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A colonel on the **HOT** seat

She bullied, abused authority to coerce justice, say officers, NCOs

By Gidget Fuentes
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OCENWIDE, Calif. — The Marine Corps is investigating complaints made by several Marines against a senior officer at the San Diego recruit depot, including claims she abused her authority, interfered with criminal investigations and intimidated subordinates.

Col. Stephanie C. Smith, a judge advocate by training and the commander of Headquarters and Service Battalion for the depot and the Western Recruiting Region, is a decorated veteran and recipient of several judicial accolades during her 23-year career, which includes deployments in support of operations in Afghanistan, Iraq, Kosovo and Somalia.

The complaints against her are tied to at least a half-dozen administrative or legal cases involving Marines assigned to the depot. They came to light in October when Joshua Hawk, a former staff sergeant assigned there as a drill instructor, filed an appeal of his special court-martial conviction with the Navy's judge advocate general, citing Article 69(b) of the

Former Staff Sgt. Joshua Hawk was kicked out of the Corps after spending four months in the brig on a conviction for dereliction of duty and drunken and disorderly conduct. He is appealing and has alleged that unlawful command influence was widespread at Marine Corps Recruit Depot San Diego.

Uniform Code of Military Justice. He was sent to the brig for four months earlier this year after pleading guilty to charges of dereliction of duty and drunken and disorderly conduct.

The officer who prosecuted him, Maj. Robert Bueno, provided Hawk's attorney with a signed affidavit alleging Smith instructed the officer to pressure a key witness in the case and take other action he felt was inappropriate. Hawk's appeal, a copy of which was provided to Marine Corps



DEFENSE DEPARTMENT

Col. Stephanie Smith, commanding officer of Headquarters and Service Battalion, Marine Corps Recruit Depot San Diego.



GIDGET FUENTES/STAFF

this issue from HQMC."

A spokesman there declined to discuss the matter beyond this official statement: "It is Marine Corps policy not to discuss any possible ongoing investigations or inquiries being conducted by the Office of the Inspector General of the Marine Corps."

When she arrived at the depot in June 2008, Smith served as the command's staff judge advocate and top legal adviser to the commanding general, then-Brig. Gen. Angela Salinas. After a year, she took over as the H&S commanding officer, where she oversees approximately 530 Marines and sailors. Smith has law degrees from the University of Maryland and the Army's Judge Advocate General School, according to a bio published by Bates College, the liberal arts school in Lewiston, Maine, where Smith earned her undergraduate degree in 1987.

Throughout her career, Smith has held assignments on the West Coast and in Okinawa, according to the bio, and in 2007 she was recognized by the American Bar Association and the Judge Advocates Association as the Outstanding Career Judge Advocate for the

Times, contains at least five affidavits from officers and noncommissioned officers who have served, or continue to serve, under Smith's command. The complaints prompted an inquiry by the Marine Corps Inspector General's Office, Marine Corps Times has learned.

Smith declined to comment. Reached by e-mail, she referred questions to Headquarters Marine Corps public affairs staff at the Pentagon who "will be responding on my behalf and are handling



BOB FERRY

Col. Stephanie C. Smith, commander of Headquarters and Service Battalion, Marine Corps Recruit Depot San Diego, is the subject of several complaints from enlisted Marines and officers.

Marine Corps. She is married with two children, her Bates bio says.

Hawk was busted to lance corporal after his conviction and discharged in July. His appeal, which is still pending, alleges widespread unlawful command influence and prosecutorial misconduct at the recruit depot, saying Smith "engaged in a systematic and widespread campaign of intimidation of defense witnesses and manipulation of the military justice and administrative processes in order to obtain the results she desires regardless of the evidence."

The case against Hawk included charges of rape and sexual assault stemming from a night of drinking with friends at the depot's Locker Room Bar and Grill in September 2008. By February 2009, he was pulled from the drill field, lost his DI cover and was put on legal hold as prosecutors combed through his past, coming up with new allegations of drunken and disorderly behavior.

Fearing an unfair trial and the consequences of a felony conviction, he agreed to a plea deal in March, with the prosecutor dropping the rape charge in exchange for a short sentence in the brig

and a quiet dismissal from the Corps.

The affidavits in Hawk's appeal portray Smith as intimidating and threatening, a micromanager who sought to ensure convictions by unearthing past, unrelated infractions.

