

ROE . . . also a Matter of Doctrine

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Introduction

Judge advocates (JAs) have developed the U.S. Army's concept of operational law and rules of engagement (ROE) at an exponential rate over the past decade.¹ Several years ago, commentators and the Judge Advocate General's Corps (JAGC) correctly decided to emphasize training and doctrinal issues as JAs developed strategies to mitigate the foreseeable challenges that ROE would present.² Recent articles debate the effect of the current operational environment on the current approach to ROE training and development from the perspective of the challenges that ROE present to commanders and JAs.³ The debate takes the form of first establishing whether these challenges generally rise to the level of actual "problems" in the current approach to ROE, and then recommending changes in or affirming a universal approach to ROE based on the existence or non-existence of "problems."

This method of evaluating the JAGC approach to ROE may not provide sufficient assistance to the JA struggling with a particular ROE challenge in a particular unit. Because ROE are mission-specific, because ROE are the tool of the individual commander, and because several layers of commanders may promulgate ROE in a given operation,⁴ a "problem" in the development or training of ROE in one context may or may not translate into another context. Lessons learned from one operation surely inform and assist the implementation of ROE in another operation. Standing alone, however, lessons learned can advance efforts to develop and refine the JA's role in training and developing ROE only so far.

While the collective challenges encountered by JAs may not provide the unifying perspective needed to formulate strategies

to continue the development of the JA's role in training and developing ROE, U.S. Army doctrine could provide that perspective. The term "doctrine," as a legal concept, of course has a particular meaning: "A principle, [especially] a legal principle, that is widely adhered to."⁵ Courts are essentially free from one jurisdiction to the next to consider the merits of a particular doctrine before determining whether to adopt that doctrine as law. Furthermore, legal doctrine is a fairly limited concept in the sense that it captures a single principle to be applied to a very specific legal issue.

The term "doctrine," as a military concept, has a much more expansive meaning. Consider the following discussion of doctrine contained in *Field Manual (FM) 3-0*:

Doctrine touches all aspects of the Army. It facilitates communication among soldiers no matter where they serve, contributes to a shared professional culture, and serves as the basis for curricula in the Army Education System. Army doctrine provides a common language and a common understanding of how Army forces conduct operations. It is rooted in time-tested principles but is forward-looking and adaptable to changing technologies, threats, and missions. Army doctrine is detailed enough to guide operations, yet flexible enough to allow commanders to exercise initiative when dealing with specific tactical and operational situations. To be useful, doctrine must be well known and commonly understood.⁶

1. See generally Lieutenant Colonel Marc L. Warren, *Operational Law—A Concept Matures*, 152 MIL. L. REV. 33 (1996); Lieutenant-Commander Guy R. Phillips, Canadian Forces, *Rules of Engagement: A Primer*, ARMY LAW., July 1993, at 4.

2. See Phillips, *supra* note 1, at 9; see generally CENTER FOR LAW AND MILITARY OPERATIONS, THE JUDGE ADVOCATE GENERAL'S SCHOOL, U.S. ARMY, ROE HANDBOOK (2000) [hereinafter ROE HANDBOOK].

3. See W. Hays Parks, *Deadly Force Is Authorized*, JOINT CENTER FOR LESSONS LEARNED: Q. BULL., Mar. 2001, at 14 (citing injuries to and prosecutions of soldiers as evidence that the current approach to ROE is a failed one); Lieutenant Colonel Mark S. Martins, *Deadly Force Is Authorized, but Also Trained*, ARMY LAW., Sept./Oct. 2001, at 1 [hereinafter *Deadly Force Also Trained*] (arguing that the shortcomings in the current approach to ROE hardly rise to the level of a systemic problem; where shortcomings exist, training can remedy them).

4. See CHAIRMAN OF THE JOINT CHIEFS OF STAFF, INSTR. 3121.01A, STANDING RULES OF ENGAGEMENT FOR U.S. FORCES (15 Jan. 2000) [hereinafter CJCS SROE] (stating that "[c]ommanders at every echelon are responsible for establishing ROE for mission accomplishment that comply with ROE of senior commanders and these SROE").

5. BLACK'S LAW DICTIONARY 496 (7th ed. 1999).

6. U.S. DEP'T OF ARMY, FIELD MANUAL 3-0, OPERATIONS 1-45 (14 June 2001) [hereinafter FM 3-0].

This recent description of the function of doctrine in the military builds upon similarly accepted conceptions of doctrine held by past commentators:

Doctrine is an approved, shared idea about the conduct of warfare that undergirds an army's planning, organization, training, leadership style, tactics, weapons, and equipment. These activities in preparation for future war lie at the heart of the military profession in modern societies. When well-conceived and clearly articulated, doctrine can instill confidence throughout an army. An army's doctrine, therefore, can have the most profound effect on its performance in war.⁷

As these writings indicate, adherence to Army doctrine affects everything from confidence and trust among soldiers to efficacy of training and success on the battlefield. Conversely, failure to incorporate doctrine in any venture can have serious negative implications for the success of that venture. The JAGC's emphasis on ROE training and development already reflects some doctrinal language.⁸ Only recently, U.S. Army operational and leadership doctrine underwent revision.⁹ To continue the JAGC's success in training and developing ROE, JAs should incorporate as much of the new doctrine in their approach to ROE training and development as possible.¹⁰

A recommitment to U.S. Army operational and leadership doctrine in the approach to ROE training and development offers the greatest potential for continued development of the JA's role in the training and development of ROE. A recommitment to doctrine suggests making slight adjustments to the JA's conception of and approach to ROE training and development. Clearly, the proposition that the individual soldier's repetitive performance of ROE-guided tasks is the best way to ensure

U.S. Army adherence to ROE is correct.¹¹ The JAGC should take two steps to further strengthen the training of the individual soldier on ROE. First, the JAGC has not fully capitalized on the vital role of the noncommissioned officer (NCO) in conducting individual training. Second, the JAGC has not adequately accounted for the challenges that NCOs face in training individual soldiers as indicated by the relative lack of off-the-shelf training resources available to these junior leaders.

A recommitment to doctrine also suggests clarifying and reinforcing the different responsibilities of commanders and JAs with respect to training and developing ROE. United States Army doctrine gives the commander primary authority to direct every facet of U.S. Army operations. Judge advocates are uniquely positioned to facilitate or frustrate the commander's ability to exercise that authority.¹² As such, JAs are obligated to be particularly cognizant of and sensitive to the leadership challenges faced by the commander. Judge advocates should take two steps to improve their support of commanders with respect to ROE.¹³ First, they should better distinguish the responsibilities of commanders and JAs in the JAGC literature on ROE. Second, they should better articulate leadership and training management considerations in the JAGC literature on ROE.

