

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

STEPHEN SIEBER, *et., al*

v.

THE DISTRICT OF COLUMBIA *et., al*

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Case No. 1:24-cv-03247

Hon. Ana C. Reyes

42 U.S.C. § 1983

**PLAINTIFFS’ MOTION FOR TARGETED DISCOVERY TO ASSIST THE
COURT IN RESOLVING PROSECUTORIAL IMMUNITY BEFORE
RULING ON THE DISTRICT’S MOTION TO DISMISS**

Plaintiffs’ motion for targeted discovery arises from statements made by the District in its D.C. Court of Appeals (“DCCA”) briefing in case 25-CV-0046 associated with jury tampering pled in Plaintiffs’ Second Amended Complaint, SAC ¶¶ 147–21 and the *ex parte* alteration of the legislative text of D.C. Code § 28-3904(f) pled in SAC ¶ 292.

**I. JUDICIAL NOTICE OF CONCURRENT DCCA BRIEFING HAS BEEN
CONCEDED AND AUTHENTICATED**

Plaintiffs’ motion for targeted discovery arises directly from the District’s concession and authentication of Plaintiffs’ motion for judicial notice. On September 29, 2026, Plaintiffs requested the Court take judicial notice of a statement made by the District in its Appellee brief in the DCCA [DE 111]. The District decided not to oppose the Court taking notice of the DCCA record in their response [DE 112]. Instead, the District authenticated additional non-hearsay opposing party admissions by attaching its entire 50-page DCCA brief, therefore surrendering all opposing party admissions contained in it. Targeted discovery is now required to assist the Court in adjudicating the District’s motion to dismiss based on prosecutorial immunity and failure to state a claim.

By choosing to attach its 50-page appellate brief, the District flooded the record with its own words. Under FRE 801(d)(2), OAG has single-handedly cemented its admissions into the record for the entirety of the litigation, serving as an *on demand* evidentiary anchor during motions to dismiss, motions for judgment on the pleadings, summary judgment, and at trial.

The following two statements are now on the docket as admissible non-hearsay opposing party admissions that require targeted discovery:

- (1) “*Given Stephen’s behavior, an employee of OAG, (not a member of OAG’s trial counsel) contacted the U.S. Marshals on May 28th, [2024] and asked them to escort OAG counsel from the Courtroom to the loading dock*” (Exhibit A–DCCA Appellee Br. 14:16–18)

By entering its entire DCCA brief into the record, the District has opened the door to additional targeted discovery as to SAC Count IX–¶ 292 regarding the *ex parte* alteration of the legislative text of D.C. Code § 28-3904(f) by OAG and Judge Edelman that went to the jury. The OAG lawyers who collaborated with Judge Edelman to *re-write the law* also remain a mystery and this is why targeted discovery is required to assist the Court in creating a detailed record when adjudicating the District Defendants’ prosecutorial immunity. The District does not claim clerical error, but instead takes a cavalier approach when stating in effect, *it’s no big deal* to re-write the law *ex parte* with Judge Edelman because it’s substantially the same:

- (2) “*Regardless, “tends to mislead” and having “**any tendency to mislead**” are substantially the same.* (Exhibit B–DCCA Appellee Br. 39:14–15) (Emphasis Added)

The District failed to deny the *ex parte* alteration of D.C. Code § 28-3904(f) by OAG and Judge Edelman that was hidden within 28 pages of jury instructions, (Exhibit C–Jury Instructions JA 767, 774–75); (Exhibit D–Appellant Br. 38:16–39:4). The District’s admissible non-hearsay opposing party admissions under FRE 801(d)(2) cuts through its entire defense, stripping the

individual Defendants of both absolute and qualified prosecutorial immunity while establishing a factual record that soundly defeats any motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). The consolidation of the two aforementioned statements into the record, authenticated by the District's own DCCA appellee brief, completely changes the legal landscape of the District's motion to dismiss.

ARGUMENT

II. THE DISTRICT'S ADMISSIBLE NON- HEARSAY OPPOSING PARTY ADMISSIONS DESTROY THEIR ABSOLUTE AND QUALIFIED IMMUNITY AS WELL AS THEIR 12(b)(6) DEFENSES

Under controlling Supreme Court precedent in *Buckley v. Fitzsimmons*, 509 U.S. 259 (1993), absolute prosecutorial immunity is adjudicated using the Supreme Court's *functional test* that shields conduct associated with the judicial phase of a case when lawyers act as courtroom advocates. Because the record now reflects an unnamed individual, "*who was not a member of OAG's trial counsel*," who initiated the *ex parte* contact with federal law enforcement, the District has stripped this actor and their co-conspirators of absolute and qualified immunity.

