

*RETIRED MILITARY LEADERS' LETTER TO THE SENATE JUDICIARY COMMITTEE ON THE JUDICIAL
NOMINATION OF WILLIAM HAYNES*

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AMBASSADOR/FORMER VIETNAM POW DOUGLAS "PETE" PETERSON, USAF (RET.)

July 7, 2006

The Honorable Arlen Specter, Chairman
The Honorable Patrick Leahy, Ranking Member
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Specter and Senator Leahy:

As retired military leaders of the U.S. Armed Forces, we write to express our deep concern about the nomination of William J. Haynes II, General Counsel for the Department of Defense, to a seat on the United States Court of Appeals for the Fourth Circuit. We send this letter reluctantly and after much reflection; none of us has publicly expressed concerns about any other nominee to the federal bench.

What compels us to take this unusual step is our profound concern about the role Mr. Haynes played in establishing – over the objections of uniformed military lawyers – detention and interrogation policies in Iraq, Afghanistan, and Guantanamo which led not only to the abuse of detainees in U.S. custody but to a dangerous abrogation of the military's long-standing commitment to the rule of law.

Before asking your colleagues on the Judiciary Committee to vote on Mr. Haynes' confirmation to a lifetime judicial appointment, we strongly urge you to conduct a thorough examination of his views on the law in this area and his role in facilitating the adoption of policies that compromised military values, ignored federal and international law, and damaged America's reputation and world leadership.

We recognize that Mr. Haynes does not bear sole responsibility for these policies, many of which were based on legal opinions emanating from the White House Counsel's Office and the Office of Legal Counsel (OLC) in the Justice Department. But a number of senior Administration officials, including Secretary of State Powell and his legal advisor, vigorously disputed those opinions and sought to challenge them. Mr. Haynes was arguably in the strongest position of any other senior government official to sound the alarm about the likely consequences for military personnel of the views being put forward by the Justice Department, because he had the benefit of the clear and unanimous concerns voiced by the uniformed Judge Advocates General of each of the military services. Yet Mr. Haynes seems to have muted these concerns, rather than amplify them.

For example, in a memorandum to the Secretary of Defense dated November 27, 2002, Mr. Haynes recommended authorizing the use of dogs to exploit phobias of detainees. This practice, which clearly violated the Army Field Manual on Intelligence Interrogations, was subsequently authorized for use against detainees at Guantanamo. And now two servicemembers have been convicted of crimes under the Uniform Code of Military Justice for using dogs to frighten detainees at Abu Ghraib. This was precisely what the uniformed JAGs predicted would happen once such departures from the rules of humane treatment of prisoners were authorized. We owed our troops better guidance.

Indeed, in his review of Defense Department detention operations concluded in 2004, former Secretary of Defense James R. Schlesinger's panel concluded that these changes in doctrine led to uncertainty and confusion in the field, contributing to the abuses of detainees at Abu Ghraib and elsewhere, and undermining the mission and morale of our troops.

Many of the legal positions put forward by Mr. Haynes in the course of formulating interrogation policy, and many of the techniques he recommended to be authorized for use against prisoners in U.S. custody, have since been repudiated and revoked. That is certainly a welcome development. But unfortunately, these course corrections came only after it became clear that the legal bases and practical impact of the policies could not withstand public scrutiny and were not worthy of this country. We have an enormous task ahead now repairing the damage those policies have done to military morale and discipline, and to America's reputation.

Had Mr. Haynes been ignorant of the likely consequences of these policies, the profound errors he made could perhaps be understood. But the uniformed JAGs of each of the services clearly and repeatedly expressed their concerns about the impact these policies would have both on the reputation of the United States and on the integrity and safety of military personnel. The Army Judge Advocate General, Maj. Gen. Thomas Romig, warned that this disdainful approach toward the Geneva Conventions and binding international law "will open us to international criticism that the 'U.S. is a law unto itself,'" and that the adoption of questionable techniques will lower international standards, "putting our service personnel at far greater risk and vitiating many of the POW/detainee safeguards the U.S. has worked hard to establish over the past five decades."

These prescient warnings were echoed by the flag officer Judge Advocates General of the Navy, Air Force and Marine Corps. But Mr. Haynes failed to heed them.

Today, it is clear that these policies, which rejected long-standing military law grounded in decades of operational expertise, have fostered animosity toward the United States, undermined rather than enhanced our intelligence gathering efforts, and added significantly to the risks facing our troops serving around the world.

America's commitment to the Geneva Conventions is grounded not only in battlefield experience, but also in the moral principles on which this country was founded. We have learned first hand the value of adhering to the Geneva Conventions and of practicing what we preach on the international stage. As you review this nomination, we urge that you compel Mr. Haynes to answer questions, including those attached to this letter, about his role in formulating and advancing these policies and to provide the Committee with all relevant documentary materials.

With respect,

General Joseph Hoar, USMC (Ret.)
Lieutenant General Robert G. Gard, Jr., USA (Ret.)
Vice Admiral Lee F. Gunn, USN (Ret.)
Lieutenant General Claudia J. Kennedy, USA (Ret.)
Vice Admiral Al Konetzni, USN (Ret.)
Lieutenant General Charles Otstott, USA (Ret.)
Major General John Batiste, USA (Ret.)
Major General John L. Fugh, USA (Ret.)
Rear Admiral Donald J. Guter, USN (Ret.)
Major General Fred E. Haynes, USMC (Ret.)
Rear Admiral John D. Hutson, USN (Ret.)
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Brigadier General David M. Brahms, USMC (Ret.)
Brigadier General James Cullen, USA (Ret.)
Brigadier General Evelyn P. Foote, USA (Ret.)
Brigadier General David R. Irvine, USA (Ret.)
Brigadier General John H. Johns, USA (Ret.)
Brigadier General Murray G. Sagsveen, USA (Ret.)
Brigadier General Stephen N. Xenakis, USA (Ret.)
Colonel Lawrence B. Wilkerson, USA (Ret.)
Ambassador/Former Vietnam POW Douglas "Pete" Peterson, USAF (Ret.)