

Re Nomination of William J. Haynes

<i>To:</i>	<i>Company:</i>	<i>Fax #:</i>	<i>Direct #:</i>
The Honorable Arlen Specter	Chairman, Committee on the Judiciary United States Senate	202-228-1698	
The Honorable Patrick J. Leahy	Ranking Member, Committee on the Judiciary - United States Senate	202-224-9516	

<i>From:</i>	<i>Date:</i>	<i>Pages w/cover:</i>	<i>Fax #:</i>	<i>Direct #:</i>
Patrick F. Philbin	July 10, 2006	3	202-654-9464	202 879-5030

Message:

July 10, 2006

The Honorable Arlen Specter
Chairman, Committee on the Judiciary
The Honorable Patrick J. Leahy
Ranking Member, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Specter and Ranking Member Leahy:

We write to support William J. Haynes' nomination for a judgeship on the United States Court of Appeals for the Fourth Circuit. Each of us worked closely with Jim in different capacities during our time in government service and had the opportunity to get to know him well. He is a fine lawyer, a dedicated public servant, and a man of great integrity. We believe he would be an outstanding judge.

In all of our experience in working with him as General Counsel at the Department of Defense, we have come to know that Jim takes pains to address all pertinent legal questions and to ensure, to the best of his ability, compliance with the law. Unfortunately, in a flurry of criticism, the record of his service has been distorted, particularly with respect to the development of DOD interrogation policies, and he has wrongly been portrayed as developing misguided policies without regard to the law. That is not true.

In that regard, we would like to emphasize two matters that have long been documented in the public record and were examined by those of us involved when the matters were made public, but that seem to have been overlooked.

First, when aggressive interrogation techniques were first requested by the Joint Task Force in Guantanamo Bay in 2002, Jim actually recommended that the Secretary of Defense *restrict* authorized techniques to a more limited set than those that had been approved by military lawyers below him. Jim reasoned that "[o]ur armed forces are trained to a standard of interrogation that reflects a tradition of restraint." When even those techniques approved in December 2002 raised concerns in some quarters within the military, Jim brought those concerns to the Secretary of Defense, the policies were rescinded in January 2003, and Jim organized a working group to address the development of new interrogation policies.

Second, Jim has been wrongly criticized based on the fact that he directed the working group convened in 2003 to accept a legal analysis presented by the Office of Legal Counsel of the Department of Justice concerning the application of certain laws and treaties (as we understand it, issues under the UCMJ were left for military lawyers to address). We would like to make clear the effect of an OLC opinion within the Executive Branch. It is important to understand that the opinions of the Office of Legal Counsel are binding on the Executive Branch. The Attorney General has delegated his authority to interpret the law for the Executive Branch to the Office of Legal Counsel, and thus other departments of the Executive Branch -- including

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DOD -- are bound by OLC's legal opinions. Jim Haynes was not taking any untoward or cavalier action by deciding, as chief legal officer for his department, that his department would abide by an OLC opinion. To the contrary, he was following the law.

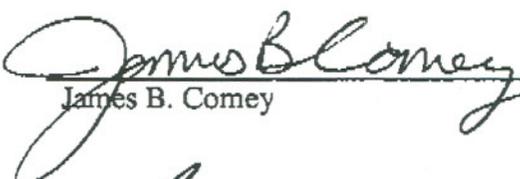
More important, when the working group ultimately approved 35 interrogation techniques, Jim's role was once again to apply sound judgment and a cautious restraint by recommending to the Secretary of Defense that only 24 of those techniques be approved, at least 17 of which came directly from the Army Field Manual. And as one of us testified before the House Permanent Select Committee on Intelligence in July 2004, even after the withdrawal of the OLC memorandum concerning the torture statute, all 24 of those techniques were deemed lawful by the Department of Justice.

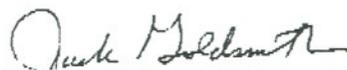
Finally, we want to emphasize that, while interrogation practices have attracted a great deal of attention in the public debate concerning Jim Haynes' nomination, the Committee should not lose sight of the fact that those issues represent only a tiny fraction of the myriad matters Jim handled in more than five years of outstanding service as General Counsel at DOD -- matters that Jim has handled with great skill and integrity and many of which we have worked on with him. Those of us with experience running large organizations both inside and outside the government understand that managing the legal issues of an organization the size of DOD is a gargantuan task even in the best of times. With extraordinary dedication to his job, Jim has handled not only the overwhelming mass of routine issues generated by one of the largest organizations in the world, but also the unprecedented challenges presented by the need to apply legal rules to a new type of armed conflict.

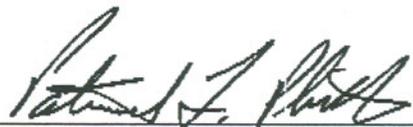
We believe that Jim Haynes will make an excellent judge. He is a careful lawyer who has been dedicated throughout his time at DOD to ensuring adherence to the rule of law. He has done extraordinary service to our Nation during a time of unprecedented challenges, and he will be a further credit to the Nation on the bench.

Sincerely,


Larry D. Thompson


James B. Comey


Jack Goldsmith


Patrick F. Philbin