WDTL
WASHINGTON DEFENSE TRIAL LAWYERS

Defense News

Fall 2025







The Seattle Judicial Reception & Awards Ceremony was a Winning Night for All!





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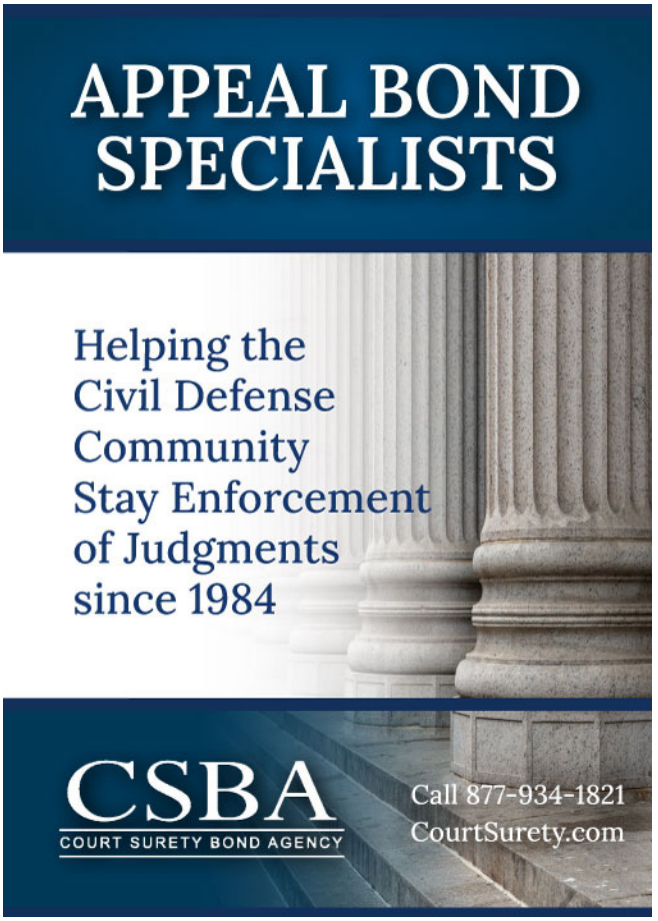
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From the Desk of Maggie Sweeney, WDTL Executive Director

Why WDTL Roundtables Are My Favorite Member Benefit

Of all the valuable offerings Washington Defense Trial Lawyers provides, Roundtables are my favorite and one of the most important benefits of membership.

In a profession where we are constantly navigating complex legal issues, evolving case law, and the pressures of advocacy, Roundtables offer something rare and essential: a space for candid, collegial conversation. These monthly Zoom gatherings are designed to feel like the best kind of water-cooler talk where you can ask hard questions, share your experiences, and learn from others who understand the nuances of civil defense practice.

Because Roundtables are open only to WDTL members, the environment is refreshingly open and supportive. Whether you're a seasoned litigator or newer to the field, you can bring your questions, insights, and even your uncertainties without hesitation. The format encourages real dialogue, and the result is a dynamic exchange that leaves you feeling more connected, informed, and energized.

Each session is led by a guest facilitator with deep knowledge of the topic at hand. These facilitators don't just present, they spark discussion, offer practical takeaways, and help us think more critically about how we approach our work. Topics range from emerging legal trends to trial strategy, ethics, and practice management, ensuring there's always something relevant and timely on the agenda.

The Roundtable program owes its origins to the thoughtful leadership of Shahin Karim and Courtney Hansen, who developed the idea in 2019 as a way to foster in-person, informal conversations among defense attorneys. Their vision was simple yet powerful: monthly gatherings where members could share first-hand knowledge, practice tips, and strategies for navigating the ever-changing landscape of civil defense, including new case law, procedural rules, and litigation challenges. Each session would focus on a fresh topic suggested by WDTL, and the invitation was open: just show up, share information, and get to know your fellow defense counsel over festive snacks and drinks. When the pandemic made in-person meetings impossible, the format transitioned to Zoom but the spirit of connection and collaboration envisioned by Shahin and Courtney remains at the heart of every Roundtable.

We are fortunate to have WDTL Board Member Jade Park of Simmons Sweeney Freimund Smith Tardif serving as our new Roundtable facilitator. Jade works closely with co-facilitators to develop timely, engaging topics that resonate with our members. Jade is always looking for new ideas. If there's a topic you'd like to explore, Jade would be delighted to hear from you.

And yes, there's CLE credit. While Roundtables are approved for 1CLE credit the real value goes far beyond the hour logged. It's about building community, sharpening our skills, and remembering that we're not in this alone.

In a world where connection can feel increasingly transactional, WDTL Roundtables remind us of the power of conversation. They're a place to be curious, to be candid, and to be in community with others who share your commitment to excellence in defense practice.

Roundtables are on the first Thursday of each month from 5:15 to 6:15 p.m. Register at wdtl.org. If you haven't joined us for a Roundtable, I hope you will. I think you'll find, as I have, that they're not just informative, they're indispensable.

With gratitude,
Maggie Symons Sweeney
Executive Director
Washington Defense Trial Lawyers

Member News

Core Sponsor, Sound Economic Forensics is proud to announce that its founder, Ashleigh Lansing, CPA, ABV, MAcc, has been recognized by Forbes as one of America's Top CPAs for Valuations in 2025. This prestigious distinction highlights Lansing's expertise in complex financial analysis, economic damages, litigation support, and business valuation services.

"This recognition is an incredible honor," said Lansing. "At Sound Econ, we are committed to providing clients with not only technical expertise but also the clarity and confidence they need when financial issues are most critical. Being included on this list reflects the dedication my team and I bring to every engagement."

Throughout her career, Lansing has built a reputation for delivering clear, accurate, and defensible financial insights. This marks her second national recognition; in 2024, the American Institute of Certified Public Accountants honored her with the 40 Under 40 Standing Ovation Award for outstanding professional achievement and leadership in forensics and valuation services.



Join the Roundtable!

Engage in members-only discussions online the first Thursday of each month.

All experience levels are welcome.

Check out the topics and register on the WDTL calendar.



A Journey of Redemption with Floyd Barrow and The Seattle Clemency Project

By Erin Seeberger, deMaine Seeberger PLLC

As a medical malpractice defense attorney, I have dedicated my career to representing healthcare providers in high-stakes litigation. My daily work involves navigating complex medical evidence, attending depositions, and developing trial strategies. However, the murder of George Floyd in 2020 influenced my perspective of our justice system in profound ways. It sparked a national dialogue on inequities in the criminal justice system and motivated my colleague, Rhianna Fronapfel, and me to seek pro bono opportunities where we could contribute meaningfully. We connected with The Seattle Clemency Project, which focuses on assisting incarcerated individuals in pursuing clemency. Through SCP, we began representing Floyd Barrow, who had been in prison for more than 20 years. Floyd's case has been transformative for me, reinforcing the broader role lawyers can play in advocating for justice and second chances.



Floyd's story is one of remarkable personal growth. Now 60 years old, he grew up in Seattle with his parents. Academic struggles in middle school led to family conflicts, prompting him to run away at age 14. That choice steered him toward substance abuse and a series of poor decisions. By the time of his incarceration in 2004, Floyd's life had been marked by addiction-related convictions. Today, he accepts full responsibility for his past, while acknowledging the significant role his untreated substance use disorder played in his early life.

