

Police Misconduct Litigation Primer

Step 1 → Request the following in your Rosser letters:

- a. Information about any lawsuits, adverse credibility findings, findings of misconduct or complaints sustained against any officers involved in the investigation and prosecution of this case, including but not limited to Officer ____ (Badge No. ____), [. . .]. I request that your search includes the files of OPC, IAD, and any other sources of personnel information (including but not limited to PPMS). I further request source documents for any such information. Given the repeated occurrence of the USAO denying such information exists only for it to be later uncovered by defense investigation or otherwise on the eve of trial, I request a proffer of the steps the USAO has taken to locate this information.¹
- b. Information about any complaints, lawsuits, or investigations of conduct pending at any point during this case (even if they were subsequently dismissed) involving any of the officers involved in the investigation and prosecution of this case, including but not limited to Officer ____ (Badge No. ____), [. . .]. I request that your search includes the files of OPC, IAD, and any other sources of personnel information (including but not limited to PPMS). I further request source documents for any such information. Given the repeated occurrence of the USAO denying such information exists only for it to be later uncovered by defense investigation or otherwise on the eve of trial, I request a proffer of the steps the USAO has taken to locate this information.

Step 2 → You/your investigator. . .

- a. Subpoena (and FOIA) the Office of Police Complaints for all sustained findings of misconduct, and underlying source materials, involving Officer ____ (Badge No. ____), [. . .]; all investigations that are currently pending or were pending against those officers at any point since [insert date of arrest/beginning of investigation], even if those investigations have since been dismissed.
- b. Check the following sources for bad cop info:
 1. PACER
 2. Google/social media.

Step 3 → File a Motion to Compel

- a. Main points:

¹ If you are litigating against the OAG, the USAO maintains a separate Lewis list, so include the following language: “I understand that the United States Attorney’s Office maintains a separate Lewis database. Please consult the USAO, request that they search their database for the above-requested information, and disclose any such information.” If you are litigating against the USAO, include this language: : “I understand that the Office of the Attorney General maintains a separate Lewis database. Please consult the OAG, request that they search their database for the above-requested information, and disclose any such information.”

1. *Defense is entitled to any sustained complaints, findings of misconduct, lawsuit judgments, etc.:*
 - i. Motive to Curry Favor
 - A. Every sustained complaint increases the officer's "guideline" punishment for future findings (including any that may stem from misconduct in your case), thereby increasing the officer's motive to curry favor with the government in the instant trial. See Table of Offenses and Penalties Guide on p. 24 at https://go.mpdonline.com/GO/120_21re.pdf and SSP Chart- pp. 27-28- https://go.mpdonline.com/GO/SOP_PPMS_and_SSP.pdf (increased PPMS points per instance of misconduct. If reach threshold, "intervention plan" goes into effect)
 - ii. Corruption bias
 - A. Coates v. United States, 113 A.3d 564, 572 (D.C. 2015) (You can cross on underlying facts of sustained complaint) (" . . . willingness to obstruct the discovery of the truth by manufacturing or suppressing testimony or otherwise to thwart the ascertainment of truth in a judicial proceeding. Such corruption is acknowledged to be a distinct form of testimonial bias.") (internal quotations omitted).
 - B. Longus v. United States, 52 A.3d 836, 852 (D.C. 2012) ("Conduct of that sort, revealing a propensity or willingness to thwart the ascertainment of truth in a judicial proceeding, bears directly on the veracity of the wrongdoer in testifying at a trial.").
 - C. Longus v. United States, 52 A.3d 836, 852 (D.C. 2012) (quoting McCormick on Evidence § 39, at 174 (6th ed. 2006) ("Self-interest in an extreme form may be manifest in the witness's corrupt activity such as seeking to bribe another witness, taking or offering to take a bribe to testify falsely, or making similar baseless charges on other occasions."))
 - D. Bennett v. United States, 763 A.2d 1117, 1123 (D.C. 2000) (Conduct of that sort, revealing a propensity or willingness to thwart the ascertainment of truth in a judicial proceeding, bears directly on the veracity of the wrongdoer in testifying at a trial.").
 - iii. Other (e.g. racial) bias.
 - A. Longus v. United States, 52 A.3d 836, 850 (D.C. 2012) ("Bias refers both to a witness' personal bias for or against a party and to his or her motive to lie.")
 - B. Moore v. United States, 114 A.3d 646, 655 (D.C. 2015) ("[T]he requirement of "a reasonable factual foundation" is a "fairly lenient one."²⁵ It simply calls for a "credible" good faith proffer of facts supporting a "genuine belief" or "well-reasoned suspicion" that the witness committed a veracity-impeaching bad act or is biased in the manner asserted; such a proffer, we have said, may be

