



**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 5800 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 (SEXUAL ASSAULT NURSE  
EXAMINER) IN THE CASE OF UNITED STATES V. CAPTAIN DOUGLAS  
S. WACKER, XXX XX 3913, USMC

1. Forwarded recommending denial.
2. The accused is charged with violation of the UCMJ, Article 120, by raping an incapacitated civilian female victim. The defense requests that a sexual assault nurse examiner, Ms. Lovette Robinson (CDR, USN, ret.) be designated as a defense expert consultant in order to discuss sexual assault investigations and victim behavior.
3. Although the requested expert would be at no expense to the government except for potential travel, the defense has not demonstrated the necessity of producing the expert consultant. No SANE examination was performed on any alleged victim in this case; therefore, there is no examination to evaluate and rebut. Additionally, to the extent that Ms. Robinson's testimony "may tend to impeach the credibility of... the accusers regarding how rape victims typically react in such scenarios," the proffered testimony appears to be either impermissible profile or "human lie detector" testimony.
4. Furthermore, the defense has not made any attempt to adequately prepare for trial through readily available alternatives. In particular, I have recommended approval of the defense request for CAPT William Leininger, MC, USN as a defense expert-consultant OB-GYN. Although CAPT Leininger and Ms. Robinson have different professional backgrounds, the defense has not explained what expert assistance they expect to get from Ms. Robinson that could not be provided by CAPT Leininger.

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5. Based on the foregoing, I find that it would be appropriate to deny the defense request for an expert consultant.



E. S. DAY



**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 21 2010**

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

Subj: REQUEST FOR EXPERT CONSULTANT (SEXUAL ASSAULT NURSE  
EXAMINER) IN THE CASE OF U.S. V. CAPTAIN DOUGLAS S. WACKER,  
XXX XX 3913, USMC

1. Returned. Your request for an expert sexual assault nurse  
examiner is disapproved.



J. K. ARRUDA  
Acting

Copy to:  
Trial Counsel