

-----Original Message-----

From: Hur Capt Christian P  
Sent: Thursday, January 20, 2011 17:33  
To: Day Capt Evan S  
Cc: haytham@puckettfaraj.com  
Subject: FW: US v. Wacker

Capt Day,

Please inform the convening authority of the below. \$12200 sounds like the appropriate amount for Dr. Rudin for the time being. I would still desire to do a retest. I had previously understood that Dr. Rudin could do the retest. She can do the reanalysis but would contact out for an actual retest with a different lab at about \$3k. Thank you.

Christian P. Hur  
Captain, USMC  
Senior Defense Counsel  
Telephone: (619) 524-8713  
Fax: (619) 524-6784  
Address: Defense Section, Bldg 12, 1st Floor, MCRD, San Diego, CA 92140

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-----Original Message-----

From: Norah Rudin [mailto:norah@forensicdna.com]  
Sent: Thursday, January 20, 2011 15:54  
To: Hur Capt Christian P  
Subject: Re: US v. Wacker

Good afternoon,

I would request 8 hrs./2200 for the preliminary review and consultation.

For trial, I would bill at my daily rates of 2K plus expenses. So, for example, if you needed me to be present for 5 days, that would be 10K + expenses (travel, lodging, per diem etc.). So you might give some thought to how many days you would wish me to be present. At the moment, I have the week of March 7 penciled in for this case. Air travel would be paid up front, for military cases, I would bill the rest.

I don't perform physical retesting. I do reanalyze the data. In the unlikely event that physical retesting might be needed, I would put you in touch with a lab that does that work. But honestly, I just don't foresee it. I will also tell you it is very expensive, usually about 1K/sample. So for only one evidence sample and two reference samples, that might be on the order of 3K or even more. We can discuss further if you wish.

I assume you will give some thought to what will be paid out of local funds, what requires a contract, and make the necessary arrangements up front. The last USMC

case I had out of SD, it took more than a year to collect payment. I sincerely hope not to repeat that performance.

Please feel free to call if you wish to discuss further.

I look forward to working with you.

Thanks,

Norah

(Dr.) Norah Rudin, Ph.D.  
Forensic DNA Consultant  
norah@forensicdna.com  
Main: 650 605-3411  
650 Castro St., Ste. 120-404, Mountain View, CA 94041  
<http://www.forensicdna.com>  
<http://www.forensicdna.com/Bookstore/index.html>

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Nature photos: <http://www.norahrudin.com>  
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Make a Small Loan, Make a Big Difference - Check out [Kiva.org](http://Kiva.org) to Learn How!

On Jan 20, 2011, at 3:07 PM, Hur Capt Christian P wrote:

Dr. Rudin,

For the above referenced he said she said alcohol rape case how many hours do you need for consultation? For trial? For a DNA retest? Thanks.

Christian P. Hur  
Captain, USMC  
Senior Defense Counsel  
Telephone: (619) 524-8713  
Fax: (619) 524-6784  
Address: Defense Section, Bldg 12, 1st Floor, MCRD, San Diego, CA 92140

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-----Original Message-----

From: Norah Rudin [mailto:norah@forensicdna.com]  
Sent: Saturday, January 08, 2011 11:24  
To: Hur Capt Christian P  
Subject: US v. Wacker

As requested, please find attached my CV, Terms of Service and also Discovery Request.

Please feel free to give me a call if you wish to discuss the case further. I look forward to working with you,

Norah

(Dr.) Norah Rudin, Ph.D.

Forensic DNA Consultant

[norah@forensicdna.com](mailto:norah@forensicdna.com)

Main: 650 605-3411

650 Castro St., Ste. 120-404, Mountain View, CA 94041

<http://www.forensicdna.com> <http://www.forensicdna.com/Bookstore/index.html>

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Nature photos: <http://www.norahrudin.com>  
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-----Original Message-----

From: Hur Capt Christian P  
Sent: Thursday, January 20, 2011 15:05  
To: Day Capt Evan S  
Subject: RE: US v. Wacker Discovery Request

No, we ask for a retest please. This is the only way we can confirm that USACIL's results are accurate. Whatever hours Dr. Johnson took for her retest would be the amount of hours we would need. I say approve the 20 and we will come back to you for more as needed.

