

THE TENTH HUGH J. CLAUSEN LECTURE ON LEADERSHIP¹**JOHN O. MARSH, JR.²**

¹ This is an edited transcript of a lecture delivered by The Honorable John O. Marsh, Jr., former Secretary of the Army, to members of the staff and faculty, their distinguished guests, and officers attending the 52d Judge Advocate Officer Graduate Course at The Judge Advocate General's School, Charlottesville, Virginia, on 12 May 2004. The Clausen Lecture is named in honor of Major General Hugh J. Clausen, who served as The Judge Advocate General, United States Army, from 1981 to 1985 and served over thirty years in the United States Army before retiring in 1985. His distinguished military career included assignments as the Executive Officer of The Judge Advocate General; Staff Judge Advocate, III Corps and Fort Hood; Commander, United States Army Legal Services Agency and Chief Judge, United States Army Court of Military Review; The Assistant Judge Advocate General; and finally, The Judge Advocate General. On his retirement from active duty, General Clausen served for a number of years as the Vice President for Administration and Secretary to the Board of Visitors at Clemson University.

² John O. Marsh, Jr., a native of Virginia, is a former Secretary of the Army and former Virginia Representative in Congress. He was a cabinet rank Counselor to President Ford. By appointment of former Secretary of Defense Cheney, he also served 1989-1994 in the position of Chairman of the Reserved Forces Policy Board, an advisory body in the Department of Defense relating to all the U.S. National Guard and Reserved Forces. Subsequently, for Secretary of Defense William J. Perry, Marsh chaired the panel on Quality of Life for members of the Armed Forces and their families. Marsh was born August 7, 1926, in Winchester, Virginia. He received his LL.B. degree in 1951 from Washington and Lee University and began the practice of law in Strasburg, Virginia. He was elected to four terms as a Representative in Congress from the Seventh District of Virginia (1963-1971) and was a member of the House Appropriations Committee. Choosing not to seek a fifth term, he resumed the practice of law. In March 1973, he returned to federal service as Assistant Secretary of Defense (Legislative Affairs). In January 1974, he became Assistant for National Security Affairs to Vice President Ford, and, in August of that year, Counselor, with Cabinet Rank, to President Ford. He returned again to private law practice in January 1977, as a Washington, D.C. resident partner of a major Virginia law firm. For President Ford, he had oversight of the Amnesty program and directed the Legislative Affairs program for the Ford White House. He chaired a panel of cabinet ranked members to make recommendations to the President for the reform and reorganization the United States intelligence community. At the request of President Ford he chaired the transition of the Ford Administration to the Carter Administration. On 30 January 1981, Marsh was sworn in as Secretary of the Army. When he retired from that post on 14 August 1989, his tenure was the longest of any Secretary of the Army or Secretary of War in the history of the Republic. During 1988, pursuant to an enactment of Congress, he served concurrently as the first Assistant Secretary of Defense (Special Operations/Low Intensity Conflict), to organize that office in the Department of Defense. On completing his service as Secretary of the Army, he undertook a special assignment as Legislative Counsel to Secretary of Defense Cheney for the development of legislative recommendations relating to streamlining of the defense procurement process, and then joined the Hazel & Thomas law firm early in 1990. He has been awarded, on six occasions, the Department of Defense Distinguished Public Service Award, and has been decorated by the governments of France and Brazil.

Let us consider history and philosophy. I am of the view that many answers to the current world situation are likely to be found in history and philosophy. I believe the study of history and philosophy will enable us to frame the doctrines and the strategies needed to address the challenges of our time.

Consider Philadelphia in September 1787. The Constitutional Convention has just concluded. There were fifty-five original delegates. Of the fifty-five, only thirty-nine delegates signed the U.S. Constitution; the others did not for differing reasons. Of the thirty-nine who signed it, the majority of them were veterans of the American Revolution. This majority put the life and death powers of the nation in the Congress, not in the Executive Branch. By original design, the most powerful chamber is the House of Representatives, not the Senate. Senate members were first elected by legislatures of the states; they were intended to be ambassadors to the national Congress from the states. Election of Senators by popular vote was provided by the Seventeenth Amendment to the Constitution and adopted in 1918.

