



# The Need for Discretion in Resilient Soldiering

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*Professionalism is the continuing exercise of discretionary judgment in applying expert knowledge.*

—Don M. Snider

**A**SERGEANT MANNED A guard post in Iraq. His tour of duty had been relatively uneventful, when suddenly a young man appeared on top of the perimeter wall that he was guarding. The young man scaled the wall, jumped over the top, landed inside the forward operating base (FOB), and brandished what appeared to be a white flag. Recalling his rules of engagement (ROE), the sergeant recognized that, having breached the security barrier and penetrated the interior of the base, the intruder was now considered a hostile threat. The ROE directed that deadly force be used against anyone breaching the wall. In those immediate seconds, this noncommissioned officer remembered similar incidents where intruders had breached security barriers and killed American Soldiers using suicide vests or bombs. If he did not shoot this intruder and he proved to be a terrorist, his comrades' very lives could be at risk within moments. The sergeant had become the final security barrier. His required course of action was clear and unambiguous. As he leveled his weapon and aimed at the intruder, something stopped him from pulling the trigger. He noticed the person was not moving and was holding up the white flag. His mind raced as he recalled how terrorists had previously used such flags and other deceptive techniques to trick Americans into allowing them time to strike. Still, the NCO did not fire. He asked himself if the intruder posed a clear and imminent danger at that moment. He knew he had two other sentries in the area who could engage the intruder with fire should he get past the guard post. The man was also still at a relatively safe distance from the rest of the sergeant's fellow Soldiers. Should a bomb go off at that moment, it would not injure anyone. He made a decision to vary from his ROE and not use deadly force unless the intruder tried to move further into the compound. The NCO's judgment in those immediate moments was: "If the man moves he will die. If the man remains still, I will try to determine his identity and purpose, without risking the safety of my fellow Soldiers."

The FOB's quick reaction force subsequently secured the intruder and found him to be unarmed. They also discovered that he was the son of a local sheik who had been a major source of assistance to the coalition forces and exercised significant influence in the local community. It was then clear that had the NCO followed the ROE, a tragedy would have resulted. Tragedy was averted because the NCO exercised what is referred to as "discretion." Had

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PHOTO: A Soldier communicates with his troops standing guard in the village of Luy Tanah, Zabul Province, Afghanistan, 9 June 2010. (U.S. Army photo by SPC Eric Cabral)

he killed the young man, he would have been legally correct according to the ROE, and yet, in hindsight, everyone was grateful that he did not.

## Discretion, a Challenging Virtue

The discretion displayed by the NCO on that eventful day is a valuable yet challenging virtue to possess. One might define it as the ability to recognize the right thing to do, given a particular set of circumstances where the correct decision is not apparent. Referring to the virtue of discretion by one of its philosophical synonyms, “prudence,” philosopher D.Q. McInerney describes it this way:

From the broad and basic knowledge that good is to be done and evil avoided, we must determine what is the specific good to be done here, what is the specific evil to be avoided now. Again, the particular virtue we call upon to aid us in this altogether critical task is prudence; prudence which enables us to do the kind of investigating that the circumstances call for, prudence which enables us to make the proper judgments pertaining to those circumstances, prudence which enables us to give ourselves the requisite directives to do what has to be done in order to attain the end that is to be attained.<sup>1</sup>

Understanding the nature and value of discretion is one thing; enabling Soldiers to employ it is quite another. The challenge consists of two components: developing the capacity to use discretion and providing Soldiers the freedom to exercise it. Acquiring discretion requires achieving one of the higher levels of moral reasoning. One can appreciate this fact by considering the contrast between the NCO’s actions in the case cited above and what a robot would have been capable of doing in that same situation. The advantage of a robot is that it can be programmed with a vast amount of data. Where a robot comes up short, compared to a human being, is in situations for which the circumstances are not described by means of pre-programmed information. Here a human being has a potentially unlimited capacity to reach an appropriate decision, while a robot would encounter an impasse. Had a robot been on guard that day at the FOB, programmed with the current ROE, the robot would have instantly shot the intruder.

The robot would not have been capable of dupli-

cating the decision making process of the NCO. That would have surpassed its capability. In fact, one of the current focuses in advanced robotic research is the attempt to imitate the human capacity for discretion. Why is this so? It is because the ability to operate in ethically complex scenarios is vital to many areas of human endeavor, and the military is a prime example. In today’s operating environment, Soldiers continually find themselves in distant lands facing unexpected ethical challenges for which prior explicit guidance is missing and with little time to reach a decision.