Christian P. Hur  
Captain, USMC  
Senior Defense Counsel  
Telephone: (619) 524-8713  
Fax: (619) 524-6784  
Address: Defense Section, Bldg 12, 1st Floor, MCRD, San Diego, CA 92140

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-----Original Message-----

From: Day Capt Evan S  
Sent: Thursday, January 20, 2011 15:03  
To: Hur Capt Christian P  
Subject: RE: US v. Wacker Discovery Request

Roger. Just to make sure I'm clear- you are not asking for a retest at this point, but would submit an additional request for funding if you decided to do so?

-----Original Message-----

From: Hur Capt Christian P  
Sent: Thursday, January 20, 2011 15:01  
To: Day Capt Evan S  
Subject: RE: US v. Wacker Discovery Request

I did speak with Dr. Rudin about hours. I can't remember at present. I would estimate that 10 hours of consultation and 10 hours for trial would be fair and if we need more we would seek more. I can't imagine us using less than that.

Christian P. Hur  
Captain, USMC  
Senior Defense Counsel  
Telephone: (619) 524-8713  
Fax: (619) 524-6784  
Address: Defense Section, Bldg 12, 1st Floor, MCRD, San Diego, CA 92140

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-----Original Message-----

From: Day Capt Evan S  
Sent: Thursday, January 20, 2011 12:32  
To: Hur Capt Christian P  
Subject: RE: US v. Wacker Discovery Request

Capt Hur,

Have you spoken to Dr. Rudin regarding her estimate of the number of hours required for the re-test that you have requested? The CA needs that information before any funding can be approved for a re-test, and a rough estimate by counsel is not going to suffice.

Also, with regard to the re-test, I am going to ask for an order from the MJ shortly setting some conditions for the testing. I'll draft an order over the weekend, if I can't track down a shell for another case. These are some of the basic conditions that I am planning to ask for.

- Defense, and any expert designated by the defense, need to safeguard the evidence and return the evidence to the government NLT 10 days before trial.
- Defense will maintain a chain of custody for the evidence during the time it is within the custody of the defense or defense expert.
- Defense will provide advance notice if the defense testing will consume any sample or any relevant portion of a sample.

Let me know if you see any issues with those conditions so far. Once I have it drafted, I'll run it by you before sending it to the MJ, since I'd rather come up with an agreed order governing the testing.

Very Respectfully,  
Captain Evan S. Day  
Judge Advocate  
Joint Law Center  
3D MAW/MCAS Miramar  
P.O. Box 452013  
San Diego, CA 92145-2013  
Comm: (858) 577-1862  
DSN: 267-1862  
evan.s.day@usmc.mil

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-----Original Message-----

From: Hur Capt Christian P  
Sent: Tuesday, January 11, 2011 10:50  
To: Evan Day  
Cc: Day Capt Evan S  
Subject: RE: US v. Wacker Discovery Request

Capt Day,

Let's go with 20 hours for initial consultant and travel to trial (she is San Francisco area) and I will ask for more hours as needed. Dr. Rudin indicated that she would pencil those dates in, but she wasn't firm until she is retained.

Christian P. Hur  
Captain, USMC  
Senior Defense Counsel  
Telephone: (619) 524-8713  
Fax: (619) 524-6784  
Address: Defense Section, Bldg 12, 1st Floor, MCRD, San Diego, CA 92140

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-----Original Message-----

From: esday516@gmail.com [mailto:esday516@gmail.com] On Behalf Of Evan Day  
Sent: Tuesday, January 11, 2011 10:08  
To: Hur Capt Christian P  
Cc: Day Capt Evan S  
Subject: Re: US v. Wacker Discovery Request

Capt Hur,

I'll forward the request for Dr. Rudin this week. I do have a couple of questions first.

- Have you re-confirmed Dr. Rudin's availability for the trial dates?
- Have you gotten an estimate from Dr. Rudin of the number of hours necessary for the requested retest? That information should have been in your request, but I can add it to my endorsement as long as you email it to me.

On another note, I haven't gotten a response from Jodi McShan after several voicemails and emails. Please have her contact me or Maj Hatch. I would lean toward granting her, based on our previous conversations, but I need to verify her availability and desire to testify first.

R/S,  
Capt Day

On Mon, Jan 10, 2011 at 10:30 AM, Hur Capt Christian P <christian.hur@usmc.mil> wrote:

Capt Day,

I've attached an additional discovery request (including a request for DNA expert) as well as a draft speedy trial clock list that I had mentioned. Thanks.

