



Then-LTG George Patton instructs troops in Sicily, Italy in 1943. (Source: Library of Congress)

MG Patton: What's the matter, Brad? I've been nominated by the President.

BG Bradley: I know . . . but it doesn't become official until it's approved by the Senate.

MG Patton: Well, they have their schedule and I have mine.⁴

Whether GEN Patton prematurely pinned on his lieutenant general rank is questionable. My assumption is the scriptwriter, Francis Ford Coppola,⁵ inserted this scene to illustrate GEN Patton's driving ambition and to foreshadow his eventual fall from grace. But every time I watch this movie, I wonder what I would have done had I been MG Patton's legal advisor and learned about this.

As an Army captain serving as a judge advocate (JA), I know I would have remained quiet—understandably, given the rank disparity. Even later, as a major JA, I probably still would not have said anything out of fear of losing the general's confidence. With experience as a lieutenant colonel, I gained more courage to speak the uncomfortable truth, but I also recall moments in my career when I awkwardly delivered advice that I knew would draw an adverse reaction from the senior officers I advised.

Some of us who have served as Army JAs or legal advisors may have encountered what I'll refer to as "Patton" moments—instances of largely undetected misconduct by Army officials that come to our attention. How we react in these moments can define our choice to place ethics over the perceived risk to our careers. Most of our careers are characterized by the delivery of mundane yet important legal advice. However, a review of past inspector general investigations illustrates that some of us have experienced, and will experience, pivotal Patton moments.

Effectively delivering difficult and seemingly mundane legal advice is a critical skill requiring some introspection. We all learn how to research and analyze legal and regulatory precepts in law school. However,

Court Is Assembled

Patton and Principled Counsel

By Margaret "Peggy" Baines

Sometimes, moments from a good movie can apply to our own experience, making them that much more unforgettable. One of my favorite movies is *Patton*, a 1970 biographical film about General (GEN) George S. Patton during World War II.¹ GEN Patton was best known for his larger-than-life, quirky personality and his history-making command of the Third Army in 1944. There, he famously led the unit's lightning trek across France, followed by its relief of the surrounded 101st Airborne Division in the Battle of the Bulge.² In one memorable scene, then-Major

General (MG) Patton arrives to take command of the II Corps from his predecessor, who had recently been relieved after the unit's defeat in the Battle of Kasserine Pass. While listening to Brigadier General (BG) Omar N. Bradley's³ description of his impressions of the embattled unit, MG Patton's aides are pinning the three stars of the lieutenant general rank on his collar even though the Senate had not yet approved this promotion. These words are spoken:

[BG Omar Bradley frowns as Patton pins on his new stars]

few law schools teach when and how to effectively deliver this analysis, and even fewer teach when and how to deliver to a military client. Some Army JAs and legal advisors seem to have been born with the ability to effectively deliver legal advice; their clients flock to them for advice on non-legal as well as legal issues. I learned, and continue to learn, this skill the hard way—through personal experience, both good and bad. Is experience the only way to learn this skill? Can't it be taught?

The Army Judge Advocate General's (JAG) Corps labels this skill "Principled Counsel," defined as "professional advice on law and policy grounded in the Army Ethic and enduring respect for the Rule of Law, effectively communicated with appropriate candor and moral courage, that influences informed decisions."⁶ In this article, I offer my view on this skill based on my specialization in the ethics field and my years as a JA and then as a legal advisor for the Army. I have found that the delivery of principled counsel is a team sport, a skill to be practiced in collaboration with supervisors, mentors, and peers. These relationships provide the opportunity to learn from another's experiences, carrying the potential to enhance technical competence, effective communication, appropriate candor, and moral courage, all tenets of principled counsel.

The JAG Corps also promotes the delivery of principled counsel as a team sport. For example, one key method that The Judge Advocate General's Legal Center and School in Charlottesville, Virginia, employs to teach principled counsel to new JAs consists of matching them with a mentor from the Graduate Degree Program (GDP), who has typically five to eight years of experience and who is preparing to assume a leadership role upon their return to the field. The two interact during structured small group seminar discussions and ideally outside of the classroom as well. The relationship facilitates principled counsel instruction for the new JAs, who learn from the GDP students' experience, as well as for the GDP students, who learn how to teach principled counsel to junior JAs.⁷ This relationship provides new JAs with an experienced person to consult outside the chain of command without fear of supervisory judgment.

I learned early in my career that the rugged individualism I prided myself on in law school, shrugging off study groups and other collaborative ventures, did not enhance my principled counsel skills and, in fact, had no place in the practice of law in the Army. As a new trial counsel, I was assigned a particularly busy jurisdiction. I coped by spreading myself thin, trying to accomplish everything to some degree. An ensuing court-martial acquittal and speedy trial violation⁸ made it obvious that this approach did not work. A mentor's advice opened my eyes to focus on the most important action facing me, namely the next court-martial, and to delegate actions of lesser importance (such as chapter actions and non-judicial punishments) to paralegals, ask fellow trial counsel with quieter jurisdictions for assistance, and to keep the chief of justice informed of my workload and priorities. Being everything to everybody resulted in providing defective counsel across the board; focusing on the important matters and asking for help resulted in principled counsel, and court-martial victories as well.

