

Interview with William Haynes and Lawrence DiRita

May 16, 2006

Welch: This is an interview with DoD General Counsel William Haynes and Principal Deputy Assistant Secretary for Public Affairs Lawrence DiRita. The interview is taking place on May 16, 2006, in the office of the General Counsel in the Pentagon. Interviewers are Alfred Goldberg and Rebecca Welch. We are doing today a follow-up interview on the attack on the Pentagon on 9/11. We had earlier interviews with Mr. DiRita and Mr. Hayes in 2003.

Goldberg: We are concerned today with 9/11, but some time in the future we would like to interview you concerning your entire careers at the Pentagon, which we do with many other officials. We have a couple hundred interviews now with officials including presidents, secretaries, secretaries of state, etc. We get down to this lowly level, also. (Laughter)

Haynes: You are really scraping the bottom of the barrel.

DiRita: You are really dredging now.

Goldberg: No, we get down much lower than this. (Laughter). We like to get down two or three levels below, because there's where the people really know what's what and what's going on.

Welch: You know who does what and where the programs really originate.

Goldberg: We are working a history of 9/11, which we hope to have out perhaps before the end of this year. It's in pretty good shape, most of it rewritten several times. A number of questions have arisen in that connection to which we don't have the answer and can't get the answers. We have writing it in the main from more than a thousand interviews done by military services, our

office, and others. They are the chief source. Much of this information doesn't exist anywhere else. Not in the documents, because it was an event that was unique, limited in time, and a tremendous traumatic event for many people, most of whom didn't have time to think precisely during the actual course of events. One issue that has arisen has to do with the rules of engagement and the use of the fighter aircraft which were launched from Langley and up in New England--the authority to shoot down civilian aircraft, when it occurred. Did Rumsfeld think that he had the authority to order that?

Haynes: Eventually, yes.

Goldberg: What do you mean?

Haynes: Well, you've had many interviews, and my perspective is only my own, but I know from firsthand information from talking to him directly, that at least late morning he knew he had authority from the President, because there were some incidents later in the day.

Goldberg: I will pursue this further, but now I would like to talk with Mr. DiRita. In previous interviews we have had with you spoke of interaction with the Director of Military Support.

What office was that?

DiRita: We used to call it DAMS, the director of military support was a component of the United States Army at the time, and they were principally responsible for what we would now call crisis response within the United States, providing assistance to other agencies, mostly.

Goldberg: You spoke of interaction, what specifically did you do at that point?

DiRita: I would need to review my own transcript from last time, but as I recall there was a lot of discussion about what other facilities might be available if we had to leave the Pentagon. The Pentagon was starting to get very pungent. There were a lot of odors in the air, a lot of smoke in the air, and everybody, I think, at one level assumed that at the very least we should be thinking

about a follow-on location. So the director of DAMS ended up inside of the Executive Support Center on and off throughout the morning.

Goldberg: That was Pete Ciarelli, wasn't it?

DiRita: It might have been.

Goldberg: He was running the Army center.

DiRita: That sounds right.

Haynes: That's funny, I tried to talk to him a couple of times that morning and couldn't get through.

DiRita: Whether it was he or not, there was a woman working very closely with him, Kathy Condy, (?) He may or may not have been there.

Goldberg: He was, because he had talked with the chief of staff of the Army over in Singapore

DiRita: So there was discussion about relocation, what options were available.

Goldberg: Another matter has to with the Military District of Washington, General Jackson, the commander, and his role. He had major support from there. Who gave him the order to supply the troops that came in, the Old Guard, and others. They provided help to the police, and helped bring the bodies out.

DiRita: My guess would be, because DAMS at that time was very active, the secretary of the Army had taken a lot of responsibility for these immediate steps, including to agreeing to some assistance in airports and those kinds of things.

Goldberg: Jackson did get the order from White, but I was wondering whether Rumsfeld just went directly; I'm not surprised, that makes sense.

Welch: I have one similar question. One source said that General Jackson, MDW commander, was given responsibility for military personnel and that General van Alstein, who took over the

TFAC the next day was given responsibility from the Army, again, even though he was on Chu's staff at the time. Was that part of the whole business with the Army?

