

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF WASHINGTON  
3 IN SEATTLE

4 CITY OF SEATTLE, )  
5 )  
6 Plaintiff, ) No. C07-1620MJP  
7 )  
8 v. )  
9 )  
10 THE PROFESSIONAL BASKETBALL CLUB, )  
11 LLC, an Oklahoma limited liability )  
12 company, )  
13 Defendant. )  
14 )  
15 )

16 PRETRIAL CONFERENCE

17 BEFORE THE HONORABLE MARSHA J. PECHMAN

18 January 29, 2008

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23  
24  
25  
Barry L. Fanning RMR, CRR, CCP

## 1 APPEARANCES:

2 For the Plaintiff  
3 City of Seattle:Jeffrey Charles Johnson  
Paul J. Lawrence  
K&L PRESTON GATES ELLIS  
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6 SEATTLE CITY ATTORNEY'S OFFICE  
Attorney at Law7 For the Defendant  
8 Professional Basketball  
9 Club LLC:Bradley S. Keller  
Paul R. Taylor  
BYRNES & KELLER  
Attorneys at Law

1           THE COURT: Okay. Counsel, good morning. I have a  
2 court reporter here. I would like everybody to please identify  
3 themselves for the court reporter, please.

4           MR. LAWRENCE: Paul Lawrence, KL Preston Gates Ellis for  
5 the City of Seattle.

6           MR. NARVER: Greg Narver of the Seattle City Attorney's  
7 Office for the City of Seattle.

8           MR. JOHNSON: Jeff Johnson, Preston Gates Ellis.

9           MR. TAYLOR: Paul Taylor, Byrnes and Keller.

10          MR. KELLER: Brad Keller, Byrnes and Keller for  
11 Professional Basketball, LLC.

12          THE COURT: At the end of the table is David Coe. He is  
13 the law clerk assigned to this particular case.

14          Counsel, you asked for a conference with me. So here I am.  
15 I am ready to listen to anything you would like to tell me. I  
16 have read your materials.

17          I will tell you what I am not interested in talking about  
18 today. I am not interested in talking about the merits of the  
19 case. I am interested in talking about the development of the  
20 case in terms of timeline, what discovery needs to be done and  
21 how quickly that can be done.

22          Those are the issues I am interested in. Please don't give  
23 me the merits. I am not interested in doing that. I am not  
24 going to decide the merits no matter what the Tacoma News Tribune  
25 said this morning, that I am going to decide the fate of anything

1 today. We are going to set dates, times, we are going to talk  
2 about the structure of what needs to be done.

3 You asked for this conference so I am going to give each side  
4 an opportunity to tell me what you want to talk to me about.

5 MR. LAWRENCE: I will start for the City of Seattle. We  
6 proposed in the joint status report a proposed plan, which we  
7 think is expedited, given the nature of this case. We have  
8 discovery outstanding to the PBC already. We have not gotten  
9 responses back. I think they are due later this week.

10 We have already identified at least one discovery dispute  
11 that will need to be resolved by your Honor. We are going to do  
12 the expedited process under the local rules, but there is a  
13 dispute already about the scope of records custodians, the need  
14 to search for documents.

15 We have third-party discovery out to four entities already,  
16 and a fifth one is going out this week. And we don't know  
17 whether or not there will be objections to those subpoenas.  
18 Three of the entities are not based in Seattle. It is the NBA,  
19 Oklahoma City and the management group that runs the arena in  
20 Oklahoma City, in addition to the two former Sonics owners.  
21 Those are out and we don't know whether or not we will get  
22 objections or just get documents back.

23 I think as both parties recognize they are both relying on  
24 experts to resolve the issue. We need this discovery in order  
25 for our experts to do their work. And I believe by the time we

1 get this discovery --

2 We also will need some fact depositions to support our expert  
3 works. Our process is to get the discovery responses, review the  
4 documents, try to set up depositions as expeditiously as  
5 possible, provide all that information to our experts. We think  
6 that they would be ready for their initial disclosures in early  
7 June.

8 And then we have set in the post schedule three weeks for  
9 rebuttals, and then a month for concluding discovery, which we  
10 anticipate at that point will be the expert depositions. And so  
11 we think the case in that sense will be ready through -- by the  
12 end of July.

13 And then at that point -- we propose what we think is a  
14 typical period between time of closed discovery and the trial  
15 date proposed in October. But we do feel that we definitely need  
16 that time to get the factual discovery done, get our stuff to our  
17 experts and get their work done.

18 MR. KELLER: Your Honor, the single issue that this  
19 case presents --

20 THE COURT: Mr. Keller, it looks like you are hurt.

21 MR. KELLER: It was dental surgery.

22 THE COURT: I'm sorry.

23 MR. KELLER: I wish I could tell you the other guy looks  
24 worse than I do, but since he was the surgeon he looks pretty  
25 good.

1       The single issue that this case presents is whether the City,  
2       the landlord of Key Arena, is entitled to specific performance of  
3       the last two seasons under the lease, specific performance that  
4       would require the Sonics to play out their home games at Key  
5       Arena, or whether a court, sitting in equity, as your Honor will  
6       be doing, deciding a specific performance claim, whether the  
7       Court would deny specific performance under these circumstances  
8       and limit the City to its contractual right to be paid the rent.

9       The lease contains a provision that provides the home games  
10      will be played at Key Arena. If that lease provision was all  
11      that mattered we could all go home right now. But the lease  
12      provision really is only going to end up being one factor.

13      It actually turns out there is quite a bit of decisional case  
14      law that exists in this area, including prior cases that involve  
15      professional sports arrangements and landlord/tenant dealings.

16      Both sides are definitely going to want an opportunity to  
17      discuss that case law with you and make their respective factual  
18      showings regarding the issues. But the issues really are pretty  
19      discreet, both factually and legally.

20      From a factual standpoint, the parties are going to be  
21      wanting to present evidence about the economic aspects of their  
22      relationship. They are going to be wanting to present evidence  
23      about the suitability of Key Arena for an NBA franchise, what  
24      some of the past efforts have been to obtain government/community  
25      support for building a new arena, and what kind of net financial

1 benefits, if any, accrued to a community of Seattle's stature  
2 from having an NBA franchise.

3 I really have only one purpose here today. It is to get the  
4 earliest possible trial date that we can get. And hopefully one  
5 this May.

6 There are three reasons why we are asking for the earliest  
7 possible trial date. The first is that the Sonics have a very  
8 real need to know by this spring whether next season they are or  
9 are not going to have the right to play elsewhere.

