



UNITED STATES MARINE CORPS

3D MARINE AIRCRAFT WING
MARINE CORPS AIR STATION MIRAMAR
PO BOX 452038
SAN DIEGO CA 92145-2038

IN REPLY REFER TO:
5801
SJA
FEB 18 2011

SECOND ENDORSEMENT on Defense Counsel's ltr 5801 DEF of
15 Feb 11

From: Commanding General, 3d Marine Aircraft Wing
To: Defense Counsel
Via: Trial Counsel

Subj: REQUEST FOR EXPERT WITNESS IN THE MATTER CONCERNING U.S.
V. CAPT DOUGLAS WACKER XXX XX 3913/0602 USMC (DNA EXPERT)

1. Returned. For the reasons listed in the First Endorsement,
your request is disapproved.

Brett M. Wilson
BRETT M. WILSON
By direction

Copy to:
File



UNITED STATES MARINE CORPS

MARINE CORPS AIR STATION MIRAMAR
JOINT LAW CENTER
P.O. BOX 452022
SAN DIEGO, CALIFORNIA 92145-2022

IN REPLY REFER TO:
5800
MJO/esd
18 Feb 11

FIRST ENDORSEMENT on defense counsel's ltr 5801 dtd 15 Feb 11

From: Trial Counsel
To: Convening Authority
Via: Staff Judge Advocate

Subj: REQUEST FOR EXPERT WITNESS IN THE MATTER CONCERNING
U.S. V. CAPT DOUGLAS WACKER, USMC, XXX-XX-3913 (DNA
EXPERT)

Ref: (a) RCM 703, MCM (2008 ed.)

Encl: (1) Email from defense counsel dtd 15 Feb 11

1. Forwarded, recommending denial.

2. The defense in this case has previously been granted the assistance of a forensic DNA expert, Dr. Norah Rudin, as a consultant in the present case. The defense now requests that Dr. Rudin be "preapproved" as an expert witness in the subject case. The defense requests that Dr. Rudin be "preapproved" for two days of testimony at \$2000/day, in addition to travel expenses from Mountain View, CA.

3. The defense indicates that they "anticipate" that Dr. Rudin may rebut testimony from a forensic biologist from the U.S. Army Criminal Investigative Laboratory, but provides no proffer of her expected testimony, as required by the reference.

4. Additionally, although the defense request to the convening authority purports to request Dr. Rudin's presence as a witness yet, the email from the defense counsel sending the request conflicts with the letter in that it claims that "Dr. Rudin would be designated an expert witness depending on what Dr. Johnson says or does not say at trial." If Dr. Rudin were to be granted as a witness, she would be subject to pre-trial interview by the government. I am aware of no relevant law that requires the government to obtain the presence at trial of a confidential defense consultant, who has not yet been designated as a witness, based solely on the expectation that she may turn into a witness

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to provide as-yet-undisclosed testimony. The defense counsel has not provided any case law supporting its position either, despite my repeated invitations to do so.

5. The defense provides no justification for Dr. Rudin's production at trial at government expense absent her testimony as a witness. Although the defense alludes to potential assistance with cross-examination of Mrs. Johnson, the defense does not explain why it cannot adequately prepare for cross-examination through telephonic consultation with Dr. Rudin and ample opportunity for pre-trial interview with Mrs. Johnson.

6. For the foregoing reasons, I recommend denial of the request. However, if the defense submits a new request for Dr. Johnson's presence as a witness which is substantially in compliance with the reference, I would recommend reconsideration of the request.

A handwritten signature in black ink, appearing to read 'E. S. Day', is written above the typed name.

E. S. DAY