Finally, the recommitment to doctrine requires a continuing focus within the JAGC on the underlying leadership considerations implicated by various strategies to improve the training and development of ROE. It is not enough to conduct individual soldier training on ROE without considering the leadership implications of the methods chosen to train them. It is not enough to outline commander responsibilities with respect to drafting and training ROE without considering the leadership implications of the commander's competing responsibilities. It is also not enough to carve out an operational niche in ROE

7. Paul Herbert, Combat Studies Institute, Leavenworth Paper #16, *Deciding What Has to Be Done: General William F. Depuy and the 1976 Edition of FM 100-5, Operations* 3 (1988).

8. See ROE HANDBOOK, *supra* note 2, at 1-1. Consider the following language from the *ROE Handbook*: "While ROE should never drive the mission, the political, military and legal forces that may impact the mission and inhibit the use of force must be considered and planned for throughout the planning process." *Id.* Now compare the preceding quotation with language from U.S. Army operational doctrine: "ROE are responsive to the mission . . . ROE may impose political, practical, operational, and legal limitations upon commanders. Commanders factor these constraints into planning and preparation as early as possible." FM 3-0, *supra* note 6, at 6-27 to 6-28.

9. See U.S. DEP'T OF ARMY, FIELD MANUAL 22-100, ARMY LEADERSHIP (31 Aug. 1999) [hereinafter FM 22-100]. See generally FM 3-0, *supra* note 6.

10. It is absolutely clear that the training approach comprehensively articulated in Lieutenant Colonel Mark Martins' seminal article on ROE training is rich enough to accommodate—indeed, in many places contemplates—the doctrinal considerations developed in this article. See generally Major Mark S. Martins, *Rules of Engagement for Land Forces: A Matter of Training, Not Lawyering*, 143 MIL. L. REV. 1 (1994).

11. See *id.*

12. See CJCS SROE, *supra* note 4 (stating that "[t]he Staff Judge Advocate (SJA) assumes the role of principal assistant to the J-3 or J-5 in developing and integrating ROE into operational planning").

13. The attentive reader will note that the focus of this article is on JAGC literature and the actions that the individual JA can take to improve ROE training and development within a given doctrinal environment. One could just as easily approach this topic by focusing instead on recommending changes to doctrine as a way to improve ROE training and development. The author prefers to wring every bit of helpful guidance from the cloth of doctrine *before* evaluating the efficacy of that doctrine. The position promoted by this article is that U.S. Army doctrine could still be a little better incorporated in current strategies to train and develop ROE.

development and training without considering the leadership responsibilities the JA incurs by doing so.¹⁴

United States Army leadership, training, and operational doctrine will guide the remaining discussion of ROE in this article. The author recognizes that this article advocates strategies for the JA to pursue in an area that ultimately belongs to the commander. Rules of engagement are the commander's tool to promote the disciplined use of force within his command. A potentially tenuous line exists between the enthusiastic JA whose involvement in ROE training and development greatly enhances the unit's mission accomplishment, and the intrusive JA whose involvement dominates and stifles ROE training and development, inhibiting the unit's mission accomplishment. None of the ensuing strategies should be read as anything other than strategies to improve the JA's support of the commander's ultimate responsibility with respect to ROE.

The Soldier: Adjustments to the Emphasis on Training

*Noncommissioned officers (NCOs), the backbone of the Army, train, lead, and take care of enlisted soldiers. . . . They ensure their subordinates, along with their equipment, are prepared to function as effective unit and team members. While commissioned officers command, establish policy, and manage resources, NCOs conduct the Army's daily business.*¹⁵

The Noncommissioned Officer

The single most important step that the JA can take to support the commander's ROE training plan for the individual soldier is to coopt the NCOs of that unit. More than just a good idea, allowing NCOs to train individual soldier skills is doctrine: consider the quotation above from U.S. Army leadership doctrine. United States Army training doctrine reflects the primacy of the NCO in individual training as well: "The CSM [Command Sergeant Major] and NCO leaders must select the specific individual tasks, which support each collective task, to

be trained. . . . [Noncommissioned officers] have the primary role in training and developing individual soldier skills."¹⁶ *The Army Noncommissioned Officer Guide*, issued to every new sergeant at their Primary Leader Development Course, affirms this role: "Individual training is your primary job."¹⁷

Yet the literature to which JAs presumably look contains very little discussion of the role of the NCO in conducting individual soldier ROE training. United States Army legal doctrine does not mention NCOs under the section discussing individual soldier training on ROE. While the field manual clearly contemplates an "other trainer" joining the commander and JA in conducting lane training,¹⁸ this hardly reinforces the primacy of the NCO's role in individual training.

The *ROE Handbook* does, however, devote two paragraphs to the NCO's role in individual ROE training. The *ROE Handbook* suggests that "[j]udge advocates should be involved in designing ROE scenarios for CTT [common task training] and STX [situational training exercises], and should monitor their implementation, particularly when noncommissioned officers who are not qualified as legal specialists will conduct the training."¹⁹ The *Handbook* warns of NCOs that are not comfortable conducting ROE training or view it as a JA function, but offers that "[j]udge advocates can assist training NCOs by providing vignettes and solutions for use in these events, by training the NCOs, and by participating in regular unit training."²⁰ Other literature capturing the lessons learned by JAs during U.S. Army operations in the Balkans, however, recommends that "[j]udge advocates . . . conduct or closely monitor all ROE training" because individual training by NCOs "fell short of what soldiers needed."²¹

Judge Advocate General's Corps resources, then, seem at least uncertain about the proposition that NCOs should be the primary trainers of individual soldiers—at least in the context of ROE. The literature certainly does not contain the unequivocal commitment to NCOs that the rest of U.S. Army doctrine possesses. Three conditions likely create this tepidness among

14. See Colonel Michael Thompson, Commander, Battle Command Training Program, Address to Command and General Staff College ROE Term II Course at Fort Leavenworth, Kansas (4 Feb. 2002) [hereinafter Thompson Address] (preparatory notes on file with author). Colonel Thompson highlighted that JAs operate as "ghostwriters for their commanders." *Id.* As such, JAs must be particularly attuned to the warrior ethos, to the commander's intent, to the constraints acceptable to the commander, and to the limits of the JA's authority in an operational context. (That is, JAs cannot take courses of action (CoAs) off the table without the commander knowing about the decision to do so during the Military Decision Making Process. This is not to advocate leaving illegal CoAs or CoAs that violate the ROE on the table—only to confirm that the commander retains the final call on his CoAs).