Christian P. Hur  
Captain, USMC  
Senior Defense Counsel  
Telephone: (619) 524-8713  
Fax: (619) 524-6784  
Address: Defense Section, Bldg 12, 1st Floor, MCRD, San Diego, CA 92140

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-----Original Message-----

From: Day Capt Evan S

Sent: Wednesday, January 05, 2011 17:21

To: Hur Capt Christian P

Cc: 'haytham@puckettfaraj.com'; Hatch MAJ Douglas C

Subject: RE: Outstanding Wacker Discovery issues

Capt Hur,

I should probably clarify a couple of these things:

- With regard to the speedy trial clock, what I meant in my response is that you have everything you need to do the excludable delay calculation yourself (i.e., excludable delay requests and scheduling orders from the court).

- Regarding the DNA expert, I need a new request from you which is compliant with RCM 703 (the first one was not, due mainly to the lack of a fee schedule and estimated cost of employment). I sent you an email previously with one suggestion and a list of other labs in California. The one private lab expert I contacted (Dr. Norah Rudin, in Mountain View, who was requested by Capt Dunn on the US v Collins case here last year) indicated that she was available for the trial dates as of the time I emailed her. As a caveat, Dr. Rudin is a suggestion only- the approval needs to come from the CA. If you send me a new request, I will forward to the CA immediately. Dr. Rudin indicated that the standard practice in most cases she dealt with was to get an initial approval for 10 hours of consultation, then submit follow-up requests for additional funding for further consultation, testing, and testimony, if necessary.

- On the same note, I note that both USACIL reports indicated that samples remain available for testing, but it's your decision whether to request any additional testing.

R/S,

Capt Day

-----Original Message-----

From: Hur Capt Christian P

Sent: Wednesday, January 05, 2011 14:48

To: Day Capt Evan S

Cc: haytham@puckettfaraj.com; Hatch MAJ Douglas C

Subject: Outstanding Wacker Discovery issues

Capt Day,

On 18 June 2010, we requested in discovery a list of the days the government calculates for speedy trial clock purposes from prefferal until the speedy clock stopped. In your response dated 1 July 2010, you said this information was already provided (see letter R.). I can't locate this information, please send again.

Also, do you have a DNA expert yet for us to consult with? I know the last one withdrew himself.



Thanks.

Christian P. Hur

Captain, USMC

Senior Defense Counsel

Telephone: (619) 524-8713

Fax: (619) 524-6784

Address: Defense Section, Bldg 12, 1st Floor, MCRD, San Diego, CA 92140

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-----Original Message-----

From: Hur Capt Christian P  
Sent: Thursday, December 09, 2010 16:12  
To: Day Capt Evan S; 'Haytham Faraj'  
Cc: Hatch MAJ Douglas C  
Subject: RE: ICO US v Wacker

The trial changes work for me.

Your COA on the DNA expert works for me too.

Christian P. Hur  
Captain, USMC  
Senior Defense Counsel  
Telephone: (619) 524-8713  
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Address: Defense Section, Bldg 12, 1st Floor, MCRD, San Diego, CA 92140

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-----Original Message-----

From: Day Capt Evan S  
Sent: Thursday, December 09, 2010 16:04  
To: Hur Capt Christian P; 'Haytham Faraj'  
Cc: Hatch MAJ Douglas C  
Subject: ICO US v Wacker

Gentlemen,

Following up on my conversation earlier with Capt Hur:

Rebecca Barker Abdullah is taking the NY and NJ bar exams on 22-24 Feb 11. I propose starting trial on 28 Feb 11 vice 24 Feb, in order to avoid any potential delay in the trial due to her exam and travel. I don't think the motions session on 22-23 Feb 11 should be affected. Please let me know if you oppose the change.