The power to raise taxes is vested in the House, and the power to appropriate money, by implication, is also vested in the House. All tax bills must originate in the House. House terms for two years were

He holds the Presidential Citizens Medal. Mr. Marsh enlisted in the United States Army in 1944, during World War II, and was commissioned a second lieutenant at age nineteen, upon graduation from Infantry Officer Candidate School. He later served in the Army Reserve and the Virginia National Guard from 1954 to 1976, much of the Guard service being in the 116th Infantry Regiment. He graduated from the Army Airborne and Jumpmaster Schools and earned Senior Parachutist Wings. While in Congress, he served a thirty-day voluntary tour of active duty in Vietnam as a major, the only seated member of Congress to do so. In 1990, Mr. Marsh was selected by the Virginia Press Association to receive its "Virginian of the Year" Award. Thirty years before, he had been named by the Virginia Jaycee's the "Outstanding Young Man in Virginia." He was chosen by the Association of the United States Army as recipient of its George Catlett Marshall Medal for public service. The John O. Marsh, Jr. Armory, a Virginia National Guard facility in Woodstock, Virginia, was named in Marsh's honor and dedicated in November 1996. In 1998, Mr. Marsh served as Visiting Professor of Ethics at the Virginia Military Institute in Lexington, Virginia. On 25 October 2002, Mr. Marsh received the first Harry F. Byrd, Jr. 1935 Public Service Award. Marsh is married to the former Glenn Ann Patterson, and they have three children: Rob, a physician, Rebecca, a former high school counselor, and graduate of William and Mary, and Scot, a surveyor, and graduate of the Virginia Military Institute. Both Rob and Scot Marsh were recalled to active duty in Operation Desert Storm, and took part in combat operations in the Gulf War. Rob Marsh, a Special Forces combat physician serving with Delta Force, was seriously wounded while serving with a special operation in Somalia. Presently, he is a country doctor in the village of Middlebrook, Virginia, and teaches medicine at the University of Virginia.

intended as a safeguard on defense spending.

George Washington, the most powerful person in the country, was the President of the Convention. The Constitutional document was largely the drafting effort of James Madison. James Madison was a native of this area, and represented it in the first Congress.

Madison wrote, I'm sure, on behalf of Washington, the resolution of transmittal, sending from the Convention the proposed new Constitution to the Confederation Congress. It is important to note the work of the Constitutional Convention was done in camera. I make that point because I think we have at times gone overboard on access by the public to the deliberations of political and other public bodies, which sometimes can be counterproductive to the political deliberation process. General access to meetings of public officials is appropriate, but the rule of reason must be applied.

The U.S. Constitution was drafted in secret. Its provisions were really not disclosed until about the 1830s, and occurred with the publication of James Madison's papers.³ It is doubtful the Constitution could have been drafted if the meetings had been public.

The transmittal resolution reflected that Washington recognized the heart of what they were doing, and the real issue facing the country. In the resolution, he said, "It is obviously impractical in the federal government of these states to secure our rights of independent sovereignty to each and yet provide for the interest and safety of all. Individuals entering into society must give up a share of liberty to preserve the rest."⁴

It was the great seventeenth century philosopher John Locke whose ideas influenced our government more than any other person living beyond our shores. Locke was a physician who, as a young boy, lived through the English Civil War of the 1640s.⁵ The war had a profound impact on him. At that time—and this is hard for us to comprehend today—there was a theory of government espoused by the Stuart Kings;

³ James Madison, *The Papers of James Madison*, available at http://memory.loc.gov/amem/collections/madison_papers/ (last visited Aug. 16, 2006).

⁴ Letter from the Federal Convention President to the President of Congress (Sept. 17, 1787), <http://federalistpatriot.us/histdocs/loft.htm>.

⁵ British Broadcasting Centre, *Civil War 1625-1649*, <http://www.open2.net/civilwar/> (last visited Aug. 16, 2006).

namely James I, Charles I, Charles II and James II in the seventeenth century. This theory held a ruler's authority and power came by Divine Right⁶. This theory is discussed in *Encyclopedia Britannica*, and other reference books. James I wrote a dissertation justifying government by Divine Right.

Proponents of the theory argued a ruler was placed on the throne by Providence. Under the theory of Divine Right, the King can do no wrong; if he is a bad ruler, and the citizens suffer from his oppression and bad decisions, then under Divine Right he will be punished by Providence when he dies. Locke became an opponent of this theory. He developed the theory that to have a secure society with liberty and justice, and to repel invasion, you must establish a government that protects liberty, provides justice, and can repel aggression. The rights of personal property are much a part of these rights under Locke's theory.