DiRita: I know that Secretary White authorized the use of military in the airports, and he did that without the prior knowledge of the secretary.

Goldberg: Airports?

DiRita: Nationwide. There was an agreement that that would be something we would do, and it wasn't until after the fact that Secretary Rumsfeld was made aware of that and put some structure into it so it could be developed to give us a time line, know who was paying for it, practical things. It wouldn't surprise me that under the same authority Secretary White was doing a lot of other things, including MDW type immediate response. That was the way DAMS was organized, they were on a kind of "unless otherwise directed" they operated, basis. The secretary's focus that day and the next day was very much on a national level. These were national concerns, but of a different nature.

Welch: It's hard to figure out who in fact made the decision about who was responsible for it additionally.

Goldberg: Chu took the initiative.

DiRita: I would imagine Chu on his own authority

Goldberg: They set it up the next morning, but Chu made the decision on 9/11.

Welch: This is not pre-PFAC, that's what I'm not clear about. We don't know, in other words.

DiRita: I have no specific knowledge of that. What I do have knowledge about suggests that White was operating with a lot of authority vested in him by virtue of being responsible for the director of military support (DAMS). As a matter of fact, that was one of the principle reasons over time the secretary decided he wanted to re-channel DAMS. It is now a Joint Staff function

related to NORTHCOM and the Joint Forces Command, because he felt he didn't have enough visibility into those kinds of decisions.

Goldberg: Why were you selected to go with Wolfowitz to the SIOP?

DiRita: I wasn't selected, I was directed. Paul Wolfowitz' assistant, Jamie Durnan (?) was in New York at the time. The order came from the White House to set up alternative command sites. There was an interagency video teleconference taking place and there was direction provided to departments to set up and establish alternative command locations as a precaution. Wolfowitz was directed to go out there and he was in the support center, as was I, the secretary, and others.

Haynes: I think he was actually in the NMCC at the time.

DiRita: People felt, at least implicitly, that eventually we were all going to end up over there. The place was getting smoky and hazy and we weren't sure we were going to have communications. Maybe the secretary didn't believe that, but others believed that we might end up being somewhere else that day because of the way the Pentagon was going. Wolfowitz was told to set the place up and his military assistant, General Batiste was there, and he wanted a civilian assistant to help him work through issues, and he looked to me to go with him. We put together a little staff group to help Wolfowitz to help him when he got out there. Dan Delorto (?) came out and several others.

Goldberg: John Bastianni said it was either you or him.

DiRita: He was definitely not going, he pulled rank, and I saluted and moved n.

Goldberg: He took good notes, but he wouldn't let us see them. You said you didn't know what caused the explosion at the time. When the secretary came back after going out of the building, did he indicate knowledge that a plane had crashed?

DiRita: No, he was very directed and focused and he knew we were very involved in what was happening in New York. He knew there were planes in the air, that there were military planes in the air. He got his head into that quickly and he didn't spend a lot of time back-briefing people on what he had seen outside.

Goldberg: Do you that he said anything at that time about the possible cause?

Haynes: I can't say for sure that I knew then, at the moment, but Larry and I were in the DSC when the plane hit and the secretary was in his office. The secretary left to go to the site and left and Jim Bastiani was with him.

Goldberg: Apparently he came running out of his office yelling "What the hell was that?"

Haynes: He was at the congressional breakfast.

DiRita: He was back in his office by that time, and we were looking for him because we had all gone down to the ESC. So I left the Executive Sports Center again and met up with him as he was coming through the corridor from the E Ring to the D Ring with a look on his face that was very serious and focused. From that point forward I didn't talk to him or ask him what was going on. I didn't learn until after the fact that he had gone to the other side to see what had happened.

Goldberg: In the previous interview you spoke of the early thought that the attack came from Al Qaeda. Was that an intuitive feeling on the part of people who were talking about it?

DiRita: I think it was intuitive based on what they had been seeing in intelligence in the previous weeks. There was, as we have now learned, a lot of chatter in the system.

Goldberg: And the attacks in New York.

