

Naval Academy head must testify about his court-martial decision in alleged rape case

A military judge Thursday ordered the superintendent of the U.S. Naval Academy to appear in court next month to answer questions about his decision to put two former Navy football players on trial for an alleged rape. Putting Vice Adm. Michael H. Miller on the stand is an unusual move that reflects the charged environment over commanders' handling of sexual assault cases, military law experts said. Miller has been under intense pressure ever since he charged three former players — Joshua Tate, of Nashville, Tra'ves Bush of Johnson, S.C., and Eric Graham of Eight Mile, Ala. — with the sexual assault of a female midshipman at an April 2012 off-campus party. The alleged victim told investigators that she was drinking heavily that night and remembered little of what happened. The case quickly attracted national attention amid congressional efforts to overhaul the military's handling of sexual assault cases. Next week, the Senate is expected to vote on a comprehensive defense policy bill

that includes nearly two dozen provisions on sexual assault in the military. The bill would strip commanders of the power to overturn jury convictions, require civilian review of assault cases that commanders refuse to prosecute, and ensure that anyone convicted of sexual assault would face a dishonorable discharge or dismissal. And it would change the military's version of a preliminary hearing, known as an Article 32 proceeding, to limit intrusive questioning of victims. In the Naval Academy case, the alleged victim endured more than 20 hours of relentless questions

about everything from her medical history to her underwear during a week-long Article 32 hearing last summer. (The Washington Post generally does not identify victims of sexual assault.) In October, Miller dropped charges against Bush, but referred Tate and Graham to courts-martial. That decision

caused a furor because it went against the recommendations of a legal adviser and the judge who presided over the Article 32 hearing. The superintendent's decision was "not based on the probability of a successful prosecution," Miller's spokesman, Lt. Cmdr. John Schofield, said at the time. "Rather, it is [Miller's] responsibility to independently evaluate evidence and determine if reasonable grounds exist that a crime has been committed by the accused." But the ruling prompted defense attorneys to ask a federal judge to intervene and force Miller to recuse himself from the case. The judge, U.S. District Judge Ellen Hollander, had previously declined to step in. Tate's attorneys this month asked Col. Daniel Daugherty, the judge presiding over the courts-martial, to throw out the case

, saying Miller's decision was tainted by unlawful command influence. In response, Daugherty ordered prosecutors to put Miller on the stand next month, at a hearing scheduled for the week of Jan. 13 at the Washington Navy Yard. Schofield said he was not aware of the order and could not comment. The order is somewhat unusual, experts said, but not unprecedented. "It doesn't happen every Monday or Thursday, but it happens," said Eugene Fidell, a military law expert and visiting lecturer at Yale Law School. Prosecutors may try to find a way to keep Miller off the stand, Fidell said. If they fail, Miller is likely to face tough questions about

whether his decision was the product of what Fidell called the “atmospheric consequences” of President Obama’s comments that he has “no tolerance” for sexual assault and “the impact of the barrage of attention on Capitol Hill.” More defense attorneys are raising the issue of unlawful command influence, legal experts said. In two cases earlier this year, a military judge in Hawaii ruled that Obama’s comments could unduly influence sentencing and limited the potential punishment the defendants could face. “In almost every case where there is any sexual assault or rape or anything, these issues are now popping up,” said Greg Rinckey, managing partner of Tully -Rinckey PLLC and a former Army Judge Advocate General’s Corps attorney. “Unlawful command influence is a major problem within the military system because so much is driven by commanders and because of the rank structure within the military,” Rinckey said. “Sometimes lower-level commanders feel if they don’t do something, it will have an impact on their career. But that is not fair to the accused.” He said the fact Miller ignored the advice of legal counsel and the judge in the preliminary hearing raises the question of “whether he wants the matter to play out, or does he want to make sure he is covering his bases for his career?”