Teamwork enhances the effective communication of legal advice with appropriate candor and moral courage—perhaps the most important part of principled counsel. Teamwork is especially vital when faced with allegations of misconduct by Army officials. The most difficult part of delivering this advice is that there is no guarantee that the Army official will heed your advice and a good chance that the official will stop seeking your counsel should you present advice that will not be well received. Inspector general reports of senior official ethical misconduct often involve early warnings from a JA or legal advisor that were brushed aside. But the risk of being ignored or even ostracized must not deter the delivery of this principled counsel.

This communication begins by gathering as many facts as possible and thoroughly understanding the governing provisions. You must become absolutely certain that the Army official's action, if true, violated a statutory or regulatory provision. Consulting with the next legal advisor in your technical chain, as well as with subject matter experts in your office and perhaps a mentor as well, is vital—it is part of the

teamwork underlying the delivery of principled counsel.

Becoming absolutely certain that the Army official's action violated a provision is often problematic. For example, statutory and regulatory provisions in the practice of ethics often leave the final determination of officiality up to the senior official. In other words, whether an action supports the accomplishment of the Army mission is often the approval authority's call, not the JA/legal advisor's call.

I've seen many JAs/legal advisors make the mistake of determining themselves whether an action supports mission accomplishment, and, in doing so, erroneously communicating an appearance allegation as a clear-cut violation. If the commanding general (CG) is authorized to approve their spouse's invitational commercial air travel at Government expense⁹ to an event where the spouse's travel does not appear to clearly produce a "direct service for the Government"¹⁰—for instance, to a sporting venue where the CG has been asked to make an official presentation and the spouse's participation appears minimal—the "direct service" call is still up to the CG, not to the JA or legal advisor. The JA's or legal advisor's job is to point out the potential adverse appearance of the spouse's travel but not to determine whether the travel produces the requisite direct service. I have seen senior officials reconsider their decisions once informed that the ultimate call is theirs, not the JA/legal advisor's. Some officials want the shield of a JA/legal advisor's determination in these instances. A senior official once demanded that I revise my ethics opinion wherein I noted the potential appearance of impropriety that could result from his proposed course of action, but I left the final decision to him. Fortunately, my supervisor supported me when I declined.

Another aspect of educating yourself fully on the provisions governing the circumstances involves developing courses of action. This is especially helpful when a statute or regulation forces a "no" response to the proposed solution. In the spouse travel example, offering suggestions on augmenting the spouse's involvement at the sporting venue so the travel meets the "direct service" standard is a good example



Then-LTG George Patton. (Source: Library of Congress)

of principled counsel practice. Those whom we advise usually appreciate receiving courses of action rather than a simple legal objection when appropriate. Teamwork almost always enhances the development of these courses of action.

Suppose the official has already clearly committed a statutory or regulatory violation. A mentor of mine often cited this quote from famous baseball coach Tommy Lasorda as a metaphor for our work: “Sometimes you’ve just got to let an umpire know that you’re not satisfied with his decision. That they’ve missed the play in your opinion. Not that it’s going to do you any good, but you’ve got to let them know.”¹¹ While it is true that sometimes your counsel will not be heeded, just letting the official know that they “missed the play” (another term found in baseball)—that you, aided by your team of advisors, question the wisdom of their actions—a can plant the seed of change. Allegations of misconduct against senior officials must also be reported to the inspector general.¹²

The actual delivery of principled counsel is another aspect that benefits from teamwork. As with trial work and mock boards, strategizing with the next legal advisor in your technical chain and your trusted subordinates on how to conduct the meeting with the official is

helpful. Face-to-face discussions are usually preferred, and bringing in a subject matter expert with you provides credibility as well as a witness to any unexpected reactions.

These are just a few of my thoughts on developing principled counsel skills. At this point in my career, I believe I have improved my delivery of principled counsel with the help of my mentors, peers, and supervisors. I have learned in practice what the JAG Corps teaches, that principled counsel is not a skill to be practiced in isolation but rather with your team. At this stage of my development, as a member of GEN Patton’s staff during the unauthorized pinning of the 3-star rank, I would have immediately brought the incident to the attention of the next legal advisor in my technical chain, as well as to a mentor. After consulting with the subject matter experts in my office, I would have informed the general that his actions were not only improper, but also that they would have served to tarnish his image and cause others to doubt his integrity. And perhaps I would even suggest to MG Patton that he “Go forth and conquer but do so legally and ethically.” Well, maybe . . . **TAL**

Ms. Baines retired from her role as the Associate Deputy General Counsel, Ethics and Fiscal Law, U.S. Army Office of General Counsel, at the Pentagon, in November 2024.

