

Attorneys in Naval Academy Sex Assault Case Wrap Up Arguments

By Pamela Wood Prosecutors told a military hearing officer on Tuesday that three Naval Academy football players engaged in sexual acts with a drunken female midshipman at an off-campus party last year and then lied about it repeatedly to investigators. Lawyers for the defendants said prosecutors presented scant proof of sex — just conflicting statements and hearsay — and that the alleged victim was not so drunk that she wasn't able to give her consent. They said the woman wasn't able to keep her story straight through the investigation or the hearing. The sides presented closing statements Tuesday on the eighth day of the Article 32 hearing into sexual assault allegations against the football players. Midshipmen Tra'ves Bush and Joshua Tate face charges of aggravated sexual assault. Midshipman Eric Graham faces a charge of abusive sexual contact. All three could be charged with making false official statements. The defendants did not testify during the hearing and have not commented publicly on the charges. The Baltimore Sun does not identify the alleged victims of alleged sexual assaults. Cmdr. Robert P. Monahan Jr., the investigating officer who presided over the Article 32 hearing at the Washington Navy Yard, will weigh the competing versions of the events and report his findings to Vice Adm. Michael Miller. Miller, the academy superintendent, will decide whether to refer the defendants to a court-martial, order administrative sanctions or dismiss the charges. He will make that decision amid rising concern over sexual assaults in the military. The Pentagon estimates as many as 26,000 service members were assaulted last year, up from 19,000 the year before. Eight straight days of testimony — the alleged victim alone spent more than 20 hours on the stand, and several other midshipmen also testified — revealed details of heavy drinking and casual sex at the elite training ground for future Navy and Marine Corps officers. The alleged victim has said she remembers little of the April 2012 night during which the three midshipmen are alleged to have engaged in sexual acts with her while she was incapacitated. She testified last week that she drank alcohol before and during the party at the off-campus "football house" in Annapolis, and that she was able to piece together what might have happened only from rumors around the academy and postings on social media. Attorneys for the government say the woman performed oral sex on Graham in a car, that Bush had sex with her — perhaps in a bedroom — and that Tate also had sex with her that night. The case relies mostly on witness statements and interviews, some of which offered conflicting information. None of the witnesses called by prosecutors said they had seen any of the alleged sex acts. No physical evidence was presented.

Lawyers for Bush and Graham argued that the accuser doesn't recall any sexual acts with them and that naval investigators should have read their clients their rights as possible suspects before taking their official statements. Tate's attorneys claim the only evidence he had sex with the alleged victim was when she asked him if they had sex and he responded, "You don't remember? Let me refresh your memory." That comment, his attorneys said, is not proof that he had intercourse with the woman. Lt. Cmdr. Angela Tang, an attorney for Graham,

said the woman could not have performed oral sex on her client unwillingly. "People drink, people have sex, and it's not a crime," she said. At least three times during the alleged victim's testimony, she said she was too exhausted to go on, and the proceeding was halted for the day. And Cmdr. Warren "Art" Record, who represented Tate, suggested that if the alleged victim really didn't remember anything, she wouldn't have had so much trouble on the stand. "People who don't remember don't have to lie," he said. During her testimony, the alleged victim described a night of drinking that started with a friend at Bancroft Hall, the academy's dormitory, and continued on the ride to the football house and at the party. She said she remembers flashes of being in a bedroom with Bush and in the back of a car with Tate. She said she has no memory of sexual activity with any of the three men, though she admitted to having consensual sex with a fourth man the morning after the party. Monahan is expected to take weeks to compile his report and make recommendations. Miller is not required to follow Monahan's recommendations. None of the accused are now on the football team. Bush has completed the academic requirements for graduation, but his commissioning in May was put on hold pending the outcome of the case. Graham is a senior, and Tate is a junior. Greg Rinckey, a former Army lawyer who is now managing partner with the law firm Tully Rinckey in Washington, said the investigating officer will need to determine whether there is "reasonable cause" that a crime may have occurred. A growing number of critics in Congress and the general population say the military has not done enough to stop sexual assaults within the ranks — making commanders "very nervous now about not prosecuting," Rinckey said. "I think a lot of sexual assault cases that in the past would have played out at lower levels ... are now going to Article 32s or court-martial."