



SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

MAR 07 2013

The Honorable Jeanne Shaheen
United States Senate
Washington, DC 20510

Dear Senator Shaheen:

A handwritten signature in blue ink, which appears to be "Jeanne", is written over the "Dear Senator Shaheen:" line and extends into the first paragraph.

Thank you for your letter of March 4, 2013. As we discussed in our meeting during my confirmation process, and as I mentioned in my opening statement at my Armed Services Committee hearing, I am committed to doing everything I can to stop sexual assault in our armed forces. I have made this issue a priority with all of the Services, and the uniformed and civilian Pentagon leadership.

In your letter, you asked that I immediately provide additional information on the case of Lt Col James Wilkerson. After a panel of military members found Lt Col Wilkerson guilty of a sexual assault and sentenced him to a year in confinement and dismissal from the Air Force, the convening authority exercised his responsibility and statutory authority and reviewed the case. I am informed that the convening authority reviewed the case over a three-week period and that he concluded that the entire body of evidence was insufficient to meet the burden of proof beyond a reasonable doubt. While a convening authority is not required to record the reasoning for his decision approving or disapproving the findings and the sentence, I have asked the Acting DOD General Counsel and the Secretary of the Air Force to determine how the factual basis for the action taken can be made more transparent.

You asked whether I have the authority to overturn the dismissal of the case. Under the Uniform Code of Military Justice (UCMJ), the convening authority's action is a final decision. The decision of the convening authority cannot be changed, either by the Secretary of the Air Force or by the Secretary of Defense per title 10 U.S.C. §860.

In addition, you asked that I examine additional steps that can be taken. I believe this case does raise a significant question whether it is necessary or appropriate to place the convening authority in the position of having the responsibility to review the findings and sentence of a court-martial, particularly prior to the robust appellate process made available by the UCMJ. I have directed the Secretary of the Air Force, in coordination with the Acting General Counsel of the Department of Defense, to review this case to assess whether all aspects of the UCMJ were followed, and, after consultation with Secretaries of the Army and the Navy, to report to me on whether the case points to changes that should be considered in the UCMJ, or in the military services' implementation of the UCMJ and, if so, what changes should be made.

Furthermore, I have directed the Acting General Counsel to ensure that the role of the convening authority in sexual assault cases is considered by the Independent Panel required by section 576(a)(1) of the National Defense Authorization Act for Fiscal Year 2013. As you know, that Panel is to conduct an independent review and assessment of the systems used to investigate,

prosecute, and adjudicate crimes involving adult sexual assault and related offenses “for the purpose of developing recommendations regarding how to improve the effectiveness of such systems.” The role of the convening authority, following a conviction, is an appropriate topic for review by the panel, since the effectiveness of the system includes, in part, whether the system serves both to do justice, and to be seen by all participants in the system as doing justice. I am in the process of considering selections for the five members to be selected by me, and I look forward to the Chair and Ranking Member of the Committees on Armed Services of the Senate and of the House considering their appointments to the panel as well.

Finally, I am also prepared to work with you as you consider additional legislative options that could help ensure the effectiveness of our responses to the crime of sexual assault.

Thank you again for your letter. An identical letter is being sent to Senator Boxer.

Sincerely,

A handwritten signature in blue ink, appearing to read "C. Boxer", with a horizontal line underneath.