10 The NBA as a league does its scheduling for the next season  
11 during the June time period. The Sonics have applied to the NBA  
12 to relocate the franchise. That relocation and the application  
13 itself is subject, of course, to whatever this Court rules are  
14 its rights under the lease.

15 You have an entire basketball organization --

16 THE COURT: Mr. Keller, you need to help me understand  
17 what that outside influence means. In other words, if the NBA  
18 says to the Sonics, no, you can't move to Oklahoma, are we done?

19 MR. KELLER: If they unequivocally say you cannot move  
20 to Oklahoma at all?

21 THE COURT: Or you can't move to Oklahoma for two years  
22 or one year or whatever, does that moot this litigation?

23 MR. KELLER: In the abstract, yes. I suspect the detail  
24 would be in the fine print, they would say you can't move to  
25 Oklahoma or you can't move elsewhere unless you resolve the lease

1 situation either through the courts or with the City as your  
2 landlord. And that's what I meant by conditional.

3 My client very much respects the right of this Court to  
4 decide this controversy. We are not moving out in the middle of  
5 the night. We have applied to the NBA for the right to move, but  
6 that application itself to the NBA is conditioned on the  
7 presumption that either through a negotiated resolution or a  
8 court adjudication that the Sonics get the entitlement to leave.

9 So what are some of the external factors? The first reason  
10 is you have an entire organization, you've got its players, its  
11 coach and its staff and the entire NBA league needing to know by  
12 June where this organization is going to be for the '08/'09  
13 season. That's the first reason. You also have a fan base that  
14 wants to no one way or the other when they are re-upping and  
15 considering whether to get season tickets next year.

16 The second reason is that this case can be ready to be tried  
17 in May. In fact, it could be ready for a trial in April.  
18 Whether you are dealing with a three or four-day bench trial --

19 THE COURT: So you have abandoned March?

20 MR. KELLER: I have abandoned March. I asked for March  
21 figuring it was going to be April or May. I can be ready for  
22 this case in March.

23 If I thought that there was a real -- I know that your Honor  
24 likes to have a certain period of time that works back from the  
25 trial date to arrange for the hearing of dispositive motions.



1 And so I am abandoning March. That was in the joint status  
2 report in recognition of the fact that if we can get May we can  
3 still finish discovery by March and still have that kind of a  
4 hiatus that your Honor likes to have for dispositive motions.

5 But whether this case is a three day or a four-day trial, or  
6 a six or a seven-day bench trial, the number of witnesses really  
7 is modest and the issues are not complex. This case has been  
8 pending for over three and a half months, since early October.  
9 There really isn't a whole lot of discovery to do. Maybe a half  
10 a dozen or so fact witnesses and some experts and the case is  
11 ready.

12 And there is a third reason why the case should be set for  
13 trial in May. Because of these league scheduling issues if this  
14 case doesn't get decided by May you have in effect decided it for  
15 the next season. If the case is not decided in this May/June  
16 time frame the practicalities of the situation are that the  
17 schedule for next year is going to be probably set as if the  
18 Sonics will be in Seattle for the next season.

19 Whether that scheduling dynamic helps illuminate what might  
20 have been the City's motive for asking for an October trial date,  
21 that might be something that is interesting to speculate about.

22 We did try and enlist the City in joining us back in November  
23 and early December in requesting the scheduling conference back  
24 then, and approaching the Court in December and jointly asking  
25 for an early trial date. They declined to do so.

1           In sum, this is a dispute that needs to be decided by May.  
2       Second, it is a dispute that can be ready for trial and decided  
3       in May. And, third, it is a dispute where delay, whether it is  
4       intentional or not, works to the strategic advantage of one side  
5       and the distinct strategic disadvantage of another side.

6           Since last fall the City and the Sonics have had this  
7       fundamental disagreement over whether specific performance under  
8       this lease is an appropriate remedy under these circumstances.

9           Since last fall the Sonics have been trying diligently to get  
10      that to an adjudication. We are asking your Honor to set a  
11      spring trial date so we can try the case in this courtroom and  
12      have that issue resolved once and for all in a way that makes  
13      sense.

14           THE COURT: Well, Mr. Keller, even if I were to decide  
15      it that quickly for you, would that end it? Obviously whoever  
16      feels aggrieved can appeal.

17           MR. KELLER: Whether the right of appeal of one party  
18      would or would not be an -- be viewed by the NBA as an impediment  
19      to granting the relocation, I am not even going to speculate on.  
20      If they gave us the green light, the decision of this Court  
21      stands. You can't really -- it is very difficult to try to  
22      supersede a ruling like that.

23           THE COURT: Okay. Let me come back to the City. If  
24      there is a date by which people have to set their basketball  
25      schedules in order to sell tickets, whether or not the Sonics

1 stay, isn't that date important to the City because you are not  
2 going to sell tickets for them to play in Seattle if it is  
3 uncertain?

4 MR. LAWRENCE: First of all, Mr. Keller has injected a  
5 huge number of facts into his statement that have no -- we have  
6 never heard before, that we have no knowledge of whether they are  
7 accurate or not. They are not in the joint status report. We  
8 have seen no discovery.

9 THE COURT: You must know what date it is that the NBA  
10 sets their schedule.

11 MR. LAWRENCE: Actually we don't. We have discovery  
12 going out this week to the NBA. We don't have that information.  
13 We are not privy to the inner workings of the NBA. For whatever  
14 reason, the NBA is relatively discreet in what information --

15 THE COURT: Don't you know historically when it is that  
16 the tickets go on the market? I mean, that is something you  
17 certainly must know.

18 MR. LAWRENCE: Season tickets are sold up to the  
19 beginning of the season to people.

20 THE COURT: Which by the way is when?

21 MR. LAWRENCE: It typically is either the end of  
22 September or the beginning of October.

23 I think in terms of season ticket sales -- I think your  
24 Honor pointed out something very significant, regardless what the  
25 decision is there is going to be an appeal of this case. I don't

1 agree with Mr. Keller that if the decision is to allow the Sonics  
2 to leave there is not a good basis to get a stay of that decision  
3 pending the appeal.

4 Putting that aside, we don't even know -- I also don't  
5 know -- I think Mr. Keller's description of the NBA decision is  
6 also not accurate based on what we have heard. They can decide  
7 unequivocally not to allow the move, they can decide  
8 unequivocally to allow the move or they can decide to  
9 conditionally allow the move. There is no sense that I know of  
10 that they have made any decision yet.

11 I think your Honor's question is very pointed, if they decide  
12 unequivocally not to allow the move until the end of the lease  
13 then this case is over. And I think we are anticipated to know  
14 that sometime in April or May. That may be relevant.