15. FM 22-100, *supra* note 9, at A-4.

16. U.S. DEP'T OF ARMY, FIELD MANUAL 25-100, TRAINING THE FORCE 1-9 (15 Nov. 1988) [hereinafter FM 25-100].

17. U.S. DEP'T OF ARMY, TRNG. CIR. 22-6, THE ARMY NONCOMMISSIONED OFFICER GUIDE 21 (23 Nov. 1990) [hereinafter TC 22-6].

18. See U.S. DEP'T OF ARMY, FIELD MANUAL 27-100, LEGAL SUPPORT TO OPERATIONS 8-14 (1 Mar. 2000) [hereinafter FM 27-100].

19. ROE HANDBOOK, *supra* note 2, at 2-8 to 2-9.

20. *Id.* at 2-9.

21. CENTER FOR LAW AND MILITARY OPERATIONS, THE JUDGE ADVOCATE GENERAL'S SCHOOL, U.S. ARMY, LAW AND MILITARY OPERATIONS IN THE BALKANS: LESSONS LEARNED FOR JUDGE ADVOCATES, 60 (13 Nov. 1998) [hereinafter BALKANS AAR].

JAs to hand the reins of ROE training to NCOs. First, NCOs are uncomfortable with the complex standards ascribed to ROE.²² Second, as the *ROE Handbook* indicates, NCOs are equally unsure about their responsibility, then, of training their soldiers on those standards. Third, when NCOs are given the opportunity to train ROE, this training frequently may not meet standards, as the Balkans after-action review intimates.

These three conditions do not, however, warrant creating an ROE training exception to the doctrinal directive that NCOs are primarily responsible for individual training. Conversely, given the critical role ROE play in the success of U.S. Army operations, it is imperative that JAs dedicate themselves to enlisting and empowering the NCO Corps to conduct ROE training. Doing so holds the potential to improve ROE training dramatically in the JA's supported unit. The following is a strategy for developing proficiency in ROE training within the NCO Corps.

Judge advocates presumably need an ally in their efforts to assist commanders in providing the proper emphasis on ROE training during home-station training.²³ After notifying their brigade and battalion commanders of their interest in exploring ROE individual training possibilities with their respective CSMs, JAs should waste no time in establishing strong relationships with those CSMs.²⁴ The JA tasked to implement an individual training program should, by doctrine, consult the CSM early and often. This makes practical sense as well, once the JA recognizes the CSM's value as a resource and ally. The CSM, for example, can offer advice on when ROE training best fits into the Training Management Cycle. By doctrine, the CSM has responsibility for selecting individual tasks to train and coordinating them with the commander's collective training plan,²⁵ so the CSM represents the best and most appropriate

vehicle for getting individual ROE training on the training calendar. The CSM can give the JA an idea of how often the unit conducts individual training, how frequently personnel change over, what competing demands the soldiers in the unit face, and the overall difficulties the CSM has in supervising individual training in the unit.²⁶

Once individual ROE training appears on the calendar, the CSM can identify the strongest NCOs in the unit with whom the JA might work to develop ROE training resources. The CSM or an NCO that he designates can critique the JA's training resource material with an eye to what will best communicate significant points to soldiers. More important still, the NCOs offer years of experience at training soldiers in collaboration with the JA's substantive expertise. That experience can help tailor ROE training to the unique tasks any particular unit can expect to perform. The goal is to develop tools beyond the obligatory vignette²⁷ that could train soldiers on varying levels of ROE complexity.

Why proceed with ROE training by empowering the NCOs in a supported unit? First, the previous discussion emphasizes that by doctrine, this is the way we should do it. By treating ROE training as something special, it will always be something special and will never become familiar. Second, from a practical standpoint, growing a system whereby NCOs develop and conduct ROE training, using the JA as a resource, at the very least injects more trainers into the mix, allowing for more training to occur. Third, resourcing and developing an STX tailored to the unit's specific needs is beyond the experience level of many JAs. The final ROE training plan and execution can be enhanced immeasurably by the input and experience of NCOs. Fourth, doctrine and experience demonstrate that enlisting the NCO Corps offers the JA an important feedback mechanism.²⁸

22. "Commanders reassure soldiers with uneven success that actions taken in tense, uncertain, and rapidly evolving circumstances will not be second-guessed with 20/20 hindsight." *Deadly Force Also Trained*, *supra* note 3, at 16. "Several judge advocates cautioned that peace operations can cause greater, sometimes dangerous, reluctance on the part of soldiers to employ force when authorized and even perhaps, advisable." BALKANS AAR, *supra* note 21, at 66.

23. The *ROE Handbook* follows its emphasis on ROE as commanders' rules, not lawyers' rules, with the admonishment that JAs must ensure ROE development and training receive sufficient attention. See ROE HANDBOOK, *supra* note 2, at 2-1. Lieutenant Colonel Whitaker echoed this concern with his observation that ROE at times do not receive proper attention from the commander and his staff until the ROE have failed to support the mission in the middle of the training exercise. See Lieutenant Colonel Richard M. Whitaker, Impact of COE on ROE Development and Execution (Dec. 2001) (unpublished manuscript, on file with author).

24. Equally important is the designation of an OPLAW NCO in the SJA office that can act as a liaison between the CSM and the OPLAW attorney or JA. This article discusses the potential benefits of doing this *infra* notes 75-77 and accompanying text.

25. See FM 25-100, *supra* note 16, at 1-9. Again, some that would prefer to focus first on Army-wide doctrinal changes might argue that the CSM, with every individual task other than compliance with ROE, relies on mission training plans (MTPs) to identify supporting individual tasks to train. The argument continues that ROE compliance does not appear in MTPs as an individual task. Naturally, then, the CSM and senior NCOs are unable to make their individual training recommendations/individual task selections for ROE training the way they would with any other individual training. This argument would conclude that one improvement needed Army-wide is the addition of individual ROE tasks to the MTP rubric; however, this may improperly frame ROE individual training. Complying with ROE is not a mission in and of itself. Instead, ROE function as additional conditions on individual tasks such as "engage a target with your individual weapon." In this sense, ROE training might be more appropriately compared with NBC training. NBC training requires soldiers to quickly move through fundamental tasks, such as don a protective mask or MOPP gear, and then proceed to training their individual tasks subject to the conditions of a simulated NBC environment. Similarly, the individual soldier may be trained on certain ROE fundamentals like the CJCS SROE self-defense principles, then proceed on to individual or collective training with the added conditions of a certain set of ROE.