Coordinating courthouse security by directing a federal law enforcement escort is a textbook administrative, law-enforcement function that was ordered by OAG and/or Attorney General Brian Schwalb without a court order and absent all jurisdictions. The District's unsworn assertion that a mystery OAG employee "*who was not a member of OAG's trial counsel*" is a diversionary eleventh-hour narrative designed to insulate OAG trial lawyers and *Apex* OAG executives from personal liability.

In their 42 § 1983 conspiracy action, Plaintiffs and the Court are not required to blindly accept the District's self-serving characterizations of its own covert admissions. There is no proof that OAG trial lawyers, supervisory personnel, Deputy Attorney General Jennifer Jones

(“Deputy AG Jones”) or D.C. Attorney General Brian Schwalb (“AG Schwalb”) did not directly orchestrate, command and approve *ex parte* contact with the U.S. Marshals Office that ultimately led to documented jury tampering. Allowing the District to defeat targeted discovery by simply claiming an *anonymous administrative OAG employee* contacted the U.S. Marshalls Office requesting an escort would give OAG the green light in future Superior Court trials to engage in the same egregious extrajudicial misconduct.

Absolute and qualified immunity are highly specific, individualized defenses that cannot be applied blindly as a global shield to the entire OAG. This Court should not adjudicate the District’s claims of absolute and qualified immunity when it does not know who made contact with the U.S. Marshals Office, what their job description was and under whose explicit direction the OAG employee was operating. OAG’s admitted communication does not capture its content, any internal OAG communications before or after, or the precise instructions given to the U.S. Marshals Office by OAG and at whose direction. This evidentiary void remains in the exclusive possession and control of the District Defendants. This set of facts establish that absolute and qualified prosecutorial immunity cannot be resolved *on the law* alone in this instance because admissible non-hearsay opposing party admissions have resulted in critical identities being withheld from this Court as it applies to prosecutorial immunity adjudication. Therefore, there is a need for expedited targeted discovery to assist the Court in adjudicating the District’s immunity claims by identifying the *anonymous OAG employee* who contacted the U.S. Marshals Office as well as their co-conspirators.

(a) The District Has Created a Dispositive “Factual Contradiction”

In its response to Plaintiffs’ judicial notice motion [DE 112], the District attempts to minimize the constitutional gravity of its extrajudicial contact with the U.S. Marshals Office by

offering an unsworn, self-interested *alibi* claiming communication was merely a benign request for a *loading dock escort* for OAG based on Stephen Sieber's out of court behavior. However, Plaintiffs' ¶¶ 147–217 SAC must be taken as true when pleading unauthorized *ex parte* jury contamination without a court order absent all jurisdictions, resulting in the U.S. Marshals escorting the jury from their deliberations in a pretextual bad faith tampering scheme.

(b) The 50-page Appellee Brief of the District Fails to Dispute Plaintiffs' Jury Tampering Claims.

Perhaps the most striking admission in the District's DCCA brief is they fail to dispute and therefore admit the jury tampering claims pled in appellants' opening brief (Exhibit E Appellants' Opening Br. 22–24). Plaintiffs' Exhibit E provides a detailed factual review of communications between Judge Edelman's courtroom clerk Mr. Dawaoyne Lee and Supervising Deputy U.S. Marshal Kevin Spencer as witnessed by Plaintiff Stephen Sieber, accompanied by official Court transcripts of Judge Edelman admitting from the bench to his and OAG's involvement in the jury tampering scheme. In the face of this detailed evidentiary recital, OAG remained completely silent in their DCCA response brief. Under Local Civil Rule 7(b), if an opposing party files a responsive brief but fails to address or contest a specific argument raised by the moving party, the court may treat that unaddressed point as completely conceded. *See FDIC v. Bender*, 127 F.3d 58, 67–68 (D.C. Cir. 1997) (affirming that the local rule gives the court discretion to treat unaddressed arguments as conceded); *see also Buggs v. Powell*, 293 F. Supp. 2d 135, 141 (D.D.C. 2003)

(c) The District Admits to the *ex parte* Alteration of the Legislative Text in D.C. Code § 28-3904(f) Presented in Jury Instructions

Pursuant to FRE 106, Plaintiffs have attached Exhibit D including the cover page and relevant sections of its opening appellant brief in the DCCA to provide the necessary foundation

for the following District concession. Plaintiffs' DCCA opening brief explicitly claimed the out-of-court *ex parte* alteration of the legislated text of D.C. Code § 28-3904(f) by OAG and Judge Edelman was intentional, unlawful and highly prejudicial:

*“Ultra vires: The trial Court and OAG acted by intentionally altering the legislative text in the category two, (JA 774–775) and Category Seven Jury Instructions (JA 778–779) thereby violating the principles of statutory interpretation and the separation of powers . . . Judge Edelman and OAG altered D.C. Code § 28-3904(f) to a highly prejudicial standard moving it from “fail to state a material fact if such failure tends to mislead to fail to state a material fact which has **any tendency to mislead** (JA 774–775). This ultra vires statutory amendment was unlawful, deliberate and highly prejudicial.”*
Emphasis added (Exhibit D – Appellant Br. 38:16–39:4).

