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“What To Do When The Inspector General Shows Up”

Hon. Joseph E. Schmitz
May 11, 2015

Ritz Carlton Pentagon City

What To Do When The Inspector General Shows Up (or calls)

- Admonition by a senior official of the Department of Defense to The Inspector General of the Department of Defense (shortly after U.S. Senate confirmation in 2002):
“Always remember that I mere telephone call from you can have the psychological effect of a neutron bomb.”
- “If you are doing your job as a senior official, the question is not if you will be investigated by the IG, but when. Prepare accordingly.”

Secretary of Defense Donald Rumsfeld

- “Better the devil you know than the devil you don't.”

What To Do When The Inspector General Shows Up: Take Aways

- Principle of First and Second Things
- First Things for Inspectors General
- How To Prepare For The Inspector General:
 - Understand what an IG is -- and is not;
 - The various roles of an Inspector General;
 - The difference between military and civilian IG's;
 - The similarities between military and civilian IG's;
 - Assume that you will be investigated by an IG;
 - Lessons Learned from the Boeing Tanker Scandal.
- “Tolerance becomes a crime when applied to evil.”

Principle of First and Second Things

- **“You can’t get second things by putting them first; you can get second things only by putting first things first.”**

C.S. Lewis, “Time and Tide,” *in* GOD IN THE DOCK (1942)

- **A more recent “first things” expert explained the principle more bluntly, using the most basic of all “second things” to make the point:**

“The society that believes in nothing worth surviving for -- beyond mere survival -- will not survive.”

Peter Kreeft, *A REFUTATION OF MORAL RELATIVISM: INTERVIEWS WITH AN ABSOLUTIST* , p. 133 (1999)

Principle of First and Second Things (cont.)

“[Just laws] serve the right end, that of effecting the happiness of those who enjoy them. They, in fact, secure them all good things. But there are two different kinds of good things, the merely human and the divine; the former are consequential on the latter. Hence a city which accepts the greater goods acquires the lesser along with them, but one which refuses them misses both. . . . Of divine goods, the first and chiefest is . . . wisdom, and next after it sobriety of spirit; a third, resulting from the blending of both of these with valor is righteousness, and valor itself is fourth.”

Plato, The Laws 361b-d (360 BC)

Principle of First and Second Things (cont.)

- In modern business parlance, what C.S. Lewis called “First Things” are now called, at least by some, “The Soft Edge -- Expression of Your Deepest Values.” Rich Karlgaard, *THE SOFT EDGE: WHERE GREAT COMPANIES FIND LASTING SUCCESS*, p. 10 (2014)
- The most paradigmatic “Second Things” are money and survival;
- In modern business parlance, “Second Things” are within the “Hard Edge,” and would include, *e.g.*, “Precise Execution.” *See id.*, p. 7.
- Underlying both the Hard and Soft Edges is the “Strategic Base”:



Id., p. 5

American First Things (John Adams 1775): “be very vigilant in inspecting”

- “ART. 1. The Commanders of all ships and vessels belonging to the THIRTEEN UNITED COLONIES, are strictly required to shew in themselves a good example of honor and virtue to their officers and men, and to be very vigilant in inspecting the behaviour of all such as are under them, and to discountenance and suppress all dissolute, immoral and disorderly practices; and also, such as are contrary to the rules of discipline and obedience, and to correct those who are guilty of the same according to the usage of the sea.”

Continental Congress, “Rules for the Regulation of the Navy of the United Colonies of North-America; Established for Preserving their Rights and Defending their Liberties, and for Encouraging all those who Feel for their Country, to enter into its service in that way in which they can be most Useful,” November 28, 1775

American First Things: Oath to Support and Defend the Constitution Against All Enemies

- U.S. Constitution, Article VI: “. . . all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution.”
- By Act of Congress, “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’.” 5 U.S.C. § 3331

American First Things (U.S. Congress 1997): “be vigilant in inspecting”

- “All commanding officers and others in authority in the naval service are required to show in themselves a good example of virtue, honor, patriotism, and subordination; to be vigilant in inspecting the conduct of all persons who are placed under their command; to guard against and suppress all dissolute and immoral practices, and to correct, according to the laws and regulations of the Navy, all persons who are guilty of them; and to take all necessary and proper measures, under the laws, regulations, and customs of the naval service, to promote and safeguard the morale, the physical well-being, and the general welfare of the officers and enlisted persons under their command or charge.”

10 U.S.C. 5947 (1997)

Inspector General First Things



Inspector General First Things (cont.)



*“You get what you inspect,
not what you expect.”*

*Secretary of Defense
Donald H. Rumsfeld
September 10, 2001*



*“For everyone who does evil hates the
light, and does not come to the light,
that his deeds may not be exposed.”*



IG First Things: Accountability & Due Process

- “No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of receipts and expenditures of all public money shall be published from time to time.”

