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# United States Senate

WASHINGTON, DC 20510-3205

July 12, 2019

Honorable Mark T. Esper  
Acting Secretary of Defense  
U.S. Department of Defense  
1000 Defense Pentagon  
Washington, DC 20301-1000

Dear Acting Secretary Esper,

As a member of the Senate Armed Services Committee and the Ranking Member of its Personnel Subcommittee, I have led efforts to improve the military's handling of sexual assault cases and to create the most objective and impartial military justice system. I am very troubled by the apparent mishandling of the sexual assault allegations against General John E. Hyten both over the fairness of the process in this case and what it indicates for the broader need for military justice reform.

As I have learned, the Air Force Office of Special Investigations (AFOSI) has conducted a criminal investigation into allegations of sexual assault against a subordinate officer. I understand the investigation proceeded exceedingly quickly for such criminal inquiries, and the Air Force convening authority, General Holmes, decided against preferring charges to a court martial or any other disciplinary action. While I do not seek to influence the decision as to the guilt or innocence of the accused, I write to raise grave concerns with the process in this case because I do not believe that it contributes to good order and discipline and morale in our military.

I am disappointed to learn that your office, under then-Acting Secretary Shanahan, improperly assigned disposition authority to an officer who possesses neither the necessary distance from the accused nor the seniority to properly carry out disposition responsibilities. General Holmes, the Commander of the Air Combat Command (ACC) and the disposition authority, is junior to the accused by a few years, and Generals Hyten and Holmes are among only about a dozen fellow Air Force four-star generals. When faced with felony-level allegations against one of the highest ranking officers in the military, it did not serve justice or increase good order to delegate disposition authority down from your office to the Secretary of the Air Force and finally to the Commander of the Air Combat Command.

The reasonable decision would have been to appoint an official more senior than the accused, possibly one in a different service, to avoid conflicts of interest or even a perception of such by the rank and file or the public. In appointing a disposition authority that is considered in some ways to be junior to the accused, I believe DoD leadership has made an error that can lead to a biased and unfair case disposition, or a perception that a case determination would be made

preferentially in favor of General Hyten, undermining the sense of justice among the military and civilian members of the Department.

A further aspect of this process that troubles me is the public characterization being provided by the Department. Pentagon spokeswoman Col. DeDe Halfhill said in a statement to the media that "With more than 38 years of service to our nation, Gen. Hyten has proven himself to be a principled and dedicated patriot." Congress eliminated the "good soldier" defense five years ago. It is inappropriate and undermines justice for the Department to use it when litigating the case in the public domain.

While aspects of the case are being characterized to the Armed Services Committee and to some extent in the press by the Department, it is my understanding that the survivor has not had the opportunity to fully review the investigation file. And since the more public discussion of the case and allegations made against the survivor's character, she has not been afforded a "meaningful opportunity to communicate the victim's views to the disposition authority" per the Department's own procedural requirements. While the survivor's Special Victims' Counsels (SVCs) may have had access to some parts of the investigative report, and the survivor had an opportunity to bring her views of the disposition to General Holmes, this is not adequate given the public airing of the case and the need to communicate with a higher-level disposition authority.

As Pentagon leadership continues to publicly underscore that it is doing all it can to counter the sexual assault problem in the military, I ask that your office sets the best example. Your office and other DoD senior leaders need to show that sexual assault allegations against the most senior officials will be treated the same as when junior enlisted members are accused of similar felony-level crimes.

Thus, I urge you to address these concerns objectively, without preference, by personally reviewing the case, providing the AFOSI investigation file in the most unredacted form possible to the survivor, and affording her the opportunity to communicate to you directly about the case disposition. I am not prepared to move forward with consideration of General Hyten's candidacy for the second highest military office in our nation without, at minimum, such a thorough review.

Sincerely,



Kirsten Gillibrand  
United States Senator

cc: Department of Defense Inspector General