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Democracy Dies in Darkness

Retired Col. Kathy Spletstoser wasn't able to stop Joint Chiefs vice chairman Gen. John Hyten from being confirmed. But she's not done with him.

By **Manuel Roig-Franzia**

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A folding camp chair serves as living room furniture in Kathy Spletstoser's tiny Alexandria, Va., apartment.

Visitors use the floor as a table on the infrequent occasions she brings out snacks — or entertains visitors. A sock monkey with a red heart on its chest, one of the few visible possessions, reclines against the pillows on a platform bed with sheets pulled tight.

“My boyfriend,” Spletstoser cracks, the words wryly slipping out the side of her mouth.

In 27 years as an active-duty soldier and Army commander, it never made sense for her to accumulate. She was always packing and unpacking for foreign posts, for the war zones where she fought enemy combatants at ground level and for the stateside assignments where she has ended up in another type of fight with her former colleagues.

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Spletstoser, who rose to the rarefied rank of full-bird colonel before retiring in 2019, fashioned herself as a fixer of broken things — systems and underperforming units and cultures. She still sees herself that way.

What Spletstoser and her supporters perceive as broken, others see as whole, sturdy and vital: the parallel justice systems that generally seal the grievances of military personnel inside the confines of military institutions, and the legal doctrines and rulings that have long blocked service members from suing superior officers in civilian courts for claims deemed to be related to their military service, including sexual assault.

For Spletstoser, 52, embarking on what could be seen as her latest fix-it job has meant challenging one of America's most powerful men — four-star General John E. Hyten. He is the vice chairman of the Joint Chiefs of Staff, the military's second-highest-ranking officer, and has recently been coordinating the military response to coronavirus pandemic as co-chair of Defense Department's covid-19 task force.

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Spletstoser has accused Hyten of sexually assaulting her more than half a dozen times while she was under his command and then retaliating against her — accusations that he has vigorously denied during a military investigation and in front of the U.S. Senate.

Hyten declined interview requests for this story. At his confirmation hearing last year, he said that he wanted to state “in the strongest possible terms that these allegations are false.” He cited a “very extensive, thorough investigation” that he said “revealed the truth: Nothing happened ever.”

Hyten and his attorneys have overstated the results of the Air Force's investigation, saying it found Spletstoser's allegations to be “unsubstantiated.” In fact, the investigation — which was triggered by a complaint Spletstoser filed with the Air Force in April 2019 — neither supported her version of events or completely exonerated Hyten.

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The investigation ended without a determination of “guilt or innocence” or a conclusion about whether Spletstoser’s allegations had been “substantiated or unsubstantiated,” according to the Air Force’s announcement when the investigation report was publicly released. The case did not move forward because the Air Force general in charge of reviewing the investigation determined there was “insufficient” evidence to charge him or recommend administrative action, according to the Air Force statement.

Spletstoser also brought her complaint to the Senate, which didn’t think enough of her accusations to prevent Hyten’s confirmation as vice chairman.

So now, she turns to a federal court in Los Angeles, where a victory in a sexual assault lawsuit she filed against Hyten, which reached a critical juncture Monday when a federal judge in Los Angeles heard arguments on Hyten’s attempt to dismiss the suit, would be the equivalent of a major legal earthquake that could possibly set precedent for other service members, permitting them to sue their commanders in federal court for damages.

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At the same time, on the other side of the country, Spletstoser is meeting with members of Congress in hopes of persuading lawmakers to loosen the doctrine governing service members’ access to the civilian courts in sexual assault cases.

They’d be trying to overcome decades of legal precedents that have blocked suits, despite periodic efforts to overturn those rulings. The Justice Department attorneys representing Hyten have cited numerous rape and sexual assault cases that have been blocked over the years, including one in which the court said that “while the acts of sexual harassment served no military purpose, they were incident to” the plaintiff’s military service. Another says “even sexual misconduct can be within the scope of employment” in the military.

