

**DEPARTMENT OF THE AIR FORCE  
USAF JUDICIARY**

UNITED STATES	)	
	)	DEFENSE PROPOSED
V.	)	VOIR DIRE
	)	
MSGT JEFFERY K. ANDERSEN	)	
(PACAF)	)	27 September 2021
Joint Base Elmendorf-Richardson, Alaska	)	
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The Defense respectfully requests to ask the following questions during voir dire, along with follow-up questions, as necessary:

**Introduction of Counsel**

1. (Brief introduction of counsel) Have you had any dealings with Capt Malloy or I that could negatively affect your view of MSgt Andersen?
2. Let me ask that a little broader... Have you ever had any interactions with defense attorneys that gave you such a negative view of lawyers it would be hard for you judge this case fairly?

**Burden of Proof**

3. The prosecution must prove their case beyond a reasonable doubt for you to convict MSgt Andersen. The Judge has told you that proof beyond a reasonable doubt is proof that leaves you firmly convinced of the accused's guilt. That's the highest burden known to law. Do you feel you are able to hold the prosecution to that standard, and make them prove their case beyond a reasonable doubt?
4. Lets talk about what "firmly convinced" actually means. If, after you heard all the evidence, you believe "*its possible*" an accused did it, but weren't firmly convinced, would you vote not guilty?
5. If, after you heard all the evidence, you believe an accused "*probably*" did it, but still weren't firmly convinced, do you agree it is your duty to find them not guilty?
6. If, after you heard all the evidence, you are "*pretty sure*" an accused did it, but weren't firmly convinced, do you agree it is your duty to find them not guilty?
- 7.. That's a very high standard. Do you think that is unfair to the prosecution?
8. Does everyone understand the burden the prosecution must surpass is so high to protect against wrongful or uncertain convictions?

9. Do you think it should be a lower standard of proof, making it easier to convict people of crimes?

10. In that regard, do you all agree that if the prosecution does not prove their case beyond a reasonable doubt, you are enforcing the law by voting not guilty?

### **Presumption of Innocence**

11. MSgt Andersen, just like every other American, is innocent until proven guilty by legal and competent evidence. Does everyone understand MSgt Andersen has no duty to “prove his innocence”?

12. Even knowing that, do you feel if the Government goes through the hassle of prosecuting someone, they must have done something wrong?

13. When you hear about people being arrested or charged with crimes on the news, do you believe they are guilty?

14. Do you think that people accused of crimes have too many rights, or that it should be easier to convict people in our system?

15. Do you think that innocent people are sometimes accused of crimes?

### **Right to Remain Silent**

16. MSgt Andersen has the moral and legal right not to testify at this proceeding. Would you hold it against him if he doesn't testify?

17. Does anyone think a person must testify if they are truly innocent?

18. Do you agree that people who are completely innocent may choose not to testify?

19. And would you agree that should never be used against them?

### **Personal Involvement with Relevant Issues**

20. MSgt Andersen is accused of maltreatment, retaliation, and dereliction of duty. Treatment of airmen is a current topic at issue in the Air Force. So, I want to ask you a few questions about your personal experiences. Throughout the next few questions, I'm going to use the term “someone close to you.” By that, I mean a close family member, a friend, someone who you genuinely care about. It also includes yourself. I'm not talking about people who don't mean much to you, like a random acquaintance from years ago or an Airman you don't really know. With that definition in mind, has someone close to you been the victim of maltreatment?

21. Has anyone close to you been suspected of, charged, or convicted of maltreatment towards subordinates?
22. As a commander or supervisor, have you ever been involved with charging someone with maltreatment, either through an Article 15 or a court-martial?
23. As a commander or supervisor, have you ever been involved with any other adverse action, like discharge or an LOR, against someone for maltreatment?
24. Has anyone been involved with any adverse action against someone for retaliation?
25. Have you ever sat as a court-martial or discharge board member?
26. Has anyone ever been an investigating official for an IG or Command Directed Investigation?
27. Have you or anyone close to you ever been falsely accused of a crime?
28. Does anyone feel yelling in the workplace is never permissible?
29. Does anyone feel it is never permissible for a supervisor to use profanity towards a subordinate?
30. Do any of you have a personal or professional relationship with anyone here at the JBER legal office?
31. Does anyone feel there is a generational disconnect between senior supervisors and young airmen?
32. Do any of you consider the \_\_\_\_\_ Commander or First Sergeant to be a friend?
33. Do any of you, your family members, or friends have training in psychiatry, psychology, sociology, counseling or mental health issues of any kind?
34. Does any member of the panel know any other member of the panel? Explore.

### **Witness Credibility**

35. Part of your job will be to evaluate the credibility of the witnesses. Will you consider the possibility that a witness may lie to you?
36. Will you consider the possibility that a witness may lie to cover up their own motivations or misconduct?

37. Do you think it is possible someone could fabricate or exaggerate an allegation to hurt the person they are accusing?
38. Do you believe that an allegation must be true simply because a person makes the allegation and then agrees to testify at trial?
39. Can each of you consider the allegations may be false?

### **Investigation**

40. Do you think the people who investigate a crime have a duty to conduct a thorough and impartial investigation?
41. Its the prosecution's job to prove their case. MSgt Andersen has no duty to prove anything. So, if the investigator fails to do a good investigation, and you are left with unanswered questions about what happened, do you agree not to hold that against MSgt Andersen?

### **Air Force Expectations**

42. Do any of you feel that if you find MSgt Andersen not guilty of the charges, you will have somehow disappointed the Air Force?
43. Do you think MSgt Andersen's commander, or the superior commander who convened this court, want you to find MSgt Andersen guilty?
44. We often hear the term "good order and discipline." Do you think you are promoting "good order and discipline" just as vigorously by voting not guilty if the government fails to meet their burden?

### **Sentencing Issues**

45. MSgt Andersen has pled not guilty to these charges. In the military, we have no break between the findings and sentencing phase of trial. Because this is the only time I have to talk to you, I have a couple of questions about the sentencing phase:
46. Do you think that every Air Force member convicted of a crime should get kicked out with a punitive discharge?
47. Do you think that every Air Force member convicted of a crime should have to serve at least some jail time?
48. Do you think MSgt Andersen's commander, or the superior commander who convened this court, want you to sentence him to a punitive discharge or a certain period of confinement?

49. We often hear the term “good order and discipline.” Do you think that a sentence that promotes “good order and discipline” must contain a punitive discharge or a period of confinement?

50. If you have to formulate a sentence, will you consider the evidence that shows the good things he has done in his life, his rehabilitative potential, and any other evidence we put before you?

51. Do you think that people convicted of crimes can be rehabilitated?

52. Does anyone feel an individual convicted of a crime should never be allowed to retire?

### **Concluding Questions**

53. Would you all agree that it is important for a trial not only to be fair, but to be perceived as fair and just?

54. I do my best to ask thoughtful questions, but it is possible I missed a topic important to you. Does any panel member believe, for whatever reason, that perhaps they should not sit as a member of this court-martial?

Respectfully submitted,

CLAIR M. STROM, Capt, USAF  
Circuit Defense Counsel

I certify that I have served a true copy via email and via eFiling of the above on the Military Judge and Trial Counsel on 27 September 2021.

CLAIR M. STROM, Capt, USAF  
Circuit Defense Counsel