In January of last year, President Václav Havel's⁷ term came to an end as the leader of the Czech Republic. Havel, a renowned intellectual and poet, had been imprisoned during the Cold War for his political views. He had gained elective office—head of the Czech Republic. When he stepped down from this office, the media called him “The Philosopher King.” One reporter commented that there were dents in the crown of the philosopher king. Havel seemed to echo that view when he responded, “We cannot expect that the world—in the hands of poets—will suddenly be transformed into a poem.”⁸

Current events in our world today confirm that the world is not a poem. Our Capitol city, Washington, in the early years of the third millennium, is becoming the city of the Jersey Walls. Accessibility to government buildings is limited, and protected by armed guards. Sensor devices scan your briefcase, and your person. This is aimed to thwarting a would-be terrorist. These circumstances point to the vulnerability of an open society, and how much we need the wisdom of the Founding Fathers to secure our liberties today. I have a problem with sequestered federal buildings. I have a concern where federal public servants are sequestered from the people they serve, and where you, in effect, have to

⁶ See THE COLUMBIA ENCYCLOPEDIA, *Divine Right of Kings* (6th ed. 2001-2005), available at <http://www.bartleby.com/65/di/divineri.html>.

⁷ See Arie Farnham, *Havel Era Ends in Czech Republic*, CHRISTIAN SCI. MONITOR, Jan. 31, 2003.

⁸ Vaclav Havel, *A Farewell to Politics*, N.Y. REVIEW OF BOOKS, Oct. 24, 2002.

get a permit to see them. I think this runs counter to the American experience.

In 1790, Thomas Jefferson had just returned from France. He was asked by a reporter, "Who did he consider the greatest man in America?" Jefferson did not hesitate, and he answered, "James Madison."

Locke's philosophy argued that individuals entering society must give up a share of liberty to preserve liberty for the whole. For Locke, it was a theory, to build a government with separation of powers between the legislative and executive branches. Madison took this theory and made it a reality. Madison was not only a superb political theorist and philosopher, but also a hands-on political practitioner and a political realist. The realism is reflected in his comment, "If men were angels, no government would be necessary."⁹ He remained, nonetheless, for his realism a political visionary, and the Constitution is a document of extraordinary flexibility. It is a product of his vision and his intellectual genius. It should be noted, he had studied for years, and prepared himself for political leadership.

In the Virginia Code, following the Constitution of the United States, and the State Constitution, in a statute that reads in part, "The common law of Virginia, in 1776, shall be the Common Law of England." The next statute in the code states that those acts of Parliament, including the English Bill of Rights, which are compatible with the laws of the Commonwealth that shall be the law of Virginia. These two provisions reflect our heritage from the English judicial system.

At this very moment, in the Middle East, the United States and forces of other nations are engaged in a struggle to stem terrorism. This is a different kind of terrorism. It incorporates information technology and cyber resources as weapons. These are tools used by both sides in the war. Because of cell phones, less developed countries have skipped the wires and poles generation in development of communication. They have acquired a highly effective, reliable communication system using cell phones for internet and e-mail. Terrorists use encrypted information. It may be embedded in different ways in their messages, making it harder to discover.

⁹ THE FEDERALIST NO. 51 (James Madison), *available at* <http://www.thirteen.org/federalist/paper51.html> (last visited Aug. 16, 2006).

I suggest you read a Federal publication that deserves greater consideration, "Critical Foundations."¹⁰ Perhaps, you have seen it, if not, you can get it online. It is a publication from a commission appointed by the President of the United States in 1997. You will recall before 9/11—there was terrorist act in Oklahoma City in 1995, the bombing of the Murrah Building. There were immediate grounds for federal jurisdiction because it was a Federal building that was bombed. Consequently, the FBI took jurisdiction. As a result of the attack, President Clinton appointed a study commission; half of the commission was from government, and half from the private sector. The commission examined cyber-activity, and the need to protect the national information infrastructure. Out of this Presidential study would come Presidential Decision Directive (*PDD*) 62, *Weapons of Mass Destruction*¹¹ and parts of *PDD* 63, *Presidential Decision Directives, Cyber and Information Infrastructure*.¹²

The Presidential study cited two major conclusions. First, there is a lack of awareness in America on the vulnerability of the Nation's infrastructure. Secondly, the law lags badly, and is failing to keep pace with emerging technology. The Presidential Report points out where the law lags, and how it should be remedied. The fact that that some of our laws for the cyber world are inadequate was demonstrated in the Y2K challenge. Remedies for Y2K could not have been accomplished if the Congress had not suspended briefly, the Freedom of Information Act (FOIA) and the Antitrust statutes.

