



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.

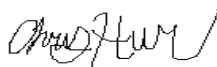
3. Dr. Jacobs is employed by the U.S. Government and is experienced in explaining how alcohol affects the human body and he has expert toxicology knowledge in general. As he is a government employee, the Government would only need to pay for his travel to attend hearings at MCAS Miramar. Total travel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

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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