

## **National Security Group Lunch Transcript**

**June 14, 2013**

**Joseph Schmitz**

**JOSEPH SCHMITZ:**

Appreciate that introduction. You forgot one part of my background that maybe uniquely qualified me to be Inspector General is I have eight children and a very saintly wife who bore all eight of them, and that gave me probably the best credentials that I'll deserve as an Inspector General.

So let me also say how delighted I am that the Reserve Officers Association is well represented here. I used to be, I believe, at least qualified to be a member but I think I might have been a member. And that will be a pretty good segue into what I like to call "Inspector-General first things." C.S. Lewis, if you remember nothing else from today, C.S. Lewis coined a principle back in the 1940s when we were fighting the Nazis and the Japanese, and he called it "the principle of first and second things." First things are principles that define who you are or who an entity or a nation is. Second things are typically very, very important things for human beings. Classic second things are money and survival, but they don't define who you are. So what C.S. Lewis said, that if individuals and societies are always focusing on the very, very important second things, in the end they don't achieve their second things and they lose their first things.

So I want to leave you with that principle today and I want to put in the context of what it is that defines an Inspector General. What are the first things about being an Inspector General? When I was a naval reserve officer, I started working as an Inspector General. I was the Inspector General of the Naval Reserve Intelligence Program, which was a worldwide organization of about 4,000 naval reserve intelligence officers. And my responsibility was to maintain compliance within the reserve intelligence program principally of the intelligence oversight laws – maybe a timely subject these days. But the intelligence oversight laws principally restrict the way that federal officials collect, retain, and disseminate information about U.S. persons. In a nutshell, that's what intelligence oversight laws are about. They overlap with a statutory law called the Posse Comitatus Act, which also restricts what federal, military personnel can do in the context of civil law enforcement – it's a post-Civil War development coming out of reconstruction.

So intelligence oversight and Posse Comitatus were kind of my shtick when I was a Inspector General for the Naval Reserve Intelligence Program. What I learned real fast in that capacity is that the first thing about being that type of Inspector General, it comes back actually to the U.S. Constitution and the oath of office that we all take. Whether we're in the legislative branch or the executive or the judicial branch,

we all take an oath of office to support and defend the Constitution of the United States against all enemies, foreign and domestic. Hence, the subtitle of the IG handbook: Fraud, Waste, Abuse and Other Constitutional Enemies, Foreign and Domestic.

And what I learned in my capacity as a reserve officer is that ultimately, intelligence oversight and Posse Comitatus comes down to a very, very important part of what defines our identity as Americans, and that's the Tenth Amendment of the United States Constitution, which is a formalization of a principle that underlies the entire U.S. Constitution which we call federalism, but it actually has a more formal name. It's called the Principle of Subsidiarity, which is that government decisions should be made at the lowest level possible where they are felt most. And so, unless you really understand that first thing, it's really hard to train people to comply with an intelligence oversight system of laws that only applies to the federal government because of the nature of the federal government being a government of limited powers.

And this even takes us back to the parliamentary system in England where our forefathers were schooled, where under that system, unlike our system, the parliament of England has every police power that is not forbidden it. And that's what every state government in the United States now has and that's quantified in the Tenth Amendment. All powers that are not delegated to the national government nor prohibited by the Constitution to the states are reserved to the states and the people, respectively. That's the Tenth Amendment.

So when you think about all these recent events involving the mega-data scandal and all of these IG issues, you got to keep that in the prism of first things. Our Constitution establishes the national government as a limited government particularly in police-power issues. And collecting, retaining, and disseminating information about U.S. persons is frankly all about police powers. Okay? So that's one of the first things.

The other first thing – it is a very, very fundamental thing that you need to understand about Inspectors General is that Inspectors General are by design independent. Okay? Independence is one of those first things that defines what an Inspector General is. The army teaches at their IG school that an Inspector General by tradition serves as an independent extension of the eyes, ears, voice, and conscience of the commander. Important that it's independent because the commander is ultimately the one who is responsible for the good order and discipline within a military unit just like the agency head or cabinet member is ultimately responsible for everything that goes on within that agency or department.

