

1 E3ddschc Conference  
2 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

3  
4 ADRIAN SCHOOLCRAFT,  
4  
5 Plaintiff,

5  
6 v. 10 CV 6005 (RWS)

6  
7 THE CITY OF NEW YORK, et al.,  
7  
8 Defendants.

8  
9 -----x  
9 New York, N.Y.  
10 March 13, 2014  
10 2:00 p.m.

11 Before:

11  
12 HON. ROBERT W. SWEET,  
12  
13 District Judge

13  
14 APPEARANCES

14  
15 NATHANIAL B. SMITH  
15 Attorney for Plaintiff

16  
16 JOHN LENOIR  
17 Attorney for Plaintiff

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18 MICHAEL A. CARDOZO  
18 Corporation Counsel for the  
19 City of New York  
19 Attorney for City Defendants

20 BY: SUZANNA PUBLICKER METHAM  
20 RYAN G. SHAFFER

21  
21 SCOPPETTA SEIFF KRETZ & ABERCROMBIE  
22 Attorneys for Defendant Steven Mauriello  
22 BY: WALTER A. KRETZ, JR.

23  
23 MARTIN CLEARWATER & BELL LLP  
24 Attorneys for Defendant Jamaica Hospital  
24 BY: GREGORY JOHN RADOMISLI

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APPEARANCES CONTINUED

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IVONE, DEVINE and JENSEN, LLP  
Attorneys for Defendant  
Dr. Isak Isakov  
BY: BRIAN E. LEE

CALLAN, KOSTER, BRADY & BRENNAN, LLP  
Attorneys for Defendant  
Dr. Lilian Aldana-Bernier  
BY: PAUL F. CALLAN

1 THE COURT: Please, be seated. Thanks very much.  
2 I am going to take as our text the March 5 letter from  
3 the city.

4 Have all the witnesses now been identified by the  
5 plaintiff?

6 MS. METHAM: Well, your Honor, plaintiff identified  
7 one witness. However, he did so nearly a month after the Court  
8 had ordered him.

9 THE COURT: That wasn't quite my question. My  
10 question was, have all the witnesses now been identified?

11 MR. LENOIR: Yes, your Honor. I believe so from the  
12 plaintiff's side.

13 THE COURT: All right. OK. So I think that sort of  
14 takes care of that.

15 Who is the late witness?

16 MS. METHAM: Your Honor, the witness is an individual  
17 by the name of Joe Ferrara. City defendants seek to have him  
18 precluded as a witness based on plaintiff's failure to comply  
19 with the Court's order and the fact that plaintiff had known of  
20 this witness for three-and-a-half years prior to the  
21 identification.

22 THE COURT: OK. Is there a real problem with this  
23 witness?

24 MS. METHAM: We don't believe he is relevant in any  
25 way but --

1 THE COURT: OK. All right. So we've solved that.  
2 Everybody has been identified.

3 Second, subpoenas. Now, let's see if we could figure  
4 this out. The plaintiff has sought depositions of the Jamaica  
5 Hospital defendants, correct? And we haven't agreed on -- you  
6 haven't been able to work out whether or not those depositions  
7 are going to be taken. Yes?

8 MR. RADOMISLI: Well, they designated two emergency  
9 medical technicians who were at the plaintiff's home. The only  
10 issue is if your Honor needs to extend discovery, then  
11 certainly they will be produced.

12 THE COURT: OK.

13 MR. LENOIR: We have also asked for the hospital to be  
14 deposed, and we could not really discuss the time or who would  
15 be the person representing the hospital for deposition.

16 MR. RADOMISLI: They were supposed to serve a 30(b)(6)  
17 notice and an identification. So that hadn't been done.

18 THE COURT: That had been done?

19 MR. RADOMISLI: Had not been done.

20 THE COURT: What is the problem?

21 MR. RADOMISLI: I don't know. They just haven't  
22 served it. They haven't identified anyone other than the two  
23 EMTs is what I am trying to say.

24 THE COURT: Do you want a 30(b)(6) witness from the  
25 hospital? What do you want?

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1 MR. LENOIR: To depose the hospital itself regarding  
2 its policy --

3 THE COURT: Yes. But I drove by the hospital the  
4 other day and, oddly enough, it can't speak. Now, who do you  
5 want?

6 MR. LENOIR: We don't know who the hospital would want  
7 to represent it, whether it is counsel or -- but somebody who  
8 would speak on behalf of the hospital.