DiRita: Yes, we knew that obviously something was going on in a systematic fashion. When we went out to SIOP they convened a deputy's committee meeting via video teleconference, and the

discussions from those early moments there was a conclusion that it was Al Qaeda, based on the intelligence that had been occurring in the previous weeks. The 9/11 Commission testimony has all this information, but the country had already taken specific steps during the course of that summer because of the threat levels that had occurred.

Goldberg: You also spoke of the immediate reaction to retaliate, somehow or other, presumably it was Al Qaeda you had in mind. Were there voiced reactions by the secretary, deputy secretary, or others?

DiRita: I didn't hear the secretary talk about it at all; what I participated in were video teleconferences that included the deputy's level, so it was Paul Wolfowitz, Steve Hadley, and others, I'm sure. There was discussion about options if we assumed it was Al Qaeda, but it was very open, not a focused discussion.

Goldberg: On the helicopter coming back from the site you and Wolfowitz were talking of this.

DiRita: Yes; mostly what we were talking about was what was needed as the department immediately, and began sketching what we thought would be the request to Congress for supplemental funding. The assumption that day was that the president would respond to this in a robust way, so what would we need immediately. Paul and I were just sketching out what would a supplemental appropriation require look like.

Goldberg: Supplemental appropriations for antiterrorism, for ?

DiRita: No, not in that detail, for the full range of activities. We had just come through the budget cycle, and we knew we had made choices and priorities and left things on the table, so we started looking at high-demand low-density items, and what we would want to plus-up right away, operations and maintenance, what we would want to fully fund; the kinds of things you always have to make choices about in budget cycles and we realized we were probably entering

at least a short period of an unconstrained environment in terms of money, so what would we be asking for? We were coming up with tens of millions of dollars in requests, and as I recall it became a \$40 billion supplement.

Goldberg: Were you aware that the president's helicopter from Andrews was supposed to land at the Pentagon that morning?

DiRita: When he came back from Louisiana?

Goldberg: He was supposed to come back to Washington from Florida, and we were given to understand from reliable sources that his helicopter was to land at the Pentagon and he was to go over to the White House by land transport.

DiRita: I wonder why.

Goldberg: One thing we've heard was that there were some repairs being done at the White House helicopter pad, and that's why he was coming into the Pentagon.

DiRita: Are you saying that prior to the knowledge of the 9/11 attacks there was discussion about the President landing?

Goldberg: No, whether anyone knows whether that was a fact.

DiRita: I would think that I would be aware that on a normal operating day the President would be landing at the Pentagon, because they would at least want to advise the secretary.

Goldberg: From Fort Myer they sent over a special team to look the place over to make certain it was secure and had the fire trucks on hand and were all set to receive him at approximately 11:00.

DiRita: That's the first I've heard of it. I suppose that's something that could have been done on a contingency basis by the people responsible for option A, B, C, down to option Z. I have no

recollection that the secretary that the president could be landing, and I think he would at least have been told about it, and if he were told about it, I would probably have known.

Goldberg: With reference to the Defense Protective Services, and their response; were you following that at all during this time?

DiRita: No. I saw them, when we were making the decision that Wolfowitz would deploy. I remember being in the NMCC and it was getting smoky and there were people milling around. CIVITS (?) wasn't working, the secretary was over in the corner talking on the red switch, and I was talking to Wolfowitz about who should go. I said my deputy should go with him, and he and I talked about the fact that the CIVITS upstairs was the only one working, the one in the NMCC wasn't connecting with the White House and we had the bright idea of a senior civilian going up there. He said that was me, because I was a PAS. Of course, I went up there and was unconnected to the secretary so I don't know what good it did. He was looking on the screen at the situation room and Justice, State, and other unconnected people to the command structure. I remember going out of the NMCC, on the second floor, into the C Ring and upstairs to the EFC where we ended up spending most of the day. There was really thick smoke and the black-clad Ninjas.

Goldberg: That must have been the SWAT squad.

Haynes: The Defense Protective Service probably had that kind of capability. I remember seeing them at that time; that must have been no later than 10:00 or so.

DiRita: I didn't have any visibility. I seem to recall that the DPS folks were with the secretary at least when he came back.

Welch: It was a communications guy. I wasn't Bastiani, it was

Goldberg: During the course of the morning the secretary was advised to leave the building.

Were you present when he got the warning?