The computer world poses major challenges. It is estimated that as much as 90% of the information infrastructures is in the private sector. If James Madison were alive today, I am sure he would relish these challenges of private sector governmental cooperation. However, I am of the view that the talent and resources are here in this room to address these challenges.

¹⁰ PRESIDENTS COMMISSION ON CRITICAL INFRASTRUCTURE PROTECTION, *CRITICAL FOUNDATIONS: PROTECTING AMERICA'S INFRASTRUCTURE* (1997).

¹¹ Fact Sheet- The White House, Office of the Press Secretary, *Combating Terrorism: Presidential Decision Directive 62* (May 22, 1998), available at <http://www.fas.org/irp/offdocs/pdd-62.htm>.

¹² The White House, Washington, *Critical Infrastructure Protection: Presidential Decision Directive/NSC-63* (May 22, 1998), available at <http://www.fas.org/irp/offdocs/pdd/pdd-63.htm>.

The Presidential report on protecting the infrastructure suggests the creation of ISACS, Information Sharing Analysis Committees, to achieve better communication and cooperation between government and the private sector. The report recommends dividing the United States infrastructure into seven sectors, including transportation, petroleum, and electric power grids and financial services. It is envisioned that within the ISACS, there can be an appropriate exchange of information to contribute to the effectiveness of these infrastructure components.

In *The Republic*,¹³ Plato, discusses the ideal state and the qualifications you need in the leader of that ideal state. He made this observation, “Until philosophers are kings, or kings philosophers, or the kings and princes of this world have the spirit and power of philosophy, and political greatness, and wisdom meet in one, cities will never have rest from their evils, nor shall the human race.”¹⁴

I served on a committee that was established by Congress to look at impacts of weapons of mass destruction in a terrorist attack in our cities and communities. This committee is referred to as the Gilmore Commission because it was chaired by Governor Gilmore of Virginia. A number of issues were raised in the commission reports. The Commission found there is a failure in transferring vital classified information to others in government who need this information. The current system of classification of sensitive information is a relic of the Cold War. The Gilmore Commission surveyed thousands of first responders, and they pointed to the need to develop a process so first responders- the sheriffs, the police, the firefighters- can obtain the information they need. You cannot do it under the current system. It is expensive to get security clearances even in the federal system, and often clearances are not transferable to other federal agencies. This should have been corrected years ago.

I suggest you look at the issues associated with Continuity of Government Commission (COG)¹⁵ and Continuity of Congress

¹³ Wikipedia, Republic (Plato), http://en.wikipedia.org/wiki/Plato's_Republic (last visited Aug. 16, 2006).

¹⁴ *Id.*

¹⁵ Continuity of Government Commission, <http://www.continuityofgovernment.org/home.html> (last visited Aug. 16, 2006).

Commission (COC).¹⁶ There is legislation proposed in reference to both of these. The House of Representatives poses a special problem in continuity of Congress. Filling a House vacancy requires a special election. In the Senate, however, as a general rule, when a vacancy occurs, the Governor of the state can make the appointment to fill the seat.

There is much public discussion about “data mining.” A little over a year ago, the Defense Advance Research Projects Agency,¹⁷ began a program called Total/terrorism Information Awareness (TIA)¹⁸. Secretary Rumsfeld appointed a committee to look at privacy issues raised by technology and their impact on defense programs. I was a member of that study group. Data mining can be troublesome, and it is increasing. With computers, it becomes hard to control. One data mining technique is radio frequency detection (RFID). RFID began as an inventory control measure. The device may be no larger than the head of a pin. In the manufacturing process, it might be inserted into a jacket or belt. When the item comes off the production line, it can be tracked to its final destination. However, its use is being expanded well beyond inventory control measures.

Contributing to the problem of data mining is the fact that individuals give third parties the authority to collect personal data. For example, if you shop in a Food Lion or Safeway with the “bonus” card, you disclose your shopping preferences when you check out. This shopper information is collected, and can be sold to other commercial interests.

