



UNITED STATES MARINE CORPS
OFFICE OF THE STAFF JUDGE ADVOCATE
3250 CATLIN AVENUE, SUITE 133
MARINE CORPS BASE
QUANTICO, VIRGINIA 22134-5001

IN REPLY REFER TO:
5800
B0521
4 Oct 11

From: Captain Peter C. Combe II, Trial Counsel
To: Commanding General, Marine Corps Combat Development Command
Via: Staff Judge Advocate, Marine Corps Combat Development Command

Subj: REQUEST FOR GOVERNMENT EXPERT WITNESS IN THE FIELD OF FORENSIC
PSYCHOLOGY IN THE CASE OF UNITED STATES VERSUS CAPTAIN JAMES M. ROWE,
USMC

Encl: (1) Charge Sheet preferred 27 April 2011
(2) Additional Charge Sheet preferred 4 August 2011

1. Trial counsel respectfully requests that the convening authority in the case of United States v. James M. Rowe. Specifically, trial counsel requests that the convening authority approve funding for the government to hire Dr. Gabriel Holguin.

2. This case involves a possible sexual assault against the alleged victim, former 1stLt Ariana Klay. There are several issues with regard to Mrs. Klay's testimony that raise concern.

a. The events giving rise to the charges occurred on 28 August 2010; however, Mrs. Klay did not make any official report until 15 September 2010; which report was not made until Mrs. Klay was at Commanding General's Non-Judicial Punishment. Previous to this she disclosed matters relating to the alleged assault to a licensed mental health provider as part of a restricted/closed report.

b. Additionally, Mrs. Klay engaged in what are often termed, "counter-intuitive victim behaviors." Essentially this means that she did things after the alleged assault which one would not normally expect of a victim. She continued to have personal and telephone contact with her alleged assailant, she participated in social gatherings with the alleged assailant and his spouse, and she continued to confide in him.

c. Finally, Mrs. Klay has given both oral and written statements, as well as sworn testimony, on this matter. Through her numerous recitations and recollections of the events of 28 August 2010 several inconsistencies have emerged with regard to the extent and nature of her relationship with the accused, some of the details of 28 August, and her actions after the alleged assault. All of these issues (delayed reporting, "counter-intuitive" behaviors, and inconsistent statements) have the potential to severely undermine Mrs. Klay's credibility at a court-martial.

3. An expert in the field of forensic psychology can adequately educate the members with respect to these issues, and present a full and effective case to the court. The testimony of an expert in these matters will be able to effectively educate the members so that they may make an adequate determination of Mrs. Klay's credibility in light of the above noted discrepancies.

Subj: REQUEST FOR GOVERNMENT EXPERT WITNESS IN THE FIELD OF FORENSIC
PSYCHOLOGY IN THE CASE OF UNITED STATES VERSUS CAPTAIN JAMES M. ROWE,
USMC

a. The requested expert will be able to educate the members with regard to "counter-intuitive" behaviors. Such an expert can explain that continued contact with a familiar assailant and delayed reporting are common behaviors for a victim of sexual assault. The expert will also be able to educate the members as to the reasons for these behaviors when the assailant is someone familiar to the victim.

b. The requested expert will also be able to educate the members with regard to memory formation in traumatic situations. Specifically, the expert will be able to testify that victims of trauma rarely remember a consistent, ordered narrative of events. Rather, memory formation during traumatic events is focused on sensations and is depicted as a series of sensory "snapshots," rather than the "motion picture" associated with normal memory formation. The expert will further testify that in these situations it is normal for trauma victims to "fill in the gaps" in order to create narrative which makes sense.

c. Finally, the requested expert will be able to evaluate Mrs. Klay, the alleged victim in this case. Through review of her treatment/psychological records, interview with her, and subsequent evaluation, the expert will be able to identify which "counter-intuitive" behaviors Mrs. Klay has exhibited, as well as provide an opinion as to why that would be the case. Additionally, this evaluation will allow the expert to testify as to the potentially fragmented nature of Mrs. Klay's memory as the result of the traumatic events which she apparently suffered.

4. Dr. Holguin has provided the trial counsel with an estimated fee schedule/statement of work for this case:

- a. Pretrial Document review and preparation: \$250/hr (8 hours)
- b. 2 days travel/preparation and interview: \$1,950/day
- c. 3 days of trial observation/testimony: \$2,000/day.

5. Trial counsel estimate that, based on the evidence in this case, that trial will take no more than three day. Based on these estimates, Dr. Holguin's services will cost the government approximately \$12,000.

6. Trial counsel has contacted approximately twenty (20) government employed experts and none has indicated availability for the docketed trial dates in this case. Additionally, of the civilian experts contacted only two responded and Dr. Holguin is both, (1) qualified to testify as stated in this request, and (2) less expensive than the other civilian expert by approximately \$5,000.



P. C. COMBE II