



INSPECTOR GENERAL  
DEPARTMENT OF DEFENSE  
400 ARMY NAVY DRIVE  
ARLINGTON, VIRGINIA 22202-4704

## **ADVANCED INTELLIGENCE LAW COURSE, NATIONAL GROUND INTELLIGENCE CENTER: “THE IMPORTANCE OF THE RULE OF LAW IN THE WAR ON TERROR”**

*Remarks as delivered by Inspector General Joseph E. Schmitz of the Department of Defense, Charlottesville, Virginia, July 1, 2004*

---

Thank you, Colonel [LTC Harold McCracken, USA], I am delighted to be here at the National Ground Intelligence Center. I am honored to have the privilege of speaking about something in which I believe strongly, and that is the role of both Inspector General and intelligence professionals – and their lawyers – in promoting integrity not only within the Intelligence Community, but within the broader Department of Defense.

Before I proceed, I would first like to outline three lessons and one tool – the “take-aways,” if you will – that I would like to leave you with today:

First, the tool: Young naval officers learn this principle early in their careers. The “Bridge Rule,” as it is known in the fleet, says that if you’re standing the bridge watch in formation steaming at night, with the Captain asleep in the At Sea Cabin, and you ask yourself, “Do I need to wake the Captain?,” you’ve already answered the question. Wake the Captain. Use this rule as a tool for dealing with Intelligence Law challenges. If you ever ask yourself, “I wonder if this is legal under the Intelligence laws?” run it up your chain of command. If you think that the chain of command is not working, report it to an IG.

The first “take-away” lesson is that Intelligence Oversight is more than academic -- it protects constitutional rights of real U.S. persons;

Second, every Intelligence professional can and should make a difference;

And third, lawyers in the Intelligence Community need to educate their clients so that they, the clients, know the law and can do their jobs without worrying about what might or might not be legal.

Our success in winning the *War on Terror* fundamentally depends upon the success of our intelligence community.

A few weeks ago, the Inspector General of the U.S. Army, Lieutenant General P. T. Mikolashek, admonished a graduating class of about 60 new Army Inspectors General, many of whom are now deployed in the global war on terror: “There is no guarantee we will celebrate the 4<sup>th</sup> of July next year.” Think about it. I agreed with the three-star Army General, and reminded the same class of new Inspectors General of the sacred oath of office we all take to “support and defend the Constitution of the United States against all enemies, foreign and domestic.”<sup>1</sup>

How many of you today believe that we are currently engaged in a war for our very survival? Our terrorist enemies certainly believe that they are engaged in a war with us to the death. The terrorists proclaim this objective openly, and often.

My job as Inspector General of the Department of Defense is to serve as an “independent extension of the eyes, ears, and conscience” of my Commander, Secretary of Defense Donald Rumsfeld.<sup>2</sup> It is my statutory duty objectively – the Army calls it doggedly – to pursue the truth, and to present my findings to Secretary Rumsfeld, to the Congress, and ultimately to the American People, as plainly as I see it.<sup>3</sup>

Allow me to explain a bit more about what an Inspector General is in the context of marching orders from our Commander-in-Chief to all of us, both civilian and military, who are engaged in the global war on terror, and that is that we must always do not only what is legal, but what is right.<sup>4</sup>

When the Continental Congress created the Office of the Inspector General of the Army in 1777, the functions of the office were to:

- “Review the troops;
- “See that officers and soldiers were instructed in exercise maneuvers, established by the Board of War;
- “Ensure that discipline was strictly observed; and

---

<sup>1</sup> See 5 U.S.C. § 3331 (“An individual . . . elected or appointed to an office of honor or profit in the civil service or uniformed services, shall take the following Oath: ‘I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.’”).

<sup>2</sup> See Army Regulation 20-1, Inspector General Activities and Procedures 5 (Department of the Army, 2002).

<sup>3</sup> See Department of the Army, The Inspections Guide, p. 4-3-20. See also; Defense Criminal Investigation Service, Special Agents Manual, Chapter 3 (“Investigation is a detailed objective inquiry to ascertain the truth about an event, situation, or individual.”).