Spletstoser says her lawsuit is “about equal justice under the law. Military members must be afforded equal opportunity in our judicial system, which they currently don’t have. I want him to be held accountable for what he did.”

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Not long ago, she was talking to her brother — John Spletstoser, a federal law enforcement officer in the Midwest — who’d encouraged her to use her voice and status as a former high-ranking officer with two bronze stars to inspire lower-ranked female service members who might be fearful of speaking up about sexual misdeeds.

But he also offered a dose of reality about what lies ahead: “You’re fighting Goliath.”

Tours of duty

Kathy Spletstoser wanted to “blow things up.”

She’d had fun in her first foray into the military as an Army reservist rigging parachutes in the late 1980s. She liked the irreverence, the camaraderie. Officially, they were the 431st Quartermaster Company. They called themselves the “Four Thirsty Worst.”

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But she wanted action.

This was no surprise to her sister, Jean Spletstoser, a deputy sheriff in Wisconsin, who remembers her as a “tom boy,” growing up in Eau Claire, Wis. They were raised by a nurse anesthetist mother working long hours after their parents divorced when she was a teenager. She'd been a Catholic school jock, a force on the basketball court. She also did some modeling.

But the uniform of a soldier fit her better than the latest fashions.

“It became your professional life, your social life,” Spletstoser recalls. “When it's at its best, it's very good.”

More than any place, the battlefield made sense to her.

Sides are clear. There are rules of engagement. Frissons of energy coursed through her, along with a sense of purpose.

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She served four tours of combat duty in the early and mid-2000s, two each in Afghanistan and Iraq. In 2005, her unit was ambushed outside Kandahar in Afghanistan, and she suffered what she describes as a severe concussion and a mild traumatic brain injury when her vehicle flipped.

Still, she says, “the funnest times I've had in my life have been in war.”

'A transformer, a fixer'

"We have tribes in the Army," Spletstoser says one afternoon. "I had not adhered to any particular tribe."

It was that way in 2011 when Spletstoser was sent to South Korea as a commanding officer overseeing more than 4,000 troops, with what she says was a straightforward mandate: shake things up and improve readiness of the U.S. troops based there.

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"My reputation is definitely as a transformer, a fixer, a results-driven person," she says. "Now, that's good and bad. You love that or hate that. That can rub people the wrong way."

And so it was just a bit of an odd fit in 2016 when Spletstoser was assigned as the director of the Commander's Action Group at Offutt Air Force Base in Nebraska, where the U.S. Strategic Command manages the nation's nuclear arsenal. There, she'd be mixing with Air Force personnel, whom she perceived as less accustomed to the brusque Army style that came so naturally to her. Nonetheless, she earned glowing marks, according to copies of her evaluations.

Less than a year after starting the job, she got a new boss, a tall, Harvard-educated, four-star general, John E. Hyten, who'd made a name for himself in the Air Force's space operations. Spletstoser was leery. She considered him a "desk jockey" with expertise in acquisitions and space but none of the on-the-ground war-fighting experience she had.

She says she "quickly learned that he was exceedingly bright and he was willing to learn and he was willing to engage in a back-and-forth dialogue that leveraged both of our quick wits in a professional environment."

According to Spletstoser, their professional relationship quickly took a turn. Not long after she began reporting to Hyten, Spletstoser alleges, he dismissed all the other staffers from a meeting in his hotel room while they were on a temporary duty assignment in Palo Alto, Calif., then grabbed her hand and placed it on his crotch. She alleges that she could feel his erect penis through his uniform pants.

A few months later, on a work trip to Monterey, Calif., he summoned her to his hotel room for what she thought was a meeting, then tried to kiss her, she says.

In the coming months, in locations as far-flung as Seoul, and Washington, D.C., she says Hyten grabbed her breasts or tried to kiss her, according to her lawsuit.

“I was confused by his behavior,” Spletstoser says in an interview. “It was just a horrible, horrible feeling.”