26. See FM 22-100, *supra* note 9, at A-23 to A-25.

27. See FM 27-100, *supra* note 18, at 6-12.

Consider this charge from the *Army NCO Guide*: “Because you live and work directly with and among your soldiers, you have the best opportunity to know them as they really are. You are the first to identify and teach soldiers how to best use their strengths; the first to detect and train soldiers to overcome their shortcomings.”²⁹ A JA’s strong relationship with the CSMs and other NCOs in the brigade that the JA supports will give him ready access to critical feedback regarding the level to which individual soldiers are trained on ROE.

Finally, as mentioned earlier, ROE govern the disciplined use of force. By using the NCO support channel to plan, execute, and assess training, the JA reinforces one of the chain of command’s critical roles. Discipline is a key function of the chain of command.³⁰ To the extent that JAs sacrifice a degree of substance in their initial attempts to empower NCOs to conduct individual ROE training, they improve the strength of the chain of command with a subsequent positive effect on discipline. The soldier’s knowledge of the ROE might be clouded at first, but the soldier’s attribute of discipline necessary to comply with those ROE will be strengthened.

Nothing in the above section is revolutionary or even particularly exciting. It reflects a relatively quick survey of U.S. Army doctrine. Yet JAGC literature does not generally capture detailed discussions of the benefits of involving NCOs to a greater extent in individual ROE training. The JAGC should pay greater attention to capturing U.S. Army leadership and training doctrine, especially doctrine as it relates to NCOs, in the JAGC’s emphasis on training.

The Standard

Of course, a decentralized individual ROE training effort requires a uniform standard on which to build. Arriving at a uniform standard presents a daunting challenge for two reasons. First, because ROE are the tools of the individual commander, one would anticipate slightly different ROE from one command to another. Second, while in theory ROE purport to be a “commander’s tool,” JAs to a varying degree perform much of the heavy lifting in terms of anticipating, analyzing, and mitigating

ROE problems. The JAGC could, however, take at least two steps toward developing standards for basic ROE principles.

First, to the extent that the ROE for a particular mission may reflect some principles of the Law of War,³¹ the JAGC should promulgate individual soldier training aids on the Law of War. The *Soldier Manual of Common Tasks* contains the Skill Level 1 task “Comply with the Law of War and the Geneva and Hague Conventions.”³² Ten printed pages of performance measures follow this task. A soldier must pass each of these performance measures to receive a “Go” on this task. Unfortunately for the motivated sergeant who wants to prepare his soldiers for their annual Common Tasks Test, the section of the task purporting to list references for the Law of War lists no such references.³³

Field Manual 27-14, Legal Guide for Soldiers, makes no mention of the Law of War.³⁴ There are also no Graphic Training Aids (GTAs) on the Law of War. The JAGC should publish a pamphlet or GTA for soldiers as a reference for Law of War principles. The pamphlet could provide discussion for the issues raised by the performance measures outlined in the *Soldier Manual for Common Tasks*. The pamphlet would purport to do nothing more than provide soldiers with a baseline understanding of Law of War principles.³⁵

Second, the JAGC should pursue the promulgation of a separate task entitled something like “Comply with Fundamental Self-Defense Principles.” These self-defense principles would be grounded in the Standing ROE issued by the Chairman of the Joint Chiefs of Staff. Again, a GTA or pamphlet should accompany the new task to provide the proactive NCO the resource needed to correctly train the soldiers assigned to him.

The Law of War and the fundamental self-defense principles will be present in all U.S. Army operations and are the responsibility of every individual soldier. Since ROE will incorporate these pervasive principles to one degree or another in any given operation, individual soldiers must always possess a basic understanding of them. Furthermore, Law of War and self-defense principles are the two influences on ROE that are most conducive to a single Army-wide standard. Given the primacy of the NCO in conducting individual training, the JAGC should

28. See FM 22-100, *supra* note 9, at A-25.

29. TC 22-6, *supra* note 17, at 11.

30. See FM 22-100, *supra* note 9, at 3-6 to 3-9.

31. See FM 27-100, *supra* note 18, at 8-2.

32. U.S. DEP’T OF ARMY, SOLDIER’S MANUAL OF COMMON TASKS, SKILL LEVEL 1, TASK 181-105-1001(SL1) (1 Oct. 2001), available at <https://hosta.atsc.eustis.army.mil/cgi-bin/adtdl.dll/stp/stp+21-1-smct/tasks/181-105-1001%28sl1%29.htm>.

33. See *id.*

34. See U.S. DEP’T OF ARMY, FIELD MANUAL 22-14, LEGAL GUIDE FOR SOLDIERS (16 Apr. 1991).

35. The U.S. Army published *FM 27-10, Law of Land Warfare*, in the 1950s. It does not reflect the most current developments in the Law of War.

provide the NCO with readily-accessible training resources that reflect the basics of Law of War and self-defense principles.

The Commander: Recombitment to Doctrine and Leadership

Fortunately, the JAGC has devoted tremendous effort to developing individual ROE training. This effort has compiled a great body of literature and training vignettes to act as resources supporting a unit's ROE training program. Recognizing the development of training in this area, the recommendations discussed above should be taken as little more than course adjustments. The literature offering guidance on ROE as they relate to the commander and the staff function, however, is not as abundant. Commanders, with the support of their JAs, coordinate staff activities to interpret, draft, and otherwise employ ROE. Again, this article turns to U.S. Army doctrine and leadership considerations for assistance in evaluating appropriate strategies to achieve this staff coordination.