What inspired Rhianna and me most was Floyd's dedication to change during his time in prison. He achieved and maintained sobriety throughout his sentence, participating in recovery groups and rehabilitative programs that encouraged self-reflection, helping him understand the impact of his actions on his family and community. These efforts built his self-esteem, turning him from a man who once felt directionless into someone confident, honest, and deeply committed to others.

Family has also been central to Floyd's transformation. His brother Louie, who received clemency in 2020 and was released in 2021, shared a cell with him for several years. They bonded over shared regrets and aspirations. When I spoke with Louie, he praised Floyd's newly developed emotional intelligence and shift toward living for his loved ones. Their mother, Elizabeth, shared how Floyd called during family gatherings, staying connected despite the distance. Floyd's son, Floyd Jr., relied on him for guidance during challenging times, and Floyd maintained weekly contact with his grandchildren, helping with homework over the phone and stressing the value of

education. This close-knit support system has helped Floyd grasp the importance of relationships, extending his remorse to the harm his earlier choices caused his family. In prison, he invested in these bonds daily, emerging as a devoted son, brother, father, and grandfather.

Education further fueled Floyd's progress. Overcoming his youthful aversion to school, he earned his GED in 2014. He then obtained a Pell Grant to take community college courses while incarcerated, even teaching himself computer basics to complete assignments. Floyd's curiosity extends beyond formal education; he follows NPR and the news, and he devours books on American history. I introduced him to my mother-in-law, Sally, who shares his passion for reading. They have formed a unique friendship, swapping book recommendations and stories about their grandchildren like members of a two-person book club. This demonstrated his ability to connect with and make an impact on individuals with highly different backgrounds from his own, further impressing Rhianna and me in our work with him.

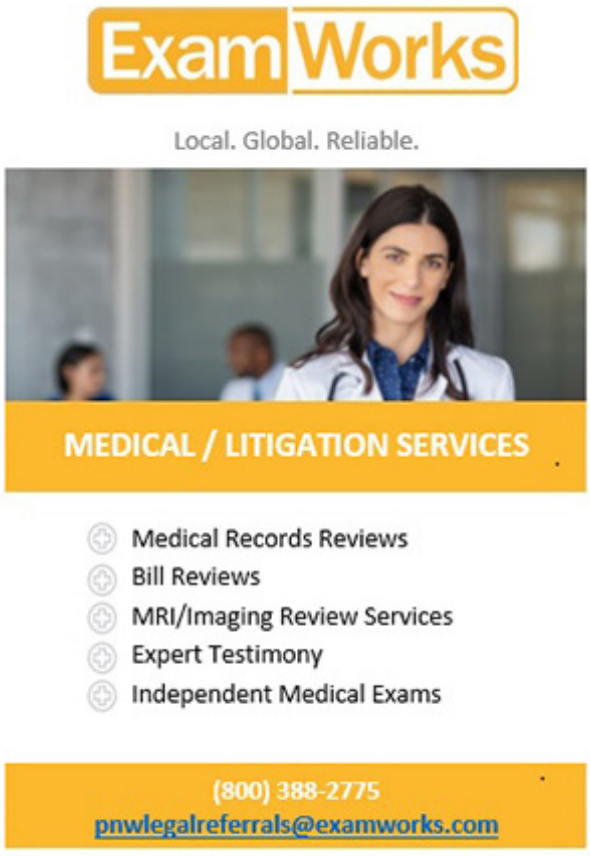
Floyd's work ethic stands out as well. He held consistent employment for almost his entire incarceration, working 50 to 55 hours weekly, including through the COVID-19 pandemic. In the kitchen, he advanced from basic roles to managing menus and inventory, earning praise from supervisors. Floyd takes pride in his contributions, sending earnings home to buy gifts for his family, ensuring he never misses a birthday or holiday.

His prison record reflects his transformative path. Floyd had minimal infractions, none serious or violent, and none at all in the decade prior to our work with him. Corrections staff respect him, often telling his family he was a model inmate. He also became a mentor to fellow inmates. He openly discussed his past to guide others, emphasizing that change, though difficult, is worthwhile. Peers described him as respected and compassionate, someone who listens and encourages. He draws on his faith to instill hope, helping others repair family ties and navigate loss. One friend credited Floyd with teaching him that incarceration does not preclude being a good parent. Through these roles, Floyd channels his regrets into positive influence.

In preparing Floyd's clemency petition, we highlighted his extraordinary evolution. The King County Prosecutor's Office, after reviewing his case, in an unprecedented move, joined our request for commutation. The King County Prosecutor's Office, in joining the petition noted that under current charging standards, several of Floyd's prior drug related offenses would not be charged today. Thus, his offender score, used for sentencing purposes, would have been lower resulting in a shorter sentencing range.

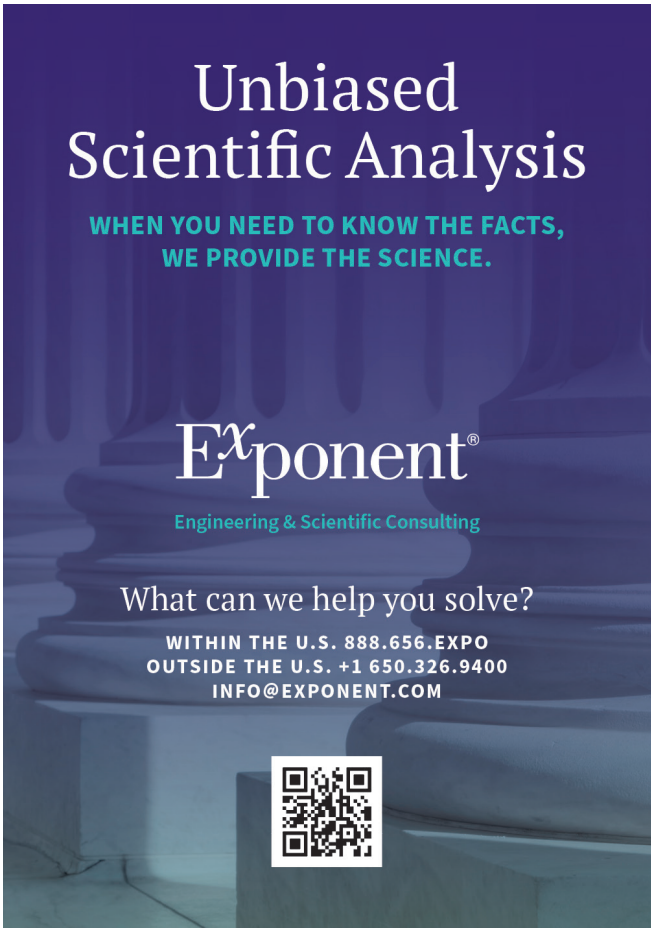
In September 2024, Rhianna and I, along with the King County Prosecutor's Office, presented Floyd's clemency petition to the Washington State Clemency and Pardons Board, who unanimously voted in favor of clemency. Governor Inslee signed Floyd's commutation on his final day in office.

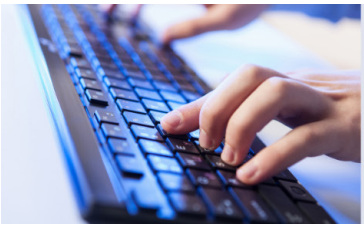
Floyd has been free for more than six months now and is thriving. He lives in Federal Way with his son, surrounded by family in a supportive, sober environment. He works for a contractor preparing meals for airlines, applying the food service skills he honed in prison. He continues to prioritize his sobriety, and spends time enjoying moments with his family, making up for lost time. Floyd's successful re-entry demonstrates his readiness to contribute as a productive community member and the value of second chances.