When reviewing Exhibit D alongside the District's DCCA response brief [DE 112], the Court must conclude the District has completely failed to dispute Plaintiffs' jury tampering claims. This total silence operates as an admissible, non-hearsay opposing party admission under FRE 801(d)(2). In Plaintiffs' SAC ¶ 275–87, the same claims regarding the unlawful alteration of D.C. Code § 28-3904(f) are pled, to which the District Defendants have now admitted through continued silence in their DCCA appellee brief.

(d) The Court Cannot Determine Absolute Immunity Without an Identity:

Absolute and qualified prosecutorial immunity are highly specific, individualized defenses. This Court should not rule on whether an act was *advocatory* or *administrative* in a vacuum. Because the person who contacted the U.S. Marshals Office remains unnamed, as well as the OAG lawyer or executives who collaborated with Judge Edelman to alter the legislative text of D.C. Code § 28-3904(f), the Court is left devoid of the factual baseline to evaluate both absolute and qualified immunity. Therefore, targeted discovery is required as to Plaintiffs' SAC Count V ¶¶ 147–217 regarding jury tampering and Count IX ¶ 292 regarding the *ex parte* alteration of the legislative text of D.C. Code § 28-3904(f). Targeted discovery is needed to

identify the responsible parties for the Court to create a record prior to ruling on the District's absolute and qualified immunity claims in the motion to dismiss phase.

III. THE LEGAL STANDARD GOVERNING TARGETED DISCOVERY OF PROSECUTORIAL IMMUNITY DURING A MOTION TO DISMISS

This Court may grant targeted discovery during a motion to dismiss when the critical information needed to resolve a threshold issue like *immunity* is in the exclusive possession and control of the District Defendants and cannot be obtained from any other source. As the Supreme Court noted in *Crawford-El v. Britton* 523 U.S. 574, 597–598 (1998) when reversing the D.C. Circuit's attempt to fashion restrictive rules designed to block discovery against government officials, "The District Court has broad discretion to manage discovery given the commands of Rule 26. One of its purposes is to facilitate the 'just, speedy, and inexpensive determination of every action, Rule 1... Rule 26(c) vests the trial judge with broad discretion to tailor discovery narrowly and to dictate the sequence of discovery."

The D.C. Circuit has recently reinforced that district courts possess this innate case-management authority to authorize targeted discovery tailored specifically to resolve threshold factual questions concerning an official's entitlement to a defense. *See Rodriguez v. Pan American Health Organization*, No. 24-7135 (D.C. Cir. Aug. 14, 2026). Plaintiffs' narrow targeted discovery requests are uniquely mandatory because they will assist the Court in evaluating the District's liability as well as absolute and qualified prosecutorial immunity of the individual District Defendants during the adjudication of the District's motion to dismiss.

The District has failed to identify the *mystery OAG employee* who contacted the U.S. Marshals' office and continues to conceal the identity of the specific OAG actor who actively collaborated *ex parte* with Judge Edelman to covertly alter the legislative text of D.C. Code § 28-3904(f) that contaminated jury instructions. Because the District has left these primary actors

completely anonymous in both instances, the Court cannot legally evaluate the individual assignment of prosecutorial liability or that of any co-conspirators. Therefore, targeted discovery under Rule 26 is required to ascertain who these individuals are, what specific actions they took and who they conspired with before this Court can rule on the District's motion to dismiss. Under the controlling "*functional test*" mandated by the United States Supreme Court, absolute prosecutorial immunity attaches strictly to the nature of the function performed, not the title of the actor (*Buckley v. Fitzsimmons*, 509 U.S. 259, 269 (1993)).

(a) The District Cannot Appeal Targeted Discovery to the D.C. Circuit Should This Court Order it

This principle was recently upheld by the D.C. Circuit in *Rodriguez v. Pan American Health Organization*, No. 24-7135, slip op. (D.C. Cir. Aug. 14, 2026). In that case, the defendant tried to immediately appeal a narrow threshold discovery order before the district judge ruled on an immunity defense. The D.C. Circuit dismissed the appeal for lack of jurisdiction, explicitly holding that a targeted discovery order aimed at resolving threshold immunity facts is a *non-final order* that does not qualify for an immediate interlocutory appeal to the D.C. Circuit.