DiRita: I remember that Chief Jester or someone was starting to make people mindful of the fact that they couldn't guarantee no power shortages or too much smoke and it was starting to float into his world that he would have to leave. That was probably when we started discussing what we would do if we had to leave that room. I think in his mind he was never going to SIOP. There were definitely emergency response people telling us they couldn't guarantee we could stay there much longer. There was stuff in the air, and electronics.

Welch: We are also interested in the environmental concerns. From the incident commander outside there was an evacuation order because of the warning that a second plane was coming in. That's different from the fact that you couldn't breathe in there because of the smoke. Did you get that?

DiRita: I don't remember concern about a second airplane. There were concerns about planes in the air that could be inbound somewhere. There was discussion about that because they had lost track of someone over Alaska, and somebody coming from Europe. There was a lot of chatter.

Welch: There was a specific one that came through the FBI to the incident commander and they put out the evacuation order.

Goldberg: That was the plane that crashed in Pennsylvania.

DiRita: I don't remember people saying there was another plane coming into the Pentagon. I remember a couple of days later there was a mass evacuation—people were on a hair trigger.

Goldberg: No, that morning there were warnings all over the place. It was chaos.

DiRita: There was a lot of chatter.

Haynes: Chaos is not the right word for it at that point. That plane went down just 15 minutes or so after the one that hit our building.

Goldberg: It went down at 10:03; we didn't get the word here so they ordered the evacuation at 10:15, when they were told of an incoming plane. People said firemen and others withdrew for almost 20 minutes before they were allowed back in. They weren't going to take a chance.

Also, there had been the collapse that had occurred earlier, before 10:15. At that point it is possible that Chief Schwartz, the incident commander, tried to warn the secretary and his people.

DiRita: It's possible. I remember emergency response-type people in the room on and off telling us that there were issues, smoke and haze, and electrical issues. I remember Doc Cooke either there or talking to us about areas of the Pentagon that were no longer acceptable and things of that nature.

Welch: But you don't remember that morning of another plane specifically heading toward the Pentagon.

DiRita: No.

Haynes: Later in the day.

Goldberg: They panicked every time a plane came close.

Haynes: Even in the days afterwards, I remember a couple of those.

DiRita: Yes, at least one evacuation. I remember once coming out of the men's room and all of a sudden it looked like the entire E Ring was heading my way, running as fast as they could. I thought "what the heck is going on?"

Goldberg: The evacuation was ordered at 10:15, and most people got out.

DiRita: The secretary went into a zone of total focus on what was going on and was not easily distracted. Those are important issues, but he was focused on "I have airplanes in the air; there

are fighters in the air; they have been told they have the authority to shoot somebody down, and I want to make sure I really understand what that means.”

Haynes: He was not thinking about in-bound planes.

DiRita: There were fighters in the air, and who had control of those guys because right then somebody believed that somebody had the authority to do something and he wanted to make sure he truly understood that because he understood he was in the chain of command, so that's where his head was for a period of time. Also, the worldwide force levels and threat levels: he was having discussions with Dick Myers about that. Where were we globally, did we need to raise our defense condition of readiness, our threat conditions, and those things. So he was on a very elevated plane of global issues and very focused on aircraft in the air with weapons on them and with authority to shoot people down, and he wanted to understand what the rules were so that the fighters could understand them.

Goldberg: Who did give the authority to shoot planes down?

DiRita: That was so well hashed out in the 9/11 Commission report, it's worth going back and looking at that. The secretary got on the phone with the vice president, who was conveying a conversation he had had with the president, who was not immediately available to discuss it.

Haynes: The secretary had spoken with the president before he left the building.

DiRita: Yes, so I wouldn't want to try to recreate that time line. I think we did our best to lay it out.

Goldberg: From that report it looks as if Cheney initially did authorize it and then checked with the president, who of course went along with it.

DiRita: I don't know that I'd draw that conclusion.

Goldberg: That's not my conclusion, that's the way it looks from the report.

DiRita: The secretary had had one early conversation with the president and interactions with the vice president and the vice president I believe was conveying information that he had based on conversations with the president.

Goldberg: I think the 9/11 report left it up in the air.

DiRita: Yes. That's possible. But they interviewed the president and the vice president, too.