She was trying to preserve her career, she says, and didn't know what to do.

“I fear no man in battle,” she says. But challenging a four-star general was different: “The reality is they have as much power as God.”

In December 2017, according to Spletstoser's lawsuit, Hyten knocked on her hotel room door while they were attending the Reagan National Defense Forum in Simi Valley, Calif. Once inside, he pulled her toward him so she couldn't move and groped her, she says in her lawsuit. He told her something like, “I want to make love to you.”

He rubbed against her, Spletstoser says, and ejaculated in the workout shorts he was wearing. When she freed herself, he asked if she would report him, and — fearing retaliation — she said she wouldn't.

The month before the alleged assault in Simi Valley, Hyten had gushed to another officer about her promotion potential, according to Spletstoser's lawsuit. The month after the alleged assault, an internal investigation was launched into whether Spletstoser was a “toxic” leader, the lawsuit says. The investigation, which was completed by a general who reported to Hyten, concluded she'd “bullied” subordinates, was an “insensitive driven achiever” and “toxic self-centered abuser” — accusations she denies. Hyten relieved her from her position. Spletstoser believed it was pay back for rejecting his advances.

Hyten has denied wrongdoing. But the circumstances of the inquiry drew a reproach at Hyten's confirmation hearing from Republican Sen. Joni Ernst of Iowa, who said he'd failed to counsel Spletstoser about alleged complaints regarding her behavior and did nothing about them until questions about his own leadership were being raised. Ernst, the only GOP senator to vote against his confirmation, also noted that the investigation was not completed by an independent entity outside his chain of command.

Hyten had told Spletstoser he planned to retire, she said in an interview. She figured that there was no risk of Hyten engaging in the same type of alleged misconduct with other service members once he'd retired, and she decided to take her allegations “to the grave.”

She had no idea that she would be going back to war in a few months.

Not against al-Qaeda or the Taliban this time, but against a four-star general.

'The machine takes over'

In April 2019, Spletstoser says, she learned that Hyten would be nominated by President Trump to be vice chairman of the Joint Chiefs of Staff.

With Hyten remaining in the military, she decided to end her silence and filed a complaint that prompted an investigation by the Air Force Office of Special Investigations.

At first, the complaint was cathartic for Spletstoser. But the feeling didn't last.

"I didn't realize how much the machine takes over," she says. "The machine being the Department of Defense."

Critics of the military's handling of sexual assault cases found much to alarm them in Spletstoser's case. The decision not to go forward with a court-martial of Hyten was made by another Air Force four-star general — part of a small and ultra-elite group of military leaders. The investigative interviews were also conducted by officers who were junior in rank to Hyten.

A standard investigative technique — recording a phone call between the accused and the accuser — was conducted in less than ideal circumstances: while Hyten was in the car with his wife, an environment in which, presumably, he'd be less forthcoming.

"It was completely botched," said Don Christensen, a retired Air Force colonel who was the Air Force's chief prosecutor from 2010 to 2014 and is now president of "Protect Our Defenders," a not-for-profit group focused on ending "an epidemic" of military rape.

On the taped call, which was disclosed but not specifically quoted in the Air Force investigation report, Hyten had told Spletstoser something like, "I have my eye on you," according to her lawsuit. She considered the remark threatening. He'd taken a polygraph that his wife, Laura, told investigators was "inconclusive" and upset him, according to Spletstoser's lawsuit.

Laura Hyten did not respond to an interview request made through her husband's office.

Still, the investigation surfaced issues that could be problematic for Spletstoser, potentially undercutting her claim that her superiors unfairly retaliated against her during the investigation into her alleged "toxic leadership." While some witnesses were supportive, there were numerous others who made complaints about Spletstoser.

She was "bitchy" and "rough," witnesses said. Hyten called her "brilliant up but toxic down," according to the investigation report.