For instance, let's just bring it down to current events. All the stuff that you're reading about in the papers these days about the bad things that are happening or had happened within the Department of State, all of these bad things that need to be investigated, inspected or audited, these things are all the responsibility of the Secretary of State. The Secretary of State, by act of Congress, has an "independent

and objective unit.” This is from the Inspector General Act of 1978 that establishes the Office of Inspector General within the Department of State.

In addition to just setting up this Inspector General office within the Department of State, Congress found it necessary to put in a number of checks and balances to make sure that in fact that Inspector General is an independent and objective Inspector General. A number of those requirements are spelled out in the Inspector General Act. A number of them actually go back to our Constitution. And I’ll mention these ‘cause the Constitution is almost always talking about first things, and one of the requirements in the Inspector General Act which ties to the Constitution is, only the President of the United States can nominate an Inspector General, only the Senate can confirm an Inspector General, and only the president after senate confirmation can then appoint the Inspector General to serve as that independent and objective watchdog within the agency.

If you’ve read my Wall Street Journal article or my National Review article, or you’ve checked the Project on Government Oversight IG Vacancy Tracker Program recently, you will understand that there are currently seven vacancies in the federal government, seven IG offices that do not have Inspectors General. Six of those are Senate-confirmed Inspector General offices, and about half of the 73 federal Inspectors Generals are by statute required to be Senate confirmed. The other half are in relatively small organizations and they are appointed by their agency head but they’re also required to be independent and objective, and to follow those kind of first things about what it really means to be an Inspector General.

So the actual vacancies now in the federal government are first of all the State Department which has been vacant for over five years. The entire tenure of Hillary Clinton she has never had a Senate-confirmed Inspector General. The next one is Labor, and then Interior, then Homeland Security, then SEC, and then DOD. All six of those senate-confirmed IG positions, by statute and by the Constitution, are required to have an Inspector General that’s nominated by the President, confirmed by the Senate, and then appointed by the President to serve as that independent and objective watchdog to help both the agency head and Congress in their respective functions. As I said earlier, it is the agency head who is ultimately responsible for all these bad things, and the Inspector General is only a tool available to the agency head and to Congress to essentially oversee the operations of those federal agencies.

So what I wrote about recently is – and I think this is important to drive home and then I think I’m going to probably stop pretty soon and take some questions if that’s the way you want to do it, Frank – but I do want to get to not only a description of the problem, but I am going to announce at least today at least one proactive constructive suggestion that I have for the Congress to deal with this scandalous situation where the President of the United States, notwithstanding all of his talk about transparency – and this is not a partisan issue – it is just a fact that this current President came in talking all about transparency and accountability.

And even just two days ago the State Department announced the following – and this was reported in the New York Post on Tuesday – State Department spokesman Jen Psaki said that the agency was conducting internal investigations of all the cases that have come to light and wouldn't ignore serious charges against top officials. And she went on further – and this was publicly reported but this is an official State Department spokesman, not a spokesman for the State Department Office of Inspector General, by the way – but this State Department spokesman said, "We take allegations of misconduct seriously and we investigate thoroughly." "The notion that we would not vigorously pursue criminal misconduct in any case is preposterous." And "We've put individuals behind bars for criminal behavior." "Ambassadors would be no exception."

So my question for the Secretary of State and for the President is: Who's investigating Ambassador Susan Rice for appearing on TV after September 11<sup>th</sup>, 2012, and announcing to the American people and to the world that the terrorist attack was caused by a web-based, B-rated video? And then I'm going to quote the legal standard that, that blatant, false representation appears to have violated. And this is from Title 18 of the United States Code, Section 1038, the title of which criminal prohibition is "False Information and Hoaxes." This prohibits "engaging in conduct with intent to convey false or misleading information under circumstances where such information may reasonably be believed." So who's going to investigate Ambassador Susan Rice for that apparent violation of a federal criminal law? Who's investigating the author of the blatantly false parts of Ambassador Susan Rice's talking points that she utilized during her post-Benghazi-attack TV appearances, in apparent violation of Title 18 United States Code Section 1001(a-2) which prohibits anybody from "in any manner within the jurisdiction of the executive, legislative, or judicial branch of the government of the United States, knowingly and willfully making materially false, fictitious, or fraudulent statements or representations"?