Haynes: They have a lot more information than I have.

Goldberg: Authorization was given to engage or take out the aircraft.

DiRita: Eventually, yes.

Hayes: Which aircraft are you talking about, the one in Pennsylvania?

Goldberg: Hijacked aircraft in general, non-specific. Then at 10:33 Hadley on a conference call asked guidance from the vice president on taking out an in-bound aircraft 5 or 10 miles out, which turned out to be a Medivac helicopter. That's how confused things were during that period of time. By 10:31 the order to shoot down was broadcast over the NORAD network. I think what we are going to have to do in addressing this briefly is simply make the point that it is uncertain.

Haynes: Do you have access to whatever documents the 9/11 Commission had access to?

Goldberg: No, we just used the 9/11 report. We do have some interviews that speak to it in some form or other. We haven't interviewed the vice president.

Haynes: Are you planning to?

Goldberg: I have many times in the past.

Haynes: When he was secretary?

Goldberg: No, after that. We had the longest interviews we have ever had with him. He lasted three and a half hours several times. We had to give up before he did.

DiRita: You ran out of tape?

Goldberg: Practically.

DiRita: I have to get back down, but I will be happy to schedule more time if this is important to you.

Welch: One thing I picked up from your interview was when you were talking about coming back with Wolfowitz, discussing the budget to prosecute a war. At that point, how specific did you get into any kind of operation consideration, or were you only thinking in terms of force levels?

DiRita: We weren't even thinking to that level of detail. We had just been through the exercise where we came into office; President Clinton had submitted a budget; President Bush submitted a budget amendment; and we knew that that budget amendment, as with all budgets, made choices and therefore we knew that there were things not included in that budget amendment (this was the May time frame of '01). So we had sufficient understanding plus the QDR to think we could at least sketch out—it had nothing to do with needing 50,000 troops in Afghanistan, it was nothing to that degree, because we weren't thinking like that yet. We knew that we would want to fund a lot of operations and maintenance at a level above what we knew we had requested in the budget. We knew, for example, that we had asked for \$302-some millions, and what could we do to plus-up operations and maintenance plus some of the high demand-low density items like unmanned aircraft and things of that nature.

Welch: It was just a general thought of how much to add for each of the programs.

DiRita: I would have to refresh my memory on what some of the issues of the moment were. We had a sense that there were some immediate things we knew that in an unconstrained environment we would ask for, and knew that we now would be in such an environment for a

short period of time, so we needed to ask for more. We would ask for so many millions of dollars for operations and maintenance, procurement, those kinds of broad brush strokes.

Welch: Some day some historian will want to know how you all thought about those questions.

DiRita: We were literally looking at if O&M was at \$60 million in the '01 budget, let's get it to \$70 million.

Goldberg: There was not much more you could do.

DiRita: By the way, when we ended up getting the supplemental appropriation, in November or December of that year, that's about the level of detail Congress provided back to us. They said, "OK, you can have this much money, spend it and come back and tell us how you spend it." It was the one and only blank check we got. We decided to go ahead and be as refined as we could on what we thought would end up being a blank check.

Goldberg: Can we have an address and telephone number for you?

DiRita: I'll give you my local address here, it will be good for awhile. I will be back and forth to Charlotte over the course of the next few months so this will be a good address for me for the foreseeable future.

Goldberg: What do you feel about a more detailed interview?

DiRita: Whatever helps the cause, I will be happy to.

Welch: Would you be interested in donating our notes?

DiRita: I have to think about that.

Goldberg: Did you take a lot of notes on that day?

DiRita: I took some.

Goldberg: Tory Clarke took a lot of notes.

DiRita: Did she give you her notes?

Goldberg: No, we don't have anybody's notes.

DiRita: I know that Cambone took notes. You should talk to him.

Goldberg: They were very precise.

DiRita: My notes included times and when the secretary said this and t hat.

Goldberg: The timing is the most difficult thing to pin down.

DiRita: I know I reviewed them for the 9/11 Commission report; I may have destroyed them, because they became part of the record.

Haynes: Mine were not nearly as voluminous as yours. I was just carrying around a stack of paper and whenever Ed would give something to the secretary, he would give it to me, so I was carrying around all the situation reports, and so on.