For purposes of this article, two principles emerge from another quick survey of U.S. Army doctrine. First, U.S. Army operational doctrine directs that ROE should be responsive to the mission and should permit the commander to exercise flexibility within the operation.³⁶ Rules of engagement may be tailored and supplemented to meet commanders' needs in a specific operation.³⁷ United States Army legal doctrine recognizes that "ROE must evolve with mission requirements and be tailored to mission realities. Rules of engagement should be a flexible instrument designed to best support the mission."³⁸

The *ROE Handbook* generally reflects the principle that commanders own the ROE. When describing the process of Course of Action (CoA) development in the mission planning

phase, however, the *ROE Handbook* seems to counsel JAs that if, in their judgment, supplemental ROE are not likely to be approved by higher headquarters, then the CoA planning group should be notified so "they can modify or abandon the proposed CoA."³⁹ This slip in guidance, albeit a small and unintentional one, indicates an incorrect ordering of priorities between ROE and the mission against which JAs should protect. The weight of doctrine indicates the proper approach would entail informing the commander of the likely disapproval so that the commander could determine whether to press for supplemental ROE approval with his higher commander.⁴⁰

Second, U.S. Army operational and leadership doctrine value the commander's judgment. United States Army operational doctrine places a premium on the commander's well-informed judgment that allows him to make better decisions than the enemy.⁴¹ Judgment, acquired from "experience, training, study, and creative thinking," is the key component in "the art of command."⁴² Likewise, U.S. Army leadership doctrine recognizes judgment as one of the leader's key mental attributes. Importantly, doctrine directs that the leader exercising judgment must consider a range of alternatives, think methodically, and consider the consequences of the decision to be made.⁴³ Judge advocates should not confuse *FM 27-100*'s boast that "[i]nvolvement with ROE places judge advocates firmly within the command and control of operations"⁴⁴ as a grant of authority competing with that of the commander's authority to use his judgment.

Taken together, U.S. Army operational and legal doctrine have important implications for ROE development. Specifically in the context of the commander's relationship with his staff, ROE development must accommodate the principles above. Rules of engagement must not only be substantively correct, but a process must also be in place to rapidly supple-

36. See FM 3-0, *supra* note 6, at 6-27.

37. *Id.*

38. FM 27-100, *supra* note 18, at 8-3.

39. ROE HANDBOOK, *supra* note 2, at 1-25. Course of action development is a primary component in the Military Decision Making Process. See U.S. DEP'T OF ARMY, FIELD MANUAL 101-5, STAFF ORGANIZATION AND OPERATIONS 5-2 (31 May 1997) [hereinafter FM 101-5]. During CoA development, the staff works to add flesh to the general guidance given by the commander on his vision of the upcoming mission. The staff later briefs the commander on the CoAs that they have developed so that the commander might choose between them. The danger in the sequence of events outlined by this quotation from the *ROE Handbook* is that the JA is determining the shape of the future mission (by taking a CoA off the table) based on his interpretation of the ROE, rather than letting the commander determine the shape of the ROE based on his judgment of the mission requirements.

40. See CJCS SROE, *supra* note 4, encl. L. The SROE clearly contemplate an active staff role in CoA development. The SROE also authorizes the commander's use of an ROE planning cell that includes the SJA. The SROE also clearly articulates, however, that "[c]ommanders will request and authorize ROE." *Id.* While the ROE planning cell and the JA within that cell might feel very strongly that supplemental ROE may not be approved by higher headquarters, the *ROE Handbook* may proceed a step too far by implying that the CoA planning group has the authority to abandon a CoA without the commander's involvement.

41. See FM 3-0, *supra* note 6, at 5-3 to 5-4.

42. *Id.* at 5-4.

43. FM 22-100, *supra* note 9, at 2-42.

44. FM 27-100, *supra* note 18, at 8-2.

ment them in response to changing mission requirements. Likewise, ROE should not mandate pre-ordained courses of action for the commander, but should provide a methodical framework that the commander may use to exercise his judgment.

Draft ROE that the Commander Can Use

To draft ROE that the commander can use, the JA must first understand the ROE from higher headquarters. Initially, the JA might think of this requirement as an issue of interpretation. Consider again *FM 27-100*'s guidance to JAs who interpret ROE: "Interpretation of ROE demands skills that are well-honed in the legal profession and specifically cultivated within the 'judge' function of legal support to operations."⁴⁵ Later, the U.S. Army legal doctrine speaks again to the JA's unique ability to interpret presumably vague ROE: "In some situations, the OPLAW [Operational Law] judge advocate will be the sole member of the ROE Planning Cell . . . or the staff possessing the necessary training in objectivity and impartiality to state unpleasant interpretations of a higher headquarter's ROE."⁴⁶

These passages indicate a potential point of divergence between U.S. Army legal doctrine and U.S. Army operational and leadership doctrine. Taken together, the excerpts from U.S. Army legal doctrine place a sort of primacy on the JA, not the commander, with respect to establishing the bounds of the ROE.⁴⁷ The focus on the JA's "judge" skills is misdirected, however. Unlike interpreting a statute or regulation, where the drafters or proponents cannot ordinarily be found or consulted, the ROE are passed through the chain of command. When disagreements about what the ROE allow or disallow arise on the staff, the interpretive skills or objectivity of the various staff members should not adjudicate the disagreement. Instead, the commander should be informed so that he, based on his judg-

ment or his consultation with his chain of command, can decide the bounds of the ROE.⁴⁸ An understanding of U.S. Army operational and leadership doctrine provides the proper focus in this case.

Having correctly guarded against injecting themselves into the process improperly, JAs must guard against the lawyer's affinity for a well-turned locution when drafting ROE. The attempt to articulate just the right level of restraint and just the right guidance may result in amorphous ROE that render the rules ineffectual. On this score, *FM 27-100* gets it exactly right: "*Avoid Excessively Qualified Language*. Rules of engagement are useful and effective only when understood, remembered, and readily applied under stress."⁴⁹ Yet this and other warnings in U.S. Army legal doctrine⁵⁰ regarding pitfalls in ROE drafting fall short in providing positive guidance for the JA trying to craft a useful tool for the commander.

Again, a quick examination of doctrine with a particular eye to the leadership challenges facing commanders reveals much of the procedural guidance useful to JAs drafting ROE. It is important to recognize that targeting decisions and clearance of fires processes⁵¹ follow directly from the development of ROE and represent the conduct of missions within the ROE. The lessons pulled from doctrine in this section necessarily apply to mission execution as well. United States Army operational doctrine charges commanders and staffs with the enormous task of synchronizing the Battlefield Operating Systems (BOS) during the planning and execution of a mission.⁵² Rules of engagement development and clearance of fires decisions compete for the commander and staff's attention with myriad other systems supporting the success of the mission.

Indeed, further study of the operational doctrine shows that "operational design stresses simultaneous operations rather than a deliberate sequence of operations,"⁵³ reinforcing the con-

45. *Id.* at 8-10.

46. *Id.*

47. Of course, when the Law of War defines these bounds, most would agree that the JA does have a particularly important responsibility to identify clearly those bounds for the commander. The discussion that follows should be read with the understanding that the JA's interpretive skills are valuable in the context of Law of War considerations incorporated in the ROE.