Our work with Floyd has been profoundly rewarding. It bridged my defense practice with broader justice issues, showing how pro bono efforts can foster real change. To my WDTL colleagues, I recommend exploring similar opportunities. Floyd's journey illustrates the potential for redemption when individuals commit to growth and receive support. I am grateful to The Seattle Clemency Project, Rhianna, and especially Floyd for this inspiring chapter in my career.

Erin Seeberger brings nearly two decades of insight and experience to serve her clients' legal needs. Her practice involves the defense of physicians and healthcare institutions against claims of medical malpractice. She also represents healthcare providers in licensing and disciplinary actions, and consults with healthcare institutions regarding privileging and credentialing matters. Additionally, Erin counsels professional services clients on matters related to disciplinary issues, accommodations, and other challenges that arise in the employer-employee relationship. Throughout her career, Erin has tried multiple cases in federal and state courts, including claims for employment discrimination, medical and dental malpractice, contractual indemnity, and wrongful death. Erin is licensed to practice in California and Washington.





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Seattle Judicial Reception & Annual Awards Ceremony

By Rory Cosgrove, WDTL President, Carney Badley Spellman

Each year at its Seattle Judicial Reception, the WDTL recognizes four exceptional lawyers for their contributions to the bench, the bar, and our community: (1) Outstanding Defense Trial Lawyer, (2) Outstanding Litigation Associate, (3) Outstanding Plaintiff's Lawyer, (4) Community Leadership, and Career Excellence Award. Nominations are submitted by our members and core sponsors, and are then voted on by WDTL's board of trustees.

This year was an exceptional year for nominees. The WDTL had many standouts in each category, making the decision difficult for its trustees. But four lawyers stood out above all the rest:

- Natalie Heineman of Larson Health Advocates won the award for Outstanding Defense Lawyer.
- Monica Marks of Preg O'Donnell & Gillett won the award for Outstanding Litigation Associate.
- John Bender of K&L Gates won the Outstanding Plaintiff's Lawyer Award.
- Rhianna Fronapfel of Bennett Bigelow & Leedom, P.S., won the Community Leadership Award.

And to recognize a special person for her career devoted to public service and the defense bar, the WDTL honored Celeste Stokes with the Career Excellence Award.

The Seattle Judicial Reception was a smashing success. Over 100 WDTL members, trial and appellate judges, core sponsors, and friends and family of the award winners attended the event at the Washington Athletic Club. Heartfelt speeches and fellowship, once again, took over the Washington Athletic Club for an evening.

The WDTL again thanks its core sponsors for their support of the Seattle Judicial Reception and the award winners.

Thank you to our Core Sponsors! WDTL would not exist without your valued partnership and expertise.

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The 2025 Award Winners



Natalie Heinman



Monica Marks



John Bender



Rhianna Fronapfel



Celeste Stokes

The Celebration

2025

WDTL Seattle Judicial Reception & Awards Ceremony

https://www.youtube.com/watch?v=p7Og-agOzK0

Defense Win
Kitsap County Prosecutor's Office

On August 21, 2025, Kitsap County received a unanimous defense verdict in Tammy Duryea v. Kitsap County after a three-week jury trial in Kitsap County Superior Court. Kitsap County was represented by Lael Carlson and Kate Cummings of the Kitsap County Prosecutor's Office. The trial involved a former Kitsap County District Court employee who was terminated in November 2021 for failure to receive a COVID-19 vaccine in accordance with a vaccine mandate implemented by the Kitsap County Superior and District Courts. Plaintiff had requested an exemption from the vaccine mandate on the basis of both religious beliefs and disability. Plaintiff brought claims only under the Washington Law Against Discrimination. Plaintiff's claims for failure to accommodate a disability and wrongful discharge in violation of public policy were dismissed at summary judgment.

At trial, Plaintiff claimed failure to accommodate her religious beliefs and retaliation. To demonstrate a failure to accommodate religious beliefs, Plaintiff was required to prove that she had a bona fide religious belief that conflicted with her ability to receive the COVID-19 vaccine. During trial, Plaintiff did not articulate any specific tenet or belief that conflicted with her ability to receive the COVID-19 vaccine and instead testified that she had simply prayed about whether to receive the vaccine. In conversations with the jury after trial, jurors indicated they did not doubt the sincerity of Plaintiff's religious beliefs, but that they had been unable to discern a connection between those beliefs and her inability to receive the vaccine. Plaintiff also claimed retaliation by Plaintiff's manager, the District Court Presiding Judge, Human Resources, and legal counsel for the District Court.

At closing, Plaintiff asked for nearly $1.2 million. After a day of deliberations, the 12-person jury returned a defense verdict.





Sussing Out When Clients Lie to Their Attorney

By Mike Rhodes, Mix Sanders Thompson PLLC

Clients often try to tell the truth, but it is human nature to lie when it is within one's self-interest. The following article discusses how to suss out when clients lie and what to do about it.

How Lawyers Can Detect Dishonesty Without Breaking Trust

Every attorney eventually faces a difficult truth: some clients lie. Whether out of fear, shame, pride, or a misguided belief that deception will strengthen their case, clients sometimes withhold or distort facts. Detecting those lies is not about cynicism — it's about protecting the integrity of the representation, the lawyer's ethical obligations, and ultimately the client's best interests.

Why Clients Lie

- Understanding the "why" behind deception helps lawyers respond strategically rather than emotionally. Common reasons include:
- Self-preservation: Clients may fear criminal liability or civil penalties.
- Shame and embarrassment: Admitting fault, addiction, or infidelity can be painful.
- Strategic misjudgment: Some believe the lawyer "only needs to know what helps the case."
- Mistrust or misunderstanding: Clients unfamiliar with attorney–client privilege may think full disclosure is unsafe.

Warning Signs of Dishonesty

No single sign proves deceit, but patterns can be revealing:

1. Inconsistencies in narrative – Details shift between meetings, or documents contradict verbal accounts.
2. Overly rehearsed or vague answers – Clients may seem to have memorized a version of events, avoiding specifics.
3. Avoidance of documentation – Refusing to provide records or access to evidence raises red flags.
4. Emotional incongruence – The tone or affect doesn't match the content (e.g., calm recounting of a traumatic event).



5. Defensiveness or hostility when questioned – A client who reacts strongly to gentle probing may be hiding information.

Ethical and Practical Implications

Lawyers have a duty of candor toward the tribunal and competent representation of their client. A dishonest client can jeopardize both. If an attorney knowingly presents false evidence or testimony, they risk ethical sanctions. Therefore, when deception is suspected, the goal is to encourage truth-telling — not to "catch" the client, but to realign them with their own interests.

Techniques for Encouraging Honesty

- Reaffirm confidentiality: Remind clients that honesty is protected by privilege (within lawful bounds).
- Explain the consequences of lying: Clarify how falsehoods can destroy credibility and case outcomes.
- Ask open-ended questions: Allow the client space to tell their story without feeling cornered.
- Use corroboration gently: Mention inconsistencies neutrally ("This document says something different — help me understand why").
- Build rapport: Clients who feel respected are less likely to hide information.