U.S. Const., Art. I, Sec. 9, cl. 7

- “No person shall . . . be deprived of life, liberty, or property, without due process of law.”

U.S. Const., Amend. V

- “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

U.S. Const., Amend. X

IG First Thing: Know Your Enemy and Self

- “One who knows the enemy and knows himself will not be endangered in a hundred engagements.
- “One who does not know the enemy but knows himself will sometimes be victorious, sometimes meet with defeat.
- “One who knows neither the enemy nor himself will invariably be defeated in every engagement.”

The background of the cover features a large, light blue watermark of the official seal of the Inspector General of the Department of Defense. The seal depicts an eagle with wings spread, perched atop a shield with vertical stripes. Above the eagle is a semi-circle of stars. A banner draped across the eagle's chest reads "EFFICIENCY". Below the shield is another banner with the Latin motto "SUB TUTELA ALTISSIMI SEMPER".

THE INSPECTOR GENERAL HANDBOOK

Fraud, Waste,
Abuse, and Other Constitutional
"Enemies, Foreign and Domestic"

Inspector General **JOSEPH E. SCHMITZ**
of the Department of Defense, 2002-2005

Foreword by
LT. GEN. **RICHARD G. TREFRY** (Ret.)
Inspector General of the US Army, 1978-1983

“THE INSPECTOR GENERAL HANDBOOK: FRAUD, WASTE, ABUSE, AND OTHER CONSTITUTIONAL ‘ENEMIES, FOREIGN AND DOMESTIC’” (Table of Contents)

Part A. What is an Inspector General?

- Chapter 1. Traditional Roles of an American IG: The Other Founding Father
- Chapter 2. Inspector General Act of 1978: Straddling the Separation of Powers

Part B. The Duties of an Inspector General: Case Studies in Transparent Accountability

- Chapter 3. Independent Extension of the Eyes, Ears, and Conscience of the Commander (and of Congress): Can Chaplains Be Agents of Al-Qaeda?
- Chapter 4. Teach & Train: The Assassination of Inspector General al-Mokhtar
- Chapter 5. Inspect: Inspecting Sex Slavery through the Fog of Moral Relativism
- Chapter 6. Investigate Fraud, Waste, & Abuse: Air Force Tanker Scandal
- Chapter 7. Investigate Senior Officials: “A Guy Named Satan” 3-Star Speeches
- Chapter 8. Audit: Reporting to the American People on How Their Government Spends Their Money
- Chapter 9. Investigative Oversight: Friendly-Fire Death of Corporal Patrick Tillman
- Chapter 10. Intelligence Oversight: Why Didn’t We Know About 911 Beforehand?
- Chapter 11. Whistleblower Reprisal: Tombstones at Arlington National Cemetery

Part C. Lessons Learned

- Chapter 12. Enemies Foreign and Domestic
- Chapter 13. First and Lasting IG Things

IG Handbook, Foreword

- “There is more to being an Inspector General than being ‘meaner than a junk yard dog,’ the term sometimes used by congressional and other supporters of the Inspector General Act of 1978.
- “It is well to remember that the two principal roles of any Inspector General are to be, first of all, the confidant of the commander (or, in civilian parlance, the agency head); and, second, to be the best teacher in any organization.
- “Those who successfully fulfill these roles become by experience and discipline the best leaders in any military and/or civilian endeavor.”

Richard G. Trefry LTG, U.S. Army Retired
The Inspector General of the Army (1977-83)

IG Handbook, Introduction

- Every American Inspector General takes an oath of office, whether “in the civil service or uniformed services,” to “support and defend the Constitution of the United States against all enemies, foreign and domestic.”
- The book is designed not only for teaching and training professionals assigned to Offices of Inspectors General throughout the federal government, but also for the benefit of government and corporate leaders who will need, sooner or later, to deal intelligently with an Inspector General.
- In plain English, this book explains by what authority and for what purpose an Inspector General does what he or she does on behalf of "We the People."

IG Handbook, Introduction (cont.)

- Although never adopted as official policy, here is my best effort to . . . answer the question, “What in the world is an Inspector General?”:
 - I am an Inspector General in the United States Department of Defense, serving as an independent extension of the eyes, ears, and conscience of my commander.
 - I am a paradigm of integrity, efficiency, accountability, and intelligent risk-taking.
 - Dogged in the pursuit of the truth, I neither dictate to others in authority nor turn a blind eye.
 - I show in myself a good example of virtue, honor, patriotism, and subordination.
 - I am vigilant in inspecting the conduct of those placed under me, guarding against and suppressing all dissolute and immoral practices, including but not limited to fraud, waste, and abuse of authority, as I support and defend the Constitution of the United States against all enemies, foreign and domestic. So help me God.
- I am an Inspector General in the United States Department of Defense.