Among the allegations:

■ Bueno, who prosecuted Hawk, alleges that Smith was dissatisfied with the story offered by the civilian woman who claimed Hawk sexually assaulted her and told the prosecutor how to get the woman to "change her testimony in order to make her ... more credible," according to his affidavit. At the time, Smith was the depot's SJA.

Bueno's affidavit recounts a meeting he attended with Smith and two agents from the Naval Criminal Investigative Service, quoting the colonel as having said: "You can't make her come off as the Virgin Mary because no one is going to believe her, Rob. Have her say that she went to the Locker Room with every intention of meeting with Hawk and things got out of hand.' ... I could not believe she was asking this of me. ... I believe she was instructing

me in the presence of the [NCIS agents] in order for them to get on 'the same sheet of music.'"

"Smith would frequently talk to witnesses and victims," he wrote in the affidavit. "She would brag about how she would flip defense witnesses and how she would chew their butts out for testifying for the defense."

Later, claiming she feared for her safety, the alleged victim told Bueno she did not want to participate in the prosecution's case against Hawk, according to Bueno's affidavit. Smith allegedly told Bueno: "We can't afford to lose her; do whatever it takes to get her back on track," according to his affidavit.

Acting on Smith's instructions, Bueno wrote, he went back to the alleged victim and convinced her to cooperate with the prosecution.

"I must have gone overboard because she was so inflamed that she wanted to testify at [Hawk's] Article 32 hearing after I spoke with her," Bueno wrote.

Smith, Bueno wrote in his affidavit, insisted on never having victims testify at Article 32 hearings.

"I didn't want Col. Smith to yell at me for violating another one of

her policies. ... She only wanted the government to put NCIS agents on the stand and no one else," he wrote.

Bueno convinced the alleged victim to sign paperwork stating she would attend the Article 32 but not testify, he wrote. He took the same forms to other civilians involved in the case and got their signatures as well.

"Again," Bueno wrote in his affidavit, "my motivation was to comply with Col. Smith's policy to avoid a negative confrontation with her. Early during her tenure as SJA, she yelled [at] and ridiculed one of my senior captain prosecutors ... in front of other prosecutors and enlisted Marines for allowing his victim to testify at an Article 32 hearing."

Smith dug into Hawk's background on her own, Bueno wrote in his affidavit, "looking at his security clearance issues and drunk and disorderly conduct. ... She brought all of that stuff up and handed it to me to prosecute."

Bueno has since moved to the joint law center at Marine Corps Air Station Yuma, Ariz. He is currently deployed; attempts to contact him were unsuccessful.

■ Maj. Christopher Blalock, who was assigned to the battalion's operations shop, provided a second affidavit to Hawk's appeal. In it, Blalock alleges that in 2009, Smith, as the depot's SJA, discussed sexual assault allegations against Capt. Douglas Wacker, a Marine in his office who was facing a general court-martial. Blalock wrote in the affidavit that, as a potential juror in the case, he worried "that the current command climate ... would not permit

the perception of a fair and impartial trial."

Blalock wrote in the affidavit that Smith referred to Wacker "as a narcissist whose ego is finally catching up to him." His affidavit continues: "The manor [sic] in which she briefed me on Capt. Wacker left no doubt that she believed him guilty of the charges being brought against him. She also suggested that we not assign him to any duties that would benefit his case. I took that to mean she did not want us to allow him the opportunity to bolster his credibility prior to his court date."

The depot charged Wacker with rape and indecent assault after investigating an alleged incident in New Orleans in 2007. His defense attorney, retired Maj. Haytham Faraj, who also represents Hawk, said the sex was consensual and that the district attorney in New Orleans declined to prosecute his client.

The depot later dropped the charges against Wacker without explanation, but the 3rd Marine Aircraft Wing refiled them last January. Wacker remains at Marine Corps Air Station Miramar, Calif., where he is assigned to 3rd MAW, a spokesman said. No trial date has been set, and Wacker's attorneys are seeking to have the case dismissed on grounds it was tainted by unlawful command influence at the depot.

Blalock's affidavit is accompanied by several e-mails, including one allegedly written by the battalion's executive officer, a lieutenant colonel. It refers to Wacker as a "rapist," a "criminal" and "a

See COLONEL next page

Colonel

From previous page

psychopath." Smith distanced herself from those comments in an e-mail sent to Blalock and other prospective jurors a few days later, saying she was unaware of the lieutenant colonel's harshly worded e-mail and does not condone his comments.

"I am committed to ensuring that Captain Wacker gets a fair trial," Smith wrote. "Captain Wacker is innocent until proven guilty by a competent court of law."