Managing the Relationship When Lies Persist

If, despite your best efforts, you know the client continues to mislead you:

- Withdraw if ethically required: Under Model Rule 1.16, withdrawal may be mandatory if continued representation would violate ethics rules.
- Document interactions carefully: Keep clear records of advice and client statements.
- Maintain professionalism: Avoid confrontation; deception often stems from fear, not malice.

Final Thoughts

Detecting dishonesty is part of the human side of lawyering. The best attorneys balance skepticism with empathy — recognizing that most clients lie not to harm their lawyer, but to protect themselves. The true skill lies in transforming that instinct for self-preservation into a foundation for honest, effective advocacy.

Mike Rhodes defends insurers and their insureds in actions involving insurance coverage, bad faith and personal injury. He has over 12 years of trial, arbitration and mediation experience in the federal and state courts of Washington, as a former deputy prosecutor and civil attorney. He has substantial experience representing insurance companies, corporations, property owners, and product manufacturers.



Member News

Baker Sterchi is pleased to announce the addition of Gregory Narver as senior counsel in the firm's Seattle office.

With more than 20 years of experience as an in-house government lawyer, Narver has a deep understanding of the complex legal issues, political pressures, and regulatory constraints facing school districts, municipalities, and other institutional clients. His practice focuses on appellate, government liability defense, and trial practice, as well as consulting in the governmental agencies/public entities industry.

Narver earned his law degree from the University of Washington School of Law and holds his undergraduate degree from Williams College. He is licensed to practice in Washington and before the Supreme Court of the United States.

Baker Sterchi Cowden & Rice is also pleased to announce the addition of Reeya Patel as an associate in the firm's Seattle office.

Her practice focuses on insurance defense, premises liability, and personal injury. Patel earned her law degree from Seattle University School of Law and holds an undergraduate degree from the University of Washington. During law school, she served as president of the Middle Eastern and South Asian Law Student Association, received a Pro Bono Pledge Distinction, and completed a semester-long externship with the Immigration Justice Clinic at Seattle University. Patel is licensed to practice in Washington.





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The Jury Box: Observations from an Eastern Washington Lawyer

By Mary Rathbone, Moberg Law Group

A Round of Applause for William "Billy" Clapp: A River Champion.



Have you ever spent a hot summer day in Grant County, drifting near sparkling waters, and wondered about the story behind Billy Clapp Lake? This iconic lake isn't just a favorite local getaway— it's a living testament to the bold vision and relentless drive of William "Billy" Clapp, a philanthropist and lawyer whose imagination, innovation and persuasive nature helped transform the Columbia Basin into a thriving agricultural destination.

What was described as an idea stoked around a woodstove in 1917, in a small law office in Ephrata, WA, William M. (Billy) Clapp and a few others discussed the potential for the Columbia Basin to feed a nation. The only problem? No Water. This post-World War I discussion led to what is now referred to as the Columbia Basin Reclamation Project. This project stands as a canonical example of how vision, local advocacy, and intergovernmental coordination can mature from speculative concept to nation-shaping public works. William "Billy" Clapp's regional insight, institutional strategy, and coalition-building helped move the Grand Coulee from an improbable idea to a cornerstone of western water law, federal reclamation policy, and basin-scale economic development.

The proposal to impound and elevate the Columbia River flows for irrigation were initially greeted with skepticism due to technical doubts, fiscal caution, and political hesitation. In this milieu, the Grand Coulee concept—anchored by the idea of a large mainstem dam with integrated hydropower to cross-subsidize irrigation—was both ambitious and controversial. Initial proposals contended with an entrenched river development paradigm focused on navigation and piecemeal irrigation works, not a vertically integrated powerhouse-irrigation system.

With the assistance of a few others, Billy Clapp was able to effectively articulate how a federal reclamation model could lawfully encompass a power-first dam to finance irrigation through power revenues, thereby aligning reclamation objectives with the emergent federal power policy. This framing was critical to overcoming the "who pays" objection and cementing a lawful nexus between Title I irrigation purposes and power development under federal statute. Clapp forged a credible, cross-disciplinary case—a prerequisite for federal authorization and appropriation in a skeptical political environment.

Mary Rathbone is an attorney based in Ephrata, Washington who is passionate about educating the public regarding civics and the courts.



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Artificial Intelligence and the Integrity of Expertise

By Lauren Riley, Machaon Medical Evaluations, Inc

Introduction

Expert witnesses have long stood as the bedrock of evidentiary credibility. They embody "expertise," lending weight to complex litigation where facts alone are insufficient. The introduction of Artificial Intelligence threatens to erode the judicial trust in experts that has been made standard over decades.[1] Contemporary cases serve as a warning that AI-assisted analysis can backfire.[2] From fabricated citations to unverified calculations, defense attorneys now face new challenges of ethics, admissibility, confidentiality, and defining "expert judgment" in the modern courtroom.[3]

Case Study: Kohls V. Ellison

By looking at a particular case, Kohls v. Ellison, one can get a grasp of the precedent for AI interference in expert witness cases. The case from January this year was challenging Minnesota's ban on AI-generated election deepfakes. During the case a Stanford professor, Dr. Hancock, was hired as an Expert witness. His testimony was subsequently thrown out after it was found that ChatGPT-40 AI hallucinated the citations of his court filing.

The incident not only "shattered credibility" in the immediate case but also signaled a broader judicial skepticism toward AI-assisted expert evidence, inviting greater scrutiny and exclusion from admissible testimony in some courts.[4] Kohls v. Ellison underscores the legal community's deepening unease with generative AI. Fabricated citations can appear so convincingly authentic that even a seasoned academic, an expert in artificial intelligence itself, can be misled into relying on them in sworn testimony condemning AI. In one of the judiciary's most ironic episodes, Hancock exposes a profoundly troubling erosion of professional competence and evidentiary credibility in the age of algorithmic authorship. Experts are at risk of broader scrutiny due to fabricated citations and the collapse of trust in testimony.[5] Even highly credentialed experts armed with innovative tools are not immune to the pitfalls of AI hallucination. When the credibility of an expert fails, so too can the case they support.

Broader Implications for Expert Witnesses

Originally a matter of free speech vs. technological regulation, Kohls V. Ellison now serves as a warning about the fragility of judicial trust, and courts are beginning to adapt. In Doe vs. State of Minnesota, plaintiffs sought a full Daubert analysis of both expert declarations. While the court denied a Daubert analysis in full, they did

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[1] Lars Daniel, "*The Irony: AI Expert's Testimony Collapses Over Fake AI Citations,*" *Forbes* (Jan. 29, 2025), https://www.forbes.com/sites/larsdaniel/2025/01/29/the-irony-ai-experts-testimony--collapses-over-fake-ai-citations/

[2] "*When AI Hallucinations Become Expert Testimony: A Warning Tale for Litigators,*" *Maryland State Bar Association* (Feb. 2025), https://www.msba.org/site/site/content/News-and-Publications/News/General-News/When_AI_Hallucinations_Become_Expert_Testimony_A_Warning_Tale_for_Litigators.aspx

[3] Id.

[4] *Maryland State Bar Association*, supra note 2.

[5] *Louisiana Law Review*, "Emerging Risks in AI-Assisted Legal Contexts" (2024).

evaluate each expert's competence and credibility by employing Daubert principles [6]. They also denied a challenge to one expert's declaration on the grounds of sufficient competence and credibility, demonstrating how trust rather than just technical qualification is now critical to determining admissibility.