48. See Thompson Address, *supra* note 14. As a former battalion and brigade commander and as the current commander of the Battle Command Training Program, COL Thompson's experience supports the doctrinal primacy of the commander's judgment in this case.

49. *FM 27-100*, *supra* note 18, at 8-13.

50. *Field Manual 27-100*'s section on drafting ROE advises: "*Avoid Restating Strategy and Doctrine*," "*Avoid Restating the Law of War*," "*Avoid Restating Tactics*," and "*Avoid Safety-Related Restrictions*." *Id.* at 8-12 to 8-13.

51. This article refers to the two processes collectively as "clearance of fires."

52. See *FM 3-0*, *supra* note 6, at 5-64. The BOS are: Intelligence, Maneuver, Fire Support, Air Defense, Mobility/Counter-mobility/Survivability, Combat Service Support, and Command and Control. *Id.* Coordinating these functions means overseeing and maximizing the productivity of an enormous number of tasks that support an operation, from Intelligence Preparation of the Battlefield to Communication Systems to Operational Security, and so on. Developing ROE must take place in the context of simultaneously coordinating all of these other systems.

53. *FM 3-0*, *supra* note 6, at 5-55.

cept of competing priorities within a given mission. United States Army leadership doctrine also emphasizes the importance of the organizational leader's ability to understand the interoperability of systems.⁵⁴ By understanding the merits and shortfalls of each individual system and by understanding how the use of one system affects the others, the commander can maximize the performance of the whole.⁵⁵

These are important principles for the JA developing strategies to draft ROE that prove more useful to commanders. Combining the doctrinal guidance that the commander's reasoned judgment is the final arbiter in resolving mission uncertainties with the recognition that military operations should occur in a rapid, simultaneous manner, the JA can properly balance attention between the process or effect of ROE and the precise substance of the ROE. If the commander must consider all of the systems that contribute to mission success, then the JA supporting that commander must also have an eye to those competing systems. In drafting, then, a JA might design a flowchart or spreadsheet, based on the ROE, that "correctly" resolves every discrete targeting decision that a commander will need to make in the course of an operation. But, what effect does devoting the time to getting the decision exactly "right" every time have on synchronization, for example? What type of demands does making this decision place on the Intelligence Preparation of the Battlefield (IPB), one of the tasks under the Intelligence BOS? These types of questions inform the JA seeking to draft useful ROE for the commander.

Seeking a balance between process and substance when drafting ROE is validated by observations of organizational leaders and their JAs in the field. Two observations from the Battle Command Training Program make the point: "First, we have to construct the ROE based on a very careful and thoughtful IPB process, so that the rules contemplate the nature of the enemy and the type of terrain that we will fight on."⁵⁶ Additionally, "we have to refine clearance of fire rules and procedures so that we can generate flexible and rapid response to opportunities to strike at the enemy."⁵⁷ Both quotations demonstrate the growing emphasis on ROE accomplishing more than providing a "Go/No-Go" procession through potential target lists. Instead, drafting ROE requires that the JA address discrete tar-

geting decisions in light of the fluid nature of ongoing operations.

Doctrine also validates these conclusions. Commanders cannot rely on rote adherence to extensive rules. Such adherence does not aid the commander when there are gaps in the information necessary to apply the rules. Instead, the commander must rely at times on "informed intuition" to fill these gaps,⁵⁸ "accept calculated risk" to seize the initiative,⁵⁹ and understand that it is "counterproductive to wait for perfect preparation and synchronization."⁶⁰ One final doctrinal warning summarizes the necessary balance between process and substance in ROE drafting: "Too great a desire for orderliness leads to overdetailed orders, overcontrol, and failure to seize and retain the initiative."⁶¹ These excerpts do not in any way mean that a commander or JA should stop developing substantively correct ROE, or that commanders should disregard ROE if they become too "inconvenient" or "tough." The excerpts do, however, support the idea that ROE should not encumber the mission.

When drafting ROE and advising targeting decisions, to be useful to the commander, the JA must understand and provide for the fact that doctrine contemplates the commander doing his best, but that a substantively perfect decision may be elusive. The JA cannot have "tunnel vision"—focusing on the effects of ROE on an operation to the exclusion of all else. Yet broadening the focus of the JA should not diminish the important role of ROE in U.S. Army operations. How can the JA's capabilities and expertise be more fully integrated into the commander's staff?

Integrating the Judge Advocate on the Staff

As the preceding section suggests, one strategy for more fully integrating the JA in the staff function for purposes of ROE development is for the JA to broaden his exclusive focus on ROE and their impact on operations. To broaden his focus, the JA must continue to develop the inherent leadership responsibilities that accompany one's commissioning as an officer in the U.S. Army. The remainder of this article focuses on strate-

54. See FM 22-100, *supra* note 9, at 6-24. The term "organizational leader" refers to commanders at the brigade, division, and corps level—essentially those with the most assets and most expansive staff functions to oversee. See *id.* at 6-3.

55. See *id.* at 6-24.

56. E-Mail from Lieutenant Colonel Richard Whitaker, Senior Observer/Controller, Battle Command Training Program, to author (Dec. 18, 2001) [hereinafter BCTP E-mail] (on file with author).

57. *Id.*

58. FM 3-0, *supra* note 6, at 5-3.

59. *Id.* at 5-5.

60. *Id.* at 6-39.

61. *Id.*

gies for the JA to develop his role as a leader on the staff and in the unit he supports with the aim of strengthening the command's commitment to ROE development and training.

As before, U.S. Army leadership doctrine provides the start point for formulating a strategy for greater integration on the staff. Judge advocates may, to a greater or lesser extent, struggle with the apparent disconnect between the critical role in developing ROE with which they were tasked and the occasional inattention given to ROE by a commander and his staff. The natural place to begin a survey of leadership doctrine with an eye toward better integration is with the doctrinal mandate for self-development. Self-development obviously incorporates the need of the individual to identify areas of individual weakness or lack of knowledge and then to implement a program of study to address those weaknesses.⁶² For some JAs, especially those that support a particular unit or, even more important, those that *anticipate* supporting a given unit on a future deployment, this program of study should include U.S. Army operational and training doctrine. This focus is especially true for the Operational Law Attorney or those attorneys that anticipate working on a staff and developing ROE.