Regarding the DNA expert, I contacted Dr. Nora Rudin, who is a consultant in the bay area. She said that her typical initial contract for a government case would be 10 hours, after which she would recommend whether to request additional funding if necessary. I can't speak for the convening authority, but that does not sound unreasonable to me as long as the request is in proper form. Her contact info is available at:

<http://www.forensicdna.com/Consulting.htm>

There is a list of other consultants available at:

[http://www.cacnews.org/membership/lab\\_directory.shtml](http://www.cacnews.org/membership/lab_directory.shtml)

V/R,  
Capt Day

-----Original Message-----

From: Day Capt Evan S  
Sent: Wednesday, November 10, 2010 15:19  
To: Hur Capt Christian P  
Cc: 'Haytham Faraj'  
Subject: RE: US v. Capt Wacker: Defense DNA expert

Capt Hur,

I am not offering a retest, merely seeking clarification whether you are requesting one at this time.

To summarize where we are with the DNA expert at this point, all I have is a prior request which is non-compliant with RCM 703(d) and has already been denied on that basis. Therefore, I am not taking any further action on this matter at this time. If you want to reconsider the issue, I would strongly suggest that you re-submit a request that complies with the rule.

Very Respectfully,  
Captain Evan S. Day  
Trial Counsel, Military Justice Office  
Joint Law Center  
3rd MAW/ MCAS Miramar  
Comm: 858-577-1887  
DSN: 312-267-1887  
Fax: 858-577-1734

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-----Original Message-----

From: Hur Capt Christian P  
Sent: Wednesday, November 10, 2010 13:49  
To: Day Capt Evan S  
Cc: 'Haytham'  
Subject: RE: US v. Capt Wacker: Defense DNA expert

Capt Day,

I appreciate the offer for USACIL to retest, I wanted our own DNA expert to retest the articles (estimate of hours is based on what Dr. Johnson needed 2 weeks?), we potentially wanted to do some DNA transfer tests (several days) and some consulting (20 hours) and some in court testimony observation (30 hours depending if Cusack comes in?). I've asked for a fee breakdown for Dr. Lee. We are open to government employed experts to keep costs minimal.

I think the case law recognizes that we get equal access to a comparable expert that the Government had, if Dr. Johnson needed 100 hrs, then our expert may end up needing 100 hrs. Obviously we are going to be economical here, but some of this is outside of our ability to quantify at present.

Christian P. Hur  
Captain, USMC  
Senior Defense Counsel  
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Address: Defense Section, Bldg 12, 1st Floor, MCRD, San Diego, CA 92140

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-----Original Message-----

From: Day Capt Evan S  
Sent: Wednesday, November 10, 2010 11:11  
To: Hur Capt Christian P  
Cc: 'Haytham'  
Subject: RE: US v. Capt Wacker: Defense DNA expert

Capt Hur,

Understood. However, I still have yet to receive (1) a request for a specific number of hours of assistance with justification (assuming that your expert works on an hourly basis) and (2) a fee schedule. Both of these are required elements of a request for expert assistance under RCM 703(d), and the CA can't approve anything without a complete request.

With regard to the retest, please make a formal request as soon as you know whether you want one (since the testing would require some lead time). If you're not sure yet, please submit a request for expert consultation now and a request for additional funding to do the testing once you have made a decision.

Very Respectfully,  
Captain Evan S. Day  
Trial Counsel, Military Justice Office  
Joint Law Center  
3rd MAW/ MCAS Miramar  
Comm: 858-577-1887  
DSN: 312-267-1887  
Fax: 858-577-1734

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-----Original Message-----

From: Hur Capt Christian P  
Sent: Wednesday, November 10, 2010 10:12  
To: Day Capt Evan S  
Cc: 'Haytham'  
Subject: RE: US v. Capt Wacker: Defense DNA expert

Capt Day,

Thank you for the reference list. We already provided a civilian alternative. I understand that Dr. Lee may be pricey, but he does high profile cases and Capt Wacker's case certainly qualifies as that.

Regarding government experts with suitable qualifications as Dr. Johnson, we wouldn't object to such a forensic examiner if one at USACIL could work for us.

We conceivably want a retest of the articles of clothing and DNA samples. We also want to explore transfer theories that would require consultation and review of the file as well as interviews with witnesses. We will also need our DNA expert to sit through trial testimonies and then testify themselves if necessary.