With higher emphasis on trust comes higher standards for trustworthiness. Hancock's reliance on unverified AI output led to exclusion, which means courts are aware and on the lookout for AI contamination in expert materials [7]. The duty to verify and ensure accuracy is both "personal and non delegable" under the Federal Rule of Civil Procedure 11.[8] With an evolving jurisprudence, a quiet but significant reinterpretation has been set into motion: the affirmation that testimony must be grounded in verifiable human judgment. No algorithm can absolve a witness or their counsel of that responsibility.

Response

Legal rulemaking and regulatory bodies are taking action. The Maryland State Bar Association recently cautioned litigators that the "use of AI does not relieve personal accountability" from procedural or ethical rules. They go on to say that attorneys and experts must employ "rigorous verification" to AI assisted content.[9] Legal commentators and academics have developed alike motifs, arguing that reliance on generative AI models in expert testimonies contributes to "emerging risks in legal, academic, and regulatory contexts," including unvetted output, fabricated citations, and the collapse of institutional trust."[10]

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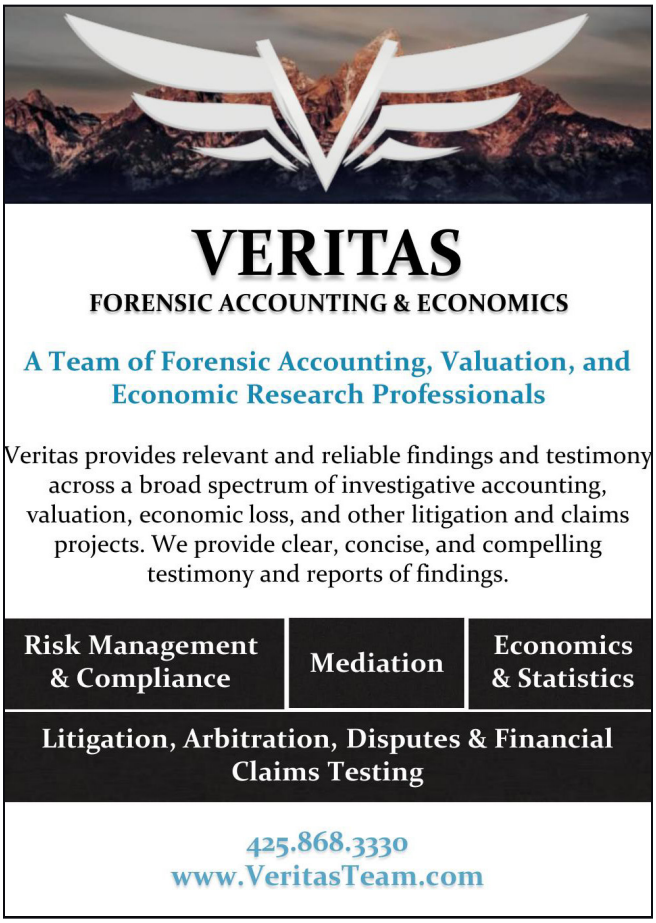
[6] "*When AI Hallucinations Become Expert Testimony: A Warning Tale for Litigators,*" *Maryland State Bar Association* (Feb. 2025), https://www.msba.org/site/site/content/News-and-Publications/News/General-News/When_AI_Hallucinations_Become_Expert_Testimony_A_Warning_Tale_for_Litigators.aspx

[7] Fed. R. Civ. P. 11(b) (requiring that all submissions are "formed after an inquiry reasonable under the circumstances").

[8] Fed. R. Civ. P. 11(b) (requiring that all submissions are "formed after an inquiry reasonable under the circumstances").

[9] *Maryland State Bar Association*, supra note 2.

[10] *Louisiana Law Review*, "Emerging Risks in AI-Assisted Legal Contexts" (2024).





Disclosure of AI involvement may soon become a standard expectation in expert declarations and court filings. This shift mirrors trends in early academic and regulatory ethics. For members of the Washington Defense Trial Lawyers (WDTL) and the broader defense community, these developments carry weight. Expert witnesses are integral to defending tort, injury, and product liability cases. Their reports anchor causation, credibility, and damages analyses. The intrusion of AI into this space creates new battlegrounds for admissibility, reliability, and privilege. A single AI-assisted phrase or phantom citation can upend months of case preparation and threaten to erode the credibility upon which expert testimony depends. Defense counsel must therefore vet their witnesses for subject matter expertise and technological discretion. As the boundary between humans and machines continues to blur, the lawyer's role is to preserve the integrity of judgment itself.

The courtroom's relationship with artificial intelligence is still being solidified, but one principle remains central: expertise must be earned, not generated.

Lauren Riley is a client relations specialist at MACHAON Medical Evaluations, a core sponsor of WDTL. She is currently pursuing her undergraduate degree on the pre-law track and enjoys gaining real-time insight into defense cases through her work with the medical expert witness firm.

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DRI Annual Meeting Recap: Built for Business – The Future of the Defense Bar

By Allison Krashan, Bryan Cave Leighton Paisner LLP

The 2025 DRI Annual Meeting took place October 15–17, 2025, at the Chicago Marriott Downtown Magnificent Mile. Several members of WDTL's leadership team, including Maggie Sweeney, Ashley Nagrodski, Rory Cosgrove, and Allison Krashan attended the meeting, as well as WDTL members holding leadership positions in DRI including Rachel Reynolds and Lori O'Tool. This flagship event brought together hundreds of civil defense attorneys and in-house counsel from across the country for three days of education, leadership development, and unparalleled networking opportunities.





The meeting theme, Built for Business: The Future of the Defense Bar, guided a robust agenda featuring world-class speakers, including keynote speaker Bob Woodward, who delivered a fireside chat on leadership and truth. Attendees earned CLE credits through sessions on cutting-edge topics such as:

- Third-party litigation funding strategies
- Navigating interactions with Attorneys General
- Bridging the gap between the courtroom and the C-suite



Leadership programming focused on empowering the next generation of defense bar leaders. Sessions explored best practices for building successful teams, defining organizational culture, and preparing for emerging challenges in civil litigation. WDTL's own Maggie Sweeney spoke on a panel on Tips on Effective Amicus Programs, and Allison Krashan spoke on a panel on Engagement with Corporate Counsel.



Networking was front and center throughout the event, providing opportunities for members to engage in governance and strategic planning. Attendees participated in the Welcome Reception (Oct. 15), Premier Networking Reception at the Shedd Aquarium (Oct. 16) – which also included a meet and greet with the penguins, and special programs for first- and second-time attendees to foster connections. Beyond the formal agenda, attendees enjoyed Chicago's vibrant culture, iconic architecture, and culinary scene, making this year's meeting both professionally enriching and personally memorable.



Allison Krashan has extensive litigation experience in product liability, toxic torts and commercial litigation matters. Allison focuses her practice on the defense of chemical and pharmaceutical manufacturers as well as retailers and property owners. Her extensive litigation experience in state and federal courts includes environmental and toxic tort claims, product liability claims and commercial litigation matters.



From Conflict to Collaboration: Understanding Attorney Work Styles

By Ileia Perry, Steno Agency, Inc.

Your co-counsel wants another research memo. You think you've already done enough research. Meanwhile, your associate is still mapping out contingency scenarios while you're ready to just handle things as they come up in court.

Sound familiar? These aren't personality clashes, they're differences in work styles that, when understood, can transform team friction into strategic advantage.