9 THE COURT: Well, it sounds like a 30(b)(6) witness,  
10 doesn't it?

11 MR. RADOMISLI: Yes.

12 THE COURT: It sounds like you want to designate  
13 somebody to testify on behalf of the hospital.

14 MR. RADOMISLI: About what?

15 THE COURT: Well, I suspect it is about the incident.

16 MR. RADOMISLI: They've already deposed --

17 THE COURT: No. No. I understand that. But I don't  
18 know what he wants to ask them. Nor do you. But somebody  
19 who -- you don't know who you want?

20 MR. LENOIR: Well, we want, I guess, a 30(b)(6), but  
21 someone to speak on behalf of the hospital regarding their  
22 policies for admitting patients in the context of Officer  
23 Schoolcraft.

24 THE COURT: OK. I take it -- wait a minute. Let's  
25 see if we can be clear. Patients admitted under claims of

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1 what?

2 MR. LENOIR: Emotionally disturbed persons.

3 THE COURT: OK. All right. We solved that. You all  
4 can get together on a schedule.

5 Now, subpoenas. I mean, is that it for the hospital?

6 MR. RADOMISLI: As far as the hospital witnesses go?

7 THE COURT: Yes.

8 MR. RADOMISLI: I believe so.

9 THE COURT: OK. How about the city?

10 MR. SHAFFER: Your Honor, it is the city's position  
11 that plaintiff, he waived his right to depose the witnesses he  
12 is now seeking to depose by waiting until the last minute to  
13 seek their depositions. He has known about these witnesses who  
14 are defendants since 2011, and then he seeks to depose them on  
15 a two-week expedited schedule without conferring with anybody,  
16 knowing full well that all of the other depositions took months  
17 to schedule. And he does so in an attempt to basically garner  
18 an extension of discovery from the Court by saying, oh, I  
19 couldn't have possibly known who I wanted to depose without  
20 deposing the first ten witnesses, which makes no sense because  
21 he has known about all of these people since 2011. In fact,  
22 they were identified in his own initial disclosures, some of  
23 them.

24 THE COURT: Yes.

25 MR. SHAFFER: So our position is that he has waived  
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1 his right to depose them and by waiting until the last minute  
2 and then just unilaterally selecting dates to depose them.

3 THE COURT: What are we talking about in terms of  
4 numbers?

5 MR. SHAFFER: I believe seven additional witnesses,  
6 all of whom their identities have been known for years in this  
7 case.

8 THE COURT: These are not defendants?

9 MR. SHAFFER: Six of them are defendants. I believe  
10 one of them is a nonparty city employee.

11 THE COURT: And the six defendants have not been  
12 deposed?

13 MR. SHAFFER: No. And no formal notice was ever  
14 served until, I believe, 28 days before the close of discovery,  
15 seeking to depose them within a matter of two weeks.

16 THE COURT: And then who is the additional person?

17 MR. SHAFFER: It is an NYPD sergeant who is not named  
18 as a defendant but has been identified as a witness by both  
19 sides, I believe. And he was not present on the night of the  
20 incident.

21 THE COURT: All right. So the plaintiff can take  
22 those seven depositions and we'll talk about scheduling. That  
23 is something that you will have to work out but we'll talk  
24 about it.

25 MR. SHAFFER: Your Honor.

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1 THE COURT: Yes.

2 MR. SHAFFER: If I may ask, could the Court preclude  
3 plaintiff from noticing any additional depositions of people he  
4 has got identities of at this point? We are so late in the  
5 game here.

6 THE COURT: Oh, yes. All right. Unless there is  
7 something that's presented today, there are no further  
8 discovery demands -- depositions, documents, etc., etc. --  
9 unless there is something that comes up today.

10 MR. SHAFFER: OK.

11 THE COURT: Now, document demands. Do I have the  
12 sense that that was resolved, or am I wrong?

13 MR. SHAFFER: Not resolved.

14 THE COURT: OK. And the city's position is that the  
15 document demands recently served are duplicative and largely  
16 have been complied with.

17 MR. SHAFFER: Some are duplicative. The remainder for  
18 the most part are just blatantly irrelevant to the case.

19 Just a brief example, your Honor: Requests for  
20 several years worth of logs relating to vehicles towed in the  
21 81st Precinct, with no connection to Mr. Schoolcraft or any of  
22 the defendants.

23 And it's the city's position that serving duplicative  
24 and irrelevant complaints is an abuse of the discovery process.

25 THE COURT: OK. Now, duplicative, that should be --  
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