<sup>4</sup> See G.W. Bush, “Memorandum For The Members of the Senior Executive Service,” November 19, 2001. (First, we must always maintain the highest ethical standards. In addition to asking, “what is legal,” we must also ask, “what is right.”)

- “Ensure that officers commanded properly and treated soldiers with justice.”<sup>5</sup>

The techniques of Inspectors General and our scope have changed a great deal since those days, but these basic principles have not.

The man George Washington chose to help instill these principles into the fledgling American militia was Baron Friedrich Wilhelm Von Steuben of Prussia, who after serving as George Washington’s IG throughout the Revolutionary War became an American citizen. A monument in honor of Inspector General Von Steuben’s achievements stands today in Lafayette Park, across from the White House in Washington D.C., which monument bears the inscription, “He gave military training and discipline to the citizen soldiers who achieved the independence of the United States.”<sup>6</sup>

At the dawn of the previous century, another American president described the lessons learned from the first effective American Inspector General. President William Howard Taft, at the 1910 von Steuben statue dedication in Washington D.C., made the following observation: “The effect of Steuben’s instruction in the American Army teaches us a lesson that is well for us to keep in mind, and that is that no people, no matter how warlike in spirit and ambition, in natural courage and self-confidence, can be made at once, by uniform and guns, a military force. Until they learn drill and discipline, they are a mob, and the theory that they can be made into an army overnight has cost this nation billions of dollars and thousands of lives.”<sup>7</sup>

No American today should ever doubt that we hold ourselves accountable to the rule of law.

Here lies the fundamental difference between us and the terrorists.

It all comes down to this – we pride ourselves on our strict adherence to the rule of law under God – which does *not* mean that whoever is in power wins.

The terrorists make no apologies for their evil acts; they do not hold accountable those among them who act outside the law; and they refuse to recognize the very standards of behavior that distinguish civilization from barbarism.

---

<sup>5</sup> Journals of the Continental Congress, 1774-1789, Saturday, December 13, 1777, at p. 1024 (<http://memory.loc.gov/ammem/amlaw/lwjclink.html>).

<sup>6</sup> “Unveiling of the Statue of Baron Von Steuben, Washington, DC, December 7, 1910,” compiled by George H. Carter and printed under the Direction of the Joint Committee on Printing, flyleaf photograph of monument (1911).

<sup>7</sup> William Howard Taft, “Address of the President of the United States” reproduced in “Unveiling of the Statue of Baron Von Steuben, Washington, DC, December 7, 1910,” *supra*, at p. 50.

We, on the other hand, punish those among us who violate the law – and are disappointed with ourselves when those among fail to meet our high aspirational standards.

As President Bush so compellingly argued in his speech to the United Nations last September, in some instances – and the subject the President was addressing was intervention in human trafficking – we must follow a rule of law that “stands above the laws of man and of nations.”<sup>8</sup> This concept of the rule of law is the very foundation of our constitutional way of life. It is the reason why America still shines for the entire world as the proverbial beacon on a hill.

If we ever get to the point when Americans seriously doubt whether or not we will hold ourselves accountable to the rule of law – from the most junior Army private to the Commander-in-Chief – then we will have lost the war on terror.

But we have not arrived at that point.

We are not even close.

The outrage that virtually all Americans felt at the recently publicized instances of prison abuse in Iraq is a strong indicator that we still place the very highest value on the rule of law and the standards of decency that distinguish us from the terrorists.

We are still, by the grace of God, the beacon of hope to the world.

As the Inspector General, sometimes I have to get out among the troops. In a word, I have to inspect. Last month I traveled to Abu Ghraib prison to see for myself how we interrogate detainees. I then traveled to another detainee collection point in Afghanistan to learn more about the rules, standards, and procedures we use to collect intelligence and otherwise to deal with the known and potential terrorists we capture in the course of our ongoing military operations.

