

**NAVY-MARINE CORPS TRIAL JUDICIARY
WESTERN JUDICIAL CIRCUIT**

UNITED STATES)

v.)

AARON V. WYLDE)
XXX XX 0964)
PRIVATE FIRST CLASS)
U.S. MARINE CORPS)

GENERAL COURT-MARTIAL

DEFENSE PROPOSED VOIR DIRE

18 October 2010

1. Do any of the members feel reluctant being here today?
2. Do any of the members know who convened this court-martial?
3. Do you understand that the same person that convened this court-martial also selected all of you to be members?
4. Do you also understand that the person that selected you to be members is also responsible for charging PFC Wylde?
5. Based on those facts do you see the possible perception of improper influence OR conflict that might arise from having the same person that charged PFC Wylde also select the jury?
6. Because of that reason and some other reasons lawyers are permitted to ask questions (called a voir dire) of jurors to ensure that the proceeding will be fair, do you understand that?
7. Even though I am permitted by law to ask questions, sometimes I feel reluctant to ask perfect strangers personal questions about their lives and views, do you understand that?
8. Before we do that I would like to tell you that if I ask a question that you feel reluctant, embarrassed, or uncomfortable answering, let me know by saying I prefer not to answer and we'll take it up during the individual voir dire. Do you understand?
9. As a criminal defense lawyer I sometimes feel self conscious about what I do. I think my feelings come from negative stereotypes or preconceived views about criminal defense lawyers that I used to have before becoming a lawyer. Do any of you know or understand what I am talking about?
10. Has anyone else actually felt like I do about criminal defense lawyers?

11. **If necessary:** Do you agree that in order for the criminal justice system to function correctly there must be criminal defense lawyers?

12. **If necessary:** Based on my experiences in life I have been able to overcome perceptions of stereotypes by becoming more familiar with the thing that I have stereotyped? Do you agree that that is one way to overcome stereotypes?

13. **If necessary:** I promise to be honest, open and to provide you all the information that I am allowed to so far as the law and rules for this court-martial allow me. In return I ask that you endeavor to set aside any negative feelings that you may have about defense lawyers and to listen to the evidence with an open mind. If at any time you feel like there's something that you don't understand or if I'm doing something that you feel is confusing, let the judge know and he will bring it to my attention so I can clarify. Is that fair?

14. Do any of you feel that PFC Wylde must be guilty of something otherwise he wouldn't be here?

15. What if I told you that investigators seized a bag of a substance referred to as spice from PFC Wylde's bag in his room, that PFC Wylde admitted that the substance called spice is his and that his roommate will testify that they smoked spice together, would that cause you to think that he is guilty?

16. Aren't we wasting our time by having this trial since there is strong evidence that he violated the order and he is, therefore, guilty?

17. Do you agree then that a trial is necessary because our justice system requires a jury to be convinced even if there is evidence of guilt?

18. PFC Wylde is charged with violating lawful orders by using, manufacturing and selling spice? Are any of you familiar with Spice?

19. Do any of you have personal views regarding spice?

20. Do any of you have personal experience with spice? This is not a question regarding use of spice but one that seeks to discover if you have had to handle spice related issues at your units or with your Marines.

21. Do you know the legal status of spice in California? Other states? The United States?

22. Do any of you know or believe you know the physiological effect spice has on a person's conduct?

23. Even if you know or believe you know the effects of spice could I ask that you leave

room for consideration of evidence as to its effects that may be different than your views?

24. We are facing charges of orders violations for PFC Wylde using or distributing spice. I am therefore looking at it like any other orders violation charge but I am afraid that some people see spice as more of a violation of Article 112a, the drug violations article under the UCMJ. Do any of you feel that spice is or should be under the drugs Article of the UCMJ?

25. For a period as a young lieutenant I held a “zero tolerance” view of drugs in the Marine Corps. Are you familiar with that term?

26. I understood zero tolerance to mean that once someone is found guilty of using drugs, he or she must be separated from the Marine Corps; do any of you currently have or have in the past held that view?

