlement: "Brad's a formidable lawyer with the endless energy to thoroughly prepare." Lots of attorneys are well prepared, he says, but Keller's strength is his ability to "skillfully represent unpopular causes in a way that's ethically appropriate."

Not surprisingly, helping out-of-towners steal the home team meant his own security became a consideration. With 5,000 demonstrators showing up the day the trial began, the defense team was escorted by U.S. marshals out the courthouse loading dock, and back and forth between the federal building and Keller's offices.



Keller's courtroom tenacity may not have won him many friends in Seattle, but he has plenty in Oklahoma.

"I got a handful of not-so-veiled threats," says Keller. When one expressed hope his children would meet the same fate as the kids in the nursery of the bombed Oklahoma City federal building, he hired armed, off-duty cops to stand in his driveway and the lobby of his locked-down office. "This doesn't happen often to a guy with my kind of practice," says Keller.

Silver-haired and lean, Keller, 54, has a boyish energy and gregariousness that serves him well in the courtroom. He lights up when talking about what he calls his "black-hat cases." It's obviously where he loves to engage. Forensically and professionally, they're the most challenging cases, he says, "You're starting the case in the hole—and you climb out of that hole with pre-trial work, but more importantly, in the trial. Woe to the lawyer who pretends that the negative perception doesn't exist. It

does. You've got to put it out there; deal with it, straight and out front."

He and his late partner Peter Byrnes represented Big Tobacco in Washington state's 1998 antitrust/consumer-protection suit against R.J. Reynolds, a client that couldn't have been much lower in public esteem. In the first three minutes, Keller told the jury "smoking is bad for your health and everyone knows it," and that the defense wouldn't claim otherwise. "You almost heard them exhale with a sense of relief that we weren't going to sell them a bill of goods."

The trial ended in its ninth week when it was settled in a 48-state agreement in which Christine Gregoire, then the state's attorney general, was famously involved. Defense attorney Keller talked with the jurors after the settlement: "They were sharply divided [during the trial], and we hadn't put on our defense yet," says Keller.

He took more heat in 2001 defending Abbott Laboratories, maker of a test that misdiagnosed a Spanaway woman with a rare form of cancer, putting her through three years of unneeded multiple surgeries and chemotherapy.

Keller's team lost that one—though the jury put equal blame on the woman's doctors—but prevailed the next year in an 11-week trial in which 26 Alaska Airlines flight attendants claimed that a small engine made by contractors of Keller's client, Honeywell, created toxic fumes that mixed with cabin air and sickened them.

It hasn't all been black hats—he and Byrnes represented seafood-processing companies harmed by the 1989 oil spill by the Exxon Valdez, with a recovery of more than \$90 million for their clients. More recently, the firm consolidated cases

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[Keller continued from page 9] with five other firms to represent families of 16 University of Washington football fans killed in the 2001 crash of a Mexican charter excursion flight to Chichen Itza during a Holland America Line cruise in the Gulf of Mexico. The cruise line had portrayed the side trips in brochures as offered by independent contractors and denied all liability—so Keller's team had the very difficult task of proving it was a case of negligent selection.

It took shoe-leather investigation. They found some “deep-throat” ex-employees of the cruise line and the excursion operators willing to speak out against the cruise line. Keller flew to the Yucatan, wrangled one witness a passport and visa, then brought him to the U.S. for a deposition.

“We had to develop a theory that would work and then find evidence that would support it. We were very fortunate to find one. It was collective hard work by not just myself, but also Keith Kessler [Stritmatter Kessler Whelan Coluccio], Todd Gardner [Swanson Gardner], David Tift [Ryan, Swanson & Cleveland] and Jeff Jones [Krutch Lindell].” Holland America settled and the numbers are confidential, although Keller admits, “Ours was not insubstantial.”

THIS ‘KID’ WOULDN’T TAKE NO FOR AN ANSWER

Son of a successful trust and estates lawyer, Keller was born in Queens, N.Y. He graduated in 1976 from Wisconsin’s Beloit College, a small liberal-arts school known as an alternative school, but not one with much cachet, he says. “Academics were not my strong suit in high school, and it turned out to be the right college for me.” In those years, Keller was introduced to two things that would mold his future: the law and Seattle.