The more time I spend with our forward-deployed troops, listening to their stories and watching them perform their duties, the more I understand why the terrorist hate us so much.

Beyond any doubt, we owe our American men and women now serving overseas a debt of gratitude.

---

<sup>8</sup> George W. Bush, “President Bush Addresses United Nations General Assembly,” September 23, 2003 ([www.whitehouse.gov/news/releases/2003/09/20030923-4.html](http://www.whitehouse.gov/news/releases/2003/09/20030923-4.html)).

I cannot begin to tell you what an awesome and honorable job American troops are doing in both Iraq and Afghanistan. They are making incredible sacrifices, and making them gladly – generally with a brave and humble spirit – in order to provide hope for nations who have been under the control of tyrants for generations and, more importantly, to protect you and me from another terrorist attack against our own children and grandchildren on American soil.

Yet to a great extent the efforts and achievements of our soldiers, sailors, airmen, and marines around the world are unsung, overshadowed by a constant flow of bad news, allegations of wrongdoing, and public misperception – sometimes based on our own publications.

For example, in the early 1980s, one of the U.S. Armed Forces service training commands – and this is no secret, it was in the preface of “Fundamentals of Naval Intelligence” published by the Naval Education and Training Command – put out a correspondence course on Intelligence that started off with the following quote:

*“Intelligence is the world’s second oldest profession, with less scruples than the first.” – Author Unknown*

Now what type of impression do you think that leaves the reader with? Not a very good one, I would venture to say.

It certainly doesn’t describe a profession that, at its very core, must exemplify integrity – since national decision-makers must be able to rely on its products to put into place far-reaching policies that directly affect our very welfare and survival.

Intelligence is no place for moral relativism. The ends do not justify the means. It is not enough to come to the right conclusions – the process in getting there must be the right one, too.

I’m not saying the decision to choose integrity over expediency is easy. There are some very tough questions and decisions that even the most learned of men disagree on. Let’s – since it is so much in the news these days – look at the issue of torture as an example.

In the July 2002 edition of *The American Legion* magazine, there is an article beginning on page 12 titled “When All Else Fails . . . Why Not Torture?” The author suggests that non-lethal techniques can be an effective means to produce truthful information in the war on terrorism. He also discusses concepts such as torture warrants and scenarios such as the “ticking bomb case” involving a hidden nuclear device in a major metropolitan area.

The author states in his article: *“In speaking to numerous audiences since Sept. 11 – audiences reflecting the entire breadth of the political and ideological spectrum – I have asked for a show of hands as to how many would favor the use of non-lethal torture in an actual ticking-bomb case. The vast majority of audience members responded in the affirmative.”*

In another part of the article, the author goes on to say: *“It is far better to discuss in advance the kinds of tragic choices we may encounter if we ever confront an actual ticking-bomb terrorist case than to wait until the case arises and let somebody make the decision in the heat of the moment.”*

The author: Harvard law professor Alan Dershowitz.

An article that appeared on the front page of the June 9, 2004, edition of *The Washington Post* quotes Senator Charles Schumer of New York as making the following statement in a crowded hearing room on Capitol Hill: *“I think there are very few people in this room or in America who would say that torture should never, ever be used, particularly if thousands of lives are at stake.”*

I use torture as an example to make the point that frequently, especially in the intelligence community, we are faced with very difficult, complex decisions that frequently epitomize the classic “Hobbesian choice.” You are literally “damned if you do and damned if you don’t.”

And this is why integrity is so vital. We need men and women of integrity who, if that time ever comes, will make decisions based on principle and not expediency.

Before I entertain your questions, let’s review the “take-away” lessons: Intelligence Oversight is more than academic, it protects constitutional rights of real U.S. persons; every intelligence professional can and should make a difference; and lawyers in the Intelligence Community need to educate their clients so that they know the law and can do their jobs without worrying about what might or might not be legal.

And finally, when in doubt, remember the Bridge Rule; check with your chain of command, or – if that fails – call an Inspector General.

Thank you for your service. May God bless you.