IV. TARGETED DISCOVERY IS REQUIRED FROM THE FOLLOWING PARTIES

(1) Mr. Dawaoyne Lee – Judge Edelman's Courtroom Clerk

Any back-channel *ex parte* directives from AG Schwalb and/or OAG and/or Judge Edelman involving the unauthorized jury escort would have involved Judge Edelman's courtroom clerk Mr. Dawaoyne Lee as an operational conduit. Noticing Mr. Lee's deposition will reveal any first-hand knowledge of the *mystery OAG employee* who contacted the U.S. Marshals and how the jury contamination unfolded. Plaintiffs acknowledge they cannot subpoena Judge Edelman, based on absolute judicial immunity regarding his conversations with

Mr. Lee about the U.S. Marshals interacting with the jury. However, that information can be obtained through Mr. Lee. The following was pled in Plaintiffs' SAC:

“On May 28, 2024, OAG filed an ‘Emergency Motion’ in the Superior Court Litigation while the jury was deliberating titled on the docket as: *“Motion for order preventing any party to this matter from harassing jurors after a verdict has been returned, both inside and outside the courthouse.”* SAC ¶ 147. “After receiving notice of OAG’s Emergency Motion via his cell phone, S. Sieber returned to Judge Edelman’s courtroom 130, unnoticed, while the jury was deliberating and took a seat within earshot of the clerk’s position located next to where Judge Edelman presides.” SAC ¶ 148. “If S. Sieber would not have instinctively returned to Judge Edelman’s courtroom at the time he did and witnessed communications regarding OAG’s *ex parte* jury tampering plot involving A.G. Schwalb, OAG lawyers and Judge Edelman, the jury tampering scheme may have never been uncovered.” SAC ¶ 149.

“Plaintiff S. Sieber witnessed Marshal Spencer informing Judge Edelman’s courtroom clerk, Mr. Dawayone Lee, that Deputy U.S. Marshals would be escorting jurors pursuant to orders from OAG, a party in the case, and without notice to the Precision Parties, a hearing, or a court order.” SAC ¶ 150. “Mr. Spencer asked Mr. Lee if Judge Edelman was in his chambers, and Mr. Lee said yes.” SAC ¶ 151. “Mr. Spencer then stated: *I’m just going to give him a heads up* and then exited the courtroom to speak to Judge Edelman, affirming *ex parte* contact among OAG, Marshal Spencer and Judge Edelman, while leaving the Precision Parties in the dark.” SAC ¶ 152. “Once U.S. Marshal Spencer exited the courtroom into the chambers area, S. Sieber approached courtroom clerk Mr. Lee who explained that OAG had ordered the Marshals to escort the jury.” SAC ¶ 154.

Mr. Lee must sit for deposition for narrow targeted discovery based on his intimate knowledge of events, including Mr. Lee's discussions with Judge Edelman and supervising U.S. Marshal Kevin Spencer to identify the *mystery OAG employee* and others who contacted the U.S. Marshal's Office that facilitated the jury tampering scheme.

(2) Mr. Kevin Spencer – Deputy U.S. Marshal Supervisor for the Superior Court

Deputy U.S. Marshal Kevin Spencer was dismissed by Plaintiffs without prejudice from the case based on absolute immunity. However, all of Mr. Spencer's actions pled in the SAC were specifically preserved in the litigation with respect to proving the remaining claims against the District Defendants. It was Mr. Spencer that was seen and heard in conversation with courtroom Clerk Dawaoyne Lee by Stephen Sieber, confirming the implementation of the jury tampering scheme as pled in Plaintiffs' SAC. Mr. Spencer must testify under oath as to identify of the *mystery OAG employee* and possibly *Apex* executives involved in the jury tampering scheme. Plaintiffs acknowledge they cannot subpoena Judge Edelman to discover the content of his conversations with Mr. Spencer or why he allowed the U.S. Marshals to interact with the jury without a court order or notice to the defense. However, that information can likely be obtained through Mr. Spencer. Therefore Mr. Spencer must sit for narrow targeted discovery.