Hyten also raised questions about Spletstoser's mental health, saying she made threats alluding to the possibility she could harm him or herself, according to

the investigation report. Spletstoser says her remarks, were misinterpreted, including emails in which she says, “the only one who gets to judge me now is God,” and “I don’t plan on being around any longer.”

Hyten’s Justice Department attorneys and his congressional supporters have characterized the investigation as definitive and thorough, noting that 53 investigators took part, interviewing 63 people in three countries and 14 states, and reviewing 196,000 emails and 4,000 pages of documents.

When a redacted version of the report was released in August, the Air Force noted that the special investigations office “does not make a determination as to innocence, guilt, weight of the evidence, or whether to substantiate or unsubstantiate the allegations.” The purpose of the investigations are to provide findings to the military’s “court martial convening authority,” which decides whether to charge the accused, take administrative action or not move forward with the case.

But, in many instances, the results have been portrayed differently. Hyten’s spokeswoman, Maj. Trisha Guillebeau, noting that the Air Force and Congress had conducted investigations, said in a statement to The Washington Post that the allegations were “unsubstantiated,” but did not respond to a request to provide documentation to support that claim.

On the first page of the Justice Department’s motion to dismiss Spletstoser’s lawsuit, Hyten’s attorneys state that the Air Force found her allegations to be “unsubstantiated.” Reginald M. Skinner, a senior trial attorney on the case, did not respond to multiple emails saying The Post would specifically report that the statement appears to be in conflict with the Air Force’s announcement accompanying the release of its investigation.

Spletstoser’s name became public during Hyten’s confirmation hearings, and she believes that a person with whom she’d previously worked leaked her name. Hyten declined to answer questions about whether he was involved in making Spletstoser’s name public or knew who had.

Inside the hearing room, Sen. Martha McSally, (R-Ariz.), an Air Force veteran who has said she was raped while serving in the military but has not identified her assailant — declared that Hyten is “innocent.”

Her statement rankled Spletstoser’s sister, Jean, who said McSally “didn’t have the guts to name her perpetrator.”

McSally did not respond to multiple interview requests.

Former Air Force secretary Heather Wilson, a Hyten supporter who oversaw the investigation of Spletstoser’s allegation before leaving her post as secretary, told senators at the hearing that he’d been “falsely accused.”

“It is entirely possible that his accuser is a wounded soldier who believes what she is saying is true, even if it is not,” said Wilson, a onetime congresswoman from New Mexico who is now the president of the University of Texas at El Paso.

Wilson declined to answer written questions from The Post about the basis for her unequivocal assertion that Hyten had been falsely accused or that wounds

may have been a factor in Spletstoser's allegations against Hyten.

A military protective order had been issued at Spletstoser's request against Hyten months earlier, according to a copy of the order included as an exhibit in her lawsuit. Spletstoser said she asked for the order, which states that it is not intended to indicate wrongdoing, because she felt threatened on the taped call, he knew where she lived, and she'd been told by Air Force investigators that Hyten had been Googling her. Hyten did not respond to questions about the protective order.

Six days after the order was lifted, the Senate overwhelmingly confirmed Hyten.

Two months after that, Spletstoser left the Army.

An enormous hurdle

Spletstoser didn't know what to do. But she knew she had to do *something*.

She ended up being referred to Ariel Solomon, an employment lawyer who splits her time between New York and Washington, and agreed to take her case pro bono along with several other lawyers. She gained more firepower when Ridgely Walsh chief executive Juleanna Glover, a well-connected Washington public affairs specialist who was formerly active in Republican politics but is now a supporter of Trump's 2020 Democratic opponent, former vice president Joe Biden, also signed on to provide pro bono services.

In November, Spletstoser filed her lawsuit in federal court in Los Angeles against Hyten, seeking damages — and another chance to prove she wasn't lying.