She went on to explain her decision to reassign Wacker around the time the depot was scheduled to host a multiagency emergency preparedness exercise expected to attract media attention. Given the seriousness of the charges against Wacker, Smith wrote, she did not want to risk having him serve as a spokesman for the depot. Further, she wrote, he "should not be privy to the specifics of the force protection plan for the Depot and/or the local authorities' response plan in the event of an emergency."

The move was meant to ensure good order and discipline within the battalion, Smith wrote in her e-mail. It was not personal.

"I do not want my decision ... to impact your decision to participate in any manner you deem appropriate regarding Captain Wacker's upcoming trial," she wrote. "In fact, I expect you to participate without any fear of repercussion or reprisal."

Blalock is no longer assigned at the depot, but it's unclear where he is now stationed. Attempts to contact him were unsuccessful.

■ Gunnery Sgt. Pedro Navagonzalez, a career planner at the depot, wrote in his affidavit that Smith "intimidated" him, questioned his "loyalty" to her and threatened him with nonjudicial punishment earlier this year when he came to the defense of a staff sergeant who faced punishment for allegedly missing some required training.

Navagonzalez wrote in his affidavit that Smith wanted to void the Marine's military occupational specialty. But Navagonzalez wrote a letter of recommendation for the Marine, a staff sergeant career planner who previously worked as his assistant, because he wrote, his former colleague was competent and deserved to keep his MOS. "The next thing I know," he wrote in his affidavit, "Col. Smith called to berate me and then she sent me an e-mail telling me that I showed no personal loyalty to her by writing a letter of recommendation against her personal wishes."

A copy of Smith's e-mail to Navagonzalez accompanies his affidavit. In it, she alleges Navagonzalez, who has served in the Corps for more than 20 years, knew before signing his endorsement that the case against his former assistant was being pursued by "Depot level staff."

"I accept your apology but I think this situation is far from over," Smith wrote in her e-mail to Navagonzalez. "... In order for you to have done what you did with your endorsement, you demonstrated no loyalty

to me whatsoever and you disrespected my judgment."

Navagonzalez was threatened with NJP, according to his affidavit. He filed an inspector general complaint against Smith, he wrote. A few weeks later, he was told the charges against him were dropped.

Attempts to contact Navagonzalez were unsuccessful. He is still based at the depot.

■ In his affidavit, Capt. David Ahn, a former attorney at the depot, accused Smith of asking him in 2008 whether he tried to "flip the witnesses" prepared to testify on behalf of a staff sergeant suspected of committing sexual assault and having an inappropriate relationship with a junior Marine. The colonel allegedly told him that the witnesses "needed to know who they worked for, who was paying them, and who writes their fitreps," or fitness reports, Ahn wrote.

He was instructed to re-interview the witnesses, according to his affidavit, which he did in the company of another captain. However, Ahn wrote, they did not "mention who they were working for, who was paying their salary, and who was writing their reports."

Later that year, Ahn was made the depot's senior defense counsel. In his affidavit, he recounted his suspicion that Smith tried to influence the testimony of an officer set to testify as a character witness during the court-martial of another staff sergeant.

When the case went to trial, Ahn wrote in the affidavit, Smith sat behind the prosecutor, a captain, and issued instructions to him. During a recess, Ahn learned Smith was talking to one of his witnesses, a major, in an "angry manner," he wrote.

"I ... located the SJA and did observe [her] talking with my witness in an emotional manner," Ahn wrote. "I approached both individuals and asked the SJA whether or not she was attempting to influence the testimony of my witness. The SJA responded in the negative and proceeded to close the hatch so she could be alone with my witness," he wrote in the affidavit. Ahn's affidavit states the witness ultimately did not change his testimony.

Ahn has since moved to Camp Pendleton, where he's assigned to 1st Marine Logistics Group. Attempts to contact him were unsuccessful.

■ Sgt. Sidney King wrote in his affidavit that when his wife left him to return to New York, he was ordered to move out of his off-base rental home and back to the barracks. He was suspected of defrauding the government of his monthly housing allowance, according to his affidavit.

King's affidavit alleges that Smith told a first sergeant to convey her order for King to give up his house, and that he spent the next week living in his car because there was no room for him in the barracks.

Additionally, King's affidavit asserts, he was told to give his daughter's mother, a former girlfriend, \$850 a month in child support payments — \$350 more than what he had been paying, he told Marine Corps Times. King sent the money to appease the command.



