

78. (Services) Please describe the panel member selection process at trial (to include challenges, voir dire, etc.) between the military judge, prosecution and defense counsel.

USA	<p>Article 41, UCMJ, provides the statutory framework for panel member selection and challenges at trial in the U.S. Army. The President provides further rules for the panel selection process in Rule for Courts-Martial (RCM) 912. This system places control of voir dire with the military judge rather than counsel, who determines form and manner of voir dire, sets deadlines for service on the court of written voir dire, collects questions for the panel member questionnaires, establishes time limits for the questioning of witnesses, and sets other limits based on the individual requirements of the case itself.</p> <p>In an Army court-martial, the parties review the panel questionnaires prior to trial and the military judge will frequently request that counsel for both sides submit their proposed voir dire questions for pre-trial in camera review. At the court-martial, the military judge will typically ask a series of preliminary questions (some of which are required under RCM 912) prior to allowing counsel to ask questions. This ensures that both the prosecution and defense have an opportunity to ferret out any issues of potential bias (actual or implied). Counsel are then given an opportunity to request individual voir dire based on responses in a panel member's questionnaire or response to group voir dire. The military judge usually requires a reason for the request.</p> <p>In an Army court-martial, trial and defense counsel each have unlimited challenges for cause; however, only one peremptory challenge. Rule for Courts-Martial 922(f)(1) provides fourteen bases for counsel to levy challenges for cause against a panel member in an effort to remove any actual or implied bias from the panel.</p> <p>In ruling on defense challenges for cause, the military judge is required to apply the liberal grant mandate. The mandate ensures that the accused gets a fair trial and also protects the interest of society, the government, and the victims of crime, in the prompt and final adjudication of criminal accusations. Once voir dire is conducted, all challenges are ruled on, and peremptory challenges are executed, the remaining members are impaneled, sworn, and the court is assembled.</p>
USAF	<p>Trial and defense counsel, as well as the military judge, are routinely permitted to ask court members questions at trial to ensure that the accused is brought to trial before an impartial court panel. This questioning is referred to as "voir dire," and occurs prior to the court members hearing any evidence in the case.</p> <p>The opportunity for voir dire is used to obtain information for the intelligent exercise of challenges; counsel should not purposely use voir dire to present factual matters which will not be admissible or to argue the case. The nature and scope of the examination of members is within the discretion of the military judge. Members may be questioned individually or collectively. Ordinarily, the military judge should permit counsel to question the members personally. Trial counsel ordinarily conducts an inquiry before the defense. Whether trial counsel will question all the members before</p>

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the defense begins or whether some other procedure will be followed depends on the circumstances. For example, when members are questioned individually outside the presence of other members, each party would ordinarily complete questioning that member before another member is questioned. The military judge and each party may conduct additional questioning, after initial questioning by a party, as necessary. Ordinarily the members should be asked whether they are aware of any ground for challenge against them. This may expedite further questioning. The members should be cautioned, however, not to disclose information in the presence of other members that might disqualify them.

Both the trial and defense counsel can challenge any member for cause. There is no limit to the number of court members who can be removed for cause. Each side is also permitted one challenge without cause. This is called a peremptory challenge. Its only limitation is that it may not be used to improperly remove a member on the basis of that member's race, gender, or other constitutionally protected status.

If the accused pleads "not guilty," the court members receive evidence, arguments from counsel, and instructions on the law from the military judge in order to determine whether the accused is guilty or not guilty. The members must be convinced beyond a reasonable doubt that the evidence presented during the trial shows the accused committed the offense to find the accused "guilty." The decision of the court members is called the "finding." The senior ranking court member is called the "president." It is the president's job to announce the findings of the court-martial panel to the accused and counsel and to check the vote count and announce the results to the other members. If the accused is found "guilty," the court members will hear evidence in aggravation, extenuation and/or mitigation, listen to arguments from counsel recommending a sentence, and receive instructions from the military judge on sentencing procedures. They then deliberate and decide on an appropriate sentence. The president announces the sentence in open court in the presence of accused and counsel. If the accused pleads "guilty," but elects to be sentenced by members, the same sentencing procedures apply as when the accused is found "guilty" by members.

Court members are given an opportunity to question witnesses after the counsel have completed their examinations. A court member proposes a question by writing it down on the question forms provided. Both counsel will review the question and can object to the question posed by a court member. The military judge will rule on the objection. In asking questions, court members must remember not to become advocates for either side, but must remain impartial. Court members are allowed to take notes during the trial. A court member may refer to his or her notes during deliberation, but the notes are not evidence, cannot be used by any court member as evidence, and may not be shown or read to other members. Ultimately, if the members cannot agree on whether particular evidence was presented, or what the exact nature of the evidence was, the members may ask the military judge to reopen the court and present the evidence again.