15 In terms of preparing for the season, I think it is fair to  
16 say that if the Sonics were going to be permitted by the NBA to  
17 move, and your Honor would permit them to move, September is a  
18 time we need a decision by in order to get tickets sold,  
19 etcetera.

20 As I understand it, the Ford Center available. So it is not  
21 a question of availability of competing arenas. In fact,  
22 Oklahoma City is going to vote in March about spending money on  
23 the arena regardless of whatever your Honor does and, I guess,  
24 regardless of what the NBA does.

25 So I think if you need to get a team moved by the end of --

1 before next season, we will be looking at a trial at the  
2 beginning of September.

3 THE COURT: Okay.

4 MR. LAWRENCE: We really do believe firmly we do not  
5 have the information available to us to have our experts ready  
6 and our fact stuff done before the end of June.

7 THE COURT: Well, let's go back. Obviously I have no  
8 information before me on which to decide what the NBA is going to  
9 do. So I am taking that off the table. Let's approach this from  
10 the standpoint of what has to be done and how fast can it get  
11 done.

12 The City basically claims they need 25 depositions. But  
13 let's go through the categories of those. I am not understanding  
14 why that many are necessary. You indicate you want to take  
15 multiple principals' depositions. Why do you need that if you  
16 have got the capacity to do a 12(b)(6) and get one person  
17 speaking for the current Sonics' ownership?

18 MR. LAWRENCE: We already know from public statements  
19 that at least one of the Sonics -- current Sonics owners made a  
20 statement that was radically different than anything that  
21 Mr. Bennett was stating. Mr. McClendon stated that it was never  
22 the intent of the team to stay in Seattle. He made that  
23 statement publicly. It was published. He was fined by the NBA  
24 for making that statement.

25 We don't believe that having one person speak for the PBC is

1 sufficient. We believe that in fact --

2 THE COURT: So now I have two. There are at least two  
3 people, the 12(b)(6) and this other guy who made the statement.

4 MR. KELLER: Do you mean a 30(b)(6)?

5 THE COURT: Excuse me. 30(b)(6).

6 MR. LAWRENCE: We can't know better until we get the  
7 discovery response back. This is an issue of dispute. We have  
8 asked for, for example, all the documents of all the owners. We  
9 want to understand, and I think it is very important, what did  
10 the owners know going into this.

11 We think it is pretty clear that the current PBC owners all  
12 understood the adequacy of the Key Arena, all understood the  
13 economic aspects of the relationship between the City of Seattle  
14 and the Sonics, all understood the claimed economic hardship they  
15 are claiming here, and they went ahead and purchased the team  
16 anyway. There is nothing equitable that requires them --

17 THE COURT: Doesn't this entity operate as an entity?

18 MR. LAWRENCE: As far as we know not. Because McClendon  
19 and Bennett -- All I am saying is that we want, and this is the  
20 discovery dispute that is going to come before you, to see the  
21 documents relating to all the owners and the others that were  
22 approached by Bennett to purchase. And that may indicate  
23 additional people to depose or may not. I can't tell you exactly  
24 how many people.

25 THE COURT: You want to depose people who aren't

1 actually -- aren't actually purchasers?

2 MR. LAWRENCE: We have information about a former  
3 participant that suggests that he may have relevant information  
4 about the intent of the PBC to stay or not stay. But we need to  
5 take the deposition of this person. We need the documents before  
6 we can identify how many. It may be that we just need Bennett  
7 and McClendon. But we need the documents of the other owners.  
8 And it is only this one other former owner we have identified as  
9 a potential other witness.

10 THE COURT: I am still not understanding what somebody  
11 who never purchased into this group, whether he thinks that they  
12 intended to leave immediately, has to do with it.

13 MR. LAWRENCE: That has nothing to do with it. What he  
14 was told by Mr. Bennett about what the purpose of the purchase  
15 was is relevant. If he was told that the purpose of the purchase  
16 was to move to Oklahoma City and break the lease, then the Sonics  
17 cannot claim clean hands when we get into the equity. We need to  
18 know what was told to people who were considering the purchase of  
19 PBC.

20 THE COURT: That is three depositions. Anybody else in  
21 that category of principals?

22 MR. LAWRENCE: Again, I can't tell you unless we get the  
23 documents. And once we get the documents, which --

24 THE COURT: Well, let's assume I am asking you for what  
25 you know right now, as to who it is. I am trying to see just

1 exactly what is the scope of discovery that needs to be done.

2 MR. LAWRENCE: They have identified 12 people with  
3 knowledge in their disclosure requests -- in their disclosure  
4 filings. So to say a half dozen witnesses doesn't make sense  
5 consistent with what they have disclosed to the Court and to us  
6 as to the scope of --

7 THE COURT: I am talking about how many depositions you  
8 need to take.

9 MR. LAWRENCE: We would like to take the 12 that they  
10 identified as persons with knowledge relevant to the case.

11 THE COURT: What if they were to tell you they are not  
12 going to call 12, they are going to call six?

13 MR. LAWRENCE: Again, I think we have the right to take  
14 the depositions and decide for ourselves whether or not this is  
15 good information or bad information. We can't rely on --

16 THE COURT: Let's move on to representatives of the NBA.  
17 How many representatives of the NBA need to be deposed?

18 MR. LAWRENCE: Probably one.

19 THE COURT: And you represented the former owners. Why  
20 do they need to be deposed since presumably you have access to  
21 them?

22 MR. LAWRENCE: We don't have access to information from  
23 the former owners. That is a red herring by the City.

24 THE COURT: Well, why do you need a deposition as  
25 opposed to going to your former clients and saying, tell us what



1     you know?

2             MR. LAWRENCE: Well, they don't necessarily -- They  
3     sold the team to the Sonics. I don't think there is any reason  
4     to believe that Mr. Schultz or whoever is designated by that  
5     group is supportive of the City's position in this case. We need  
6     to know what the nature of the discussions were between the  
7     Schultz group and PBC.

8             THE COURT: So do you think that those two -- your  
9     position representing the City and your former clients would be  
10    in opposition? Are we going to interject a problem here with  
11    your representation?

12            MR. LAWRENCE: No. We have dealt with that with our  
13    former clients.

14            THE COURT: So if you have an agreement with your former  
15    clients that there isn't a problem, I guess I am wondering why  
16    don't you know what your former clients want to say? There are  
17    lots of ways to get information. The most cumbersome is the  
18    deposition.

19            MR. LAWRENCE: We don't have access to Mr. Schultz. I'm  
20    sorry. Mr. Schultz and certain other members of that former  
21    ownership are not making themselves available for interviews. We  
22    need to go through the formality of the deposition.