27. Do any of you believe that I had the wrong definition of “zero tolerance” and that it actually means something else?

28. We all know that spice is prohibited by an order vice the UCMJ and that it is not prohibited under federal or state laws as a controlled substance, nonetheless spice is prohibited by the Marine Corps; do any of you feel that a conviction of all the charges on this charge sheet must result in a BCD?

29. What about a certain term of confinement?

30. Before you go to your deliberation room to deliberate, the judge is going to instruct you that *“each of you must impartially decide whether the accused is guilty or not guilty according to the law I have given you, the evidence admitted in court, and your own conscience.”* I would like to focus on the word conscience may I do that?

31. Can we all agree that by using the word conscience a human factor is introduced into this trial that may not otherwise be there if you are simply told to vote the evidence and the law?

32. By human factor I mean that we are permitted to use common sense, experience, education, feelings and our senses to try and arrive at a just outcome. Does anyone share my view on the definition of the word conscience in the instruction?

33. Putting it another way, if we were told to simply vote the evidence and law, it may reduce the trial to a mathematical formula that removes the human element do you agree?

34. That brings me to my next point. This trial may have two phases. There is the findings phase where you decide guilt or innocence and if you find PFC Wylde guilty, we would go into what’s called the sentencing phase where you decide the type of punishment to adjudge. Do you understand that?

35. The judge will instruct you that you should consider the range of sentencing options from no punishment, the conviction serving as punishment, all the way up to the maximum. Do you understand that?

36. Do you now see why the instruction allows you to vote your conscience?

37. If that were not permitted, the sentence would be decided based on some formula. Do you agree?

38. Instead you are provided the discretion to vote your conscience in deciding guilt or innocence and the range of sentencing options. Do you understand that?

39. Do any of you feel a sentence of no punishment makes no real sense?

40. Do any of you feel a sentence of no punishment, under certain circumstances, makes perfect sense?

41. Are any of you aware of, or familiar with, concluded criminal cases in which there was an acquittal that you thought is unfair and should have been a conviction?

42. Do any of you feel that law enforcement officials deserve greater respect simply because of the uniform they wear?

43. Do you feel that someone who works in law enforcement is more believable as a witness than someone who is not in law enforcement?

44. Even though you may not believe that a law enforcement official should be believed simply because of the uniform he or she wears, would you agree that we hold such people to a high standard when it comes to telling the truth?

45. Would any of you agree that a law enforcement officer has a greater duty of care in telling the truth because in our society they get special trust from us and they promise to serve and protect us?

46. Does anyone here believe that a police officer has an absolute right to enter your home at anytime?

47. Besides the standard unit and command directed inspections that take place within the barracks, do any of you feel that Marines who live in the barracks have a lesser right to privacy than Marines who live in their own homes?

48. Are any of you familiar with the term command authorized search? Do you understand that a command authorized search is the same as a search warrant in the civilian world?

49. How do you feel about the commander having to authorize a search before one of his Marines' rooms or property is searched by law enforcement?

50. Do any of you feel that law enforcement should have the right to conduct a search whenever they think it is appropriate?

51. Do any of you think that judges have a difficult job because they must at times set aside normal personal human views, opinions and biases and make neutral decisions?

52. Do you understand that each of you is a judge of the facts in this case?

53. How do you feel about that? Do any of you feel that based on your personal or professional views it would be difficult for you to sit as a judge of the facts?

54. Do you agree that one of the awesome challenges a judge faces is doing what he or she believes is right even though it may be contradictory to personally held views or opinions as to what the outcome should be?

55. Do any of you harbor any doubts as to your own capacity to set aside personal views or opinions and to judge the facts of this case in a fair and neutral way?

By: /S/

Haytham Faraj

Attorney for Plaintiff

1800 Diagonal Road

Suite 210

Alexandria, VA 22314

Tel 888-970-0005

Fax 202-280-1039

Email: Haytham@puckettfaraj.com

18 October 2010

Date

CERTIFICATE OF SERVICE

I certify that a copy of this document was served upon government counsel on 18
October 2010.

By: /S/

Haytham Faraj
Attorney for Plaintiff
1800 Diagonal Road
Suite 210
Alexandria, VA 22314
Tel 888-970-0005
Fax 202-280-1039
Email: Haytham@puckettfaraj.com

18 October 2010

Date