

# **EXHIBIT 4**

## Hill Allen

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**From:** Bruce, John (USANCE) [John.Bruce@usdoj.gov]  
**Sent:** Tuesday, November 01, 2011 2:19 PM  
**To:** LIBBY\_JORDAN@nced.uscourts.gov  
**Cc:** Hill Allen; admin@nccai.org  
**Subject:** RE: MacDonald evidentiary hearing

Dear Libby: As we await the Movant's reply to the Government's response [DE-194] to Movant's motion for appointed counsel [DE-191], it is necessary for the Government to give the Court an update regarding statements made in our 10/3/11 response [DE-185] to Movant's motion to continue the evidentiary hearing [DE-184].

On Thursday, 10/27/11, Judge Eagles of the USDC-MDNC informed counsel for both parties in U.S. v. Edwards that the trial would begin with jury selection on 2/6/12, not in January 2012 as previously thought. It is anticipated that the trial will last about six weeks.

Since the government's filing on 10/3, there has also been a change in the status of Mr. Wade Smith in the Edwards case. He will not be participating as part of the trial team for the defense. He will likely be a witness for one or both parties in that case.

As stated in the 10/3 filing, having the Edwards trial going on at the same time as the evidentiary hearing in the MacDonald case is problematic for the Government because the two proceedings will draw on many of the same resources of our office. Also, Mr. Smith will now likely be a witness in both proceedings.

Thus, the change in circumstances since 10/3/11 is that from the Government's perspective, January 2012 has now been freed up, but the time period from February 6 to about March 16 is problematic.

The Government still favors the current setting of 11/28/11 for the evidentiary hearing on the Britt claim.

Please let me know if you need further information or if the Court wishes this to be put in a more formal filing.

Thank you.

John Stuart Bruce  
First Assistant U.S. Attorney  
Eastern District of North Carolina  
(919) 856-4850

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

**From:** Hill Allen [mailto:HALlen@tharringtonsmith.com]  
**Sent:** Thursday, October 06, 2011 10:02 AM  
**To:** LIBBY\_JORDAN@nced.uscourts.gov; Bruce, John (USANCE)  
**Cc:** Walker, Thomas G. (USANCE); jzeszotarski@poynerspruill.com; admin@nccai.org  
**Subject:** RE: MacDonald evidentiary hearing

Dear Libby,

In light of the Government's preliminary list of 30 witnesses, I suggest that the estimate of five days for the hearing may be too short.

As the Court considers available slots for the hearing, I'd respectfully request that the hearing be set on or after February 16, 2012. I suggest that date based on the Government's earlier statement that it prefers not to have the hearing in January 2012 and should be available, following the John Edwards trial, after February 15, 2012. (See D.E. 185, para. 6.) In support of this request, I'd request that the Court consider the following:

1. The Government has said that it would be available after February 15, 2012. (D.E. 185.)
2. Lead counsel for Jeffrey MacDonald, Hart Miles, has just withdrawn from the case. (D.E. 183 & 186 - Motion and Order.) We need to sort through issues in the wake of Hart's withdrawal. New lead counsel will need time to prepare.
3. The Court has set a parallel briefing schedule relating to MacDonald's IPA claim and request for additional DNA testing with new technology. That briefing schedule calls for the Government to file a brief by December 1, 2011 and for MacDonald to reply shortly thereafter. (D.E. 180.) I submit that it may make sense to work through that briefing schedule and have a unified hearing on all of Mr. MacDonald's claims beginning on or after February 16, 2012, rather than proceeding piecemeal.

Thank you for your consideration of the foregoing.

Respectfully submitted,

Hill

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

From: Bruce, John (USANCE) [mailto:John.Bruce@usdoj.gov]  
Sent: Tuesday, October 04, 2011 4:13 PM  
To: LIBBY\_JORDAN@nced.uscourts.gov; Hill Allen; admin@nccai.org;  
jzeszotarski@poynerspruill.com  
Cc: Walker, Thomas G. (USANCE)  
Subject: RE: MacDonald evidentiary hearing

Libby:

Before he withdrew, I had a conversation with Hart Miles in which we were trying to assess the length of the hearing. We were working under the assumption that that the hearing would cover:

1. The timeliness and truth of the Britt Claim
2. The specific items of evidence that were mentioned in the CA4's opinion (other than DNA):
  - a. Affidavit of the elder Helena Stoeckley;
  - b. Blond synthetic hair-like fibers; and

c. The three affidavits describing confessions made by Greg Mitchell.

In the above list, 1, 2(a) and 2(c) would involve some witnesses for both sides, but Hart thought that the Movant would not have new evidence to present on 2(b), but would want the previous material submitted on that considered as part of "the evidence as a whole" at the appropriate time.

Assuming that our assessment was accurate, the Government has made a preliminary list of about 30 witnesses. There may be some overlap between our list and the Movant's list, perhaps about 5 to 8.

Our best estimate is five court days.

Since this is a non-jury matter, the Government has no objection to splitting the hearing up if the Court does not have a five-day window to put it in.

Thank you for consulting us about this.

John Stuart Bruce  
First Assistant U.S. Attorney  
Eastern District of North Carolina  
(919) 856-4850

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

From: LIBBY\_JORDAN@ncd.uscourts.gov [mailto:LIBBY\_JORDAN@ncd.uscourts.gov]

Sent: Tuesday, October 04, 2011 1:26 PM

To: Bruce, John (USANCE); hallen@tharringtonsmith.com; admin@nccai.org;  
jzeszotarski@poynerspruill.com

Subject: MacDonald evidentiary hearing

Counsel,

Judge Fox is attempting to find a slot to reschedule the MacDonald evidentiary hearing, now set for the week of 10/31/11. He understands the Government would rather not move the hearing but does not object, so long as the hearing can be completed before the end of the year.

Judge Fox has asked me to determine how many witnesses each side plans to call, and what your very best estimate is for the duration of the hearing. Please advise at your earliest convenience.

Thank you very much,

Libby Jordan  
Law Clerk  
Senior U.S. District Judge  
James C. Fox  
E.D.N.C.