He was attracted to Beloit by its required semester of work-study. It was the early 1970s, and he says, “At that point, I fancied myself as a liberal New York Jewish kid who’d become a defense lawyer to defend those unfairly accused by the oppressive United States government.” His work-study was in the busy, hectic Dade County (Florida) Public Defender’s Office, where he spent three months working capital cases. Criminal work, he discovered, was not for him. “We measured success by whether we kept people out of the electric chair; it took the sheen off that kind of practice.”

On a hitchhiking trip to visit a girlfriend doing a Beloit internship in Seattle, a pony-tailed Keller fell in love with the city and the area: “I came back a few years later in a three-piece suit.”

His law school, Brooklyn Law, was as inauspicious as Beloit. It was a solid, regional school in New York City whose best-known alumni are Geraldo Rivera and talent agent Irving “Swiftly” Lazar. “The price was right,” he

laughs. “I was not competitive to go to an Ivy League college.” But he found his academic footing: By the end of his first year, he was No. 2 in his class.

In 1978, Keller heard that attorneys for Seattle’s prestigious Bogle & Gates were in New York interviewing Columbia and NYU students to be summer clerks. Keller says he wanted the

“Some of us refer to those days as the ‘golden days’ of Bogle & Gates. It was a litigation powerhouse with a collection of very talented trial lawyers: Ron McKinstry, Peter Byrnes, James Smith, Spencer Hall, Jay Zulauf and others.”

Under their tutelage, Keller developed skills as a trial lawyer and commercial litigator. “Like lots of young lawyers, I thought to be good I had to

Would he have won the [Sonics] judgment? Keller smiles. “Clearly, I will never know.” Pechman’s ruling was on her desk—she was about to hand it out when the settlement came in. She flipped the paper over, saying something like, “Guess we won’t be needing this now.” That tantalizing scenario will have Keller wondering for the rest of his life.

sophistication of a big firm practice, but one that was trying cases. “I realized, in a city like Seattle, you could get in a large firm and still get into court and try cases. If I went down the track of a large New York firm, there’d be lots of zeros but I’d be just one of a cast of thousands.”

Coughenour and Mike Courtnage (Alston, Courtnage & Bassetti) were doing the interviews; it was a very competitive process. “My secretary called from Seattle,” Coughenour recalls. “She said a kid from Brooklyn Law School wanted an interview; I said tell him we’re booked and really don’t have the time.”

But Keller finagled the name of the attorneys’ hotel. After dinner one evening, Keller was camped at Coughenour’s hotel-room door. “He wore us down, and we let him in,” Coughenour laughs. “I remember thinking, in my arrogant way, that I’d never heard of the school, and it was going to be a hard sell to persuade me to hire someone from there.”

The kid from Brooklyn Law, Coughenour says, interviewed them. Sitting on the bed with a legal pad of questions, “He took careful notes of every answer we gave. We were both so impressed, we hired him for the summer.” After getting his law degree in 1979, Keller went back to Seattle, passed the Bar and worked the next five years at Bogle.

He was in the right place. Coughenour says,

“They taught me that, in the courtroom, sincerity, preparation and integrity win over judges and juries far more than being an abrasive, sarcastic kid from New York.”

When his Bogle mentor, Peter Byrnes, went out on his own in 1984, it surprised many when he took Keller with him to create Byrnes & Keller. “Pete Byrnes was the premier trial lawyer in the commercial field in Seattle,” Keller says. “I was a nobody, just a hardworking kid five years out of law school.” Tapping Keller hoisted him to near equal footing. Byrnes died in 2007, when cancer ended a 23-year-old partnership. It’s still painful for Keller. “We had a great ride together,” he says.

Keller says “therapy” for his high-powered, high-profile lifestyle is water-skiing on Lake Washington at 6:30 a.m. most weekdays from May to October, or hanging out with his family: wife, Michelle; daughter, Mikaela, 10; and 4½-year-old son, Matthew. Stepson Marc, 19, is at the University of Montana.

Keller has no plans to give up the black-hat cases any time soon. Byrnes & Keller has zeroed in on potentially notorious cases such as product-liability suits, and is getting its share of the growing number of legal-malpractice suits.

Keller says with tongue in cheek, “We cover the whole panoply of man’s inhumanity to his fellow man.” ◀