(3) Mr. Kevin Vermillion – Deputy Director of Consumer Protection and OAG Lead Trial Counsel in the Superior Court Litigation

Mr. Kevin Vermillion was the Deputy Director of Consumer Protection and lead counsel for OAG in May of 2024, *District of Columbia v. Precision Contracting Solutions L.P. et al*, 2019-CA-5047-B (Superior Court litigation"). The statement: "*Given Stephen's behavior, an employee of OAG, (not a member of OAG's trial counsel) contacted the U.S. Marshals on May 28th, [2024] and asked them to escort OAG counsel from the Courtroom to the loading dock.*"

OAG's statement raises immediate red flags signaling a cover-up. It is simply not plausible to conclude that the Deputy Director of Consumer Protection and lead counsel for OAG in the Superior Court litigation was oblivious to the U.S. Marshals Office being contacted if he was supposedly being escorted to the loading dock. Rather than speculate, targeted discovery will clarify through the under-oath deposition of Mr. Vermillion the extent of his involvement and if Deputy AG Jenifer Jones and/or AG Schwalb were directly involved in unlawful contact with U.S. Marshals to facilitate a jury escort without a court order. Therefore Mr. Vermillion must sit for deposition for narrow targeted discovery.

Mr. Vermillion was also lead counsel involved in *ex parte* communications with Judge Edelman during the *ex parte* creation of proposed jury instructions that resulted in the *ultra vires* alteration of D.C. Code § 28-3904(f) that was presented to the jury. Mr. Vermillion can testify as to the who, what, when, where, why and how the District accomplished jury instruction contamination through the *ex parte* alteration of legislative text.

(4) Ms. Lindsay Marks – Assistant Attorney General and Second Chair Counsel

It is not plausible to conclude that Ms. Marks was oblivious to the U.S. Marshals Office being contacted if she was one of the OAG lawyers supposedly being escorted to the loading dock. Rather than speculate, targeted discovery will clarify through her under-oath deposition if Ms. Marks or others were directly involved in communications with the U.S. Marshals Office, or if she has direct knowledge of Deputy AG Jenifer Jones and/or AG Schwalb being directly involved. Therefore Ms. Marks must sit for deposition for narrow targeted discovery. Ms. Marks was second chair and potentially involved in *ex parte* communications with Judge Edelman during the creation of the proposed jury instructions that resulted in the *ultra vires* alteration of D.C. Code § 28-3904(f) that was presented to the jury. Ms. Marks can also testify

as to the who, what, when, where, why and how the District accomplished the alteration of legislative text that contaminated jury instructions in this and other cases.

(5) Ms. Margret Ulle – Former Assistant Attorney General and Third Chair

The targeted discovery directed at former Assistant Attorney General Margaret Ulle, who was third chair in the Superior Court litigation is essential to uncover the planning and execution of the unauthorized jury escort and the identity of the *mystery OAG employee*. Her immediate departure after the trial reveals OAG's prosecution team's systematic exit from public service related to this case once it ended. While serving as a front-line trial attorney within the OAG during the May 2024 Superior Court trial, Ms. Ulle was uniquely positioned as an intimate, on-the-ground participant in the litigation surrounding unauthorized jury contamination by Deputy U.S. Marshals.

In January 2025, Ms. Ulle suddenly vacated her post as Assistant Attorney General to become an associate at Venable LLP, the same law firm where sitting AG Brian Schwalb served as firm-wide Vice Chairman and Partner-in-Charge of the Washington, D.C. office prior to taking office as D.C. Attorney General. Ms. Ulle's immediate transition from a specialized public enforcement unit straight onto the payroll of the AG Schwalb's former law firm creates an undeniable red flag. Ms. Ulle was also potentially involved or a witness to the *ex parte* communications with Judge Edelman that resulted in the *ultra vires* alteration of the legislative text in D.C. Code § 28-3904(f) that was incorporated in jury instructions.

(6) Mr. Adam Teitelbaum – Former Director of Consumer Protection for OAG

The targeted discovery directed at former Office of Consumer Protection Director Adam Teitelbaum is a necessity, as his departure adds to the total institutional disappearance of the supervisory tier that directed the May 2024 Superior Court trial. Mr. Teitelbaum served as the

head of the Office of Consumer Protection during the trial, acting as the immediate supervisor to line attorneys Kevin Vermillion, Lindsay Marks and Margaret Ulle, and he reported directly to Deputy AG for Public Advocacy Ms. Jennifer Jones. Crucially, Mr. Teitelbaum also vacated his director post in June 2025, just months after Ms. Ulle's January 2025 exit and alongside Ms. Jennifer Jones's departure in March 2025. This staggered, migration out of OAG by the very Defendants in this case most intimately involved in the jury tampering scheme represents a coordinated, top-to-bottom OAG exodus in the same temporal nexus of Plaintiffs 42 U.S.C. § 1983 lawsuit, wherein Ms. Ulle, Mr. Teitelbaum and Ms. Jones are all named Defendants.

