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Tully Rinckey PLLC's Robert G. Kelly, Esq. outlines ordered prosecution in the Naval Academy sex assault case for FindLaw.com.

U.S. Naval Academy midshipman acquitted in sex assault case

WASHINGTON (Reuters) - A judge acquitted a former Naval Academy football player on Thursday of sexually assaulting a drunken female midshipman, one of a number of sexual misconduct cases roiling the U.S. military. Midshipman Joshua Tate, a senior from Nashville, Tennessee, had been accused of assaulting the 22-year-old woman at an alcohol-fueled off-campus party in April 2012. Marine Colonel Daniel Daugherty found Tate, who resigned from the academy on Thursday, not guilty of aggravated sexual assault after two days of testimony by more than a dozen witnesses at Washington's Navy Yard. Asked by reporters how much of the trial had been motivated by the military wanting to show it was tough on sexual misconduct, Tate's attorney Jason Ehrenberg said: "All of it." "That's the system we have. We protect alleged victims, but we don't protect alleged perpetrators," he said. Tate stood at attention and showed no emotion while Daugherty read the verdict before a full courtroom. After the decision, he turned and spoke to his attorneys in a low voice, and walked away from the court building smiling. His accuser was not present. Prosecutors declined to comment. Daugherty said he would refer another charge against Tate, making false official statements, to the academy for discipline under the school's honor system. Later in the day on Thursday, Naval Academy spokesman Commander John Schofield said Tate had resigned from the program in exchange for that charge being dropped. Three U.S. Naval Academy football players were initially accused but Tate was the only one to be court-martialed. Charges against the other two were

dropped. **TORN ABOUT COOPERATING** The woman, also a senior at the elite service academy in Annapolis, Maryland, testified that she had been torn about cooperating with Navy investigators and had concealed from them how much alcohol she consumed at the party. She conceded that she was too drunk to remember having sex and only learned about it through social media and classmates. Reuters does not report the names of sexual assault victims. In his verdict, Daugherty said the woman had obviously been traumatized by comments her classmates posted on Facebook and Twitter, which he called "rude, disgusting and vulgar." But her failure to remember the sexual encounter did not by itself prove she was incapacitated or did not consent to having sex with Tate, the judge said. Robert Kelly, a former judge for the Marine Corps and Navy, said the Tate case underscored how commanders were free to order prosecution despite legal advice against it. Vice Admiral Michael Miller, the Naval Academy superintendent, was urged by his legal counsel and a military judge not to proceed. He denied in a January hearing that he was under pressure to go ahead with prosecution. A commander "is the one who makes the big bucks to make the hard call. He's the one who's in charge, and he's the one who has to live with the consequences," said Kelly, now an attorney with the Tully Rinckey law firm in Washington. The Defense Department said in December that there were slightly more than 5,000 reports of sexual assaults across the armed forces in the fiscal year through October, up about 50 percent from the previous year. President Barack Obama also in December approved reforms aimed at stemming the crisis. He urged graduating Naval Academy officers in May to stamp out sexual assault in their ranks. Also on Thursday, a one-star U.S. Army general who had pleaded guilty to mistreating a junior female officer during an adulterous sexual affair was reprimanded by a military judge but avoided jail time in a rare court-martial of a top officer.