Steno's Attorney Work Styles framework to help attorneys understand how they naturally process information, respond to pressure and execute their work. By recognizing these patterns, legal teams can leverage their diversity rather than fight against it.

The 4 Attorney Work Styles

Points of misalignment make sense once you understand the four attorney work styles:

- The Research Commander builds cases through thorough legal analysis. They excel at finding precedent that strengthens arguments, digging deep into case law.
- The Strategic Architect sees cases as interconnected systems requiring careful coordination. They excel at risk assessment and project management, creating detailed frameworks that account for multiple scenarios.
- The Courtroom Dynamo performs best under high-stakes pressure. They trust their instincts and experience to make quick strategic pivots based on what's unfolding in real-time.
- The Narrative Weaver crafts cases around compelling human stories. They translate technical legal concepts into narratives that connect emotionally with their audience.

From Friction to Strategic Advantage

Understanding these work styles doesn't just reduce tension, it fundamentally changes how teams operate. Rather than trying to change how attorneys naturally work, teams can help each person enhance their strengths while strategically borrowing techniques from other archetypes when needed.
When you recognize that a Research Commander's thoroughness and a Courtroom Dynamo's quick thinking both serve valid purposes, you stop viewing their different approaches as obstacles and start seeing them as complementary strengths.

This awareness translates into concrete changes. Communication adapts: Research Commanders get detailed written briefs while Courtroom Dynamos get quick verbal summaries. Task assignment becomes strategic: Research Commanders lead motion practice, Courtroom Dynamos handle emergency hearings, Strategic Architects manage complex multi-party cases, and Narrative Weavers lead client communications. A Strategic Architect's organizational framework provides the structural backbone for a Narrative Weaver's compelling presentations. The Narrative Weaver ensures those comprehensive plans actually connect with real people. Research Commanders dive deep into precedent while Courtroom Dynamos keep the team

moving forward. Each work style's weakness becomes less critical because teammates bring different strengths.

Beyond the Framework

Most attorneys demonstrate elements of multiple work styles depending on circumstances, and the strongest legal professionals develop flexibility to access different approaches as cases require. However, understanding which approach you naturally default to under pressure, and recognizing those patterns in your colleagues, provides the foundation for building more effective teams.

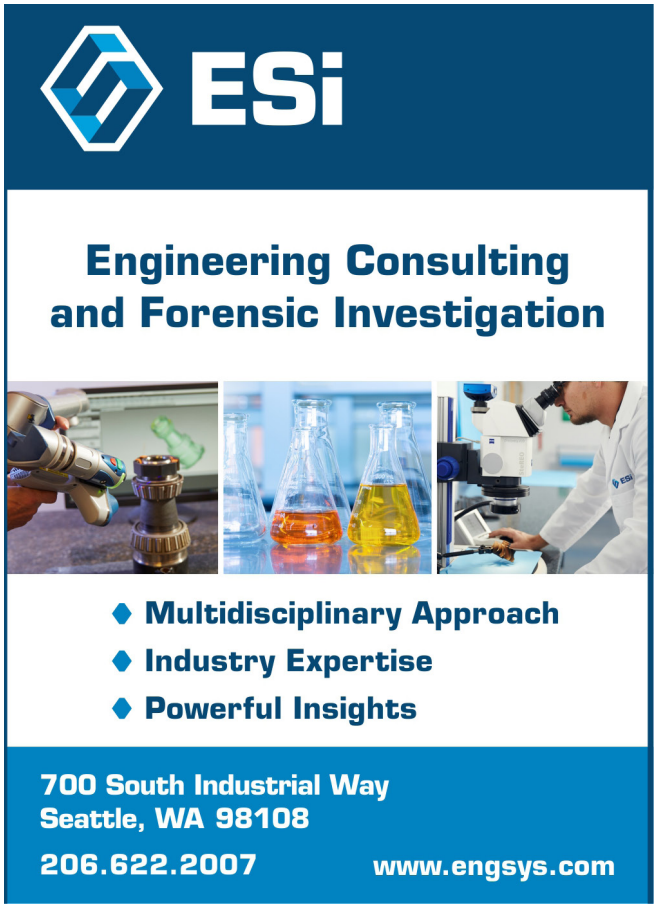
The attorney who wants one more research memo and the one who thinks research is done aren't having a personality conflict. They're approaching the work from fundamentally different but equally valid perspectives. When teams recognize these differences as strategic assets rather than sources of friction, collaboration shifts from contentious to complementary.

Ileia Perry is a Senior Account Executive with Steno. She has over six years in the legal industry, including time as a court reporter, plus backgrounds in healthcare and self-care entrepreneurship.

ASK A TRIAL LAWYER

SEND YOUR QUESTIONS FOR THE NEXT ISSUE
READ THE CURRENT ARTICLE ON PAGE 26





Is There a Class in Your Class Action?

By Ben Lester, Ph.D., Exponent



What human factors can reveal about consumer decision-making and purchase behavior in class action certifications

Class action lawsuits are increasingly focused on issues of alleged misrepresentation based on consumer perception and understanding of myriad consumer products and services. Given the potential size of class actions, the consequences can scale quickly for product manufacturers facing reputational and monetary damages.

With so much at stake, the certification phase of a class action lawsuit — when the court determines whether the group allegedly affected is a class in the eyes of the law — has become increasingly important. Without certification, a lawsuit can be dismissed without moving on to the next phase: examining the merits of the claims.

For example, in KIND LLC "Healthy & All Nat." Litig, 15-MD-2645, 2022 U.S. Dist. LEXIS 163207 (S.D.N.Y. Sept. 9, 2022), the plaintiffs who purchased KIND products alleged the product's label, "All Natural/Non GMO," was deceptive. Yet plaintiffs' interpretations of the phrase "All Natural" ranged from products "made from whole nuts, fruits, and whole grains" to products made with "ingredients [that] were not synthetic, not chemicals, [but were] natural ingredients" to products "pull[ed] out of the Earth' or 'dirt,' or 'untouched.'"

Based on this testimony, the Southern District of New York declined to certify the class, finding the interpretations were so varied that "common questions no longer predominated." In other words, the complaints were not similar enough to justify combining them into one lawsuit.

As this case shows, claims of misrepresentation in marketing and product labeling can benefit from human factors analysis of consumer understanding, decision-making, and purchase behavior, all of which can affect whether a group in a class action lawsuit is found to be a class or not. Analyzing misrepresentation issues using human factors techniques can help clarify consumer decision-making and behavior in class action lawsuits, which can affect any imaginable product, from a financial offering to vehicles, cosmetics, food and beverages, and medical devices.

What's makes consumers a class in a class action lawsuit?

Before examining the merits of class action claims, courts require class certification according to four components under Fed. R. Civ. P. 23(a): numerosity, commonality, typicality, and adequacy of representation.

Commonality and typicality are central to determining the homogeneity and representativeness of the group of people allegedly affected by (alleged) misrepresentations about a product or service. For commonality, questions of law or fact need to be common to everyone in the class seeking certification. For typicality, stakeholders must show how well the grievances of the proposed class are represented by and reflected in those individuals who seek to represent the entirety of the class as plaintiffs.

In misrepresentation claims, the allegation is often that a group of people form a class because they purchased a product for the same specific reason, and if the product manufacturer had disclosed the "truth" about some value-reducing characteristic of the product, the class would not have purchased or leased the product. Take, for example, the label of a hypothetical juice product that describes its contents as "naturally sweetened," but the item turns out to be made with processed sugar (sucrose).