based on “plausible factual allegations or itself [may be] plausible within the framework of facts that neither party has contested.”).

- C. Coates v. United States, 113 A.3d 564, 575 (D.C. 2015) (“In order to be constitutionally entitled to pursue a line of bias inquiry, a party need only “proffer ‘some facts which support a genuine belief’ that the witness is biased in the manner asserted” or, lacking such facts, at least “a ‘well-reasoned suspicion’ [of bias] rather than ‘an improbable flight of fancy.’”).
2. *Defense is entitled to any complaints, investigations, lawsuits, etc. that were pending at any point during the investigation, even if they were later dismissed:*
 - i. If pending at time of trial, government will concede motive to curry favor.
 - ii. Artis v. United States, 505 A.2d 52, 54 (D.C. 1986) (“A government witness is susceptible to impeachment for bias not only if he had a relationship with the court, such as probation, at the time of trial but also if he had such a relationship when the government was in touch with him during investigation of the crime.”).
 - iii. Lewis v. United States, 10 A.3d 646, 653 (D.C. 2010) (witnesses “may make statements to an investigator . . . in order to curry favor, and then be called to testify after the relationship is ended, but still be subject to the same bias motivation.”) (internal quotations omitted).
3. *Defense is entitled to source materials:*
 - i. Coates v. United States, 113 A.3d 564, 570 (D.C. 2015) (“Because bias is not a collateral issue, “evidence from which the jury can infer bias may be presented not only through cross-examination, but also by the introduction of extrinsic evidence.”).
 - ii. Vaughn v. United States, 93 A.3d 1237, 1259 (D.C. 2014) (“[t]he government withholds source documents at its peril.”).

Step 4 → Cross-Examine!

- a. Main points:
 1. *Bias is always relevant.* Coates v. United States, 113 A.3d 564, 572-73 (D.C. 2015) (“[B]ecause the bias of a witness is always a proper subject of inquiry, in a criminal case “[a] trial court’s refusal to allow questioning [by the defendant] about facts indicative of a witness’s bias from which the jury could reasonably draw adverse inferences of reliability is an error of constitutional dimension—specifically, a violation of the defendant’s Sixth Amendment right of confrontation.”)(internal citations omitted).
 2. *Must allow defense to cross-examine on all forms of bias.* Longus v. United States, 52 A.3d 836, 852 (D.C. 2012) (“[A]llowance of some examination for one type of bias (currying favor with the government) does not satisfy the Sixth Amendment with respect to cross-examination for corruption, a different type of bias.”).
 3. *Must allow use of extrinsic evidence.* Longus v. United States, 52 A.3d 836, 853 (D.C. 2012) (“[T]rial court’s ruling was based on the erroneous belief that cross-examination about the fact of a pending investigation, without allowing defense

counsel to probe into and present extrinsic evidence of the underlying facts, satisfied appellant's right under the Sixth Amendment."); Matter of C.B.N., 499 A.2d 1215, 1218 (D.C. 1985) ("[T]he defendant may introduce extrinsic evidence to establish bias or prejudice because it is not a "collateral issue.").