



UNITED STATES MARINE CORPS

THIRD MARINE AIRCRAFT WING
MARINE CORPS AIR STATION MIRAMAR
P.O. BOX 452038
SAN DIEGO CA 92145-2038

IN REPLY REFER TO:

5810

SJA

JUL 14 2010

SECOND ENDORSEMENT on Defense Counsel's ltr 5801 DEF dtd
29 Jun 10

From: Commanding General, Third Marine Aircraft Wing
To: Detailed Defense Counsel

Subj: REQUEST FOR EXPERT CONSULTANT (OB-GYN) IN THE CASE OF
UNITED STATES V. CAPTAIN DOUGLAS S. WACKER, XXX XX 3913,
USMC

1. Returned, approved. You are granted authority to obtain Captain William Leininger, U.S. Navy, as an expert consultant and, if called upon, as an expert witness. While serving as an expert consultant, Captain Leininger's communications with the defense counsel and Captain Wacker will be protected by Military Rule of Evidence 502.

2. Only travel expenses per Joint Travel Regulations are authorized. No expert fees are authorized.

A handwritten signature in black ink, appearing to read "T. Conant".

T. CONANT

Copy to:
SJA
Comptroller
Trial Counsel



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
6 Jul 10

FIRST ENDORSEMENT on Defense Counsel's ltr 5801 dtd 29 Jun 10

From: Trial Counsel
To: Commanding General, Third Marine Aircraft Wing
Via: Staff Judge Advocate, Third Marine Aircraft Wing
Subj: REQUEST FOR EXPERT CONSULTANT (OB-GYN) IN THE CASE OF
UNITED STATES V. CAPTAIN DOUGLAS S. WACKER, XXX XX 3913,
USMC

1. Forwarded recommending approval.
2. The accused is charged with violation of the UCMJ, Article 120, by raping an incapacitated civilian female victim. The victim does not recall the alleged assault but discovered a tampon lodged very high in her vaginal canal after the accused denied that any sexual intercourse took place. The defense requests that an OB-GYN, CAPT William Leininger, MC, USN, be designated as a defense expert-consultant.
3. The victim does not recall the alleged assault but discovered a tampon lodged very high in her vaginal canal after the accused denied that any sexual intercourse took place. Additionally, the accused's semen was later discovered on the crotch of shorts and jeans worn by the victim shortly after the alleged assault. The defense requests expert assistance in order to present alternative explanations for this evidence to the members. Defense counsel do not have specialized experience or training regarding these matters and cannot testify.
4. As CAPT Leininger is a government employee and is local, the government would incur little or no expense by granting him as a consultant or witness to the defense.
5. Based on the foregoing, I find that it would be appropriate to approve the defense request for an expert consultant.

A handwritten signature in black ink, appearing to read "E. S. Day".

E. S. DAY



UNITED STATES MARINE CORPS
OFFICE OF THE STAFF JUDGE ADVOCATE, LEGAL ASSISTANCE
MARINE CORPS RECRUIT DEPOT/WESTERN RECRUITING REGION
3700 CHOSIN AVENUE
SAN DIEGO, CALIFORNIA 92140-5197

IN REPLY REFER TO:
5801
DEF
29 JUN 10

From: Defense Counsel
To: Commanding General
Via: Staff Judge Advocate

Subj: REQUEST FOR EXPERT CONSULTATION IN THE MATTER CONCERNING
U.S. V. CAPT DOUGLAS WACKER, USMC, XXX-XX-9313 [OBYGN]

Ref: (a) Manual for Courts Martial, 2008 Edition, RCM 702(d)
(b) Manual for Courts Martial, 2008 Edition, MRE 706(a)
(c) Charge Sheet, ICO U.S. v. Capt Wacker

Encl: (1) Curriculum Vitae for William M. Leigninger, CAPT, USN

1. Per References (a) and (b), the Defense respectfully requests the employment of CAPT Leigninger, USN, a licensed medical doctor and OBYGN physician as a Defense Expert Consultant. If this request is approved, the Defense would have the option to later designate Dr. Leigninger as a Defense Expert Witness for testimony at trial.

2. Per Reference (c), the Accused faces a General Courts-Martial due to alleged Article 120, sexual assault, violations against two female civilians. One of these female civilians alleges that she had sexual intercourse with the Accused because "she noticed that her tampon was pushed deep inside her...she realized, Wacker had raped her because there is no other way her tampon would have been pushed so far inside of her...it took 20 minutes to pull the tampon out because it was pushed so far up and because it was very painful." This female civilian has no memory that sexual intercourse with the accused even occurred.

3. As indicated by enclosure (1), Dr. Leigninger has a wealth of experience in evaluating and analyzing all matters relating to female anatomy and specifically gynecological issues. He has personally reviewed instances where female patients had tampons pushed far up their vaginal canals and sexual intercourse was not the cause. This case involves complex gynecological issues that can only be explained and evaluated by medical experts in that field.

4. A key piece of Government evidence in its case that the Accused allegedly raped a female civilian is that female civilian's testimony that sexual intercourse with the Accused caused her tampon to be pushed up her vaginal canal. Only a licensed gynecologist with medical training can offer consultation and opine as to whether or not this is possible or even likely. It is therefore necessary for the administration of justice and the courts-martial process that the Defense receives an expert consultant who can explain this information within the province of the attorney/client relationship. As a licensed medical doctor, Dr. Leigninger would also offer

Subj: REQUEST FOR EXPERT CONSULTATION IN THE MATTER CONCERNING
U.S. V. CAPT DOUGLAS WACKER, USMC, XXX-XX-9313 [OBYN]

consultation services to the Defense as to all other medical issues
surrounding this case.