By doctrine, leader self-development incorporates more than a self-study program. *Field Manual 22-100* also directs that commanders establish and monitor self-development programs in their units. Part of this self-development program is communication between the individual and their first-line leader and their commander.⁶³ Judge advocates, then, can use the vehicle of a self-development program to raise their concern over the extent to which they are integrated into the staff for purposes of developing and implementing ROE. Taking advantage of the doctrinal door into the staff judge advocate's office, the G-3's office, or the brigade commander's office provided by the self-development program offers JAs two benefits. First, it allows the individual JA to raise the issue of improved staff integration with respect to ROE development and implementation with these key individuals. Second, it allows the staff judge advocate, other staff officers, and the brigade commander the opportunity to develop, clarify, and articulate their guidance

or thoughts on ROE to the JA. Both benefits provide an important first step toward better staff integration.

The JA's self-development program should also lead to a clear understanding of the Training Management Cycle. The JA seeking better integration into the staff for purposes of ROE development and implementation before a deployment or training event should take a cue from the earlier discussion about competing systems during the execution of an operation. It is a given that the commander and staff must train ROE development and implementation before a deployment or training exercise.⁶⁴ It is equally clear that some commanders and staffs train ROE development and implementation at best sporadically, if not rarely, before major training exercises.⁶⁵ To the extent that this shortcoming owes to competing demands on the commander and staff's time and resources,⁶⁶ the JA must clearly respect and understand the Training Management Cycle. To make the point, recall the earlier discussion about individual training on ROE.

The *ROE Handbook* counsels that JAs seeking to train others on ROE should, among other things, search for previously planned training events on which the JA could "piggy-back."⁶⁷ At first blush, this is an innocent enough proposition and might be adopted with respect to staff training as well. While previously planned training events might provide an opportunity for ROE training, the JA should approach this recommendation with caution. Looking to doctrine, the Training Management Cycle allows the commander to concentrate a unit's training priorities during a given period.⁶⁸ Indeed, "a unit cannot attain proficiency to standard on every task whether due to time or other constraints," but "commanders can achieve a successful training program by consciously narrowing the focus to a reduced number of vital tasks."⁶⁹

Following this cue from U.S. Army training doctrine, the JA should understand that the commander plans training well in advance of execution. This planning incorporates not only resourcing the training, but also determining the focus of training. Consider the individual ROE training again. An ROE training station set up at a rifle range would, in most

62. See FM 22-100, *supra* note 9, at 5-77.

63. See *id.* at 5-78.

64. See FM 25-100, *supra* note 16, at 4-4.

65. See BCTP E-mail, *supra* note 56.

66. See Colonel John D. Rosenberger, *Reaching Our Army's Full Combat Potential in the 21st Century*, *ARMOR*, May-June 1999, at 8, 9. Colonel Rosenberger, the commander of the National Training Center's Opposing Force (widely considered to be a very effective fighting force—they are seldom defeated by U.S. Army units rotating through the National Training Center), draws attention to the "host of reasons—lack of money . . . lack of time, shortages of leaders and soldiers, installation support, and peacekeeping missions" that contribute to the difficulty in training appropriately. *Id.*

67. ROE HANDBOOK, *supra* note 2, at 2-3.

68. See FM 25-100, *supra* note 16, at 1-9.

69. *Id.* at 1-7.

instances, offer an excellent opportunity to conduct concurrent training. Imagine a commander that scheduled the range because he has an inordinate number of new privates straight out of basic training. With a significant training exercise upcoming, the commander wants to ensure that the privates are all proficient and comfortable with their weapons. The commander's training intent for the range is not mere sustainment of already proficient firers, but is instead developing proficiency in soldiers that lack it. The JA must be aware of the focus of the training before introducing a competing training objective.

The same insight may be applied to staff training on ROE development and implementation. To persuade a commander to incorporate ROE development and implementation in his staff training exercises, the JA must raise the proposal early in the Training Management Cycle. This requires both familiarity with the long-range training calendar⁷⁰ and the doctrinal understanding of what other staff sections and the commander will hope to accomplish during the planned training. Better yet, the JA should be cognizant of when the commander is setting his long-range and short-range training plans.⁷¹ The JA, by notifying the commander before the meeting that he would like to propose some ROE training, then arriving at the long- or short-range planning meeting with a plan that is sensitive to or incorporates other staff functions, will stand a much better chance of persuading the commander to incorporate ROE in the staff's training. The alternative—attempting to interject ROE conditions in previously planned training—may result in frustrating the commander and members of the staff. Instead of strengthening ROE considerations, the JA may marginalize them.

Finally, U.S. Army leadership doctrine highlights the importance of organizational leaders building teams.⁷² To the extent that improved staff integration incorporates team building, JAs can play a significant role. Doctrine articulates the important roles that the mutual demonstration of discipline and competence between team members and that the constant interaction between team members can play in developing an increasingly cohesive team.⁷³ While the responsibility of team building is most commonly associated with the commander, U.S. Army leadership doctrine offers another critical insight. Leadership is not only a function of position (that is, the commander), but also a function of role.⁷⁴

The JA, then, who seeks better integration on the staff generally, but specifically toward improving ROE development

and implementation as a staff function, has a leadership function by virtue of the role that the commander assigns the JA with respect to ROE. Anecdotally, the following is a recommended strategy. Colonel (COL) James Rosenblatt, the Staff Judge Advocate for Training and Doctrine Command, hosts a regular Wednesday afternoon social event. He invites members of his office and all of the members of another staff section to his house for food and drinks. After everyone has arrived, COL Rosenblatt gathers everyone in his dining room and makes a full round of introductions. Following the introductions, COL Rosenblatt asks the guest primary staff officer to speak for a few minutes on the critical issues that his staff section is facing. Colonel Rosenblatt follows with well-informed questions and solicits questions from the group. Afterwards, both sections have the opportunity to socialize.

This type of event has enormous potential for the JA seeking to solidify his role in operational planning and training, especially as it pertains to ROE development and implementation. One can imagine a staff judge advocate asking the other primary staff officers before the event to make remarks about their roles or perceptions of ROE and the staff processes that implement them. What a tremendous way both to foster trust and confidence between members of the staff and to exchange valuable insight into one another's roles in ROE development and implementation. Even the junior JA may incorporate this type of strategy by inviting junior officers and NCOs from other staff sections to a similarly informal setting.

The Judge Advocate

Two final recommendations require discussion separately addressed to the JA's internal function. First, for the JAGC to fully maximize its potential contribution in the field of ROE training and operational law, it must better use its own NCOs. Second, the JA may expand the sort of culture and team-building strategy personified by COL Rosenblatt's example to the units that he supports. Indeed, doctrine offers this as a valuable strategy toward emphasizing particular values within a unit.

