

**DEPARTMENT OF THE AIR FORCE
UNITED STATES AIR FORCE JUDICIARY**

UNITED STATES)	
)	
V.)	DEFENSE PROPOSED VOIR DIRE
1st Lt Patrick Burke)	
First Lieutenant)	
United States Air Force)	

1. Introduce defense team by name and rank.
~Does any member believe that a military member should not hire civilian counsel?

2. Who walked in here today and thought, "I wonder what he did wrong?"

3. Do you all understand that thought assumes that he wouldn't be here unless he had done something wrong?

4. If you were sitting where 1stLt Burke now sits, would you be satisfied that someone with your exact knowledge, experience, attitudes and beliefs would be fair and impartial in considering all of the evidence before deciding how to vote?

5. Which of you have served on an administrative discharge board?

6. Of those who have, do you understand that the standard of proof at an admin board, is by "a preponderance of the evidence," sometimes described as "51%?"

7. Do you each understand that in order for you to enter any findings of guilty in this case, the Government must establish proof of guilt "beyond a reasonable doubt?"

8. Do you all agree and accept that the "beyond a reasonable doubt" standard is significantly higher than the "preponderance of the evidence" standard applied at an admin board?

9. Do you each accept and agree that your service as a court-martial member is important service?

10. 1stLt Burke is charged with assault, vehicle theft and alcohol-related charges, as set forth on the flyer in front of you. Does any member believe that 1stLt Burke must be guilty of something, simply because he has been accused of these offenses?

11. Does any member believe that because we are here at a general court-martial, the general court-martial convening authority, 12th Air Force, has already made a determination that 1stLt Burke is guilty?

12. Do you all understand and agree that 1stLt Burke is presumed under the law to be innocent of all of these charges?
13. Do you all understand and agree that 1stLt Burke is not required to prove his innocence to you?
14. Do you all understand that the presumption of innocence is an important Constitutional right we all have?
15. Do you each understand that because the government has not yet presented any evidence of guilt and that all you have to go on is the presumption of innocence, you would have to vote Not Guilty if called upon to vote right now?
16. Do you each understand that the Government must establish each element of each offense beyond a reasonable doubt?
17. Do you each understand that 1stLt Burke has no obligation to present any evidence whatsoever?
18. Do you each understand that 1stLt Burke is not required to testify and has an absolute right to remain silent, and that you may not hold that against him?
19. Do you understand that you may, sometime during the trial, want to hear from 1stLt Burke, but that his right to remain silent is an important and fundamental right that all American citizens have?
20. Would you each agree that you have to weigh the credibility of a witness in order to determine whether to believe that witness?
21. Do you each understand that when you meet in your closed session at the end of the trial that you are required by law to vote your own conscience?
22. Do you each understand that regardless of rank, each member is entitled to vote his/her own conscience?
23. Senior member: Do you understand that each member is entitled to vote his or her own conscience even if his/her opinion differs from yours?
24. Junior member: Do you believe you would have any difficulty voting your own conscience even if your opinion differed from a member who is senior to you?
25. Voting once: The military judge will give you instructions on how to vote after you have finished your deliberations or discussions. He will tell you that you vote only once on each specification and charge. Do you each understand that when you finish discussing the case and decide to vote, that you may vote only once, and therefore cannot take "sample votes" along the way?

26. You will be instructed by the military judge that if you desire to re-vote, that you must return to the courtroom and ask the military judge for instructions on how to do that. Does each member agree to abide by that instruction?

27. If, after hearing all of the evidence and instructions and discussing the case with your fellow court-members, you have a reasonable doubt about whether my client committed any offense, will you have any hesitation about voting Not Guilty?

28. Does any member know the prosecutors in this case, either personally or professionally?

29. Has any member received any legal advice or counsel, personal or professional, from the prosecutors?

30. Do you all understand that one of the military judge's most important duties in this trial is to instruct you on the law you must apply in deciding this case?

31. Do you understand that you are required to follow the law and instructions that the military judge gives you – that they are, in essence, military orders, which you have a duty to obey?

32. Does any member believe that every court-martial is supposed to end with a finding of guilty?

33. Does each member understand, therefore, that a court-martial may legitimately end with findings of Not Guilty?

34. Do you each understand that the legal determination of my client's guilt or innocence is solely in your hands, and not those of any commander?

35. Does any member have his or her OPR written or reviewed by the convening authority, the 12th AF commander?

36. Does any member believe that the 12th AF Commander is expecting you to convict 1stLt Burke?

37. Does any member believe that the 12th AF Commander will be personally or professionally disappointed or embarrassed if you acquit 1stLt Burke?

38. Does any member have any concern that if you vote to acquit 1stLt Burke, you may be called upon to explain or otherwise justify any findings of Not Guilty to some peer or superior?

39. Do you each understand the importance to 1stLt Burke of having his case decided fairly based upon your own honest and critical assessment of the evidence?

40. Do you each understand the evidence will be presented to you first by the prosecution, and then by the defense, in small bits and pieces?

41. Because of that required trial procedure, do you each understand that you may have to wait until later in the trial to get answers to important questions that have not yet been addressed by the evidence?

42. Do you therefore each agree to maintain an open mind about the verdict until you have heard all of the evidence, received the military judge's instructions and deliberated with the other members behind closed doors?

Case specific voir dire to be explored by individual voir dire, if required:

43. Has any member taken the prescription amphetamine, Dexedrine, or "Go Pills" as a part of his or her duties in order to maintain alertness?

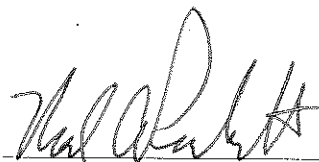
44. Has any member ever had to function in a severe sleep deprived state, such as being awake for 30-36 hours?

45. Has any member consumed alcohol after taking prescribed doses of Dexedrine or "Go Pills?"

46. Has any member consumed alcohol while in a severe sleep-deprived state, such as remaining awake for 30-36 hours?

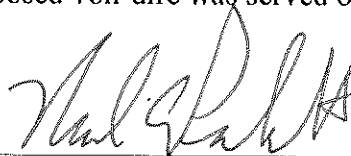
47. Has any member, while in a severe sleep deprived state, prolonged by prescribed doses of Dexedrine, or "Go Pills," consumed alcohol?

5 Oct 2011



Neal A. Puckett
LtCol, USMC (Ret)
Civilian Defense Counsel

I hereby certify that a true copy of the foregoing proposed voir dire was served on counsel for the government via email on 5 October 2011.



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