

MIDSHIPMAN JANE DOE
121 Blake Road
Annapolis, MD 21402

C.A.
JURY REQUESTED

v.

MICHAEL H. MILLER
121 Blake Road
Annapolis, MD 21402

1. This lawsuit seeks a court order directing the Superintendent of the Naval Academy, Michael H. Miller, to recuse himself from serving as the exclusive quasi-judicial decisionmaker in a pending criminal matter because the probability of actual bias on his part is too high to be constitutionally tolerable. *See Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009).

JURISDICTION

2. This lawsuit arises under the First, Fifth and Fourteenth Amendments to the United States Constitution. This Court has jurisdiction in this matter pursuant to 28 U.S.C. Section 1331. Although the federal courts often find it prudent to abstain from ruling on matters involving military personnel, the facts here compel the Court to hear the action rather than abstain. As set forth in more detail below, the Superintendent's misconduct arises from his role as "college president" of the Naval Academy.

PARTIES

3. Plaintiff Midshipman Jane Doe is a 21-year old female student attending the Naval Academy. As a result of events described below, Midshipman Doe is a witness for the

United States in an ongoing prosecution of three Midshipman, all of whom are Naval Academy football players.

4. Vice Admiral Michael H. Miller is the Superintendent of the Naval Academy, reporting to a board of visitors. Defendant Miller became the 61st Superintendent of the United States Naval Academy on August 3, 2010.

FACTS

5. According to the Naval Academy's website, "[t]he Naval Academy is organized much like a civilian college. . . . The Academy's Superintendent, a Navy admiral , is the equivalent of a college president. He oversees all of the school's functions."
6. According to the Naval Academy's website, "[t]he Board of Visitors, similar to a college board of trustees, provides the collective views and recommendations of the Board to the Superintendent concerning the Naval Academy."
7. The Superintendent has a direct interest in ensuring that nothing occurs during his tenure that diminishes or undermines the reputation of the Naval Academy.
8. The Superintendent operates and oversees a sizeable public relations office, which devotes itself to ensuring that the media and the public at large view the Naval Academy as equivalent to a top-rated civilian college. The Naval Academy website describes the academic, athletic and other qualifications of its student body in great detail.
9. The Superintendent also oversees the Naval Academy's football program. The official web site of Naval Academy athletics (which is linked to the Naval Academy's website) reveals a sophisticated marketing campaign to publicize the Naval Academy's football program.

10. Each football player is profiled on the website, with a color photograph and text describing in detail his experiences as a Naval Academy player as well as details about his personal accomplishments, both athletic and academic.
11. During his tenure, the Superintendent has placed great emphasis on football, requiring Midshipman to attend games and spending significant amounts of his own time interacting with and supporting the football team.
12. On information and belief, the Superintendent has far more direct contact and communications with football players and those associated with the football team than with any other group of Midshipman. The only time that the Superintendent ever spoke to Midshipman Doe was when she was a cheerleader for the football team.

APRIL 14, 2012 FOOTBALL PARTY AND INVESTIGATION

13. The football team maintains a “football house” at 1843 Witmer Court, Annapolis, which is used for purposes of partying outside the confines of the Naval Academy grounds.
14. On or about April 14, 2012, Midshipman Doe intoxicated herself and attended the party along with some friends. Midshipman Doe has no recall of being sexually assaulted or raped but on or about April 15, 2012 learned that she may have been as a result of certain football players bragging on social media.
15. On or about April 15, 2012, Midshipman Doe did not want to learn the extent of what had been done to her body or by whom. She did not contact the Naval Criminal Investigative Service (NCIS) or any other law enforcement.
16. On or immediately after April 15, 2012, NCIS was informed of the crimes by another Midshipman, and began a criminal investigation.

17. On or immediately after April 15, 2012, the Superintendent was aware that NCIS was investigating Naval Academy football players for sexually assaulting Midshipman Doe during a time period in which she lacked capacity to consent.
18. The Superintendent and his staff did not encourage Midshipman Doe to cooperate with criminal investigation. The Superintendent and his staff did not suggest that Midshipman Doe undergo or seek sexual assault counseling or otherwise seek support before making a decision about whether or not to cooperate with law enforcement.
19. On information and belief, the emails and other evidence will show that the Superintendent wanted to sweep the matter under the rug to prevent any reputational harm to the Academy. The Superintendent's staff judge advocate general assured the Midshipman that the investigation likely would just "go away" if she signed a declination and refused to cooperate. The Superintendent's JAG told Midshipman Doe that NCIS only had a couple of witnesses who did not know much, and that the matter would likely be dropped as everyone was going away for summer training.
20. At no time did the Superintendent's staff suggest to Midshipman Doe that cooperating with law enforcement investigations had the support of the Academy. The Superintendent's Sexual Assault Response Coordinator ("SARC"), Captain Atchinson, was supposed to assist Midshipman Doe, but instead conveyed to the Midshipman that her lack of memory due to the intoxication could mean that the sex was consensual.
21. As suggested by the Superintendent's JAG, Midshipman Doe signed the declination and refused to cooperate with law enforcement.