In this example, one group of purchasers might have read the label and bought the juice because they believed it was sweetened by fruit sugars (fructose). Had the misunderstanding been addressed by the label (i.e., that the juice was not sweetened exclusively with fructose), some consumers would not have bought it (i.e., they would have uniformly behaved in a different way). This group might be considered a class.

In contrast, some consumers may not be considered part of the same class if they read the label and bought the juice because they have been buying that brand for 20 years and would not have changed their purchase decision even if they knew the "truth" about the sweetener used in the product.

> *With the potential for class action lawsuits to expand to hundreds of thousands of people who all saw the same digital ad, testing what actual users experience is increasingly important.*

Determining commonality and typicality can be challenging because consumer purchase behavior is complex and motivated by many factors, including demographics, economics, cultural influences, timing, and past behavior (even that of prior generations of buyers). Purchase decisions vary widely because consumers pay attention to different sources of information, process that information differently, and apply different situational contexts, from past purchase behavior to varying financial circumstances, to the availability of alternatives, to the acute need for a given product.

Factoring in human factors

Human factors methodologies can illuminate consumer decision-making and purchase, lease, or subscription behavior during the certification phase of a class action by answering questions about the materiality of the representations to the purchase, prior experience and familiarity, brand loyalty, the presence of alternatives during decision-making, and potential costs associated with tradeoffs.

A human factors approach can provide a better understanding of consumer purchase motivations in product labeling and marketing misrepresentation claims through surveys, deposition/case review, scientific literature analysis, expert testimony, report writing, and novel data collection. Data collection can include customized methods such as presenting representative samples of labels or advertisements to participants and documenting information that is relevant to the class action using "covert" methods such as eye tracking, which records what participants look at and how much time they spend looking at those sources. User experience testing can also put data collected from surveys and case and literature reviews to the test in a lab environment that offers product-user testing tools.

Surveys and novel human factors data collection tools in real life

Exponent recently put the value of a well-constructed survey and novel human factors data collection tools — including replicating consumer targeting — to the test in a case involving an insurance carrier. Plaintiffs alleged that the carrier's print and email marketing ads were deceptive because they gave consumers an inaccurate understanding of what the product did.

Knowing the type of consumers targeted by the insurance company, we designed and conducted a survey to target consumers who had not bought the policy by presenting mock ads to would-be purchasers. We learned that the group of potential consumers uniformly misunderstood what the product did; consumers who were exposed to this marketing material believed it was an investment vehicle when, in reality, it was a policy that only paid for funeral expenses.

The evolving role of online marketplaces and user testing in digital misrepresentation

Digital marketing can reach many more consumers faster than print. With the potential for class action lawsuits to expand to hundreds of thousands of people who all saw the same digital ad, testing what actual users experience is increasingly important.

To this end, through an experimental study, we provided one of our clients with a customized approach to test what actual users experienced online. Our client asked us to analyze a pop-up banner disclaimer and evaluate the allegation that the disclaimer was not sufficiently conspicuous.

Because the website no longer existed by the time the case was litigated, we reconstructed the website from archival screen captures with an identical banner disclaimer and identical functionality, to the extent that it was relevant to the allegations in the case. Using eye tracking, we observed that most potential consumers did look at the banner, which is information that could be used to certify or decertify a class.

Whether trying to certify or decertify a group of people as a class, stakeholders can turn to human factors expertise to analyze essential features of consumer decision-making and purchase behavior. Human factors experts can help illuminate the homogeneity and representativeness of members of a proposed class by analyzing how they perceive, understand, and interact with products and ads, using eye tracking and other tools for virtual platforms, which are more interactive than print forums.

Ben Lester, Ph.D. https://www.exponent.com/people/ben-lester



Defense Win
Forsberg & Umlauf

On October 10, 2025, defense attorney Kimberly Reppart of Forsberg & Umlauf, P.S. obtained a defense verdict in a premises liability case tried in Whatcom County, Bradford v. Costco, Cause No. 21-2-00754-37. The case involved a Costco employee pulling a flatbed cart containing a dining room set through the warehouse. Plaintiff was walking toward the employee and turned aside just as he walked by. One of the boxes on the cart came into contact with the plaintiff's shoulder. The plaintiff claimed ongoing injuries stemming from the August 4, 2018 accident.

The Costco employee testified he was pulling the cart rather than pushing it because the boxes created a blind spot directly in front of the cart and he was concerned a child might dart out in front of him. After scrutinizing the video of the incident, the jury determined neither party was negligent and that it was "just an accident."

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Ask a Trial Lawyer

By Mary Butler, Wilson Elser Moskowitz Edelman & Dicker LLP

Grace Under Fire – Opposing Counsel Who Behave Badly

Question: How do you handle dealing with opposing counsel that are jerks, especially if they resort to cheap tactics like threatening sanctions against you or name-calling?

Litigation attracts personalities. Most are professional, some are formidable, and a select few confuse strong advocacy with performative hostility. The latter will be found deploying a variety of tactics and general behaviors that we all despise. When faced with their uncontrollable, misplaced anger and rage, unnecessary self-righteous soliloquies during depositions, or even worse, lying or manipulating discovery or filings to seek sanctions or just indulge in schoolyard name-calling—the question isn't whether to respond, it's how.

I believe the best approach balances civility with tenacity. That's easier said than done and it often requires you to examine yourself first. If you are the type to react quickly and respond aggressively to such moves by the other side, you will need to learn to take a breath. Literally. Learn to breathe, take a break, walk away if possible. Whatever you do, you have to stop playing the tit-for-tat game because that response is almost always about protecting your pride more than your client's case.

As John Travolta advised in A Civil Action: "The single greatest liability a lawyer can have is pride… Pride has lost more cases than lousy evidence, idiot witnesses and a hanging judge all put together."

Let's be honest, we know the lawyers that fall into this category. We know the lawyers who get under our skin, who we dread are going to be on the opposite side of us needling and poking at every opportunity. Because of that, your emotions are primed to respond in kind—but for you, calmness and a measured demeanor will be your friend. A lawyer who keeps their cool projects credibility—and maybe more importantly, confidence—to the court, the client, and everyone else watching. Refusing to engage at the same emotional frequency deprives them of oxygen.

For you, the one who typically throws a punch back, choose restraint. Prepare for the people who rattle you—steal yourself before depositions, hearings, or discovery conferences so that when the jab comes your way, you can bounce back with a calm face and project poise. Think: Oddjob smiling after James Bond throws a punch in Goldfinger or the German soldier in Raiders of the Lost Ark who seems unfazed by Indiana Jones' assaults. In other words, this is not passivity. It is deliberate composure.

For those of you who struggle to find the words, that is okay. This is not a reality show or audition, so your ability to deliver a quick one-liner is not a requirement. Your job is to ignore the little slights, condescension, or posturing. Take a breath and silently tell yourself that the person slinging mud will get karmic payback someday.

No matter who you are, if there is a legitimate criticism in their ramblings, focus on that. Wait for them to finish and provide a response, brief and factual. If they have truly rattled your cage and you cannot think straight, thank them for raising the issue (even if you are not thankful) and ask for a break, if possible. Or if it is an improper place or time to address the issue raised, state firmly that you will be happy to address the issue at another time and ask if they are free the following day.