23            THE COURT: Okay. So how many former owners do you  
24    need?

25            MR. LAWRENCE: We may just need a 30(b)(6) of the former

1 ownership to indicate what the discussions were, the nature of  
2 the negotiations between PBC and the Schultz group.

3 THE COURT: You talk about representatives of Oklahoma  
4 City. How many representatives and what would they offer on this  
5 particular issue?

6 MR. LAWRENCE: Again, part of the question is whether or  
7 not the Sonics -- the PBC purchased with the intent to move the  
8 team and break the lease. In which case, again, the equities  
9 weigh against any relief from the specific performance provision  
10 that exists in the contract. So it may be, again, one or two  
11 people from Oklahoma City, whoever was dealt with by Mr. Bennett.  
12 Again, we anticipate at least one person, unless the  
13 documents indicate that additional --

14 THE COURT: Are you talking about the mayor? Are you  
15 talking about a deputy mayor? Who is it in Oklahoma that would  
16 be the person you would want to depose?

17 MR. LAWRENCE: Once we see the documents we can tell  
18 you. How are we supposed to know who Mr. Bennett has been  
19 communicating with in Oklahoma City without having seen the  
20 documents?

21 THE COURT: Well, I don't know. You are the one who  
22 said that you needed to depose representatives in Oklahoma. I am  
23 trying to figure out who those people are and how many of them  
24 there are.

25 MR. LAWRENCE: There would be at least whoever can speak

1 for the City, whether it is the mayor or assistant mayor, and  
2 whose specific identity is somebody that we have learned through  
3 the course of the documents which we have requested. We filed  
4 our document request with the PBC the first possible week that we  
5 could after the initial disclosures were done. We didn't wait or  
6 delay in any way.

7 THE COURT: Okay. So when are those documents due?

8 MR. LAWRENCE: I believe they are due on Wednesday.

9 THE COURT: And so you believe pursuant to the document  
10 request you are going to find out who they were talking about  
11 this to in Oklahoma?

12 MR. LAWRENCE: Yes.

13 THE COURT: So you are assuming there is at least one or  
14 two people there?

15 MR. LAWRENCE: Correct.

16 THE COURT: Now let's talk about experts. How many  
17 experts --

18 MR. LAWRENCE: There are two. There are two other  
19 third-party groups. One is the Ackerly group that originally  
20 negotiated the lease. Again, there was probably one  
21 representative there, maybe two. And then the entity that  
22 manages the Ford Center. And depending upon whether or not any  
23 documents come back that indicate there have been discussions  
24 between the Bennett group and SMG. And, again, there is  
25 probably one person --

1 THE COURT: So the Ford Center is someplace in Oklahoma?

2 MR. LAWRENCE: Yes, that is the arena.

3 THE COURT: You want to know if they have been there  
4 basically saying, do you have a place for us?

5 MR. LAWRENCE: And talking about lease terms, etcetera,  
6 yes.

7 THE COURT: All right. So how many experts? Assume  
8 that you will get one expert per topic.

9 MR. LAWRENCE: I think right now based on what we know  
10 we are talking about probably at least three experts.

11 THE COURT: And what areas of discipline would the  
12 experts be in?

13 MR. LAWRENCE: One would deal with the economics of the  
14 situation, one dealing with the noneconomic factors that are  
15 attributable to the presence of a professional sports franchise,  
16 and the third is at least addressing a survey that they have  
17 identified in their joint status report. We would probably need  
18 an expert to address issues related to that survey, and maybe a  
19 counter survey.

20 THE COURT: If they are not going to introduce a  
21 survey -- In other words, I am trying to figure out what public  
22 opinion has to do with the legal issues here.

23 MR. LAWRENCE: Well, they raised it in their joint  
24 status report, so we need to be prepared to respond to it if your  
25 Honor believes it is relevant to the case.

1           THE COURT: All right. I am just counting on my hands  
2 but I think I got up to 11. You said 25.

3           MR. LAWRENCE: We want to be over rather than under so  
4 we don't have to come back to your Honor based on what the  
5 documents -- It is not our intent to take any unnecessary  
6 discovery.

7           THE COURT: I am wondering why -- Basically I am  
8 counting 11. The usual number is ten. So you are pretty close  
9 to that. Let me talk to Mr. Keller. Mr. Keller.

10          MR. KELLER: I will start down the same list.

11          THE COURT: Let's start down the same list.

12          MR. KELLER: I will start actually in the reverse. The  
13 one I can probably be the most specific about is experts. I do  
14 see up to three experts per side. I do agree with Mr. Lawrence  
15 on that.

16          THE COURT: Let's back up on whether or not I am going  
17 to hear experts about what public opinion has to say.

18          MR. KELLER: I would encourage you to wait until you  
19 have a little more developed briefing on what the criteria are  
20 that you consider under some of the case law that has addressed  
21 the issue of specific performance.

22          THE COURT: I am running if I am running my own survey.  
23 I can't go to the grocery store without somebody putting in their  
24 two cents about it.

25          MR. KELLER: Well, this is a survey, so this is a

1     Sonics' fan. I am kidding. There is a role potentially for the  
2     community perceptions of the value of the franchise to the City  
3     as part of one of the criteria that the Court will be asked to  
4     consider. Whether or not you think survey evidence is an  
5     appropriate way to get at that criteria or not is the issue for  
6     another day.

7             THE COURT: But let's assume -- or we can agree that  
8     both sides think the survey is something that is out there to be  
9     explored.

10            MR. KELLER: Three experts for our side as well.

11            MR. LAWRENCE: Your Honor, could I interpose? I forgot  
12     one expert. In addition to the three areas we identified we also  
13     are retaining an accountant to analyze the claimed loss that the  
14     Sonics are claiming with respect to their continuing to stay in  
15     the lease. So there is the economic factors with respect to what  
16     benefits the team brings to the City, there are the noneconomic  
17     factors the team brings to the City, an accountant to address  
18     their claim that they are losing \$20 million a year. And then if  
19     survey is an issue, the survey from the expert.

20            MR. KELLER: In terms of the ability of these experts to  
21     get ready, I understand counsel's desire to do some more  
22     discovery on empirical information.

23            I think it is also important for the Court to bear in mind  
24     the very nature of this landlord/tenant relationship is there has  
25     been an enormous amount of ongoing, continuous reporting about

1 the details of Sonics' organization's finances to its landlord  
2 under the existing arrangement. So while there is a need to gap  
3 fill, that's what it is, it is gap filling rather than a typical  
4 situation where parties are starting with a complete vacuum with  
5 lack of knowledge about each other.