22. On information and belief, this outcome was welcomed by the Superintendent, as it made it far less likely that the Naval Academy football players would be prosecuted for their criminal acts.
23. The Superintendent at all times was briefed on the facts regarding the football house, and the football player's reprehensible statements on social media regarding conducting a rape "train."
24. Yet the Superintendent did nothing to address the conduct of the football players pending the outcome of the investigation. He did not suspend the football players from playing football for the Academy.
25. The Superintendent failed to ensure that Midshipman Doe was protected from harassment by the football team. The Superintendent was on notice by that point that hostility towards women in general was rampant at the Academy. The acronym "DUBS" – standing for "dumb ugly bitches" – was so commonly used that the ice cream tubs served by the Academy are called DUBS TUBS. The Superintendent was also on notice that the football players were harassing Midshipman Doe, as she complained about the harassment to his staff. The Superintendent failed to take effective steps to halt the ongoing and pervasive harassment of Midshipman Doe.
26. In November 2012, the Superintendent abruptly closed the investigation without any action being taken whatsoever. On information and belief, the Superintendent relied exclusively on Midshipman Doe's unwillingness to cooperate as the excuse for shutting down the investigation.
27. Midshipman Doe was beginning to recover from the trauma of learning that persons, including one of whom she previously viewed as a friend, had violated her body

without her consent for their own sexual pleasure. In January 2013, she began to cooperate fully with NCIS, including by assisting NCIS in conducting successful wiretaps on various suspects.

28. During January 2013, the Superintendent took no action with respect to the wrongdoing by the football players.
29. During February 2013, the Superintendent took no action with respect to the wrongdoing by the football players.
30. During March 2013, the Superintendent took no action with respect to the wrongdoing by the football players.
31. During April 2013, despite the one year-anniversary of the crimes, the Superintendent took no action with respect to the wrongdoing by the football players.
32. In May, the Superintendent announced that President Barack Obama would be attending the May 2013 commencement. On information and belief, the evidence will show that the Superintendent contemplated permitting the President of the United States to attend and speak at the commissioning of a football player who had already admitted to having sex with Midshipman Doe on April 14, 2012. The Superintendent was well aware of Midshipman Doe's state of intoxication at that event, as the Naval Academy itself already determined the evidence of her intoxication was "indisputable" and grounds for meting out discipline (which the Midshipman had already completed by December 2012).
33. Alarmed at this course of events, Midshipman Doe and her counsel met with the Superintendent's staff at the Naval Academy. During that meeting, although it had been crystal clear since January 2013 that Midshipman Doe was assisting NCIS with

wiretapping and was otherwise fully prepared to participate in the prosecution of the football players, the Superintendent's staff continued to press the charade that the Midshipman herself was the cause of their failure to act. On information and belief, the Superintendent's staff tape-recorded that meeting.

34. After that meeting, the Midshipman's counsel contacted a *New York Times* reporter, who met with the Midshipman.
35. On or about May 31, 2013, the reporter published a story about the assaults in the *New York Times*.
36. On or about June 19, 2013, the Superintendent finally acted, permitting the charges against the three football players to proceed to an Article 32 hearing, which is akin to a probable cause preliminary hearing in the civilian criminal justice system.
37. The Superintendent signed a paper in which a Naval Officer, Grade LNI/E-6, accused the three football players of making false statements and penetrating the vulva of substantially incapacitated Midshipman Doe with their penises, and also accused another football player of making false statements and causing substantially incapacitated Midshipman Doe to touch his penis. The "accuser" was not Midshipman Doe, but some other person who attested to having personal knowledge of the crimes.
38. In August 2013, the Superintendent, acting through his Public Affairs Officer and other staff, launched a campaign to harm the reputation of Midshipman Doe. On at least two occasions and on information and belief on four occasions, the Public Affairs Officer, who was the Superintendent's direct subordinate, gave briefings for approximately 1000 Midshipmen. In these briefings, the Public Affairs Officer stated

that he was “pissed” that the football players’ crimes were made public and that his summer had been far too difficult as a result of the rape controversy.