Notes

1. PATTON (20th Century Fox 1970).
2. *The Battle of the Bulge*, U.S. ARMY AIRBORNE & SPECIAL OPERATIONS MUSEUM, <https://www.asomf.org/the-battle-of-the-bulge-asom> (last visited Oct. 28, 2024).
3. General Omar N. Bradley was a senior Army officer during and after World War II and was the first chairman of the Joint Chiefs of Staff. *Omar Bradley*, BRITANNICA (Aug. 14, 2024), <https://www.britannica.com/biography/Omar-Nelson-Bradley>.
4. *Patton: When an Oscar Movie Really Mattered*, LA TIMES (Feb. 13, 2009), <https://www.latimes.com/archives/blogs/the-big-picture/story/2009-02-13/patton-when-an-oscar-movie-really-mattered>.
5. *Patton*, IMDB, <https://www.imdb.com/title/tt0066206> (last visited Oct. 28, 2024).
6. The Judge Advoc. Gen. & Deputy Judge Advoc. Gen., U.S. Army, TJJAG & DJAG Sends, Vol. 40-16, Principled Counsel – Our Mandate as Dual Professionals (9 Jan. 2020).
7. Colonel Sean T. McGarry, *Can Principled Counsel Be Taught?*, ARMY LAW., no. 4, 2021, at 2.

8. The present day “speedy trial” standard is found in the *Manual for Courts-Martial*. MANUAL FOR COURTS-MARTIAL, UNITED STATES, R.C.M. 707 (2024) (“The accused shall be brought to trial within 120 days after the earlier of (1) Preferral of charges; (2) The imposition of restraint . . . or (3) Entry on active duty under R.C.M. 204.”).

9. See U.S. DEP’T OF ARMY, DIR. 2020-14, ARMY SPOUSE TRAVEL (23 Oct 2020); U.S. DEP’T OF DEF., THE JOINT TRAVEL REGULATIONS (JTR): UNIFORMED SERVICE MEMBERS AND DoD CIVILIAN EMPLOYEES sec. 0305 (1 Oct. 2024) [hereinafter JTR].

10. See JTR, *supra* note 9, para. 030501.A.12 (“An authorizing official may issue any of the following individuals an [invitational travel authorization] under 5 U.S.C. § 5703 if all of the applicable requirements and limitations are met . . . For any other individual [not specifically identified in A.1-11], including a spouse, travel must be personally certified by an authority . . . that the travel meets the requirements of 5 U.S.C. § 5703 and the traveler is ‘legitimately performing a direct service for the Government’ . . .”). Unfortunately, there are few opinions defining what comprises a “direct service for the Government.”

11. Noah Scott, *Remembering Tommy: A Baseball Lifer in 5 Quotes*, PITCHERLIST (Jan. 16, 2021), <https://pitcherlist.com/remembering-tommy-a-baseball-lifer-in-5-quotes>. Tommy Lasorda, (22 September 1927 – 7 January 2021)) was an American professional baseball pitcher and manager. *Id.* He managed the Los Angeles Dodgers of Major League Baseball from 1976 through 1996. *Tommy Lasorda*, BASEBALL HALL OF FAME, <https://baseballhall.org/hall-of-famers/lasorda-tommy> (last visited Oct. 28, 2024). He was inducted into the National Baseball Hall of Fame as a manager in 1997. *Id.*

12. U.S. DEP’T OF ARMY, DIR. 20-1, INSPECTOR GENERAL ACTIVITIES AND PROCEDURES para. 7-11 (23 Mar. 2020) (“Commanders, IGs [Inspector Generals], or principal HQDA staff officials must forward directly to DAIG’s Investigations Division through IG channels any and all allegations of impropriety or misconduct (including criminal allegations) and complaints against senior officials—defined as general officers (including ARN-GUS, USAR, and retired general officers), promotable colonels, PUSMAs, and SES Civilians—within 2 working days of receipt when practicable.”); U.S. DEP’T OF DEF., DIR. 5055.06, INVESTIGATIONS OF ALLEGATIONS AGAINST SENIOR DoD OFFICIALS para. 3 (6 June 2013) (C1, 28 Apr. 2020) (“Allegations of misconduct against senior officials will be reported to the IG DoD within 5 workdays of receipt by a DoD Component . . .,” defining “senior official” as “An active duty, retired, Reserve, or National Guard military officer in grades O-7 and above, and an officer selected for promotion to O-7 whose name is on the O-7 promotion board report forwarded to the Military Department Secretary. A current or former member of the Senior Executive Service. A current or former DoD civilian employee whose position is deemed equivalent to that of a member of the Senior Executive Service (e.g., Defense Intelligence Senior Executive Service, Senior Level employee, and non-appropriated fund senior executive). A current or former Presidential appointee.”).