6 Mr. Lawrence also indicated potentially taking some  
7 depositions of officials from Oklahoma City. I would like to  
8 point out to the Court that for over a month now that the City  
9 had previously served a four-year request on the City of  
10 Oklahoma, and has already gotten the City of Oklahoma's  
11 documents, which consisted of essentially nothing. So there has  
12 already been an indication to what extent there is or isn't going  
13 to be fruitful discovery in that area. And that has pretty much  
14 indicated nothing.

15 Other than that, we see in terms of factual discovery  
16 probably the mayor and one of his chief deputies, two council  
17 members, and probably one representative of a strategics task  
18 force that the City had several years ago that did a detailed  
19 analysis of Key Arena and the Seattle Center, and the suitability  
20 of the arena, both for basketball and for other purposes. And  
21 that's it.

22 THE COURT: Okay.

23 MR. KELLER: I don't understand how ownership groups as  
24 far back as the Ackerlys, which haven't owned the organization  
25 since I think the '90s, really has much to do with anything

1     anymore. We did have a lease interpretation dispute early on  
2     about the arbitration provision. But that has been resolved.

3             And when counsel indicated that there were 12 persons that we  
4     had identified as having knowledge, that included our list of  
5     City people that we believe had knowledge. So I really do get  
6     back to where I was before, that I think the whole universe of  
7     fact depositions is maybe up to a half a dozen people for each  
8     side. And that's it. Three experts.

9             THE COURT: So you are not intending to take anybody  
10     from the NBA?

11             MR. KELLER: No.

12             THE COURT: You are not intending to take anybody --  
13     You don't want to perpetuate any of your clients' depositions?

14             MR. KELLER: Right. Our client is an LLC. It has many  
15     many LLC members, like a shareholder. Taking a minority  
16     shareholder's deposition about what they know about this doesn't  
17     seem very fruitful to us. I understand discovery is limited.

18             THE COURT: Let me go back. As far as the reps from  
19     Oklahoma City, I counted five. I understood there were five  
20     people. Did I misunderstand you? The mayor, deputy mayor, two  
21     council people --

22             MR. KELLER: I was speaking of the City of Seattle.

23             THE COURT: I'm sorry.

24             MR. KELLER: The Mayor of Seattle, one of his deputy  
25     mayors, two council members from the City of Seattle and then a



1 representative of the strategic task force that the City of  
2 Seattle had several years ago. I don't anticipate doing any  
3 discovery in Oklahoma.

4 THE COURT: Gentleman, you are talking about trying to  
5 track down some fairly heady folks. In other words, you are  
6 trying to schedule perhaps the mayor of Oklahoma, the mayor of  
7 the City of Seattle, Howard Schultz, somebody from the NBA. Just  
8 how cooperative do you think those folks are going to be with  
9 you? If you had a hundred years to do this how fast do you think  
10 you can get them in the room?

11 MR. KELLER: I've got up to seven hours under the rules.

12 THE COURT: Can you get them served? Can you get them  
13 to cooperate? That's what I am saying. It is one thing to say  
14 you are going to depose the mayor of the City of Seattle, or you  
15 are going to depose Howard Schultz, it is another to get them on  
16 the calendar unless you are going to go out and serve them and  
17 drag them in.

18 MR. KELLER: I just don't think it will be a problem for  
19 the people I have identified. I don't know what kind of  
20 cooperation Mr. Lawrence is going to get from his former client,  
21 Mr. Schultz.

22 I agree with you there are some scheduling issues, but  
23 certainly if you start now it is not too much to expect that you  
24 can get these people scheduled for a half day or a one-day  
25 deposition in the next 90 days. And that's what we are talking

1 about.

2 THE COURT: So if the City is talking about 11 people,  
3 Mr. Keller, how many different people do you add to that?

4 MR. KELLER: I think I add five lay people and three  
5 experts if my math is right. I take issue with the 11.

6 THE COURT: All right. They asked for 25 and I got them  
7 to basically identify 11 slots. If you are identifying eight, I  
8 am already up to 19 depositions. How fast do you think you can  
9 do 19 depositions? What is a realistic time frame? What I am  
10 really trying to ask the two of you is to reveal your schedules  
11 to me. 19 depositions in 90 days means you have to be  
12 perpetually available.

13 MR. KELLER: I think it was Marshal McLuhan who said  
14 "work expands to fill the time allotted." If we have 90 days  
15 there aren't going to be 19 depositions. Mr. Lawrence will get  
16 his pencil out and his list of eleven will go down to six, and my  
17 list of five is probably going to go down to three or four. If  
18 it doesn't it is because we have made the judgment that we really  
19 need to take it, and it will happen. I agree when you say 19  
20 depositions does sound like a lot in 90 days. But if our  
21 office -- being available for whatever day they want to go and  
22 have a witness available, if that's what it takes to get the case  
23 to trial in May it will be done. It will be the highest  
24 priority -- it is the highest priority for our client to get this  
25 case resolved by May. And I need to do what needs to be done to

1 accommodate the City's legitimate objectives so that can happen.

2 THE COURT: Mr. Lawrence, are you continuously  
3 available?

4 MR. LAWRENCE: Between Mr. Johnson, Mr. Narver and  
5 myself we are continuously available to get this done. We do  
6 think we need the time to get the factual discovery done so that  
7 our experts can put their report out. If they are putting the  
8 report out in June that basically anticipates we will try to get  
9 our factual discovery done by the beginning of May. So that is  
10 an aggressive schedule.

11 But I can assure you we will be taking all of those  
12 depositions and any others that we find are necessary based on  
13 the documents that are disclosed and the information that is  
14 disclosed in the depositions of people.

15 I think we understand even our schedule that takes us out to  
16 the beginning of June for expert disclosures is an ambitious  
17 schedule. The City is prepared to meet that schedule. And  
18 between the schedules of the three of us we ought to be able to  
19 do that.

20 THE COURT: Do you have experts lined up on each side  
21 ready to go?

22 MR. LAWRENCE: Not ready to go in the sense that they  
23 have not --

24 THE COURT: I mean, have you identified who -- as soon  
25 as you shovel the facts in they are ready to start churning the

1 numbers for you?

2 MR. LAWRENCE: We have identified on two of the four  
3 areas.

4 MR. KELLER: Yes, we do. One of the reasons why we put  
5 the reference to the survey evidence in the joint status report  
6 was we wanted the City to know now rather than wait until  
7 disclosures that there was going to be an effort to put this kind  
8 of evidence in so they could get an expert on Friday.