39. The Superintendent ratified and adopted this clear message of anger at Midshipman Doe’s exercising her right and duty to report crimes and have them prosecuted, as on information and believe he was advised about what the Public Affairs Officer said to thousands of Midshipman but made no efforts to issue a correction.
40. In August 2013 and continuing to present, the Superintendent and his public relations staff began to describe the Midshipman as the “accuser.” Midshipman Doe has never accused any of the football players because she lacks any recall upon which to base an accusation.
41. On or about August 27, 2013, the Article 32 hearing began. The Superintendent controlled the conduct of the hearing from afar. Although he was not in the hearing room, and never observed any of the witnesses, he will be the exclusive decision maker on the credibility of witnesses.
42. On August 27, 2013, the hearing proceeded from 8:00 am until well into the evening. The majority of that time was spent in a closed MRE 412 session during which Midshipman Doe had to take the stand to rebut various exaggerations and fabrications about her past sex life that had been proffered without any underlying evidentiary support, either via affidavit or witness testimony. The Investigating Officer issued a sealed decision, which wrongfully permitted defense counsel to make blatant intrusions into the Midshipman’s privacy without any countervailing relevance.
43. Beginning the next day, August 28, 2013, at 7:30am, the government prosecutors called Midshipman Doe to the stand where she testified for approximately two hours.

44. The Superintendent, acting from afar and without ever setting foot in the courtroom, intentionally subverted the judicial process in order to punish Midshipman Doe for daring to blow the whistle publicly on wrongdoing by Naval Academy football players and the subsequent cover up. He acted from bias because his own career interests in being perceived as a strong leader of the Academy were at stake.
45. The Superintendent alone controlled the timing of the trial days. The Investigating Officer publicly appearing in the hearing made it clear that he lacked authority to control trial scheduling, and had to check in telephonically with the Superintendent about the length of the trial days.
46. The Superintendent ordered Midshipman Doe to endure an abusive schedule of cross-examination lasting in excess of 30 hours, in which defense counsel's questions went well beyond the scope of her direct, and well exceeded any relevant discovery. Such a lengthy cross-examination, standing alone, would be troubling even if conducted on non-emotional topics and in reasonable increments with the witness afforded the needed opportunity to rest between sessions.
47. But the abusive process here was far worse. The Superintendent intentionally deprived Midshipman Doe of adequate rest during the lengthy cross-examination that delved into the details of her past consensual sexual interactions that are not at issue in the case. The Superintendent thus assisted defense counsel in their effort to "turn the victim into the criminal."
48. At all times during the hearing, the Superintendent was in direct communication with his staff SARC, Nancy Mandile. On information and belief, the Superintendent had directed Ms. Mandile to remain with Midshipman Doe throughout the proceedings,

and report back to the Naval Academy. The Superintendent therefore knew with certainty about the Midshipman's exhausted state.

49. The following are approximations, as Midshipman Doe has not yet been given the trial transcript. On Wednesday, August 28, 2013, Midshipman Doe was required to report at 7:30 am and not released until 9:30 pm. On Thursday, August 29, Midshipman Doe was required to report at 7:30 am and not released until after 5:30 pm. On Friday, August 30, the Midshipman was required to report at 7:30 am, and again subjected to repetitive and grueling cross-examination. Her counsel voluntarily accepted an "invitation" to testify merely to give the Midshipman a brief break. By the end of the day on Friday, Midshipman Doe lacked any physical capacity to testify, as was clear to the Investigating Officer.
50. That evening (Friday August 30), one of the defense counsel approached Midshipman Doe's counsel, and attempted to persuade her that she controlled the "resolution" of the case, and should persuade the Midshipman to stop cooperating with the prosecution. Victim's Counsel perceived this conversation to be an attempt to subvert the judicial process, and memorialized the meeting, and conveyed it to all parties on Saturday.
51. It seems clear that the length of the cross-examination was merely a defense stratagem designed to persuade Midshipman Doe to retreat to her earlier days of non-cooperation with the government prosecution.
52. Victim's Counsel sought the reasonable accommodation of the weekend off from testifying, which would permit the Midshipman Doe to recover. The Investigating

Officer went on record stating that only the Superintendent could decide the hearing schedule.