Each member has an equal voice and vote in discussing and deciding a case. The

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	<p>influence of superiority in rank must not be employed in any manner in an attempt to control the independence of the members in the exercise of their own personal judgment. Service as a court member, while important, is not a rating factor to be considered on any member's performance report. Members may not discuss the case with anyone during the recess, even among themselves. Each member has a right to be free from harassment or ridicule based upon that member's participation as a court member. Court member deliberations are conducted in private, and each member takes an oath not to disclose any member's opinion or vote. Furthermore, no member may be compelled to answer questions about the deliberations unless lawfully ordered to do so by a military judge.</p>
USN	<p>As a normal practice, the military judge, trial counsel and defense counsel all receive copies of the members questionnaires. The trial counsel and the defense counsel exchange copies of proposed voir dire questions in accordance with the Case Management Order (CMO) and submit copies to the court. The military judge usually holds an Article 39a session (hearing outside the presence of the members) and reviews the submitted questions. Each side has an opportunity to object to questions from the other side and the military judge rules on what questions will be permitted from each side.</p> <p>Once the members are sworn in, the military judge asks a number of questions from the Military Judge's Benchbook and then gives the trial and defense counsel an opportunity to ask questions. The trial and defense counsel are permitted to ask the previously approved questions.</p> <p>After the en banc session, either party can ask for any potential member to be voir dired individually and can ask questions related either directly to that person's answers to en banc questioning or related to the questionnaire. Once both sides have had an opportunity to ask individual voir dire questions of any requested member then they are given an opportunity to raise challenges "for cause" pursuant to Rule for Court Martial (R.C.M.) 912. At this time the trial and defense counsel can raise objections to a member sitting on the panel based on actual or apparent bias. The military judge rules on these challenges.</p> <p>After the challenges "for cause" the trial and defense counsel are allowed to exercise their peremptory challenge pursuant to R.C.M. 912(g). Generally each side is allowed one peremptory challenge (this can be increased by the military judge) by which they can remove a member without reason (within certain parameters).</p> <p>After challenges "for cause" and peremptory challenges, if the remaining members do not constitute a quorum by number (five members for a general court-martial and three members for a special court-martial) or by composition (enlisted members can elect a panel with one third enlisted representation) then additional potential members are detailed by the convening authority and those members are subject to voir dire and challenge.</p> <p>Once a quorum is achieved the members are formally assembled by the military judge</p>

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	and the court is convened.
USMC	In the Marine Corps, pursuant to R.C.M. 801 the military judge controls the voir dire process and rules on all objections to questions and determines the order and manner in which questions may be asked. Prior to arriving at the court-martial, panel members will have filled out a questionnaire with their background information and military history. Once at the court-martial, the military judge will generally ask the applicable voir dire questions provided in Appendix A of the Trial Guide for the Navy Marine Corps Trial Judiciary. After the military judge asks questions to the panel, the government and defense can ask all approved questions to the entire panel. After the initial questions are completed with the entire panel, the government and the defense can call members back for individual voir dire outside the hearing of the other members and ask for more details on any given question. Upon completion of the voir dire process, the government and the defense have unlimited challenges for cause under R.C.M. 912 and one preemptory challenge for any non-Constitutionally protected reason.
USCG	<p>The process for examining the members is governed by R.C.M. 912. Once the panel members have been selected for service by the Convening Authority, they are asked to fill out a member questionnaire (if they did not already do so prior to selection). The questionnaire helps the military judge and counsel craft questions to ask during voir dire. The trial counsel is responsible for distributing and collecting the member questionnaires. The military judge sets a date approximately one week prior to trial in which the questionnaires must be provided to the court and opposing counsel. Both parties are then invited to provide the military judge a list of proposed questions that they intend to ask during voir dire and are also provided an opportunity to object to the opposing party's questions. The military judge may discuss the questions and objections during an Article 39(a) or R.C.M. 802 session with counsel.</p> <p>Although voir dire varies slightly based on the preferences of the military judge, the Coast Guard voir dire always involves a two-part process. The first step is the group voir dire where either the military judge, counsel, or both, ask the members yes/no questions designed to highlight those individuals who are unfit to serve on the panel.</p> <p>After group voir dire is complete, the military judge will permit individual voir dire to allow counsel to further explore some issues with the members, based on their responses to the group questions. Typically, every panel member is asked at least one question during individual voir dire. The individual questioning is done outside the presence of the other members and the member is invited to speak freely. The military judge follows up on responses to the group questions. The judge may also let counsel ask questions themselves during this phase, or may ask the member to leave the room and then listen to arguments from counsel as to what other questions the military judge should ask.</p> <p>Challenges are reserved until after each member has been gone through individual voir dire.</p> <p>At that time, both parties are invited to make challenges for cause. The Coast Guard</p>

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	abides by the liberal grant mandate. After challenges for cause are heard and ruled upon, first the government and then the defense is allowed to exercise their own, single, peremptory challenge, which may not be exercised in conflict with existing constitutional case law.
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