Number 3 – Who's going to investigate Ambassador Susan Rice and anyone else who utilized her talking points, including the President of the United States in a speech to the United Nations a couple of weeks after the Benghazi attacked, for violating Section 1001(a-3) of Title 18 United States Code which makes it a crime "in any matter within the jurisdiction of the executive, legislative, or judicial branch of the government of the United States, knowingly and willfully to use any false writing or document knowing the same to contain any materially false, fictitious or fraudulent statement or entry"?

And finally, who is investigating Cheryl Mills, who according to the State Department IG memo that was quoted Tuesday in the New York Post "allegedly intervened" in a Special Investigations Division case "centered upon Brett McGurk, Obama's nominee to U.S. ambassador to Iraq"? This is continuing a quote from the memo, the SID "never interviewed McGurk allegedly because Cheryl Mills from the Secretary's office interceded." This is a quote from a IG office memo repeated in the New York Post, "Without that interview, SID, that is the Special Investigations Division at State Department, has been unable to close the case." That's the end of what the memo had concludes, but I'm saying there is a section of Title 18

United States Code, Section 1505, which makes it a crime “corruptly or by threats or force or by any threatening letter or communication to influence, obstruct, or impede or endeavor to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States.”

Those are obviously rhetorical questions because there is nobody – Eric Holder is not going to investigate these apparent criminal violations by ambassador-level officials in the United States State Department. And certainly, the retired ambassador who currently can’t even call himself the acting Inspector General of the State Department isn’t going to investigate these allegations. And so that leads to a proposal that I have for you – particularly those of you who are on Capitol Hill – to do something about this scandal because the current situation, at least for almost five-and-a-half years, is the President of the United States simply has refused to nominate anybody to be the State Department Inspector General. Well, I believe that if you look at the charters of the House and the Senate oversight committees – the House Oversight and Government Reform Committee and the Senate Homeland Security and Government Affairs Committee, I believe those are the correct titles – if you look at the charters of those committees, those committees are charged in overseeing the operations of the executive branch. In vernacular, we learned this when we got confirmed by the Senate, those two committees own the Inspector General Act. And I would submit to you today that it is within the power of the chairman and the ranking members of both of those committees to appoint special independent monitors for every vacant IG office until the President nominates and the Senate confirmed independent and objective watchdogs that the law requires.

And I have one further suggestion along that lines – when the chairman and the ranking members announce their plans to fill or to appoint independent watchdogs to do what the law already requires, they should require an accounting from each agency for every dollar that has already been appropriated to pay for an Inspector General including that Inspector General’s special assistant, executive assistant, whatever else is not being paid for now out of already-appropriated money, and the chairman and the ranking members of the committee should use that already-appropriated money to fill the gap until the president does his statutory and constitutional duty so it won’t cost the taxpayers a single additional dollar.

**FRANK:**

Joe, thank you. That is splendid – great and troubling analysis followed by some very practical suggestions as to what might be done about it. Can I just add that one of the things that you sort of alluded to but that needs to be made very explicit here is this is presumably something on which there should be the broadest of bipartisan consensus since the Left –

**JOSPEH SCHMITZ:**

There's nothing partisan about –

**FRANK:**

The Left as I recall was most insistent upon having these Inspectors General in many of these agencies, so I would think that despite the fact that this oversight has seemingly been less than comprehensive for the past five years, particularly in the State Department, that this is something that the Left and the Right could come together to remedy.

**JOSEPH SCHMITZ:**

Not only should it be something that both sides of the aisle enthusiastically embrace, but in my judgment it's not an option because the U.S. Constitution Article 1, Section 9 says "A regular statement and account of the receipts and expenditures of all public money shall be published from time to time." And it doesn't say the executive branch has to do that. It doesn't say the legislative branch has to do it. It doesn't even say the judicial branch has to do it. It's a general constitutional duty of public accountability and transparency that is being flagrantly flouted right now, and Congress has the power to do something about that.

