



Vice Chairman of the Joint Chiefs of Staff Air Force Gen. John E. Hyten CHAD J. MCNEELEY

If Austin Is Serious about Preventing Sexual Assault, Why Is Hyten Still Vice Chief?

The Air Force general was never cleared of nine alleged incidents of unwanted sexual contact.

BY DON CHRISTENSEN

PRESIDENT, PROTECT OUR DEFENDERS

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Defense Secretary Lloyd Austin's first directive, issued just hours after he was sworn in, requires senior commanders to report the effectiveness of sexual assault prevention and accountability efforts by Feb. 5. It is an important symbol of the priority a Biden administration will place on reducing military sexual assault and very much in line with President Joe Biden's longtime commitment to defending victims.

But this seemingly aggressive action ignores an immediate problem facing the credibility of the new administration. The vice chairman of the Joint Chiefs, Gen. John Hyten, is being sued for sexual assault in federal court by Kathryn Spletstoser, a retired Army colonel and a decorated combat veteran. For us to take this new directive seriously, Hyten must be prohibited from participating in any reform effort because it is a direct conflict of interest.

The Department of Justice lawyers who are defending General Hyten at taxpayer's expense are arguing that the general is immune from liability and that he was acting within the scope of his responsibilities when the alleged sexual assaults occurred. But *Spletstoser v. Hyten* was recently cleared to proceed by a federal court judge, who in a landmark ruling declared that sexual assault

can never be considered incident to military service. The general's lawyers have appealed to the 9th Circuit Court of Appeals.

As background, General Hyten was never cleared in an Air Force investigation of nine alleged incidents of unwanted sexual contact. Materials produced in the investigation suggest that "investigators did not reach a conclusion about whether he had assaulted her — leaving it to senators to make a judgment call," the *Washington Post* reported. The allegations were serious enough that Kamala Harris — then a senator, now vice president — voted against confirming the general for the vice chairman position. But the Air Force general put in charge of the case, an acquaintance of Hyten's who was junior in rank to him, decided not to press charges. (Colonel Spletstoser received the Legion of Merit when she retired, a clear signal that Army leaders disagreed with the Air Force's claim that Hyten was innocent.)

The military's justice system is rife with this type of conflict of interest. It is why President Biden and many in Congress want independent prosecutors, not generals, to decide how to handle criminal complaints.

Particularly in light of the Defense Secretary's first directive, it seems odd for General Hyten to remain in his role while he is being sued for sexual assault. The 9th Circuit Court of Appeals is scheduled to adjudicate General Hyten's appeal in the upcoming weeks. The Biden Department of Justice will have to decide if they want to continue arguing the prior administration's position that perpetrating sexual assault is just part of the job for servicemen and women. And General Hyten's superiors will have to decide what message they really want to send.

Don Christensen, a retired U.S. Air Force colonel, is president of Protect our Defenders, a national human rights organization dedicated to ending sexual violence, victim retaliation, misogyny, sexual prejudice, and racism in the military. Col. Christensen served as chief prosecutor for the U.S. Air Force from 2010 to 2014.