## Training for Discretion

To achieve the capacity for discretion, Soldiers must be taught to perform moral reasoning using well defined, ethical decision making methods. Such moral reasoning involves more than an understanding of fundamental values. Values are indeed essential building blocks for ethical reasoning, but a Soldier who is capable of discretion must also learn how to apply values within a disciplined framework of ethical analysis. This is especially necessary when values appear to be in conflict with one another. Here we are talking about the need for a type of ethical decision making that has been referred to as a “multilevel approach to the professional military ethic.”<sup>2</sup> It includes such components as the teleological (outcome focused), deontological (rules/process focused), and virtue (values focused) “moral lenses.”

The multilevel approach also includes the sequence of moral processing and the ethical “battlespace” of numerous moral influences affecting the decision. This is not a simplistic approach to moral decision making that can be accomplished by an annual, half-hour slide presentation. It requires cognitive education, as well as a Socratic type of mentorship. This means that it transpires through an

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**Iraqi Police exchange gunfire with anti-Iraqi forces moments after a suicide car bomb exploded in front of them at an intersection they were working in Tameem, Ramadi, Iraq, 10 August 2006.**

ongoing exchange of thought between leaders and those they are morally forming. And the setting is not only in the classroom, but everywhere that discretionary judgment can be demonstrated in concrete ways. This could include motor pools, professional development seminars, training areas, and deployment theaters of operation.

As an example of the ubiquitous opportunities which leaders have to develop their Soldiers' discretionary capacity, consider the following possible scenario: During the briefing of an operations order, leaders can demonstrate to subordinates the art of identifying the commander's intent and implied missions. This provides an opportunity to explore how one goes about the process of recognizing considerations that are not explicitly stated and why an understanding of the commander's overall intent is important for correctly carrying out specific tasks. In a similar way, the use of ROE briefings can demonstrate the kind of discernment that reveals not just the "what" of the ROE, but also the "why" behind its stated guidelines. Again, leaders can develop their subordinates' ability to recognize values that are at stake, which the ROE

is attempting to balance (e.g., force protection and respect for innocent human life), and to appreciate how the application of discretion makes such balancing possible in unforeseen circumstances.

Leaders can likewise mentor their Soldiers in the use of discretion when they decide to "circle X" (discretionally certify) a vehicle's maintenance status. They can use the occasion to demonstrate the discretionary reasoning through which the decision was made: e.g., consideration of the nature of the maintenance deficiency, the intent of the applicable "deadline" criteria, the skill of the operator, road and weather conditions, duration and importance of the mission, the risk assessment (the "worst case" scenario), other options, and finally how the leader balanced all of these factors in arriving at a

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course of action. This is just one more example of common opportunities where leaders can develop their Soldiers' capacity for discretion.

Soldiers who are able to observe leaders exercising the use of such discretionary judgment are very likely to develop that same capacity for higher-level moral reasoning. In short, achieving a capacity for discernment occurs not just through education, but also through the experience of having it modeled by leaders who do it well.

It should be apparent that achieving the capacity for discretionary judgment requires the same intentionality as is used to develop a Soldier's occupational skills. And that is why the first component of achieving Soldier discretion is a challenge—it requires an understanding and commitment of time and resources on the part of leaders. Further, the evidence of discretionary capacity is often not as easily measured as other Soldier qualities, and hence it can be easily overlooked or devalued. Thus,

the first component of discretionary judgment will not be achieved accidentally, but only through a deliberate plan of action.

## Using Discretion

The second component is likewise a challenging one. No amount of discretionary capacity will be of any use unless there is a freedom to act upon it. Military leaders must therefore empower Soldiers to exercise their capacity for discretionary judgment. Unfortunately, I think there is a certain reluctance to do so, due to a fear that it might create a situation in which Soldiers' conduct cannot be adequately controlled. This concern on the part of leaders is certainly understandable. Command and control is essential to successful operations. However, I suggest that the answer lies not in forgoing the benefits of discretionary judgment, but in adequately preparing Soldiers to exercise it. To this end, leaders need to mentor their Soldiers to understand and apply the “reason-



U.S. Air Force, SSGT Angelita Lawrence

U.S. service members with Provincial Reconstruction Team Zabul listen to a rules of engagement brief by U.S. Army 2LT Anthony Chesini, a security forces platoon leader, prior to a convoy to Shar-e-Safa, Afghanistan, 25 October 2009.

