

UNITED STATES MARINE CORPS
WESTERN JUDICIAL CIRCUIT

UNITED STATES)	GENERAL COURT-MARTIAL
)	
v.)	
)	DEFENSE PROPOSED VOIR DIRE
DOUGLAS WACKER)	
CAPTAIN)	
U.S. MARINE CORPS)	18 February 2011

The defense proposes the following *en banc* questions:

The law, Burden, and Presumption of Innocence:

1. Have you ever participated as a member in a Court martial?
2. Have you ever served as a juror in a civilian court case?
3. Have you ever served as an executive officer of a unit?
4. Have you ever served in a capacity where you could refer Marines to Courts- martial?
5. Have you ever been the victim of a crime?
6. Have you ever worked or know anyone that worked as victim advocate?
7. Have you ever been accused of a crime? (Individual voir dire)
8. How does the fact that Captain Wacker is charged affect your presumption of his guilt or innocence?
9. Do you any of you have an opinion about the presumption of guilt or innocence in this case?
10. Do all the members agree that the burden will always be on the government to prove every element of every charge and specification beyond a reasonable doubt?
11. What do you think is worse, if an innocent person goes to jail or if a guilty person goes free?
12. Can you make room for the possibility that someone could make a false rape accusation?
13. Have you ever heard about someone being convicted of a crime and then later it was proven that they were in fact innocent? In other words, have heard about innocent people being wrongfully convicted of a crime?

14. Do you believe that innocent people can be wrongfully convicted?
15. In a rape accusation trial like this one, is it important for you to hear from the accused?
16. Do you believe that since Captain Wacker has been accused of rape that he should prove his innocence to you?
17. The government, according to the law, has the duty to prove their accusations. Do you believe that this is a fair or unfair duty?
18. The government has a duty, under the law, to prove their accusations at a very high level, called beyond a reasonable doubt; do you believe that it is unfair to require this level of proof?
19. Do you believe that if you are going to accuse someone of something this serious that you should have to prove it?
20. Do you have any experience in applying the reasonable doubt standard to a set of facts?
21. You are going to get some instructions from the judge about something called good military character. Do any of you feel that character can never be relevant in deciding guilt or innocence?

The Charges, personal views and biases:

22. Do you feel a greater sense of protection towards female members of your family or friends as opposed to male members?
23. Do you know anyone who has ever claimed that they had been raped?
24. How do you feel about people who believe in having sex outside of the marriage?
25. Do you all agree that as a Marine Corps we have different standards than the civilian world?
26. Do any of you feel uncomfortable about possibly having to abandon what you believe that standard to be and to adopt a new standard based on the law you will be advised on in this case?
27. Do you have a strong opinion regarding sexual relationships outside of marriage?
28. How do you feel about unmarried adults having a threesome?
29. How do you feel about an unmarried officer who agrees to engage in a threesome with two unmarried women?
30. Do any of the members believe that the stigma or others societal consequences that may be associated with being a sex assault victim is so great that it is unlikely that someone would falsely claim to have been sexually assaulted?

31. How do you feel about the use of alcohol?
32. Do any of you have any religious beliefs related to alcohol?
33. Do you agree that sometimes people can choose to do things while drinking and then later regret their decisions?
34. Do you believe that people can still make choices even though they were drinking alcohol?
35. Do you believe that people are still responsible for their choices even if they were drinking alcohol at the time?
36. Have you heard any stories about people doing things while they were drunk and then not having any memory of those things when they become sober?
37. If someone is awake but intoxicated from alcohol, do you believe that they can consent to have sex?
38. Do you have any friends or family who are in law enforcement?
39. Do you have any friends or family who work in the legal field?
40. Views on lawyers and defense lawyers in particular?
41. Do you believe men have a greater duty to ensure that a sexual partner has consented than a woman has a duty to communicate her lack of consent?
42. Can you make room for the possibility that a person could accuse another person of a crime in order to avoid embarrassment?
43. Do you have an opinion about the term “good order and discipline?”
44. Do you have an opinion about the term “service discrediting?”

Experts

45. Do any members know what a toxicologist does?
46. Do any members believe that the scientific method for determining Blood Alcohol Level is open to criticism?
47. Do any of the members believe that the impact of alcohol on one’s cognition, judgment, perceptions or memory is junk science?
48. Do any of the members know the difference between an alcohol induced blackout and passing out?
49. Do any of you have any expertise or particularized knowledge in the field of obstetrics or Gynecology?

50. Do any of you have any expertise or knowledge in the field of DNA testing and analysis?
51. Do any of you have any experience with the NCIS?

Members

52. Do all members understand that every member's vote is equal to the vote of every other member regardless of rank?
53. Do all members agree that in the Marine Corps Marines junior in rank must obey those senior to them?
54. How will the junior members of this panel ensure that their votes are not affected by the desires or decisions of the senior members of the panel?
55. Do any members know the convening authority?
56. Have any of you discussed this case with the convening authority?
57. Have any of you heard the convening authority discuss military justice in general?
58. Do any of you feel the convening authority expects or anticipates a conviction in this case?
59. Do any of you feel the convening authority will be displeased if there is not a conviction?

Media and information about the case

60. Have any members seen or heard anything in relation to the charges in this case prior to today?
61. What about Colonel Stephenie Smith, has anyone seen the front page article of the Marine Corps Times about Col Smith?
62. Did any members read that article?
63. Did any members remember reading about this case?
64. Has anyone discussed this case with you?
65. Have any of you attended any training or PME related to avoiding, handling or reporting sexual assaults
66. Have any of you read any articles related to sex assaults in the military?

/S/ Haytham Faraj
Haytham Faraj
Attorney for Accused
1800 Diagonal Road
Suite 210
Alexandria, VA 22314
(703)706-0442
Haytham@puckettfaraj.com

CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2011, I electronically filed the foregoing paper with the Court and with the Government at the following: Capt Douglas Hatch at douglas.hatch@usmc.mil, and Capt Evan Day at evan.s.day@usmc.mil.

/S/ Haytham Faraj
Haytham Faraj
Attorney for Accused
1800 Diagonal Road
Suite 210
Alexandria, VA 22314
(703)706-0442
Haytham@puckettfaraj.com