

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.)
MAJOR GENERAL MELVYN MONTANO, ANG (RET.)
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 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.)

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.)
Major General Melvyn Montano, ANG (Ret.)
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 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.)

General Joseph Hoar, USMC (Ret.)

General Hoar served as Commander-in-Chief, U.S. Central Command. After the first Gulf War, General Hoar led the effort to enforce the naval embargo in the Red Sea and the Persian Gulf,

and to enforce the no-fly zone in the south of Iraq. He oversaw the humanitarian and peacekeeping operations in Kenya and Somalia and also supported operations in Rwanda, and the evacuation of U.S. civilians from Yemen during the 1994 civil war. He was the Deputy for Operations for the Marine Corps during the Gulf War and served as General Norman Schwarzkopf's Chief of Staff at Central Command. General Hoar currently runs a consulting business in California.

Lt. General Robert G. Gard, Jr., USA (Ret.)

General Gard is a retired Lieutenant General who served in the United States Army; his military assignments included combat service in Korea and Vietnam. He is currently a consultant on international security and president emeritus of the Monterey Institute for International Studies.

Lt. General Robert G. Gard, Jr., USA (Ret.)

General Gard is a retired Lieutenant General who served in the United States Army; his military assignments included combat service in Korea and Vietnam. He is currently a consultant on international security and president emeritus of the Monterey Institute for International Studies.

Lt. General Claudia J. Kennedy, USA (Ret.)

General Kennedy is the first and only woman to achieve the rank of three-star general in the United States Army. Kennedy served as Deputy Chief of Staff for Army Intelligence, Commander of the U.S. Army Recruiting Command, and as Commander of the 703d military intelligence brigade in Kunia, Hawaii.

Vice Admiral Al Konetzni, USN (ret.)

Admiral Konetzni served as the Deputy and Chief of Staff, of the U.S. Atlantic Fleet. He has also served as Commander, Submarine Force, U.S. Pacific Fleet; Commander, Submarine Group Seven (Yokosuka, Japan); and Assistant Chief of Naval Personnel for Personnel Policy and Career Progression.

Lt. General Charles Otstott, USA (Ret.)

General Otstott served 32 years in the Army. As an Infantryman, he commanded at every echelon including command of the 25th Infantry Division (Light) from 1988-1990. His service included two combat tours in Vietnam. He completed his service in uniform as Deputy Chairman, NATO Military Committee, 1990-1992.

Major General John Fugh, USA (Ret.)

General Fugh was The Judge Advocate General of the U.S. Army, retiring from that post in July 1993 as a Major General. General Fugh was 15 years old when he migrated to the United States with his family from China. He was the first Chinese-American to attain General officer status in the U.S. Army. General Fugh currently lives in the Washington,

D.C. metropolitan area.

Rear Admiral Don Guter, USN (Ret.)

Admiral Guter served in the U.S. Navy for 32 years, concluding his career as the Navy's Judge Advocate General from 2000 to 2002. Admiral Guter currently serves as the Dean of Duquesne University Law School in Pittsburgh, PA.

Major General Fred Haynes, USMC (Ret.)

General Haynes is a veteran of World War II, Korea and Vietnam. He was an infantry officer for 35 years and commanded the second Marine division and the third Marine division. He was also the senior member of the U.S. military at the U.N. military armistice at Panmunjong, Korea.

Rear Admiral John D. Hutson, USN (Ret.)

Admiral John D. Hutson served as the Navy's Judge Advocate General from 1997 to 2000. Admiral Hutson now serves as President and Dean of the Franklin Pierce Law Center in Concord, New Hampshire.

Major General John Batiste, USA (Ret.)

General Batiste commanded the First Infantry Division in Kosovo and Iraq. Prior to that he was the Senior Military Assistant to Deputy Secretary of Defense Paul Wolfowitz. He is currently President of Klein Steel Services in Rochester, NY.

Major General Melvyn Montano, ANG (Ret.)

General Montano was the adjutant general in charge of the National Guard in New Mexico from 1994 to 1999. He served in Vietnam and was the first Hispanic Air National Guard officer appointed as an adjutant general in the country.

Brigadier General David M. Brahms, USMC (Ret.)

General Brahms served in the Marine Corps from 1963-1988. He served as the Marine Corps' senior legal adviser from 1983 until his retirement in 1988. General Brahms currently practices law in Carlsbad, California and sits on the board of directors of the Judge Advocates Association.

Brigadier General James Cullen, USA (Ret.)

General Cullen is a retired Brigadier General in the United States Army Reserve Judge Advocate General's Corps and last served as the Chief Judge (IMA) of the U.S. Army Court of Criminal Appeals. He currently practices law in New York City.

Brigadier General Evelyn P. Foote, USA (Ret.)

General Foote was Commanding General of Fort Belvoir in 1989. She was recalled to active duty in 1996 to serve as Vice Chair of the Secretary of the Army's Senior Review Panel on Sexual Harassment. She is President of the Alliance for National Defense, a non-profit organization.

Brigadier General David R. Irvine, USA (Ret.)

General Irvine is a retired Army Reserve strategic intelligence officer and taught prisoner interrogation and military law for 18 years with the Sixth Army Intelligence School. He last served as Deputy Commander for the 96th Regional Readiness Command, and currently practices law in Salt Lake City, Utah.

Brigadier General Murray G. Sagsveen, USA (Ret.)