9 THE COURT: Do you have written discovery outstanding to  
10 the City?

11 MR. KELLER: For document requests.

12 MR. TAYLOR: We did a four-year request earlier, your  
13 Honor, and the outstanding written discovery was only to confirm  
14 that we got everything. I think their answer will be they have  
15 produced it all already and they did make an extensive good faith  
16 production. So we think we have got all that.

17 THE COURT: Okay. So you think you have everything.  
18 You don't think you have everything but you think you are going  
19 to get it by Wednesday?

20 MR. LAWRENCE: I actually don't think we will get it by  
21 Wednesday because the PBC has indicated they are only searching  
22 documents for two people. I don't think that is sufficient.  
23 That will be before your Honor expeditiously. And then we will  
24 see. But we do not believe that we are going to get the document  
25 production on Wednesday.

1 MR. NARVER: We won't have third-party discovery on  
2 Wednesday. We will have document discovery from the defendant  
3 then, but the third-party discovery certainly we won't have that  
4 this week.

5 THE COURT: When is it due?

6 MR. NARVER: The subpoenas are being served --

7 MR. JOHNSON: Last week and this week.

8 THE COURT: So you served your subpoenas. When is your  
9 return date on your subpoena?

10 MR. JOHNSON: I think it is the standard 30 days, I  
11 believe.

12 THE COURT: Why did you wait until last week to serve  
13 your subpoenas?

14 MR. JOHNSON: That's within a week of when we were  
15 allowed to start discovery.

16 THE COURT: Okay. All right. Will there be dispositive  
17 motions or can you decide right now that it is factually complex  
18 enough that somebody is going to be able to raise an issue of  
19 fact and we can skip over that part?

20 MR. LAWRENCE: Well, given the nature of the issue,  
21 which is, of course, the equity we actually don't believe the  
22 dispositive motions would be productive.

23 THE COURT: So there is no legal issue out there that  
24 basically tosses the case one way or the other?

25 MR. LAWRENCE: That will decide the case, correct.

1 MR. KELLER: I agree. And that helps a lot from a  
2 scheduling standpoint.

3 I want to give your Honor one other date. I guess it is not  
4 in the materials but I think it is in the public domain. It does  
5 I think go to the first question you asked me. And that is on  
6 April 18th to the 20th is when the Board of Governors of the NBA  
7 meets and acts on whatever the recommendation is of the  
8 relocation committee. So to the extent there was a potential for  
9 some decision of the NBA rendering a need to get this case  
10 resolved, making that go away, that will be a known event as of  
11 April 18th to the 20th.

12 THE COURT: Okay. This is what I am thinking about in  
13 terms of what it is that is necessary in order to get this done.  
14 I am throwing out a template. If I give you 90 days to complete  
15 your fact discovery, starting from now, add to that 30 days for  
16 you to complete your expert discovery, that gets us to 120 days.

17 MR. LAWRENCE: Can I ask a question? When you say  
18 "expert discovery" are you talking about disclosures and  
19 depositions and rebuttals within that 30 day period?

20 THE COURT: Yes. Well, you are going to roll the  
21 material. You are not going to get -- Any information you need  
22 for an expert you are going to pile on earlier than 90 days. You  
23 are not going to wait until the 89th day.

24 MR. LAWRENCE: No. I understand that, your Honor. I  
25 was just making sure that I understand 30 days both to disclose,

1 file rebuttal reports and take depositions?

2 THE COURT: Correct. But if you are telling me that  
3 doesn't work, give me another alternative.

4 MR. LAWRENCE: I think we had proposed 60 days, maybe 45  
5 days as a compromise.

6 THE COURT: If you have -- I am thinking out loud now.  
7 If you have fact discovery 90 days, expert discovery 45 days, and  
8 then you take 60 days to get to trial -- If I don't have any --  
9 The reason that I need four months is if there is dispositive  
10 motions. So you understand that is what the usual time frame is,  
11 four months, so you can file your motion, ripen your motion, and  
12 I have 30 days to decide it and you have got 30 days to get ready  
13 for trial after you hear it. But if there are no dispositive  
14 motions, if we are looking at 60 days, we are looking at 185  
15 days.

16 MR. LAWRENCE: If my calculation is correct that takes  
17 us to mid August. We have conferred in advance and all three of  
18 us are available in mid August.

19 THE COURT: I don't think so.

20 MR. KELLER: I am missing something. I have got 90 days  
21 for fact discovery.

22 THE COURT: 45 days for experts, plus 60 days after  
23 discovery closes. 185 days.

24 THE CLERK: That would be August 2nd?

25 MR. KELLER: I guess the question I have is why do we

1     need 45 days for experts, and why do we need a 60-day hiatus  
2     between the close of discovery and trying a four or five day  
3     bench trial?

4             THE COURT:   So you think we can carve that down?

5             MR. LAWRENCE:  Can I speak on the expert?  I know at  
6     least one of our experts will have a challenge meeting this  
7     schedule, but he is committed to meeting this kind of schedule  
8     because it is consistent with what we proposed.  I am not sure  
9     what your Honor anticipates during the 60 day period.  Like I  
10    said a minute ago, we did confer and we are available any time in  
11    August for trial.

12            THE COURT:  Let's try 150.

13            THE CLERK:  That would be June 28th.

14            MR. LAWRENCE:  Where are you cutting 35 days from?

15            THE COURT:  I am basically looking at going back to 30  
16    days of --  In other words, basically a total of 120 days for  
17    discovery.  30 days from the close of discovery basically gets to  
18    you trial.  Mr. Keller makes the point, if there is no motions  
19    what do you need the 60 days for, if you have closed them.

20            Mr. Keller, if the City want to take discovery, and I don't  
21    know any authority, and I think you would be hard pressed to  
22    defend it to the Ninth Circuit for me to say, no, they don't get  
23    any.  That's why we just went through that process of how many  
24    people and how long is it going to take.

25            120 days to take --  I don't think you are going to be able



1 to take everybody you want to take. I think you have a pipe  
2 dream if you think you are going to get the mayor of Oklahoma  
3 City on your schedule that fast, or for that matter Mayor  
4 Nichols. The people you are talking about, I am assuming, this  
5 isn't the only thing they are doing today.

6 MR. LAWRENCE: Your Honor, if I could make a pitch to  
7 keep the 135 day schedule for discovery? If you add 30 days to  
8 that to get ready for trial, that is 165. That would give a  
9 trial in plenty of time to get a decision out so people can plan  
10 for the future.