DiRita: Those are interesting, too. Thank you for your time.

Goldberg: Than you, it's very helpful.

Welch: Now let's get to your activities, Mr. Haynes.

Goldberg: The National Guard was brought in--the Maryland National Guard and military police on 12 September. Do you have any recollection of the command chain process in bringing that about?

Haynes: I have been thinking about September 11. That whole period went into a fast forward mode, starting that morning. I don't remember specifically the Maryland National Guard; we spent a lot of time starting that night and into the next morning putting together the decision documents for calling up the Guard and Reserves and getting the president's declaration of national emergency and all the mechanical administrative decisionmaking that went into that.

Goldberg: When did he make that declaration.

Haynes: It may have been as late as the 13th, formally. There were a lot of oral decisions; I remember urging Jim Bastiani to start keeping a log of all the decisions that were being made at the time. There is a tally that is pretty detailed, but it is sketchy on the first day because there were a lot of audibles from the president and the secretary all through that day and the next few days. That's determinable, I'm sure you have access to some of those records. The secretary ended up spending a lot of time on the presence of U.S. forces in airports around the country and on the northern border. It was extraordinary. I remember driving in at 5:00 or 6:00 the next morning and seeing a soldier on a street corner in downtown D.C. and thinking "This is something."

Goldberg: With weapons?

Haynes: Yes, as I recall.,

Goldberg: Otherwise you see uniformed soldiers in D.C. at any time.

Haynes: This was not a class A uniform. At that hour of the morning, with nobody on the streets. Some of this is a blur to me, but there are things that stick out, and that was one, early one morning no one else on the street, makes you think "this is the real thing." For a long time there a surreal quality about what happened on 9/11.

Goldberg: A lot of people thought that at the time, some of them used that term, too

Haynes: Watching those towers collapse, while there was so much else going on—

Goldberg: It looked like a disaster movie.

Haynes: Yes.

Welch: Looking back over a previous interview, you mentioned that before the attack the secretary had asked you and some others about setting up a crisis action team, and you described

to us that you discussed where the chairman would be in the process, or would you go straight through the secretary, etc. When 9/11 occurred, what happened? Did you set up something like that, or was it OBE, with a different format?

Haynes: We didn't pull out the documents to see what would happen, but I got a call to come down to the ESC before the Pentagon was hit. We pulled together the people that would have been part of an advisory group to the secretary. Larry DiRita, Tory Clarke, Steve Cambone, and I and ended up in the ESC, the executive support center, that third floor room that we ended up spending most of the day in. That's where we were when the plane hit. These representatives were essential parts of any crisis action team. What I was referring to before was how to write up a DoD directive that would reflect the secretary's views. He was reacting to a couple of things that happened early on in his tenure, like the plane that was forced down in China in '93, and how that information was sent up the chain. There may have been another incident. We had Northern and Southern Watch going on in Iraq at the time and there was a particularly aggressive response during one of those incidents while the president was in Mexico, and it surprised everybody. It surprised everybody that an aggressive event like that would happen and the secretary and the president wouldn't be aware of it. It was those catalysts that caused us to begin looking at that kind of thing. Stacer (?) Holcomb, a retired admiral, was working on some of that and I spent some time with him. That's how we got into that that morning, and after the plane hit.

Welch: So it didn't come up again as an issue you needed to resolve after the fact. It was something you were discussing but it was overtaken by events?

Haynes: Yes, the secretary was so deeply connected from that minute.

Welch: That initial emergency of 9/11, even the next day, you didn't go back to that issue to solve that problem?

Haynes: There wasn't time, we were doing more substantial and immediate work. There continued to be an interesting dynamic about how the secretary is connected with the rest of the department that continues to play out. This is such a big place, and there are so many moving parts not only around the world but even in the Pentagon, with the military departments, the Joint Staff, the defense agencies, and the combatant commands who report directly to the secretary, his staff, etc. Just how he connects day to day or minute to minute with the department is something that is constantly adjusted. I joke with people that I have been here five years now and plotting different people's interfaces with the secretary is like a sign wave, there are ebbs and flows in who he is working most closely with. There is an irreducible minimum that hopefully includes the general counsel, but that is not always the case. So the answer is that no, not in the days after did we go back and look at that. Over time there has been a significant amount of attention to updating all the DoD directives, but I don't remember that one specifically.