Brigadier General Sagsveen entered the U.S. Army in 1968, with initial service in the Republic of Korea. He later joined the North Dakota Army National Guard. His assignments included Staff Judge Advocate for the 164th Engineer Group, Staff Judge Advocate for the State Area Command, Special Assistant to the National Guard Bureau Judge Advocate, and Army National Guard Special Assistant to the Judge Advocate General of the Army. He completed the U.S. Army War College in 1988. At the time of his retirement in 1996, he was a brigadier general and the senior judge advocate in the Army National Guard. General Sagsveen currently serves as the general counsel of the American Academy of Neurology in St. Paul, Minnesota. In February 2004, he participated in a medical conference in Baghdad, Iraq, and he has been participating in an effort among U.S. specialty medical societies to assist physicians in that country.

Brigadier General Stephen N. Xenakis, USA (Ret.)

Dr. Stephen N. Xenakis has served in the U.S. Army, as well as in healthcare management, academic medicine, and clinical practice. He retired from the Army in 1998 at the rank of Brigadier General and held many high level positions, including Commanding General of the Southeast Regional Army Medical Command. He currently serves as the Director of Child and Adolescent Psychiatry at the Psychiatric Institute of Washington.

Colonel Lawrence B. Wilkerson, USA (Ret.)

Colonel Wilkerson joined General Colin L. Powell in March 1989 at the U.S. Army's Forces Command in Atlanta, Georgia as his Deputy Executive Officer. He followed the General to his next position as Chairman of the U.S. Joint Chiefs of Staff, serving as his special assistant. Upon Powell's retirement from active service in 1993, Colonel Wilkerson served as the Deputy Director and Director of the U.S. Marine Corps War College at Quantico, Virginia. Upon Wilkerson's retirement from active service in 1997, he began working for General Powell in a private capacity as a consultant and advisor.

Ambassador Douglas "Pete" Peterson, USAF (Ret.)

Ambassador Peterson served as the ambassador to the Socialist Republic of Vietnam until 2001. Prior to his diplomatic posting, Ambassador Peterson served three terms as a member of the United States House of Representatives, representing the Second Congressional District of Florida. He served 26 years in the United States Air Force having served in worldwide assignments as a fighter pilot and commander. He is a distinguished combat veteran of the Vietnam War and was incarcerated as a POW during that conflict for more than six years. He completed his military service in 1981 and has extensive experience in the private sector.

Suggested Questions for William J. Haynes II

1. Before you recommended that the Secretary of Defense authorize the use of dogs to exploit phobias of detainees at GTMO, did you consider the possibility that use of this technique might constitute a criminal act under the Uniform Code of Military Justice? Are you aware that two servicemembers were recently convicted under the UCMJ for using dogs to frighten detainees at Abu Ghraib? What responsibility should senior leaders in the Defense Department assume for authorizing an act for which young soldiers are now being prosecuted?
2. Now that U.S. law contains a clear prohibition on the use of cruel, inhuman or degrading treatment of detainees anywhere in the world, could you reach the same conclusions, and make the same recommendations, that you did in your November 27, 2002 memorandum to Secretary Rumsfeld, in which you opined that waterboarding and threatening a detainee's family with death "may be legally available"? Did you at the time believe that these techniques were lawful, including under the UCMJ? Do you believe so now? Do you believe such techniques could ever lawfully be used by a foreign country on captured American personnel?
3. In a June 25, 2003 letter to Senator Leahy, you stated that the military's policy did not permit the use of "cruel, inhuman and degrading treatment," which is prohibited by the Convention Against Torture. But in your November 27, 2002 memorandum to Secretary Rumsfeld, you recommended that he authorize a set of techniques including "stress positions," forced nudity, and the use of dogs "to induce stress." Do you believe that these techniques constitute cruel, inhuman and degrading treatment? Did you believe so when you assured Senator Leahy that military policy prohibits such treatment?
4. The Working Group Report on Detainee Interrogations in the Global War on Terrorism, which you delivered to Secretary Rumsfeld on April 4, 2003, asserted that the statutory prohibition against torture does not apply to the President's detention and interrogation of enemy combatants. Did you agree with this contention at the time you delivered the Report to Secretary Rumsfeld? Do you now believe that the President can lawfully authorize U.S. personnel to engage in torture?
5. In his February 2, 2003 memorandum commenting on the draft Working Group Report, which recommended a number of interrogation techniques that violated established military doctrine and argued that the Geneva Conventions could be set aside, the Judge Advocate General of the Navy, Rear Admiral Michael F. Lohr, wrote:

“[W]ill the American people find we have missed the forest for the trees by condoning practices that, while technically legal, are inconsistent with our most fundamental values? ... I recommend that we consider asking decision-makers directly: is this the “right thing” for U.S.A. military personnel?”

Did you heed this recommendation? Did you forward to Secretary Rumsfeld the concerns expressed by the Judge Advocates General about the draft Working Group Report?

6. What responsibility do you believe should attach to senior military leaders under whose command U.S. personnel abused prisoners? In order to maintain good order and discipline, as well as adherence to the rule of law, do you believe it is important to hold commanders accountable for failing to provide appropriate guidance or leadership when this failure resulted in the application of interrogation techniques that could fairly be classified as torture? Do you support the establishment of a special investigative commission, with subpoena power, to determine why the abuse of prisoners by U.S. personnel became so widespread in Afghanistan and Iraq and who bears responsibility for such practices?