As the former Director of Consumer Protection for OAG, any high-level, out-of-court administrative maneuver to bypass a presiding trial judge and deploy federal law enforcement to escort a deliberating jury would require his direct executive clearance and operational routing. Mr. Teitelbaum was also the direct supervisor of the trial lawyers involved in *ex parte* communications with Judge Edelman during the creation of the proposed jury instructions that resulted in the *ultra vires* alteration of the statutory text of D.C. Code § 28-3904(f) that was included in jury instructions. Not only can Mr. Teitelbaum testify to the who, what, when, where, why and how the District executed its unlawful jury escort, Mr. Teitelbaum can also provide testimony on why structural alteration of the legislative text of D.C. Code § 28-3904(f) was implemented in jury instructions that lowered the burden of proof in the Superior Court litigation and likely past Consumer Protection litigation in the D.C. Superior Court.

(7) Ms. Jennifer Jones – Former Deputy Attorney General for the Public Advocacy for the Office of the D.C. Attorney General

The targeted discovery directed at Ms. Jennifer Jones is required because her personal involvement is inextricably linked to the Superior Court litigation. The employment status of Jennifer Jones abruptly changed when she left OAG in March of 2026. No record can be located

by Plaintiffs of any current employment. Ms. Jones served as the Deputy AG for Consumer Advocacy in May 2024, positioning her squarely at the helm of the division during the timeline when the unauthorized *ex parte* contact with the U.S. Marshals Service occurred.

Consequently, any internal directives, phone logs, or executive authorizations concerning contact with the U.S. Marshals were generated under her immediate supervision. The hierarchy of OAG establishes that former Deputy AG Jennifer Jones is likely the *mystery OAG employee* behind the unauthorized out-of-court contact with the U.S. Marshals Service. Within the Public Advocacy Division, line-level trial attorneys like Lindsay Marks or Margaret Ulle as well as well as directors like Mr. Vermillion and Mr. Teitelbaum lack the authority to command Deputy U.S. Marshals to escort a deliberating jury without a court order. Any maneuver of this magnitude requires high-level executive authorization, placing the responsibility squarely on the desk of Deputy AG Jennifer Jones and AG Brian Schwalb. Given the operational and constitutional implications of bypassing a presiding trial judge to deploy Deputy U.S. Marshals without a court order absent all jurisdictions, an executive of Jennifer Jones's standing would have been required to seek approval from AG Schwalb himself before knowingly violating the law.

Because Judge Edelman specifically declared from the bench that the U.S. Marshals were present at the request of *the Office of the Attorney General or the Attorney General himself*, targeted discovery into the first-hand knowledge of Ms. Jones to understand how executive-level directives to U.S. Marshals were authorized, ratified, and executed.

(8) Mr. Brian Schwalb – Attorney General for the District of Columbia

The foundational precedent in the D.C. Circuit governing the deposition of high-ranking executive officials, often referred to as the *Apex Doctrine* in government litigation, is *Simplex Time Recorder Co. v. Secretary of Labor*, 766 F.2d 575 (D.C. Cir. 1985). To overcome the

presumption against deposing an apex official in the D.C. Circuit, a plaintiff must satisfy a strict exception framework rooted in *Simplex*.

AG Schwalb is a Defendant in this case and the evidence reveals that he was a direct participant in the unlawful jury tampering scheme. Transcript records establish that AG Schwalb or his Office authorized, directed, or explicitly commanded Deputy U.S. Marshals to escort a deliberating jury from the courthouse without a court order. The test governing if an *Apex* official like AG Schwalb can be deposed balances two core requirements: (1) whether the executive possesses unique, first-hand personal knowledge, and (2) whether that information can be obtained through less intrusive means. Judge Edelman’s specific on-the-record statement from the bench referencing the involvement of AG Schwalb by name changes the calculation on both prongs of this test, thereby providing the Court with the precise legal basis required to order the targeted deposition of AG Schwalb.

The transcript record of the trial contains an explicit, open-court statement by Superior Court Judge Todd Edelman, naming OAG and/or AG Schwalb as the entities behind the unauthorized *ex parte* jury contamination. There was never a court order issued by Judge Edelman that raises questions of additional *ex parte* contact between Judge Edelman, AG Schwalb and U.S. Deputy Marshal Kevin Spencer without noticing the defense, therefore making the deposition of AG Schwalb mandatory. The following evidence is found in the record of both the Superior Court litigation and the concurrent DCCA litigation as follows:

MR. LYLE (Counsel for D. Sieber): “Well, why are the Marshals there.”