5. As Dr. Leininger is a government employee, there would be no fees
incurred for approving this request. Dr. Leininger can be contacted as
follows:

William M. Leininger, CAPT, USN
william.leininger@med.navy.mil
Office 6195329596
Pager 8882135438
Cell 7608076923

6. The Defense respectfully requests that the Government response to this
correspondence be made in writing. Thank you in advance for your time and
attention to this matter.



C. P. HUR



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SJA

JUL 14 2010

SECOND ENDORSEMENT on Defense Counsel's ltr 5801 DEF dtd
22 Jun 10

From: Commanding General, Third Marine Aircraft Wing
To: Detailed Defense Counsel

Subj: REQUEST FOR EXPERT CONSULTANT (TOXICOLOGIST) IN THE CASE OF
UNITED STATES V. CAPTAIN DOUGLAS S. WACKER, XXX XX 3913,
USMC

Ref: (d) JAGMAN

1. Returned, approved. You are granted authority to obtain Dr. Aaron Jacobs, a forensic toxicologist, as an expert consultant and, if called upon, as an expert witness. While serving as an expert consultant, Dr. Jacobs' communications with the defense counsel and Captain Wacker will be protected by Military Rule of Evidence 502.

2. Per paragraph 0146(j)(2) of reference (d), Dr. Jacobs, who is a civilian witness in the employ of the Government, shall be paid only as authorized by Joint Travel Regulations. Expert fees are not authorized.

T. CONANT

Copy to:
SJA
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Trial Counsel



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SAN DIEGO, CALIFORNIA 92145-2022

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5800
MJO/esd
6 Jul 10

FIRST ENDORSEMENT on Defense Counsel's ltr 5801 dtd 22 Jun 10

From: Trial Counsel
To: Commanding General, Third Marine Aircraft Wing
Via: Staff Judge Advocate, Third Marine Aircraft Wing
Subj: REQUEST FOR EXPERT CONSULTANT (TOXICOLOGIST) IN THE CASE
OF UNITED STATES V. CAPTAIN DOUGLAS S. WACKER, XXX XX
3913, USMC

1. Forwarded recommending approval.
2. The accused is charged with violation of the UCMJ, Article 120, by raping an incapacitated civilian female victim. The defense requests that a forensic toxicologist, Dr. Aaron Jacobs, be designated as a defense expert consultant in order to discuss the effects of alcohol and other intoxicating substances on the human body.
3. The victims in this case allege lengthy periods of complete or episodic memory loss following heavy drinking. Therefore, the effects of alcohol and potentially other intoxicating substances will be at issue in the trial. Defense counsel do not have specialized experience or training regarding these matters and cannot testify.
4. As Dr. Jacobs is a government employee, the only expense to the government would be the cost of his travel to MCAS Miramar for testimony.
5. Based on the foregoing, I find that it would be appropriate to approve the defense request for an expert consultant.


E. S. DAY



UNITED STATES MARINE CORPS
OFFICE OF THE STAFF JUDGE ADVOCATE
MARINE CORPS RECRUIT DEPOT/WESTERN RECRUITING REGION
3700 CHOSIN AVENUE
SAN DIEGO, CALIFORNIA 92140-5197

IN REPLY REFER TO:
5801
DEF
22 Jun 10

From: Defense Counsel
To: Convening Authority
Via: Trial Counsel

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

Ref: (a) Manual for Courts Martial, 2008 Edition, RCM 703(d)
(b) United States v. Short, 50 MJ 370 (CAAF 1999)
(c) Charge Sheet, ICO U.S. v. Capt Wacker

Encl: (1) CV of Dr. Jacobs

1. Per References (a) and (b), the Defense respectfully requests the employment of Dr. Jacobs, a judicially recognized toxicologist expert witness as a Defense Expert-Consultant. If this request is approved, the Defense would have the option to later designate Dr. Jacobs as a Defense Expert Witness for testimony at trial. Dr. Jacob's contact information follows:

Aaron Jacobs, Ph.D.
AF Drug Program Manager
aaron.jacobs@brooks.af.mil
DSN 240-6808
Comm 210-536-6808

2. Per Reference (c), the Accused faces a General Courts-Martial due to alleged Article 120, sexual assault, violations against female civilians and some other charges. These women allege impairment by alcohol prior to the sexual assaults taking place.

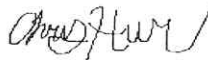
3. Dr. Jacobs is employed by the U.S. Government and is experienced in explaining how alcohol affects the human body and he has expert toxicology knowledge in general. As he is a government employee, the Government would only need to pay for his travel to attend hearings at MCAS Miramar. Total travel costs would likely only consist of a trip to attend trial.

4. Per, United States v. Short, 50 MJ 370 (CAAF 1999), under RCM 703(d), an accused is authorized expert assistance at Government expense when the Government cannot provide an adequate substitute and the defense makes a showing of necessity; the defense must show: (1) why expert assistance is needed, (2) what expert assistance would accomplish for the accused, and (3) why the defense counsel is unable to gather and present the evidence that the expert assistant would be able to develop. Here the expert assistance is needed to explain why the victims at issue cannot remember what happened because they drank alcohol during encounters with the accused. Dr. Jacobs

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

can explain how alcohol affects the ability of the person to remember events and consent to sexual encounters. Dr. Jacobs could explain to the Judge and the members that the victims' recounting of events is not accurate or reasonable given how much alcohol they claim to have consumed and the negative drug test Ms. Brooder experienced. The Defense attorneys cannot testify and this matter concerns an expert opinion. Therefore, Dr. Jacobs is needed, as a toxicologist, to testify and explain this testimony to the fact finder.

5. The Defense respectfully requests that the Government response to this correspondence be made in writing. The CV of this requested expert is at Enclosure (1). Thank you in advance for your time and attention to this matter.



C. P. HUR