Welch: So there has been no major change in how the Pentagon responds in an emergency as a result?

Haynes: Sure; DAMS doesn't exist any more, for example, but that was not an immediate change organizationally. DAMS used to be in the secretary of the Army's office as executive agency, and now has moved into the Joint Staff.

Goldberg: DAMS is in the Joint Staff?

Haynes: It's now called JDAMS, joint director of military support, and that and the creation of NORTHCOM are legacies of the old DAM system.

Goldberg: So it occurred well after 2001.

Haynes: Yes, but it is certainly a response to it because that day brought home the fact that war could be on American soil and this Department until this happened had been reluctant to have any sort of combatant command presence within the United States, because of the sensitivity that is appropriate for that kind of thing in our society.

Welch: To what extent was that a legal issue?

Haynes: Hugely; everything has legal consequences if it's done wrong, but even things that are done correctly have heavy legal content. That certainly is one. Go back to the Declaration of Independence, one bill we complained bitterly about was quartering troops in the homes of citizens, that's something that citizens have instinctual aversion to. That manifests itself in several ways, including the Posse Comitatus Act, just the notion that we prefer to have civil authority as opposed to military authority. The President's speech last night about putting the Guard on the border reflects that sensitivity. It's something we've all been careful about; there is an interesting balance that every U.S. citizen instinctively brings to the fore when you think about that kind of thing.

Welch: Do you think that in fact the character, nature, and subject of the legal issues that you spent most of your time addressing dramatically changed after 9/11 as a result of this?

Haynes: Yes, they did, but it's been five years, so you have to be more specific.

Welch: We want to stay close to the time of the event. Certainly the month before we go into Afghanistan or any other follow-up. We don't want to get into wartime issues.

Haynes: The voice comp (?) thing was well after the 9/11, maybe as late as 2003.

Goldberg: It takes time to make that kind of change.

Welch: You must have been pulled into questions that arose as legal matters, or did you feel that way?

Haynes: Sure. I had tried to contact DAMS that morning from a number of different phones as we were moving around the NMCC and the ESC. Because this was a huge incident on American soil and the system's input to the civil authorities had been through DAMS that was something I was very familiar with, because of my job and also having been general counsel of the Army 15 years ago. The Army having been executive agency for DoD it was part of my job back then. So it was part of the garden plot which was the manual that dates back to the late '60s and the civil unrest in the country and how the Army and Army National Guard in D.C., for example, is so important in responding to incidents in the United States, the DoD's support for civil authorities. Right from that moment that was certainly on my mind. When you have to think about the possibility of employing deadly force within the U.S., as a lawyer you have to bring up that other side of your brain, the fact that this is a wartime or self-defense kind of function versus a law enforcement function. Right from the git-go, so to speak, that issue came up and well into the night and certainly months and years later. This has certainly become the most legally intense war we've had.

Welch: That was the dominating factor immediately thereafter, bringing military force onto our soil, etc?

Haynes: Yes, and for the secretary, I'm sure, as well. That's one of the reasons he was so attentive to the fact that we had soldiers in airports and on the borders. There is a letter I wrote to Senator Warner back in October of that year that I have pulled out a number of times. Right afterward there was a lot of interest everywhere, including on Capital Hill, to revisiting the Posse

Comitatus Act. It's worthwhile because it captures what my position was, and what I think the Department's position over time is about that issue.

Goldberg: You have the Army volumes on that? The Army has published a couple of volumes on the Army's use in civil disorders, with a lot of attention to posse comitatus.

Haynes: I don't think I have those volumes.

Goldberg: The second volume comes down fairly close to date.

Welch: You will give us a copy of that letter?

Haynes: Sure. I've pulled it out and sent it around enough that they should be able to get it to you.

Welch: Under Chu's auspices the Pentagon set up the Family Assistance Center and there were a number of attorneys, under a reservist basically, and someone who worked for General van Elstein (?). They wanted a bunch of attorneys, some pro bono; did you meet with any of those folks? Did they come to ask you about their issues, civilian versus military issues and casualty issues?