The lawsuit has an enormous hurdle to clear. It's called the Feres doctrine, and it goes back to a 1950 Supreme Court decision related to government immunity from lawsuits. A core concept of the doctrine, as it has been applied by the courts, is that allowing subordinates to sue their superiors would undermine military discipline.

"The military constitutes a specialized community governed by a separate discipline from that of the civilian," Hyten's attorneys argue, citing a U.S. Supreme Court decision.

The interpretation of what is related to — or more precisely “incident to” — military service has been broad, incorporating allegations that take place in uniform and out, on-base or off, anything “even remotely related” to a person’s status as a member of the military.

Late Supreme Court Justice Antonin Scalia once famously wrote that “Feres was wrongly decided and heartily deserves the widespread, almost universal criticism it has received.”

And yet it has endured, vigorously defended by the military, despite criticism from activists such as Christensen, who has been a supporter of Spletstoser’s.

“I don’t know what kind of bizarre world we live in that we view sexual assault by your superior as part of your military service,” he said. “It’s an absurdity.”

The Justice Department’s defense of Hyten can basically be boiled down to the idea that even if he had committed the assaults, Spletstoser still couldn’t sue him because he outranked her, and the alleged assaults took place while they were “on official assignment.”

Spletstoser hopes to persuade the courts that “there is nothing uniquely military” about alleged assaults that took place in private hotel rooms.

While waging their legal fight, Spletstoser and Solomon have been engaged in a parallel battle over records, including emails and investigation testimony, they say the Air Force and Defense Department refuse to provide. The Defense Department has argued that the records she’s requesting are exempt from the federal Freedom of Information Act.

Spletstoser believes the records, which she thinks could provide information helpful to her case, are being shielded because they contain material that would be damaging to Hyten’s career.

As an example, she shared a snippet of her previously undisclosed testimony from one of her interviews with Air Force investigators that she believes is included in material that is not being released. It relates to a dinner attended by Hyten, President Trump and the first lady in October 2017.

“The president is an idiot,” Spletstoser says Hyten told her and other staffers, according to notes she says she took during a briefing on the meal and later provided to investigators. “He is just a businessman without the basic understanding of national security. Everything is a business transaction for him and making money is winning to him and the only thing that matters.”

Hyten went on to say, according to Spletstoser’s notes, that “the president wanted to sell nuclear-powered submarines to the South Koreans, and I had to talk him out of it, explaining why this was a bad idea. Everything is about a business deal — that is how the President views things, through that lens.

“I also spent a lot of time talking to Melania Trump about the locations of all our Intercontinental Ballistic Missile Fields. She was more inquisitive and smarter than the president.”

The Post sent the full text of Spletstoser’s notes to Hyten. He declined to comment.

“We are unfamiliar with any conversation like this,” said a White House official who spoke on the condition of anonymity to discuss matters related to how private conversations are conducted with the president. “Discussions like this would not be had casually around a dinner table.”

This summer, Spletstoser could not believe her eyes when she saw an article posted to [Military.com](#) in which Hyten disclosed that he would create a high-ranking position to analyze programs, including those addressing sexual assault and domestic violence. He said he'd gotten the idea from his daughter, who'd attended his confirmation hearings.

Spletstoser saw Hyten's plan as “disturbing and self-serving.”

By then, Spletstoser had been living in a kind of netherworld for a long time, believing she's been blackballed from civilian government jobs. She stopped going to Washington Wizards basketball games for a while after some men in the audience recognized her and began making lewd comments behind her back.

Her brother, John, detected a difference in her, a kind of fog, “like there's something always on her mind.”

“If it's not favorable for her, I hope she can move on,” he said.

Sometimes, as she waits for a day in court, Spletstoser finds herself reflexively turning away when she passes the Pentagon, once a place that almost felt like home, a place she'd returned to no matter how many times she'd packed and unpacked.

“The five-sided puzzle palace I never go in — I knew it inside and out,” she says one afternoon. “The thought of going there.”

She pauses, gathering her thoughts.

“I won't go there.”