Here are some examples of times when a lawyer can derail litigation with unnecessary bluster and suggested responses:

After discovery conferences or calls, memorialize the salient points: "As discussed, you declined to provide dates for the deposition this month and stated you would seek sanctions if we noticed dates unilaterally. Our availability is as follows…" This is not performative; it's prudent. If motion practice becomes necessary, you will be glad you built a clean, professional paper trail rather than a screenplay.

Sanction threats can be scary, but they can also be met with a thoughtful assessment to ensure you are protecting your client and the case. Ask yourself: Is there a rule at play that could plausibly support sanctions? Are we meeting our obligations? Do we have a reasonable, documented basis for our positions? If so, keep walking. If not, adjust course quickly. Note your compliance, cite the meet-and-confer steps you have taken, and invite a practical path forward. And let your client know sooner rather than later about any sanction threat.

During depositions, if they coach witnesses or obstruct questioning, calmly put the conduct on the record, ask for a ruling or admonition if appropriate, and continue. Abusive behavior thrives on escalation; it wilts under a steady spotlight and a court reporter's keyboard.

Insults are the laziest tactic. The best response is usually none at all. If you must respond, do so once, with economy: "We will not engage with personal remarks. Our position is as follows…"

If you need to file a motion, tailor the briefing around the rules, the facts, and the remedy. Quote conduct sparingly; show, don't tell. Judges know a jerk when they see one. And if they don't, then they probably don't care if there are 10 more examples you can provide.

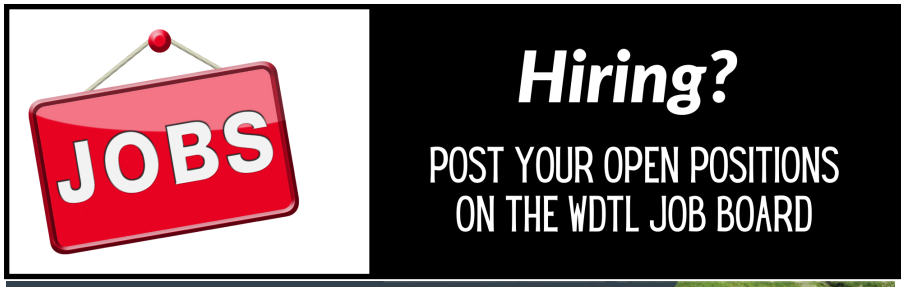
Judges don't want to referee playground spats; they want to solve problems. Similarly, your client did not hire you to win the banter. They hired you to win the case. There is no verdict or award given for best zinger delivered under Rule 26.

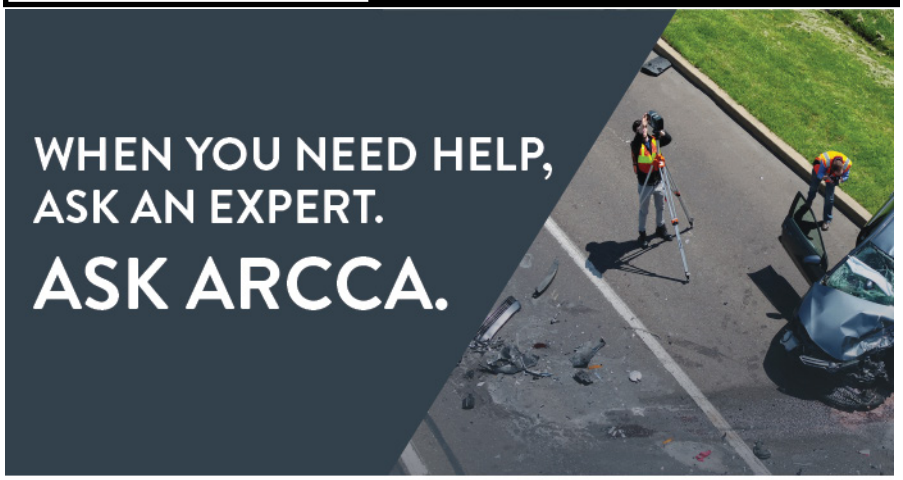
Finally, be kind to yourself. Difficult opponents drain our energy. Protect yours. Schedule calls when you can be calm. Bring a colleague to contentious meetings to keep the temperature down (and the notes accurate). And remember: Don't fight fire with fire, fight it with water … and proper documentation.

Mary Butler is a shareholder at Bullivant Houser Bailey in Seattle. She defends clients against claims of medical malpractice, wrongful death, and catastrophic injury and also leads the firm's Sports Law and Maritime practice groups. She helps clients navigate litigation with efficiency, building trust throughout the process by effectively communicating at each step. Whether she is asked to defend a doctor in a med mal case or an organization in an abuse case, Mary uses her tenacity and empathy to develop a practical case strategy to protect her clients.

Mary Butler will answer your question. While Mary's background is primarily in insurance defense, feel free to ask questions on coverage or other legal areas and Mary will seek input from others as needed. Questions can range from legal topics, general professional questions, or on personal issues that touch on professional obligations.

Please do not include case-specific details that might breach client-confidentiality or other ethical rules. Depending on the number of submissions, Mary may not be able to answer all questions submitted. Your name will remain anonymous in the WDTL Defense News, even if you provide contact details on the next page, unless you specify that you want your name, title, and/or firm name included.
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Recommended Reading for Associates

1. Imwinkelried's *Evidentiary Foundations*
2. Mauet's *Fundamentals of Trial Techniques AND* Mauet's *Pretrial*
3. Washington Insurance Law by Tom Harris
4. The Element of Style by Strunk and White
5. Garner, The Winning Brief. Can't recommend this enough.
6. Garner & Scalia, Making Your Case
7. Wydick, Plain English for Lawyers
8. Williams, Style: Ten Lessons in Clarity and Grace
9. Butterick, Typography for Lawyers
10. Clarence Darrow, Attorney for the Damned
11. Jonathan Harr, A Civil Action
12. John Grisham, The Firm
13. Point Made and Point Taken by Ross Guberman
14. Getting to Yes.
15. Never Split the Difference
16. The Trial by Kafka
17. My Life in Court by Louis Nizer
18. NITA Effective Deposition
19. Washington Practice Series

List compiled by WDTL member suggestions July 2023.This list can be found on wdtl.org under Resources>Document Library.

Send your suggestions to Kathleen at office@wdtl.org.

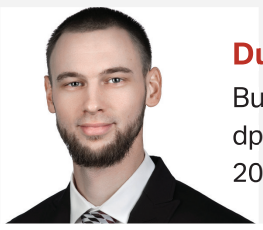


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Defense Win
Green Lake Law

Plaintiff firm Wells & Trumble asked the jury for $20,000,000 at 4:30 pm on Friday, October 3, 2025, after a 5-day trial in Snohomish County Superior Court. Defense counsel was ABOTA member and trial centurion James Mendel of Green Lake Law. The jury considered James' closing argument over the weekend and, after 6 hours of deliberation on Monday, awarded the plaintiff $30,000… less 45% contributory fault.

For more details about the case, join Green Lake Law for their Lunch & Learn on Thursday, January 8, 2026. (Elvis' 91st Birthday!)



WDTL Members - Share Your Recommendations

Do you have a rainy day reading list?

Send us your book recommendations to share in upcoming issues of the *Defense News*.

Share your favorite novels, classics, motivational, legal, or business books.

Send your recommendations to Kathleen Howat at office@wdtl.org.



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