Haynes: I'm sure I did. I remember meeting with van Alstein a number of times. The way I operate is that the lawyer I assign to David Chu is Paul Kosky (?). I knew him back on active duty in the '80s. Paul is David's lawyer and he and his staff serve the under secretary for personnel and readiness. I'm sure that that staff were the principal lawyers for van Elstein and Chu. I remember a number of reservists that came on active duty.

Welch: There was a man named Entswaller (?) who also worked for van Elstein. I was just curious if they had met with you as part of their work.

Haynes: I'm sure they did great work; the way a lot of things get to my desk is when something goes wrong. That's a basic management kind of thing.

Goldberg: So you are used to it.

Haynes: Again, if we are doing our job hopefully we are at the elbow of the client helping them make decisions rather than cleaning up afterward. Chu is a good client that way, and Rumsfeld is a good client that way. There was such an outpouring of offers of help, and what you are describing is a slice of that, but the ethical issues, the standard of conduct issues associated with that—there were vendors setting up in the parking lots, Burger King, McDonald's, and things like that. We had to be sure we were following the appropriate rules in that context about accepting gifts, personal gifts received by the government. Legal assistance for victims is easier for military than for civilian because there is a specific statute for the former, and part of the function of each JAG corps is to provide legal assistance to uniformed members and their families, particular types of legal assistance. It has been harder when you look at civilian employees of the Department. We dealt with those kinds of things. There was a lot that we had to confront for the first time.

Goldberg: In emergencies a lot of things get done ad hoc. You waive a lot of restrictions or legal matters.

Haynes: Even so, we were very attentive throughout.

Welch: Regarding overlapping jurisdictions, when the Pentagon was struck—it is in the commonwealth of Virginia—

Haynes: It's a Reservation.

Welch: There is a lack of clarity over who has jurisdiction. The decision was made initially, for example, that the medical examiner for the state of Virginia would sign all the death certificates for anyone killed within the border of the state. However, it was determined that this was a federal facility and that it would be under control of the FBI at the crime scene, and in the case of

fatalities and death certificates the remains were sent to Dover and death certificates were signed there. Apparently the medical examiner of Virginia waived the requirement that she would oversee the operation. I don't know if it was the attorney general, but apparently that decision was not made in this agency.

Haynes: That's news to me. It could have been made at Washington Headquarters Services and just not gotten to me in coordination with the local authorities. Bill Braze (?) is the general counsel for WHS now, he wasn't then, he was the deputy then; Bill and his predecessor Walt Kosky (?) work, that's how our defense legal services agency structure works, a number of decisions are made well below my level. It's possible it was worked out there without a mandate from somebody else.

Welch: It could have been from the attorney general. It's not critical, but the decision was made.

Haynes: It's probably discernable, but I don't have the answer for you now.

Welch: What do you think was the most significant issue that came up in the immediate period for you? What sticks in your mind as critical? What would you tell your grandchildren about the immediate days and weeks after that attack?

Goldberg: That would depend on the age of the grandchildren, wouldn't it?

Haynes: That remains to be seen.

Goldberg: There were so much going on, so much confusion, so many things being borne in on people, everything was important.

Haynes: From a legal perspective, for the long term we will wrestling over the things we are wrestling over right now. The lines that we draw as a society for organizational purposes and how you make decisions. In this case, law enforcement versus war. The 9/11 Commission

talked about that in a critical way, that one of the reasons we had 9/11 was that the country had treated the terrorist menace as a law enforcement matter and on 9/11 the terrorists chose to strike on a scale that could only be described as warfare. It not only overwhelmed the civil authorities but threatened even more catastrophic attacks and destruction. It illustrated why law enforcement alone is not the way to deal with it. That has to be involved, but when the secretary is thinking over planes being shot down, that is not a law enforcement mission, that is a self defense mission, a national defense mission. From my perspective as a lawyer, that was the most profound thing to come out of it. We still see that today. There are reasons for those lines to be drawn, as I alluded to earlier, posse comitatus and what we are as a people and how we got here. I think some of that is inevitable there is no way to live life without having those kinds of tensions. That is probably the thing that I take away.

Goldberg: We thank you.

Haynes: My pleasure.