As a general rule, every successful piece of legislation in the United States Congress travels two roads. First, it has to travel the “authorization road” to obtain legislative approval. Then, it must go back through the legislative process to obtain the money needed to fund the authorized project.

To demonstrate this point, when the American Revolution, in effect, ended on the 19th day of October in 1781 at Yorktown by British troops

¹⁶ *Id.*

¹⁷ Defense Advanced Research Projects Agency, <http://www.darpa.mil/> (last visited Aug. 16, 2006).

¹⁸ Total/Terrorism Information Awareness, <http://www.epic.org/privacy/profiling/tia/> (last visited Aug. 16, 2006).

surrendering to Washington, Washington immediately dispatched a courier to Philadelphia. The courier's mission was to get the surrender news to the Congress in Philadelphia quickly. The Continental Congress, on receiving this news, adopted a resolution to construct a monument at Yorktown to honor that great victory. On the 19th day of October 1891, 100 years later, President Chester Arthur unveiled the monument approved a century before. It took 100 years to get the money appropriated.

There was a reorganization of the American intelligence community in 1975. This was the post Watergate era and it was a horrendous time. Two Special Congressional committees were formed. One was the Church committee in the Senate, chaired by Senator Church. The House committee was called the Pike Committee, chaired by Representative Pike. I was tasked by President Ford to chair the White House effort to respond to the Congressional Committees. This effort was two-fold; first, handle the Congressional Committee's many requests for documents and witnesses, and second, develop an Executive Branch program to address abuses and prevent their reoccurrence. The issue of protecting Executive Privilege was also a significant one.

The National Security Agency (NSA)¹⁹ does not have a statutory charter. It was created by an Executive Order of President Truman in 1952. In the 1970's Congress considered changing that. This was fueled in part by the Watergate crises and abuses. After the election in 1974, the membership of both Houses of Congress were two to one against the administration. President Ford did not want to change the status of NSA because its extraordinary capabilities in intelligence collection which benefited greatly the national security elements of the Executive Branch. In part, because of the reforms he mandated in Executive Order 11905, an understanding was reached with the Congress and a legislative charter for NSA was averted. This understanding would also see the creation of Committees on Intelligence in both Houses of Congress.

Let me close with an anecdote, which to me says something about the strength of our Republic and its commitment to the rule of law. It was an event to which I was privy since I was serving Vice President Ford as his National Security Advisor and became aware of the developments leading to his assuming the Presidency.

¹⁹ National Security Agency, <http://www.nsa.gov/> (last visited Aug. 16, 2006).

Early in August, it became clear that President Nixon was seriously considering resigning, and that Vice President Ford was advised he could expect a call to meet with President Nixon to discuss this. That call came Thursday morning on 8 August 1974, and the two men met in the White House for an hour, or more.

The Vice President returned to his office in the Executive Offices shortly after noon. Mr. Ford met with his Chief of Staff, Bob Hartman, and me. He told us President Nixon had decided to resign as of noon the next day- a Friday.

In response to a question by Mr. Hartman, the Vice President said he would like to be sworn in by the Chief Justice, Mr. Warren Burger. An inquiry to his court chambers in Washington indicated he was attending an international law conference at The Hague. Mr. Ford spoke by phone with the Chief Justice, who indicated his willingness to participate but there was a problem in finding a commercial aircraft flight to get him to Washington for an event that was now less than 24 hours away.

The fleet of official aircraft at Andrews Air Force Base are under White House control. By four o'clock, I could tell the Chief Justice that an Air Force aircraft was enroute to The Hague. It was double crewed, one crew for the flight to Europe, and the second crew, after refueling, to fly him back to Andrews. At Andrews, the Chief Justice was air lifted by chopper and flown to the South Lawn of the White House shortly before the historic swearing in.

Now, I have often thought that an international tourist who was there at the time and would see that plane would obviously recognize it and say, what is that plane, and why is it here? The answer would be that the plane was sent with approval of the President of the United States to bring back to the United States the Chief Justice of the Supreme Court, who had written the unanimous decision that caused the President to resign. The Chief Justice would now return to America to swear in the Vice President of the United States to be the new President.

I think this transition of power demonstrates the quality and the soundness of this great Republic.

I wish you well in your careers, and thank you for your service to our Country.