11 THE CLERK: June 14th.

12 MR. KELLER: The expert side of this, it is not rocket  
13 science.

14 THE COURT: If it is not rocket science then maybe I  
15 don't need it.

16 MR. KELLER: There may be some truth to that in the end.  
17 But certainly everybody wants to work it up for you so you can  
18 decide.

19 In terms of figuring out what the financial performance of  
20 the team is going to be over the next two seasons that remain, we  
21 have got an operating history, we have got an established cost  
22 structure. This just isn't really very complicated stuff. It  
23 seems like 30 days is more than ample. And I would like to be in  
24 trial within two weeks after that and get this thing done.

25 One nice thing about rolling it right into trial after the

1 discovery cut off is you don't have a lot of stop and start.  
2 Everybody is up, they are geared, they are running, the experts  
3 are ready.

4 THE COURT: I want to give you a little time to make  
5 sure that I don't have to listen to all the stuff you listen to.  
6 Okay.

7 MR. LAWRENCE: Obviously I don't think they are willing  
8 to stipulate to the numerous noneconomic factors that are in  
9 support of the equities or the economic benefits to the City  
10 beyond simply what's rental payments. I think those are very  
11 complicated issues. Economists have been arguing about this for  
12 years.

13 MR. KELLER: I definitely have an agenda though in  
14 trying to push this into a mid June trial rather than the end of  
15 June. I know you said it is off the table but there is the  
16 scheduling issue.

17 THE COURT: Mr. Lawrence, how about if I give you 40  
18 days and I cut back and we go to trial 20 days afterwards? That  
19 still adds up to 150 I think. That is June 14th.

20 THE CLERK: Actually the 16th is Monday.

21 THE COURT: The 16th is Monday. June 16th. That is not  
22 as fast as they want to do it. I don't know when people are  
23 going to start selling these tickets. But I am realistically  
24 looking at what you are going to do. And I am going to give you  
25 the time to do your discovery, but it is going to be a mad

1     scramble. You have about this much time. And that is all you  
2     get. So it is 90 days, 40 days, 20 days, 150. I am assuming  
3     there will be no dispositive motions. I am assuming that you  
4     will file any discovery disputes in a unified format so that it  
5     gets in front of me. I am assuming that you are going to be  
6     cooperative in who it is you are going to go get.

7             I think a lot of this stuff, if you want to really find out  
8     what somebody has got to say, it doesn't make a whole lot of  
9     sense for everybody to barrel off to Oklahoma to take a  
10    deposition when maybe a joint phone call would find out whether  
11    somebody has something useful.

12            You have to start thinking about even if you go to depose  
13    somebody are you going to get them back here at time of trial, or  
14    am I for five days going to sit and watch videotape. But those  
15    are all practical things.

16            MR. LAWRENCE: Sure.

17            THE COURT: It doesn't seem like it is so terribly  
18    complicated that you get to go out and depose the world --

19            MR. LAWRENCE: We are not asking to, your Honor.

20            THE COURT: Okay. If you can get these people to sit  
21    down long enough to take their deposition more power to you. I  
22    am doubtful whether you can. I am doubtful if I gave you two  
23    years to do it you would be able to in some instances.

24            I am asking you to look creatively at how it is you exchange  
25    information. I will look very dimly on anybody who basically

1 holds information to their chest and doesn't lay it out here.  
2 The one thing that is going to be important, when you present  
3 your case at the time of trial there should be no fact, there  
4 should be no statement that both sides don't know about. I want  
5 to run the Bolshoi, I am not running mud wrestling. I expect  
6 everything is going to be orchestrated and everybody will know  
7 what is coming.

8 So let's talk about some other -- So June 16th. You are  
9 asking for five days of bench time. That is a lot of time for  
10 bench time. I will put you on an hourly calendar. If it is five  
11 days -- Is that realistic? Yes? No? You said ten previously.

12 MR. LAWRENCE: We said two weeks, right?

13 MR. KELLER: If you give me five days and put me on the  
14 clock I will try my case in two and a half days.

15 MR. LAWRENCE: I think it is fairly aggressive.  
16 Obviously we will do what your Honor says. We prefer a little  
17 more time.

18 THE COURT: How much more time?

19 MR. LAWRENCE: It strikes me at least three days per  
20 side would be appropriate.

21 THE COURT: Okay. Six days. We will go for six days.  
22 You will be on a clock.

23 Let's talk a little bit about how it is if I am the decision  
24 maker you can maximize my decision making capacity. You have a  
25 couple of problems. You want to find out what people are going

1 to say but then you have to transport it here. I would suggest  
2 that both sides sit down and figure out who it is they are  
3 actually going to be able to get in the room. And if you can't  
4 get the person in the room then you are going to have to  
5 perpetuate them somehow.

6 I really am not interested in looking at talking heads. If  
7 you decide you must use a videotape deposition, pull the camera  
8 back so that the questioner can be seen.

9 MR. KELLER: Is a split screen acceptable?

10 THE COURT: Split screen is acceptable. Even better,  
11 think about video conferencing them in.

12 MR. LAWRENCE: At trial?

13 THE COURT: Yeah, at trial. Here is the problem. If  
14 you just give me a talking head I can read those transcripts  
15 three times faster than they can talk. So what usually happens  
16 is if you give me the videotape is I will watch for about ten  
17 minutes and then I will read, unless you ask me not to. In other  
18 words, is there something so compelling about the way this person  
19 testified that it is their appearance rather than their words  
20 that make a difference.

21 MR. KELLER: If the parties were willing to agree to it,  
22 to the extent there was a perpetuated deposition, notwithstanding  
23 all the efforts to avoid it, other than having you watch for five  
24 or ten minutes for the flavor of the witness, if the parties  
25 agree to just read the transcript on your own time, could that

1 help expand the trial week in effect?

2 THE COURT: Well, obviously then you have given me the  
3 night job as well as the day job. In other words, if I am  
4 reading the transcripts at night and listening to testimony  
5 during the day --

6 MR. KELLER: We will make more work for you but we have  
7 managed our clock better.

8 THE COURT: I will read whatever you give me to read.  
9 If you want the impact of what is going to happen, think about  
10 it. Do you want to include me on some of your depositions? In  
11 other words, if you are going to take a deposition, let me watch  
12 the deposition with you. Video conference your deposition in and  
13 I will take the testimony as it comes along. That's another  
14 option. I am just trying to make it something different than the  
15 stack of videotapes.

16 MR. LAWRENCE: We hear that, your Honor.

17 THE COURT: I obviously will read whatever you want. I  
18 will make you go through and cull your depositions so that I am  
19 not reading things that don't really matter to you.