IG Handbook, Chapter 1

- In order to understand what an Inspector General is, one must first understand that there are two kinds of Inspectors General: military and civilian.
- Military Inspectors General typically focus on “discipline, efficiency, economy, morale, training, and readiness.”
- On the other hand, the 2003 “Quality Standards for Federal Offices of Inspector General” published by the President’s Council of Integrity & Efficiency outline the “fraud, waste, and abuse”-focused statutory mission of each civilian Office of Inspector General (OIG):
- OIGs have responsibility to report on current performance and accountability and to foster good program management to ensure effective government operations.

IG Handbook, Chapter 1 (cont.)

- The Inspector General Act of 1978, as amended, created the OIGs to:
 - Conduct, supervise, and coordinate audits and investigations relating to the programs and operations of their agencies;
 - Review existing and proposed legislation and regulations to make recommendations concerning the impact of such legislation and regulations on economy and efficiency or the prevention and detection of fraud and abuse;
 - Provide leadership for activities designed to promote economy, efficiency, and effectiveness, and to promote efforts to reduce fraud, waste, and abuse in the programs and operations of their agencies;
 - Coordinate relationships between the agency and other Federal agencies, State and local government agencies, and non-government agencies to promote economy and efficiency, to prevent and detect fraud and abuse, or to identify and prosecute participants engaged in fraud or abuse;
 - Inform their agency heads and Congress of problems in their agencies' programs and operations and the necessity for and progress of corrective actions; and
 - Report to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law.

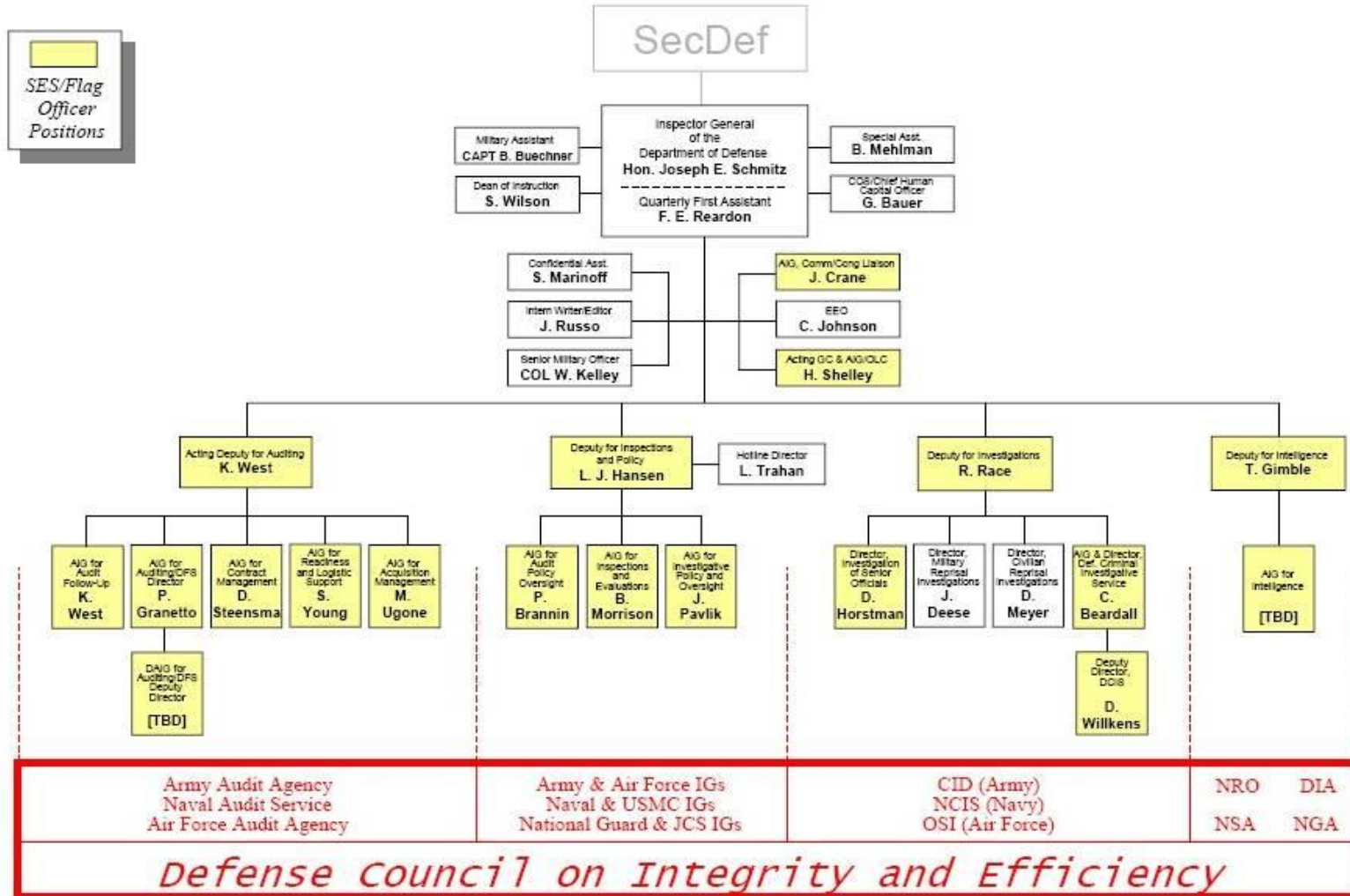
IG Handbook, Chapter 1 (cont.)