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"I just want to be a dad to my daughter and live my life," he said.

King wrote in his affidavit that after receiving Smith's order to increase his monthly child-support payments, he sought legal advice from a judge advocate at the depot's law center who concluded that, legally, King could be ordered to pay no more than \$666 a month. The judge advocate wrote to Smith, according to King's affidavit, and informed her that she could not require King to pay \$850.

King met with Smith in her office, he told Marine Corps Times. "She told me, straight up, I disgust her," he said. "I'd do anything I can to take you down."

According to his affidavit, King filed an anonymous complaint with the depot's IG. Somehow, the complaint got back to Smith, according to his affidavit.

"I'm now very fearful of retaliation," he wrote.

'I love being a Marine'

At the center of everything is Hawk, a 30-year-old former military policeman who admits he's no angel.

"I put myself in positions and did bad things," Hawk said, noting his penchant for booze and parties. "They didn't put a gun to my head and tell me to drink up."

He claims he's been sober since the allegations against him surfaced. These days, he lives with his son in El Centro, Calif., not far from his family. He's taking college courses with aspirations of working as a pharmacist or dental technician.

But if he wins his appeal, Hawk can return to service, a prospect that excites him. He was told a decision should come down in January.

"I'd go back," he said. "I love being a Marine."

In October, not long after his 12 years in the Corps came to end, Hawk's attorney obtained the affidavit from Bueno, the lead prosecutor in his case, whom Smith is accused of coaxing to steer the alleged victim's testimony and insisting that investigators dig up old allegations against him.

Hawk e-mailed Gen. James Conway on Oct. 20, just days before Conway ended his tenure as commandant, alerting him to what he described as misconduct by the colonel. Conway replied, saying "the charges you pose are serious and we will examine them closely." The general copied his legal adviser, Maj. Gen. Vaughn A. Ary, the Corps' inspector general, Brig. Gen.

Kenneth J. Lee, and Sgt. Maj. Carlton Kent, the Corps' top enlisted Marine. Hawk shared a copy of the exchange with Marine Corps Times.

As Hawk's ordeal played out, he was ostracized by many at the command and "treated like a

PFC," he said. "They were quick to point out that my conduct wasn't keeping in the Marine Corps' standards, but the conduct she is exuding is not in keeping with the highest standards of the Marine Corps," he said. "I was guilty even before I

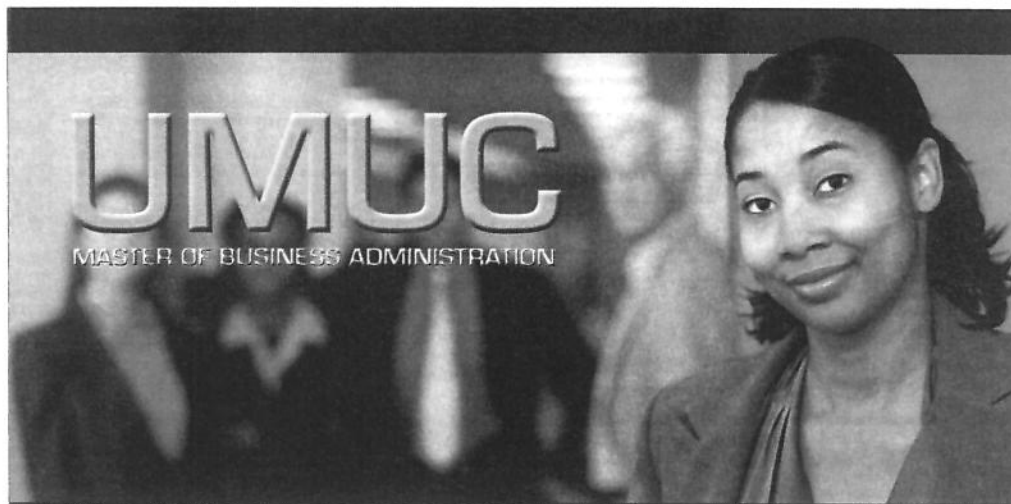
went to court. She said it, so it was gospel."

His orders to the Staff NCO Academy were nixed; so, too, were permanent change-of-station orders to a new assignment at Camp Pendleton.

Worse, Hawk said, was learning

that officers under Smith's command said nothing, even though they believed her alleged actions were wrong.

"In DI School, they always told you to have intestinal fortitude," he said. "If they just had the intestinal fortitude to say something." □



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