THE COURT: The Marshals were - - again, were here at the request of the Office of the Attorney General or the Attorney General.” (May 29, 2024, Tr. 7–10; DCCA JA 805:7–10) (Exhibit F- Court Transcript)
Emphasis added

Judge Edelman did not merely state that the Attorney General's office made a routine administrative inquiry, he identified OAG or AG Schwalb personally as the moving force that deployed U.S. Deputy Marshals directly into the constitutional sanctuary of the jury deliberation area to escort them from the courthouse without a court order or noticing the defense. Because the head of the agency is explicitly named by Judge Edelman as the party behind the trial's structural failure, AG Schwalb must sit for deposition. Judge Edelman made further admissions from the bench proving the jury was in fact escorted from the building after they completed their deliberations for the day. The following transcript evidence is the “smoking gun” that proves Judge Edelman approved Deputy U.S. Marshals escorting jurors at AG Schwalb's *ex parte* request, while violating Appellants right to notice and to be heard:

THE COURT: *“I agree with you that the party asking the marshals to escort the jury and the marshals doing that is problematic. I agree with you 100 percent on that. Essentially, if I weren't involved in that decision, that would be -- I agree with you on that.”* (May 29, 2024, Tr. 8:16–20; JA 825) Emphasis added

The following transcript evidence proves Deputy U.S. Marshals and jurors were walking and talking during the jury escort, verified by Judge Edelman:

MR. SEIBER: *“But what about them talking to each other.”*

THE COURT: *“Them talking, I guess, beyond more than chatting, if it was just like a hello as they came into -- it couldn't have been anything substantive if they were walking with -- they came in 30 seconds after they left the room.”* Emphasis added

MR. SEIBER: *“We don't know what was said, Your Honor.”*

THE COURT: *“True”*

(Exhibit H–May 29, 2024, Tr. 8:16–9:8; JA 825–826)

The District may argue that Attorney General Brian Schwalb should not face deposition when lower-level executives can provide the necessary information. However, that defense fails because OAG supervisors with direct authority over the Superior Court litigation including

Jennifer Jones, Adam Teitelbaum, and Margaret Ulle have systematically migrated out of OAG. The staggered exodus of the supervisory hierarchy responsible for the underlying trial combined with the other dispositive factors stated herein eliminates any remaining defense of *Apex* protection for AG Schwalb. Finally, the D.C. Circuit recognizes an exception where there is a colorable, preliminary showing of bad faith or highly improper administrative behavior by the agency or its top officials. Bypassing a presiding judge and/or colluding with him acting completely outside of all jurisdictions and engaging in *ex parte* directives to the U.S. Marshals Office without a court order is the textbook definition of improper behavior and bad faith by AG Schwalb requiring him to sit for a targeted deposition.

V. THE LIMITED SCOPE OF TARGETED DISCOVERY

To assure the Court that Plaintiffs seek a disciplined, narrow discovery inquiry rather than an impermissible "fishing expedition," the proposed scope of discovery is restricted to the threshold question of absolute and qualified immunity assignment in the motion to dismiss phase. Discovery shall not explore other aspects of the litigation or other topics. The scope focuses on the creation, execution, and aftermath of *mystery OAG employee* who contacted the U.S. Marshal Office. The scope will also focus on which OAG employee(s) were involved in the *ex parte* alteration of legislative text of D.C. Code § 28-3904(f). To ensure the Court has a complete record as to conduct being *advocatory* or *administrative*, and which individual Defendant is granted or denied absolute or qualified immunity based on their independent actions, targeted discovery shall encompass the following elements:

- (1) The identity, job description, and division of the unnamed OAG employee who contacted the U.S. Marshals Office, as well as any supervisory personnel involved in that contact including trial counsel, section directors, Deputy AG Jenifer Jones and AG Schwalb to discover

who ordered, coordinated, executed and approved U.S. Marshals entering the jury deliberation area during the Superior Court trial without a court order.

(2) The identity of the OAG lawyers or executives who collaborated with Judge Edelman during in the alteration of D.C. Code § 28-3904(f) that wound up being buried in 28 pages of jury instructions presented to the jury.

(3) All internal or cross-agency emails, text messages, instant messages, and calendar entries generated by the OAG or the U.S. Marshals Service regarding requests from OAG for an escort by the U.S. Marshals.

(4) All internal or cross-agency emails, text messages, instant messages, and calendar entries generated by OAG regarding the creation and alteration of jury instructions.

(5) All phone logs, cell phone toll records, transmission transcripts, and internal memo routing sheets detailing the time, duration, routing, execution and results of the contact with the U.S. Marshals Office before and after the jury contamination events.

