

The Honorable Marsha J. Pechman

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

CITY OF SEATTLE, a first-class charter city,)	
)	
Plaintiff,)	No. C07-1620MJP
)	
v.)	DEFENDANT’S MOTION IN LIMINE
)	RE MITCH LEVY AND SHERMAN
THE PROFESSIONAL BASKETBALL CLUB,)	ALEXIE
LLC, an Oklahoma limited liability company,)	
)	NOTED FOR HEARING:
Defendant.)	JUNE 6, 2008

I. INTRODUCTION AND RELIEF REQUESTED

Two witnesses listed by the City should not be permitted to testify at trial. One is a local sports talk radio host, Mitch Levy. The other is a writer known for his profanity-laced columns about the Sonics in *The Stranger*. Neither has any relevant testimonial knowledge. Both will only fuel the growing media circus. Both should be excluded.

II. LEVY SHOULD BE EXCLUDED

On May 22, 2008, after the deadline for disclosing witnesses, the City identified Mitch Levy as a witness.¹ Levy is a radio talk show host on a Seattle sports radio station, KJR 950 AM. According to the disclosure, Levy will testify concerning his:

Knowledge of the Seattle SuperSonics (“Sonics”) before and after PBC purchased the team and Sonics fan interest in the team.

¹ Ex. 1.

1 As near as can be determined, Levy has no testimonial knowledge that aids in
2 adjudicating this case. He is an entertainer whose audience consists largely of male sports fans
3 in the 25-43 age bracket. His show mixes sports and other topics apparently believed to appeal
4 to his audience, primarily attractive women.²

5 Regarding his first topic – “knowledge of the Seattle SuperSonics before and after PBC
6 purchased the team,” the relevance is difficult to determine. What a radio personality does (or
7 does not) know about the Sonics has no bearing on this case.

8 As to the Sonics’ fan interest, Mr. Levy apparently has not performed any admissible
9 survey of community interest in the Sonics. His knowledge, if any, of fan interest in the Sonics
10 will presumably be based on input from the demographic attracted to his particular brand of
11 entertainment. That adds nothing to this case.

12 Unless the City can make a proffer of relevance under Fed. R. Evid. 401, the parties and
13 the Court will be better served by hearing from percipient witnesses with testimonial knowledge.
14 Additionally, this case is already a media circus. Giving Mr. Levy a speaking role in the trial
15 will not help.

16 III. SHERMAN ALEXIE SHOULD BE EXCLUDED

17 Sherman Alexie is an author and columnist for *The Stranger*. According to the City’s
18 pre-trial statement, Mr. Alexie will testify regarding:

19 [T]he Sonics’ role in the Seattle metropolitan community from the
20 perspective of a Season TicketHolder, the diverse nature of the
21 Sonics’ crowds, the impact of the Sonics on minority communities,
22 and the impact of sports on family relationships.³

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25 ² For example, he annually conducts a contest where listeners vote for the most attractive women
26 -- head to head in single elimination style -- out of sixty-four nominated by Levy. Similarly, he
once spoke of his desire to spank one of the members of the Seattle Storm women’s basketball
team until she uttered a certain phrase. See Ex. 2. The Court can review the KJR AM website to
gain a general understanding of Mr. Levy’s show.

³ Ex. 3.

1 Other than being a season ticketholder, it is unclear what foundation or testimonial
2 knowledge Mr. Alexie brings to the case. What is clear are his biased, profanity-laden views
3 about the PBC. For example:

4 Double Jesus, I have to listen to their right-wing radio station in
5 order to hear my beloved Sonics lose again. Triple Jesus, I am a
6 leftist bastard who hopes that some wealthy right-wing local
bastards buy the Sonics from those white right-wing Oklahoma
bastards and keep the team in Seattle.⁴

7 While he is obviously a Sonics fan, he is just as obviously so biased that his testimony is
8 of no evidentiary value:

9 So, yes, I admire Howard Schultz' greatness.

10 I also hate him because the f***er gave up on the Sonics.
11 And I hate him for trying to blackmail the city for an arena. And I
12 hate him for selling the team to a boring red-state millionaire
named Clay.

13

14 And I know that plenty of you are happy that the Sonics are
leaving. And that plenty of you don't give any kind of shi_ at all.

15 I know that a few of you, like Seattle City Councilmember
16 Nick Licata, think that the Sonics in particular and professional
sports in general have negligible cultural value.

17 Well, I say this to Mr. Licata and to all of you who agree
18 with him:

19 F*** you.⁵

20 The PBC will stipulate to Alexie's passion. But his passion proves nothing but an
21 obvious bias and a lack of relevant testimonial knowledge.

22 Like Levy, Mr. Alexie would probably enjoy testifying. Also like Levy, he has nothing
23 that aids the Court in deciding this case.

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⁴ Ex. 4.

⁵ Ex. 5 at 9.

1 **IV. CONCLUSION**

2 Several of the City's witnesses have relevant testimonial knowledge. Levy and Alexie do
3 not. They should be excluded.

4 DATED this 27th day of May, 2008.

5 **BYRNES & KELLER LLP**

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CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of May, 2008, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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