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Captain, cleared of rape charge, convicted on conduct unbecoming

By Gidget Fuentes
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CAMP PENDLETON, Calif. — A Marine officer was cleared March 10 of charges he raped a woman and sexually assaulted her friend after a night of heavy drinking four years ago in New Orleans.

But a military jury here did find Capt. Douglas Wacker guilty of conduct unbecoming an officer for allegedly lying about not having sex that night. Wacker will avoid jail time but could receive non-judicial punishment.

Prosecutors with the 3rd Marine Aircraft Wing alleged Wacker, 31, a communications officer who at the time was enrolled in the University of San Diego's School of Law as part of a military-funded program, plied two women with alcohol, lured them to a hotel in the city's French Quarter and assaulted them.

Wacker's attorneys called the activity "fooling around" and argued it was consensual. He pleaded not guilty to charges of rape and conduct unbecoming.

"Everything that happened that

night was what the women wanted," said Capt. Christian Hur, a defense attorney.

Both the prosecution and the defense agreed that alcohol clouded the women's memory. One testified she had "memory flashes" from that night — April 4, 2007 — while the other told the court she recalled nothing past midnight.

Marine Corps Times does not identify alleged victims in sexual-assault cases. Both women were Wacker's classmates in the law program. They went to New Orleans during spring break to help residents after Hurricane Katrina.

With limited forensic evidence, the prosecution's case was built on suspicions held by one of the women that she unknowingly kissed or touched Wacker while her friend had non-consensual sex with him. Both women, now attorneys in private practice, testified they had serious boyfriends at the time.

Wacker is now married, and he and his wife are expecting a child.

The women complained to the university and New Orleans police,

who arrested Wacker. But the local district attorney dropped the charges and expunged his record, said Haytham Faraj, Wacker's lead defense attorney. Neither investigation found that misconduct or a crime had occurred, he said, and Wacker completed law school.

The Marine Corps and the Naval Criminal Investigative Service looked into the allegations in mid-2009, filing charges.

In June 2007, Wacker told the university's Critical Issues Board he drank and danced with the women before they left a club for a daiquiri stand, according to a recording of the hearing played during the court-martial. There, "a conversation about threesomes had come up," Wacker told the board; he proposed they check into another room at the hotel where they were staying.

"We all agreed," Wacker told the university board. "At no time did they say, 'Hey, we want to go back up to our room.'"

What happened in Room 1008 of the Royal St. Charles Hotel is unclear. Wacker told the board that he and

the women fondled but still wore underwear — there was "sexual contact," but no intercourse. The jury determined that was untrue.

"I'm very sorry," Wacker told the board. "I had no idea ... they couldn't remember."

During testimony, one alleged victim recalled "flashes" of her friend vomiting, of the three at the daiquiri stand, in the hotel lobby and then waking up in a bed in Room 1008. "I would have never agreed to a threesome," she said.

The woman left and later returned to find her friend naked on the bed, according to court testimony. She allegedly helped the woman dress and they left together. A few hours later, the woman testified, she confronted Wacker. He said they kissed and fondled but hadn't had sex, she said.

She suspected they were drugged and assaulted — allegations Wacker denied.

Her friend testified she recalls buying drinks and dancing but has no memory of dancing with Wacker and her friend, as several classmates testified.

"I was having fun," she said when questioned by lead prosecutor Lt. Col. Sean Sullivan. "Nothing out of the ordinary." At one point while dancing, "I don't remember any more." □

Colonel exerted undue influence over case, defendant says

By Gidget Fuentes
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CAMP PENDLETON, Calif. — Attorneys for Capt. Douglas Wacker, who was cleared March 10 of most charges related to accusations he assaulted two women after a night of drinking and club-hopping in New Orleans, spent nearly two years trying to get the case dropped on grounds his command unlawfully sought to see him punished.

At the center of their claim is Col. Stephanie Smith, commander of Headquarters and Service Battalion at Marine Corps Recruit Depot San Diego, where Wacker was assigned in mid-2009 — two years after civilian authorities cleared him of wrongdoing. At the time, she was the depot's staff judge advocate and top legal adviser.

Wacker, 31, a communications officer, was found guilty of conduct unbecoming an officer for allegedly lying about details of the 2007 incident in New Orleans. Wacker will avoid jail time but could receive nonjudicial punishment.

Wacker says Smith's role in his

case went far beyond that of adviser. In legal papers and pretrial motions seeking the case's dismissal, his attorneys argued she micromanaged the investigation, manipulated witness testimony and became involved in jury selection with hopes of ensuring a conviction.

The judge during Wacker's court-martial, Lt. Col. David Jones, agreed command influence occurred, but he decided it was insufficient to prevent the trial from proceeding, said Haytham Faraj, a retired Marine judge advocate who represents Wacker.

In court, defense attorneys argued that Smith labeled Wacker a "rapist" and "psychopath," spoke with one victim and asked the University of San Diego, where he attended law school, to withhold his diploma. In testimony Feb. 23, Smith called the allegations against Wacker "credible" but denied claims she said he was guilty and a danger to others. Smith also denied she tried to prevent Wacker from receiving his degree.

The complaints against Smith are similar to those made in the past

three years by former subordinates and Marines who faced criminal charges and career-ending punishment. All are part of an ongoing inquiry into Smith by the Marine Corps inspector general's office, according to court testimony. Those complaints were detailed in a Marine Corps Times story last December.

Smith said during a pre-trial hearing that she hadn't read the New Orleans police inquiry but "it was very cursory," according to a recording of her testimony. "No one had actually processed any of the evidence," she said.

Upon learning New Orleans authorities were dropping the case, Smith testified, Naval Criminal Investigative Service "then assumed the lead investigation of it." A judge advocate who worked for Smith then, Maj. Samuel Jackson, testified during Wacker's court-martial that Smith "asked NCIS to investigate ... and give us a recommendation."

The depot filed charges against Wacker, only to withdraw them and transfer jurisdiction to Marine Corps Air Station Miramar, Calif. The 3rd Marine Aircraft Wing refilled the charges in early 2010.

Faraj argued that Smith was

intent on prosecuting Wacker and drove both sets of charges.

Another of Smith's former judge advocates at the depot, Maj. Robert Bueno, testified by phone from Bahrain that in several cases Smith intimidated witnesses to change testimony, spoke about ongoing cases to other people, and tried to railroad his career.

"She will find a way to get you," Bueno said when questioned by Faraj. "In her book, you are basically guilty. ... You will remain in her crosshairs until she takes you out." Bueno said that Smith called NCIS agents to "suggest who to interview" in the Wacker case, and told one agent to stake out the university bookstore "to see if Wacker would be caught talking to any of the witnesses" in violation of a protective order. Bueno said Smith ordered the retesting of an alleged victim's hair after the first test came up negative for a date-rape drug.

Smith was adamant about getting convictions, treating Article 32s like trials, Bueno testified. Prosecutors who lose "get their butt chewed," he said.

Smith testified she had relieved Bueno as the military justice officer for "technical and professional incompetence." □