**FRANK:**

Yes sir. Mike, down here.

**MIKE:**

[UNCLEAR] attorney general?

**FRANK:**

Yes.

**JOSEPH SCHMITZ:**

Before I answer that, I understand that my presented comments were supposed to be videotaped, and I understand that the rules are that after that we go to a totally-off-the-record session.

**FRANK:**

We can do it as you wish. What we have typically done –

**JOSEPH SCHMITZ:**

Whatever you guys want to do, I'm willing to play by the rules.



**FRANK:**

Our preference is to have the questions be off the record so that particularly if congressional staffers wish to ask them there's no danger of them being –

[ABRUPT STOP-START TO AUDIO]

**MAN:**

Inspector General, are you the only non-Marine graduate of the Naval Academy to be properly addressed as general? Maybe not. Maybe there are some Air Force people around. I don't know.

**JOSEPH SCHIMITZ:**

No. I think maybe. Maybe.

**MAN:**

I have a different reaction than maybe you expected from your remarks. I didn't know about these laws. I generally feel that we maybe have too many laws. Would it be true that someone giving a cover story, supposing it were a more benign operation than the Benghazi evasions that have occurred, that a cabinet-level official giving a cover story about something could also be found to be in violation of these laws that are talking about hoaxes and so on? Do you understand what I'm saying?

**JOSEPH SCHIMITZ:**

The premise would be that it was a false story –

**MAN:**

False, knowingly false story given by, you know, for example the Secretary of Defense about an event that occurred in Lebanon or something where American troops were there and he didn't want to tell the right story, would that also be a violation of these laws?

**JOSEPH SCHIMITZ:**

Arguably. These are criminal statutes. There are rules against vagary in criminal statutes. There are a number of protections so that American citizens are not inadvertently doing things they think are legal, and then they find out well, in fact they're not only illegal but there's criminal penalties. Those are the typical type of laws; the due-process clause, the ex-post-facto clause and the rules against vague criminal laws are intended to protect us against abuses by our government. And so, I would have to look at the specific facts you're talking about in order to make a better, more intelligent response. But in theory, if a

public official were to come up with a – by definition false story is what a cover story is – and use that in a way that perpetuates a hoax, that would theoretically be a violation of the statute that I was reading from.

**MAN:**

Is there an alternative, a way to do something legally along those lines?

**JOSEPH SCHMITZ:**

Well, when I served in uniform, when we're asked a question that we could not answer, we always had a standard answer. It was "I can neither confirm nor deny", and that was the end of the matter.

**FRANK:**

Right. Let me just say, I think that it obviously would fall to agencies of the government to engage in any prosecution and to the extent that this kind of activity is authorized, I doubt that, that would be pursued.

**JOSEPH SCHMITZ:**

Hold on. I have a very important answer to follow on from what you just said, Frank. There is a very, very important first thing you have to understand about an Inspector General. An Inspector General is not a prosecutor. The mission of an Inspector General is fundamentally to shed light on facts. It doesn't matter if it can be prosecuted, and it doesn't matter if the facts are classified because every Inspector General has a clearance. So, if there are facts associated with classified information, the Inspector General does not ask himself will a prosecutor ever have to prosecute.

I had to deal with this when I was investigating and inspecting human trafficking in Bosnia. And the army lawyers had told the CID, "Don't investigate 'cause we can't prosecute." Well, that was the wrong answer. Congress passed a law called the Military Extraterritorial Jurisdiction Act because of that, and they asked me to investigate regardless of whether we could prosecute. And I did investigate and I substantiated, and then I turned over the results of my investigation about blatant human trafficking by U.S. Department of Defense contractors – and State Department contractors by the way – I turned over the factual results of my investigation in that case to the contracting officers in the Department of State and the Department of Defense for those contractors that had violated rules against human trafficking – slavery – even though we couldn't prosecute the stuff that was happening in Bosnia for nuances that didn't really matter to me 'cause my only issue was what happened.

That's a very important first thing to understand about an Inspector General. It doesn't matter if you can't prosecute. An Inspector General can still find facts.