Christian P. Hur  
Captain, USMC  
Senior Defense Counsel  
Telephone: (619) 524-8713  
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Address: Defense Section, Bldg 12, 1st Floor, MCRD, San Diego, CA 92140

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-----Original Message-----

From: Day Capt Evan S  
Sent: Tuesday, November 09, 2010 13:41

To: Hur Capt Christian P  
Cc: 'Haytham'  
Subject: RE: US v. Capt Wacker: Defense DNA expert

Capt Hur,

Roger. This site should help you find one:  
[http://www.cacnews.org/membership/lab\\_directory.shtml](http://www.cacnews.org/membership/lab_directory.shtml)

I can also look at government alternatives. As a reminder, if you ask for a private consultant, I need an estimated cost of employment (i.e. fee schedule plus the expert's estimate of the amount of time they will need) per RCM 703(d). Since it's also not clear to me what Mr. Guroff was referring to by "level of service," it would be extremely helpful if you could get a more specific proffer of what you will be requesting the expert to do (i.e. review of USACIL docs plus consulting, review of entire case file, or additional testing).

My apologies if you're getting this twice- my Outlook is going haywire right now, so I can't tell if my earlier response went out and I'd rather have you get something twice than not at all.

Very Respectfully,  
Captain Evan S. Day  
Trial Counsel, Military Justice Office  
Joint Law Center  
3rd MAW/ MCAS Miramar  
Comm: 858-577-1887  
DSN: 312-267-1887  
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-----Original Message-----

From: Hur Capt Christian P  
Sent: Monday, November 08, 2010 16:16  
To: Day Capt Evan S  
Cc: Haytham  
Subject: FW: US v. Capt Wacker: Defense DNA expert

Evan,

It looks like we will need another DNA expert.

Christian P. Hur

Captain, USMC

Senior Defense Counsel

Telephone: (619) 524-8713

Fax: (619) 524-6784

Address: Defense Section, Bldg 12, 1st Floor, MCRD, San Diego, CA 92140

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-----Original Message-----

From: Guroff, Steve [mailto:Steve.Guroff@sdsheriff.org]

Sent: Monday, November 08, 2010 15:31

To: Hur Capt Christian P

Subject: FW: US v. Capt Wacker: Defense DNA expert

Dear Capt. Hur,

I'm sorry, but after discussing the matter with my command, and reviewing the documents you provided, it's pretty clear I won't be able to provide the level of service you're looking for. Please accept my sincere regrets.

Steve Guroff, Supervising Criminalist

San Diego Sheriff's Crime Lab

-----Original Message-----

From: Day Capt Evan S  
Sent: Thursday, September 23, 2010 9:07  
To: Hur Capt Christian P; 'Haytham Faraj'  
Cc: Hatch MAJ Douglas C  
Subject: Defense Expert Request ICO Wacker

Gentlemen,

Please see attached. I note that there is a scrivener's error in the CG's endorsement- the name of the expert is Mr. Guroff (the one whose CV I provided earlier), not Dunoff. I am not sure how that mistake came about, but the intent is that you are being granted Mr. Guroff.

Very Respectfully,  
Captain Evan S. Day  
Trial Counsel, Military Justice Office  
Joint Law Center  
3rd MAW/ MCAS Miramar  
Comm: 858-577-1887  
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-----Original Message-----

From: Day Capt Evan S  
Sent: Wednesday, September 08, 2010 15:33  
To: Hur Capt Christian P; Hatch MAJ Douglas C  
Cc: 'Faraj, Haytham'; Sullivan LtCol Sean  
Subject: RE: US v. Wacker: 2nd Defense Discovery Request

Gentlemen,

Steve Guroff from the San Diego County Sheriff's lab has indicated that he is willing to assist the defense. His contact information is included on his CV. I will prepare the formal correspondence necessary to have him formally approved as an expert for the defense.

Additionally, please see attached discovery.

Very Respectfully,  
Captain Evan S. Day  
Trial Counsel, Military Justice Office  
Joint Law Center  
3rd MAW/ MCAS Miramar  
Comm: 858-577-1887  
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-----Original Message-----

From: Hur Capt Christian P  
Sent: Monday, August 23, 2010 16:57  
To: Day Capt Evan S; Hatch MAJ Douglas C  
Cc: 'Faraj, Haytham'; Sullivan LtCol Sean  
Subject: US v. Wacker: 2nd Defense Discovery Request

Gentlemen,

An additional defense discovery request is attached. Thank you.

Christian P. Hur

Captain, USMC

Senior Defense Counsel

Telephone: (619) 524-8713

Fax: (619) 524-6784

Address: Defense Section, Bldg 12, 1st Floor, MCRD, San Diego, CA 92140

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