



**UNITED STATES MARINE CORPS**

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JOINT LAW CENTER  
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SAN DIEGO, CALIFORNIA 92145-2022

IN REPLY REFER TO:  
5800  
MJO/ED  
25 Aug 10

From: Trial Counsel  
To: Defense Counsel

Subj: RESPONSE TO DEFENSE DISCOVERY AND WITNESS REQUEST IN THE  
CASE OF UNITED STATES V. CAPT DOUGLAS WACKER, XXX XX 3913  
USMC

Ref: (a) Defense counsel's ltr 5800 dtd 23 Aug 10

1. Below is the response to your discovery request dated 23 August 2010. I have used the same letters in my response as in your original request:

- a. The government is not aware of any such information that has not already been provided to the defense.
- b. The government is not aware of any such information that has not already been provided to the defense.
- c. The government is not aware of any such information that has not already been provided to the defense.
- d. The government is not aware of any such information that has not already been provided to the defense.
- e. This information will be provided in accordance with the trial schedule.
- f. The government will comply with its obligation to provide known impeachment material on any government witness.
- g. The government will comply with its obligation to provide known impeachment material on any government witness.
- h. The government is not aware of any such information that has not already been provided to the defense. The government notes that a disc containing the photos specifically requested by the defense was recently provided to the defense.
- i. The government will comply with its obligation to provide known impeachment material on any government witness.
- j. The request in its current form is denied as overbroad. The government is willing to reconsider the denial of this request if the defense provides a more specific request along with justification. The government notes that this defense discovery request is significantly broader in

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scope than the government's proposed email subpoena from the accused.

- k. Any such records that have not already been provided to the defense are privileged under Mil.R.Evid. 513, and the request is therefore denied.
- l. The request in its current form is denied as overbroad. The government is willing to reconsider the denial of this request if the defense provides a more specific request along with justification.
- m. The defense is already in possession of the requested phone numbers and email addresses.
- n. The government will comply with its obligation to provide known impeachment material on any government witness.
- o. This information will be provided in accordance with the trial schedule.
- p. This information will be provided in accordance with the trial schedule.
- q. The government is not aware of any such information that has not already been provided to the defense.
- r. The government has recently provided the defense with an audio copy of the complete Article 32, UCMJ hearing in this case, along with transcripts of the testimony of Jessica Brooder, Elizabeth Cook, Rebecca Abdullah, and Nicole Cusack. The request for a transcript of the testimony of the remaining witnesses is denied.

2. The request for production of La Nita Wacker and Ted Wacker as sentencing witnesses does not comply with the requirements of R.C.M. 703(c)(2)(B)(ii) and R.C.M. 1001(e) and is therefore denied. The government is willing to assist in making alternative forms of testimony available for these witnesses.

3. The defense request for funding for Dr. Henry Lee as a defense expert-consultant does not comply with the requirements of R.C.M. 703(d). However, the government will attempt to locate a suitable alternative DNA expert.

4. The government understands the defense request and the government's discovery obligations to be continuing in nature.

//s//

E. S. DAY