(6) All phone logs, cell phone toll records, transmission transcripts, and internal memo routing sheets detailing the time, duration, routing, execution and results of the creation and alteration of D.C. Code § 28-3904(f) and associated jury instructions.

(7) The physical, unredacted incident reports, daily activity sheets, and building security logs maintained by the U.S. Marshals Service recording the deployment of deputies to the jury deliberation area behind D.C Superior courtroom 130.

(8) Plaintiffs shall incur the cost of videotaped depositions for all parties the Court so orders to sit for under oath depositions.

(9) Prior to depositions, Plaintiffs will submit a maximum of 7 interrogatories and requests for admissions to each deponent that shall be answered prior to depositions being taken.

(10) Deposition notices shall be issued *only* to the specific individuals named in this Motion within 10 days for the Court issuing an order. All depositions shall last a maximum of two- and one-half hours per deponent with a maximum of three depositions done each day making sure the depositions are completed efficiently.

VI. PLAINTIFFS REQUEST A MAGISTRATE JUDGE BE APPOINTED BY THE COURT TO SUPERVISE THE TARGETED DISCOVERY PROCESS

To maintain maximum efficiency, respect judicial economy, and ensure total fidelity to this Court's directives, Plaintiffs respectfully request this Court refer the targeted discovery process to a Magistrate Judge for active supervision. Given the high-stakes nature of the threshold absolute immunity defense and the inevitable friction surrounding government disclosures, immediate oversight by a Magistrate Judge is essential. A Magistrate Judge will serve as an immediate judicial gatekeeper, ensuring that Plaintiffs' inquiries remain confined to:

(1) The identity, authorization, and nature of the *ex parte* communication with the U.S. Marshals Service including any co-conspirators, related communications and events; and (2) The identity of the OAG trial lawyers or Senior executives who collaborated with Judge Edelman during the alteration of D.C. Code § 28-3904(f) that wound up being buried in 28 pages of jury instructions presented to the jury.

Rather than grinding to a halt with protracted, formal briefing over predictable government objections or assertions of executive privilege, a supervising Magistrate Judge can instantly adjudicate disputes in a real-time manner. This proactive structure insulates this Court from micromanaging the granular mechanics of depositions, interrogatories and admissions and subpoena enforcement, therefore delivering a clean, verified, and complete factual record back to this Court for final adjudication on the motion to dismiss of the District's absolute and qualified immunity claims.

CONCLUSION AND RELIEF REQUESTED

For the foregoing reasons, Plaintiffs respectfully request this Court grant Plaintiffs' motion for targeted discovery as set forth the proposed order submitted to the chambers of Judge Reyes pursuant to standing order 3(c), and supported by the following attached exhibits:

Exhibit A: Appellee's Response Brief in the D.C. Court of Appeals: Cover page and attached page 14:16–18.

Exhibit B: Appellee's Response Brief in the D.C. Court of Appeals: Cover page and attached page 39:14–15.

Exhibit C: Jury Instructions from the D.C. Litigation. D.C. Court of Appeals: Cover and Joint Appendix 774–775.

Exhibit D: Appellant's opening brief in the D.C. Court of Appeals: Cover Page and attached pages 38:16–39:4.

Exhibit E: Appellant's opening brief in the D.C. Court of Appeals: Cover Page and attached pages 22–24.

Exhibit F: Trial Transcript of Superior Court Judge Edelman Admitting it was the Office of the Attorney General or the Attorney General Himself That Ordered U.S. Marshals into the Jury Deliberation Area.

Exhibit G: Trial Transcript of Superior Court Judge Edelman Admitting the Approval of U.S. Marshal Contact with Jurors Absent a Court Order While Stating Jurors Were Walking with U.S. Marshals.

Local Civil Rule 7(m) Compliance: Pursuant to Local Civil Rule 7(m), Plaintiffs certify that on October 13, 2026, the District Defendants counsel was contacted via email in a good-faith effort to discuss this Motion and determine the government's position. Defense counsel responded on October 14, 2026 and stated the District will oppose Plaintiffs' targeted discovery motion.

Respectfully submitted,
October 19, 2026
/s/ Stephen C. Sieber, Pro-se

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of October 2026 that a true copy of PLAINTIFFS' MOTION FOR TARGETED DISCOVERY TO ASSIST THE COURT IN RESOLVING PROSECUTORIAL IMMUNITY BEFORE RULING ON THE DISTRICT'S MOTION TO DISMISS was filed through the Court's e-filing system and served upon all registered participants.

/s/ Stephen C. Sieber
Stephen C. Sieber