20 Then there is always the good old fashioned what can you  
21 agree to. Is there a stipulated set of facts that you can start  
22 with? Some of these things have got to be -- They are past  
23 historical events, so what can you put together in terms of an  
24 agreed set of facts or an agreed set of documents that say this  
25 is the basic set that we are going to build upon to present the

1 case to you.

2 MR. KELLER: I would think there would be a lot of room  
3 to try and do that. It seems like we always go into these cases  
4 with great intentions, and then the lawyers sit down and try and  
5 agree on the facts and they can't. There is some basic empirical  
6 background, financial dates, documents that I think with a little  
7 more constructive effort by the lawyers we ought to be able to  
8 achieve something there.

9 THE COURT: If there are numbers that you are going to  
10 feed to both sets of experts, can you agree on what those are so  
11 that you start out with at least what the data premises are?

12 What I am trying to get you to do is realize that I am the  
13 pupil, you are the teacher. You need to be able to put the  
14 information in as creative but as well organized away in front of  
15 me as possible. I will do the homework that you give me but  
16 let's think about how you want to do that.

17 The other thing you need to know is that -- I mean, I  
18 certainly have been to a few basketball games in my live, but I  
19 have no knowledge and almost no interest in professional sports.  
20 So if there is something that I am supposed to know or realize  
21 about this that is important, you need to tell me.

22 MR. KELLER: Would you be willing to consider taking a  
23 site tour in conjunction with a particular witness' testimony?

24 THE COURT: If you thought that was -- if you thought  
25 that was appropriate, I am happy to. I have crawled under houses

1 to look at joists on my belly before to decide cases. So what,  
2 you want to take me to Key Arena?

3 MR. KELLER: There are certain aspects of the physical  
4 operation that would bear a lot on what I think some of the  
5 expert testimony will be about suitability issues.

6 MR. LAWRENCE: I don't know. We will respond to that  
7 request when it comes in.

8 THE COURT: What I am asking you to do is think about  
9 it, be creative about how it is you want to spend your six days,  
10 what you want to put in front of me. Think about who you are  
11 going to chase for a deposition, as to whether or not that person  
12 is really going to add value to what it is you are trying to put  
13 forward.

14 And if the newspaper reports this as, Judge Pechman doesn't  
15 care about professional sports you would be wrong. Okay. I  
16 have no -- What I am trying to express is I have no personal  
17 stake in professional sports in any way. So you need to teach me  
18 and educate me as to why that is important.

19 Okay. So what other dates do you need? Counting back from  
20 June 16th; discovery cut off for facts; bench trial set for 6/16.  
21 This is what the computer just spit out. Discovery completed by  
22 2/19 -- That doesn't make any sense. I am sorry, 4/17.

23 MR. LAWRENCE: That is fact discovery.

24 MR. KELLER: I like that first date.

25 THE COURT: This isn't going to quite work because this



1 spits out other deadlines that we are talking about not using.  
2 Can I get you, with what I have just told you, to sit down and  
3 propose a deadline?

4 MR. LAWRENCE: Sure.

5 THE COURT: In other words, give me a proposal for what  
6 you've got. If you want to do a trial brief, that's fine. I  
7 would like to have the trial brief the week ahead of the trial.  
8 I would like a set of proposed Findings of Fact and Conclusions  
9 of Law at the same time.

10 THE CLERK: That would be by June 11th.

11 THE COURT: Okay. Now, the other thing in your  
12 materials, you asked about ordering you into alternative dispute  
13 resolution. You are both very sophisticated litigants. You can  
14 go to anybody you like. You can pay for anybody you like. If  
15 you want to go, go. I don't know why it is that I need to order  
16 you to.

17 MR. LAWRENCE: We didn't ask. We said we would be  
18 willing to go if everything was on the table. We have been told  
19 from the Sonics that is not the case.

20 THE COURT: So I'm not going to order you to. You know  
21 how to find a mediator if you want one.

22 All right. Other issues? Anything else that I haven't  
23 covered that you want taken care of?

24 MR. LAWRENCE: I guess the one other issue is we would  
25 ask that you permit us 15 depositions per side. That gives us a

1 little leeway over the 11 that you have identified. And I assume  
2 that does not include experts?

3 THE COURT: Why would it not include experts?

4 MR. LAWRENCE: I'm sorry. I thought you counted 11 not  
5 including experts.

6 THE COURT: No, I counted 11 including experts. Each  
7 side gets 11. If you want more you can come back and ask me and  
8 tell me why you need them. But you are not going to have time to  
9 do that many anyway, not unless you start triple tiering.

10 MR. LAWRENCE: We are prepared to do that.

11 THE COURT: You have 11. That's more than what the rule  
12 sets out. Okay. Other issues? Does that take care of it?

13 MR. KELLER: Thank you very much.

14 THE COURT: Counsel, the other thing is, if there are  
15 issues in discovery that you can agree to talk with me about, as  
16 opposed to write to me about, I am willing to listen to you. I  
17 have worked that in other cases that are on a swift schedule,  
18 that you say, all right, we need somebody to make the call. You  
19 can call me and we can agree each side has a certain amount of  
20 time to present, and then you basically live with whatever I say.  
21 Obviously you don't have the same sort of development issues to  
22 create your record that you might otherwise like. But that is an  
23 option I offer to you.

24 Have you arrived at a protective order?

25 MR. KELLER: No. And I think --

1 THE COURT: Is there any need for one?

2 MR. KELLER: In this new era it would be pretty  
3 restrictive, I think. I am very cognizant of the Court's  
4 temperament on those issues. I think the City has its own public  
5 access issues to deal with on its side.

6 MR. LAWRENCE: I think it would come from your side.

7 MR. NARVER: If everything we have produced qualifies as  
8 a public record, everything we have produced so far, it would be  
9 a very small privileged log that went with that production.

10 MR. KELLER: We don't anticipate there being a problem  
11 over arriving at a protective order. And when we make that  
12 effort we will be very cognizant of the narrow scope that it  
13 should embrace.

14 THE COURT: Okay. Finally, if you do settle the case  
15 would you make sure I am one of the first and not one of the last  
16 to know? I would prefer to know it before I read about it in the  
17 paper.

18 MR. LAWRENCE: Sure.

19 THE COURT: All right. Great. Thank you. Could I have  
20 your proposed schedule on my desk -- Today is Tuesday. Could I  
21 see it by close of business next Monday?

22 MR. NARVER: Sure.

23 THE COURT: Great. Thank you.

24 (Adjourned.)

25

## CERTIFICATE

I, Barry L. Fanning, Official Court Reporter, do hereby  
certify that the foregoing transcript is true and correct.

S/Barry L. Fanning

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Barry L. Fanning