53. The Superintendent ordered Midshipman Doe to appear on Saturday August 31 at 8:30 am, thus eliminating her ability to obtain much-needed sleep. When the Midshipman appeared that morning, clearly exhausted and lacking in capacity, the Investigating Officer agreed she could not testify as she lacked the ability to focus. But again, she was not released to go obtain some sleep, but instead ordered to remain at the ready in a windowless room. At 11:30 am, counsel advised the Midshipman to leave and go get some sleep regardless of the lack of word from the Superintendent, as the Investigating Officer represented he was having trouble reaching the Superintendent by telephone.
54. Throughout the day on Saturday, Victim's Counsel continued to seek to delay the resumption of the trial until Monday morning (Labor Day) to permit the Midshipman to recover. On information and belief, the SARC Nancy Mandile also directly sought this recovery time on the Midshipman's behalf.
55. The Superintendent refused, ordering the Midshipman to appear at 8:30am on Sunday. Victim's Counsel sent a message asking that the Superintendent reconsider, as the process was too abusive to the victim. At this juncture, although previously the orders to appear had been conveyed via Victim's Counsel, the Superintendent directed several members of his staff to order the Midshipman to appear. The Midshipman called Victim's Counsel, having received calls "ordering" her to appear at 8:30 am.
56. On Sunday, the Midshipman and Counsel appeared at 8:30 am as ordered. At that juncture, Victims' Counsel pushed her way into the proceedings and made a verbal

record of the abuse despite the Investigating Officer's efforts to prevent Victim's Counsel from speaking on the record.

57. The Superintendent alone had the power to prevent abuse of the judicial process.

Instead, the Superintendent, acting from bias and his own self-interest, forced the Article 32 hearing to proceed at a rapid pace for no reason but the apparently intentional effect of lessening Midshipman Doe's ability to withstand a prolonged cross-examination that intruded into the most personal details of her personal life.

58. The Superintendent's conduct violated Midshipman Doe's Fifth Amendment due process rights. Specifically, the Midshipman has the right as a victim of sexual violence to a fair and reasonable judicial process. A fair and reasonable judicial process recognizes the Confrontation rights of the accused, but does not go beyond those to permit unduly or unnecessarily abusive or intrusion into her private sexual affairs. Further, a fair and reasonable judicial process does not permit witness exhaustion to play a role. No party should be permitted to benefit from judicially-sponsored physical coercion.

59. The Superintendent acted in an arbitrary and capricious manner and by so doing violated the Midshipman's rights to have her quantum of evidence regarding criminal activity be considered in fair and reasonable way.

60. The Superintendent, acting from personal animus, engaged in abusive and retaliatory treatment of the Midshipman. The Superintendent is biased and conflicted because his own personal self-interests in career advance merit and reputation have been harmed as a result of the crimes perpetrated at the football house.

61. The Superintendent has proven himself incapable of acting in a non-arbitrary and abusive manner. The Midshipman and all citizens called on to provide evidence in proceedings brought by government have a due process right not to be treated abusively, not to be forced to disclose private information about their intimate lives, not to have to testify under punitive or abusive conditions, not to be subject of retaliation for giving testimony and evidence, and not be subjected to arbitrary and capricious conduct by those controlling a quasi-judicial process.
62. The Superintendent's misconduct also violates Midshipman Doe's right to equal protection of the law under the Fifth Amendment. Because she is the female victim of rape and sexual assault, the Superintendent is treating her differently than he would a male victim of a different crime.
63. The Superintendent's misconduct also violates Midshipman Doe's right to free speech under the First Amendment. Because she exercised that right, the Superintendent acted in an abusive and retaliatory manner during the quasi-judicial proceedings. This in turn further harms the Midshipman, as the process has the potential to create reputational injury that persists well after the close of the proceedings.
64. Midshipman Doe requests that this Court require the Superintendent to recuse himself from serving as the exclusive quasi-judicial decisionmaker in a pending criminal matter. Based on the facts alleged above, it is clear that the Superintendent is not the type of impartial and dispassionate decisionmaker that should be given power in a quasi-judicial setting. The probability of actual bias on his part is too high to be constitutionally tolerable. *See Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009).

COUNT ONE: SUBSTANTIVE DUE PROCESS

65. Each and every allegation above is incorporated by reference as if fully set forth herein.
66. Midshipman Doe alleges a cognizable claim for violation of her substantive due process rights.

COUNT TWO: PROCEDURAL DUE PROCESS

67. Each and every allegation above is incorporated by reference as if fully set forth herein.
68. Midshipman Doe alleges a cognizable claim for violation of her procedural due process rights.

COUNT THREE: EQUAL PROTECTION

69. Each and every allegation above is incorporated by reference as if fully set forth herein.
70. Midshipman Doe alleges a cognizable claim for violation of her equal protection rights.

COUNT FOUR: FREEDOM OF SPEECH

71. Each and every allegation above is incorporated by reference as if fully set forth herein.
72. Midshipman Doe alleges a cognizable claim for violation of her equal protection rights.

PRAYER FOR RELIEF

Defendant Superintendent violated Midshipman Doe's constitutional rights. Plaintiff Midshipman Doe seeks a court order directing the Superintendent to recuse himself for bias, and for all other remedies that the Court and a jury deem just and proper.

Respectfully submitted,

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Dated September 5, 2013