The OPLAW NCO

United States Army leadership doctrine counsels leaders to carefully manage their low-density specialties.⁷⁵ The JAGC, like every branch of the U.S. Army, suffers from a shortage of

70. See FM 25-100, *supra* note 16, at 3-4.

71. The time horizons for these plans are laid out in FM 25-100. See *id.* at 3-5.

72. See FM 22-100, *supra* note 9, at 6-132.

73. See *id.* at 6-139.

74. See *id.* at 1-51.

75. See FM 22-100, *supra* note 9, at 3-41.

personnel—to include NCOs. At the same time, the JAGC, like every branch of the U.S. Army, has increased demands on its limited personnel. This paradox is nowhere clearer than in the field of operational law. The JAGC is struggling with the optimal force structure to meet the demands of operational law.⁷⁶ The aim of this article is not to recommend any doctrinal changes to the force structure of the JAGC. It does, however, recommend that JAs and staff judge advocates take advantage of the flexibility they possess in tasking NCOs under their immediate supervision to assign an NCO in every staff judge advocate office as the OPLAW NCO.⁷⁷

Dedicating an NCO to work operational law issues, including ROE training, offers potentially enormous benefits. First, the NCO will often have military experience that exceeds or at least compliments that of the JA. This is true with most officer-NCO partnerships formed in the U.S. Army. That military experience can provide the JA with a valuable filter to view ROE training plans and strategies for approaching commanders and staff members with proposals for ROE training. Second, the NCO will simply provide an extra set of eyes to observe training in the supported unit. Furthermore, since NCOs conduct most individual training, having a dedicated OPLAW NCO observe individual ROE training will be less of a distracter and may provide a truer picture of the quality of training occurring in the unit.

Third, and arguably most important, an OPLAW NCO charged primarily with duties associated with individual ROE training would serve as a valuable interface between the JA and the NCO Corps in the supported unit. All the benefits of empowering NCOs to conduct individual ROE training discussed earlier will be best realized if the JA himself has an NCO on which he can rely. A CSM, for example, will likely approach the mentoring of a junior officer a little differently than the mentoring of an NCO. This subtle difference in approaches may result in enhanced feedback for the JA via the OPLAW NCO and increased ownership of ROE standards by the NCO Corps.

Leadership

Finally, the reliance on NCOs to improve individual ROE training does not replace the JA's responsibility to interact with soldiers and NCOs in the unit he supports. Again, U.S. Army leadership doctrine provides a potent strategy for imparting values (in this case, the internalization of self-defense principles and disciplined use of force principles that form the basis of

ROE) to soldiers. While the following excerpt is taken from the context of combat or combat training, its message is weighty: "Soldiers are extremely sensitive to situations where their leaders are not at risk, and they're not likely to forget a mistake by a leader they haven't seen. Leaders who are out with their soldiers . . . will not fall into the trap of ignorance."⁷⁸

Again, soldiers will have every reason to be skeptical of the JA that they only see twice a year peddling a class on ROE. Presence at various training events, including physical training and social events, can pay dividends with respect to the JA's credibility. This ability to be present at various unit events may be limited by the JA's commitment to participate in physical training and social events with the legal office or brigade staff, not to mention a demanding case or work load. This constraint on the JA, however, makes an additional argument for an increased role for an OPLAW NCO who could establish a regular legal presence at unit events.

Furthermore, as the JA's presence is sensed more and more, and as the JA continues to emphasize basic ROE principles, he can have an impact on the unit's culture. Another anecdote makes this point. Lieutenant Colonel Richard Whitaker recounts his experiences as a trial counsel:

After each court martial, I would post the results in the company area, and then I would read the results of trial in the company formation. We took no questions, and made no reference to specific type of crime, etc. During the course of trial preparation, I made myself very visible as I came and went in preparation of the trial or preliminary hearings. The unit leaders told me that this had a profound impact on the soldiers and that my presence, coupled with the disappearance of those subsequently convicted and placed in jail was a healthy reminder that while the command rewarded those that worked hard, those that chose to violate the same rules others worked to uphold would be dealt with. You can do this without getting anywhere near an unlawful command influence issue, by allowing soldiers to draw their own conclusions and by relying on the soldier supported informal communications. Anybody that does not think that the results of an article 15 or a court martial do not spread like wild fire through a unit does not understand soldiers.⁷⁹

76. Telephone Interview with Lieutenant Colonel Peter Becker, Combat Developments Department, The Judge Advocate General's School (Dec. 15, 2001) (notes on file with author).

77. Note that the JAG School has opened its OPLAW Seminar to legal NCOs. This is a welcome first step toward embracing the tremendous potential embodied in a designated OPLAW NCO.

78. FM 22-100, *supra* note 9, at 3-24.

79. E-Mail from Lieutenant Colonel Richard Whitaker to author (Dec. 10, 2001) (on file with author).

One does not need to think long to develop a similar strategy for the JA seeking to make an impact on a unit regarding ROE. As the JA builds relationships with the NCOs and the company commanders of the unit in which he serves, opportunities to make a difference in the unit's culture will present themselves. Whether pulling soldiers aside to talk to them about ROE, reading an account in formation of an actual incident where a soldier complying with the ROE made a difference, or posting an account where a soldier violated the ROE and it had an adverse impact on the mission, JAs should be open to opportunities to reach soldiers a little at a time.

Conclusion

In the end, commanders and JAs have successfully transitioned into an era in which formal ROE play a more prominent role in Army operations than at any time in history. Given the necessity of the disciplined use of force in Army operations,

ROE assume strategic significance as they guide the individual soldier and the commander alike in their decisions to use force. Going forward, evaluating the development and training of ROE from a doctrinal perspective offers the best opportunity for continued refinement of the JA's role in implementing ROE.⁸⁰

This article outlines several strategies grounded in Army doctrine for JAs to strengthen ROE development and training. Rules of Engagement represent a somewhat untraditional operational function for the JA, yet this function requires the same diligent study and commitment that JAs ordinarily devote to the law. In this case, however, JAs must become operational and, more specifically, doctrinal experts—just as they are legal experts in performing their other functions in the JAGC. This article offers recommendations not only in hope that JAs might adopt some of them, but also to convey the idea that just as the law guides JAGC legal practice, doctrine must guide JAGC operational practice.

80. After a thorough application of existing doctrine to the role of the JA in ROE training and development, one may reach the conclusion that doctrine remains underdeveloped in this field. This article intentionally avoids discussing potential shortcomings in existing doctrine. To make informed and truly effective future adjustments to existing doctrine, the JAGC should maximize the guidance and insight contained in existing doctrine.