- Military Inspectors General share these same “fraud, waste, and abuse” missions with their civilian namesakes in at least two ways:
 - First, they too are often called upon to “conduct, supervise, and coordinate inspections, evaluation, and other reviews related to the programs and operations of their agencies”; and,
 - second, uniformed military Inspectors General are subject to “policy direction” of the civilian Inspector General of the Department of Defense, who as “the principal adviser to the Secretary of Defense for matters relating to the prevention and detection of fraud, waste, and abuse in the programs and operations of the Department [may] request assistance as needed from other audit, inspection, and investigative units of the Department of Defense (including military departments).”

IG Handbook, Chapter 1 (cont.)

Department of Defense Office of Inspector General Organization (1QFY05)


 SES/Flag
 Officer
 Positions



IG Case Study – Boeing Tanker Scandal

- The \$23.5 billion Air Force Tanker lease proposal had been designed to “generate \$2.3 billion in profit for Boeing,” but instead resulted in the imprisonment of both the Chief Financial Officer of Boeing and the Chief Procurement Officer of the United States Air Force. It has been described as “the Pentagon’s biggest procurement scandal since the late 1980s.”
- It all started with a call to the IG: “She just lied to me.”
- Who Was Accountable: “Our report identified the DoD and Air Force officials who were responsible for failing to ensure the prescribed acquisition rules and procedures were properly followed.
- “In Summary, a number of senior DoD and Air Force officials acted as if Section 8159 of the FY2002 Appropriations Act had waived various legal requirements – statutory checks and balances – that it had not.”

IG Case Study – Boeing Tanker Scandal

- What Actions Must be Taken to Prevent This Situation from Happening Again?
 - The Department must change the cultural environment in its acquisition community to ensure that the proper internal control environment is reestablished and followed
 - The Secretary of Defense should reemphasize the need to conduct an Analysis of Alternatives
 - DoD 5000 series guidance should emphasize that leasing is merely a method for financing the acquisition of a program,
 - Finally, the DoD 5000 series guidance should require, at a minimum, that the decision to enter into a contract to lease a major system must be subject to the results of a Defense Acquisition Board or a System Acquisition Review Council review, as applicable.

IG Case Study – Boeing Tanker Scandal

- The Rest of the Story:
 - E-mail from an Air Force General to the Secretary of the Air Force:
“Oh s**t, the DoD Inspector General is getting involved.”
 - Reply e-mail from Secretary of the Air Force:
“At least Schmitz will give you a fair shake.”

How IG's Should Give You a Fair Shake

- According to Blackstone, rules need to be prescribed in advance. In describing this principle, Blackstone wrote that it is important the government not only prescribe, but also promulgate the laws in the most perspicuous manner available, “not like [Emperor] Caligula, who . . . wrote his laws in very small character, and hung them up upon high pillars, the more effectually to ensnare the people.”
- This principle, citing the historical despot as the antithesis of transparent government, . . . is one that every Office of Inspector General ought to apply.
- “If it takes our lawyers more than a week to tell [the IG] what the legal standard is, we will not hold anybody else accountable to that standard -- because that would be a Caligulaesque method of enforcing laws. We’re just not going to do that. It’s not part of the American system of transparent and accountable government.”

IG Challenge: Tolerance Applied to Evil

“Tolerance becomes a crime
when applied to evil.”

Thomas Mann, “A Good Soldier,” in *The Magic Mountain*, 611
(1924 as *Der Zauberberg*) (Everyman’s Library, John E. Woods transl., 2005)



*“For everyone who does evil hates the
light, and does not come to the light,
that his deeds may not be exposed.”*



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 - Lessons Learned from the Boeing Tanker Scandal.
- “Tolerance becomes a crime when applied to evil.”
- Anything Else?