

E9HPSCHC

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 ADRIAN SCHOOLCRAFT,

4 Plaintiff,

5 v.

10 CV 6005 (RWS)

6 THE CITY OF NEW YORK, ET AL.,

7 Defendants.

8 -----x
9 New York, N.Y.
September 17, 2014
12:01 p.m.

10 Before:

11 HON. ROBERT W. SWEET,

12 District Judge

13 APPEARANCES

14 LAW OFFICE OF NATHANIEL B. SMITH

15 Attorney for Plaintiff

16 BY: NATHANIEL B. SMITH

17 AND

LAW OFFICE OF JOHN DAVID LENOIR

18 BY: JOHN DAVID LENOIR

19 NEW YORK CITY LAW DEPARTMENT

Attorneys for Defendants City of New York, NYCPD and
individual officers

20 BY: SUZANNA PUBLICKER METTHAM

RYAN GLENN SHAFFER

21 SEIFF KRETZ & ABERCROMBIE

Attorneys for Defendant Deputy Inspector Steven Mauriello

22 BY: WALTER A. KRETZ, JR.
23
24
25

E9HPSCHC

1 THE COURT: I'm not getting word.

2 MS. METTHAM: Narrative, summaries? The area where
3 the respondent to the survey was able to expound without
4 checking a multiple-choice question. So the raw data from the
5 actual survey, what the respondent's typed or hand wrote,
6 which --

7 THE COURT: Was produced?

8 MS. METTHAM: It was produced.

9 THE COURT: And it will be here.

10 MS. METTHAM: I would hope so, your Honor.

11 THE COURT: Yes, it will be here. Okay?

12 MS. METTHAM: Yes, your Honor.

13 THE COURT: And that's consistent with what Judge
14 Scheindlin did?

15 MS. METTHAM: Yes, she did order the narrative --

16 THE COURT: Okay.

17 MS. METTHAM: -- information.

18 THE COURT: Okay.

19 MS. METTHAM: In terms of the other data, the reason
20 that there is a difference here in terms of the actual survey
21 responses is that in the Floyd matter, because he wasn't an
22 expert, and Professor Silverman was very limited in what he was
23 allowed to testify on. And he was only allowed to testify on
24 the pressures that they believed came from stop, question and
25 frisk information. That was only one of about 24 questions in

E9HPSCHC

1 the survey. So all of his discovery, his deposition, his trial
2 testimony was limited to stop, question and frisk pressures.

3 In this matter, the plaintiff's experts have used the
4 survey data and responses in a much broader way. They're
5 talking about CompStat data generally on stop, question, frisk,
6 on summonses, on arrests. They talk about the pressure of
7 CompStat to -- the impact on constitutional rights.

8 And the issue, your Honor, here is with them as
9 experts, we need to probe their survey so that we can make an
10 appropriate Daubert and Kumho Tire motion to exclude these
11 experts based on how they've conducted the survey on the age,
12 the numbers of the retirees, when they retired, what kind of
13 pressure.

14 For example, your Honor, plaintiff's experts -- and
15 this is Exhibit E to my September 4th motion of their report
16 and starting on Page 16 are the survey findings. And in the
17 survey findings the experts have lumped responses into these
18 subjective categories of low, medium and high and found that
19 retirees who retired before 1995 felt one way, from 1995 to
20 2001 felt another, and 2002 until 2012 felt a different way.

21 The reason we need the underlying data is that we
22 don't believe that these categories are appropriate. We don't
23 believe that cutting it off before 1995 -- we think that if you
24 changed that year, so if the respondent said he retired in
25 2000, that we want to see what retirees in that year said.

E9HPSCHC

1 Instead of saying plaintiff's experts' category of low, we want
2 to know if they said a one, a two or a three in response.

3 We just simply need more qualitatively data to be able
4 to analyze their survey and to challenge their survey
5 responses. And plaintiff here has said that his experts are
6 not relying on this data in their report, but again, I would
7 direct the Court, respectfully, to the report starting on
8 Page 14, where they spend a dozen pages talking about the 2008,
9 2012 expert -- I mean surveys, going through the survey
10 findings and linking it to this case. So instead of simply
11 saying we've done a survey in the past and this has kind of
12 changed our opinion, they've heavily relied on it in this
13 matter.

14 And in terms of the other data on which they've
15 relied, No. 1, I would direct the Court to Federal Civil
16 Procedure 262(b)(2), which requires an expert to include the
17 facts or data considered by the witness in forming their
18 opinions. So contrary to plaintiff's opinion that the federal
19 rules simply don't require an expert to provide this
20 information, it's pretty clearly written that if an expert
21 relies on data or information, they must include that in their
22 expert report.

23 And while the survey is one part, plaintiff's experts
24 also spend a large amount of time talking qualitatively about
25 CompStat, mentioning non-NYPD data sources which aren't

E9HPSCHC

1 identified anywhere in the footnote, in the references. They
2 make their own opinions about evidence that NYPD leadership
3 altered and misused CompStat, that the CompStat crime reduction
4 system has been emulated in other cities.

5 They're relying on a lot of information which they
6 haven't provided data or information on, and we're seeking to
7 get that data so that we can challenge this report
8 appropriately, your Honor.

9 MR. SMITH: Can I respond to that, your Honor?

10 THE COURT: I think we will have what we'll call the
11 Scheindlin rule for the 2008, 2012 surveys. Any identified
12 fact or literature will be produced. The depositions will be a
13 day, with the understanding that if more is needed, an
14 application will be made, and there will be no additional
15 travel time or anything of that kind. You know, the trouble
16 with that is we're just putting off that problem, but, okay.

17 Well, let's back up a little bit. Okay. I guess what
18 we should do is you'll tell me -- it's totally predictable, but
19 you'll tell me when these depositions are scheduled, and we
20 will have a conference at the close of the day to determine
21 whether or not there should be additional. Now, quite frankly,
22 I'm pretty sure there will be, but okay, we'll see.

23 MS. METTHAM: Your Honor, if I may interrupt to ask a
24 question about how that would work in reality in that with five
25 separate defendants, you know, if we're all supposed to split