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able person” criterion. This criterion belongs to the higher level of moral reasoning referred to earlier. The “reasonable person” criterion asserts that taking all things into consideration (e.g., explicit guidelines, absolute obligations or prohibitions, the intent of orders, extenuating circumstances, and likely consequences), one should act in a manner that most people would agree reflects a reasoned attempt to balance all the important factors at stake. This criterion is based on the obvious fact that no set of predetermined guidelines can adequately cover every possible contingency.

To ignore this crucial factor is to invite tragic consequences if preestablished guidelines are rigidly followed in all cases. Such a rigid, “robotic” type of conduct is embodied by the dictum: “If this, then that.” Using such nondiscretionary reasoning, a Soldier who encounters a situation that matches a “this” is trained to respond in only a “that” manner. When an event occurs that is not described by the explicit guidelines, a Soldier tries to match it with the most similar “this” addressed in given guidelines. Therein lies the Achilles’ heel of such conventions. They generally work adequately 90 percent of the time, but it’s the other 10 percent of situations where they fail and where tragic mistakes occur as a result.

The real-life scenario at the beginning of this article, involving the sergeant and the intruder, is a prime example of those potentially tragic 10 percent situations. Tragedy was avoided in that case only because the Soldier involved had both the capacity and the sense of freedom to act upon his discretionary judgment, and in the process, he demonstrated the application of the “reasonable person” criterion. This criterion is thus not a license for anarchy. Rather, it makes it possible to guide Soldiers in accordance with the ROE without losing

the capacity to do the right thing when unusual circumstances call for higher levels of moral judgment. It serves the critically important need to keep the “human factor” within the process of resolving complex ethical and legal dilemmas. It also serves to increase the likelihood that in such situations, Soldiers’ decisions will be both ethically right and in accordance with the intent of the law.

## **What is at Stake?**

The ramifications if our Soldiers are not prepared and empowered to exercise discretionary judgment are the most important aspect of this matter. What is at stake involves the loss of innocent lives and the ruining of our Soldiers’ professional and moral well-being. As noted before, the current operating environments routinely put Soldiers in situations where they must rapidly make complex ethical decisions. We speak today of the “strategic corporal” whose decisions can have far-reaching consequences. In an effort to ensure those decisions are correct, commanders have provided ROE and other guidelines. However, when the capacity and freedom to exercise professional discretion are absent, a false dichotomy can arise in the Soldier’s mind between doing what is “right” and doing what is “legal.” This can lead Soldiers to assume a “survival mentality,” which asserts, “I’m not going to risk doing what I think is right, and end up going to jail for it. If I follow the rules, they can’t hold me responsible for what goes wrong.” In the grip of such ethical and legal schizophrenia, Soldiers nonetheless do hold themselves responsible for harm associated with the execution of their military duties.

The fact that they remain legally innocent by virtue of having strictly adhered to legal guidelines does not eliminate the attendant feelings of guilt for having ignored their voice of moral conscience. This is always the case when in hindsight it is obvious that adherence to directives did not serve the humanitarian purpose for which they were issued, and as a result innocent people suffered injury or death. And the longer Soldiers are subjected to these kinds of experiences, the greater becomes the risk of undermining their mental and spiritual health. To thereby jeopardize the professional resilience of our Soldiers creates not only a concern for sustaining the force, but also raises a fundamental issue of justice. It is simply unjust to subject Soldiers to

the ethical challenges posed by today's Army while denying them the capacity and freedom to exercise necessary professional discretion. For in doing so, one prevents them from acting in the fully human manner necessary to remain psychologically and spiritually sound.

The Army's understanding of professional responsibility includes the essential concept of mutual obligations, moral duties that exist reciprocally between leaders and those they lead. Empowering Soldiers with discretionary judgment is one of those fundamental obligations which Army leaders owe to their Soldiers. Fulfilling that leadership responsibility is essential for maintaining the welfare of the individual Soldier, ensuring the highest quality of mission accomplishment, and strengthening the resiliency of the force in the present environment of persistent conflict. To be sure, it is a challenging responsibility. We might easily choose to forego it in the name of limited time and resources, but we do so at great risk. **MR**

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#### NOTES

1. D.Q. McNerny, *A Course in Thomistic Ethics* (Elmhurst, PA, 1997), 164.
2. Colonel Sean T. Hannah, Ph.D., and LTC Joseph Doty, Ph.D., "Building Moral Resources in Leaders for an Era of Persistent Conflict and Beyond" (The Center for the Army Profession and Ethic, West Point, NY: an unpublished document presented at the USMA Senior Leader Conference, June 2008).

U.S. Army, SGT Jim Greenhill



**A National Guard member stands watch on a ridge above Nogales, AZ, at the U.S. border with Mexico on 19 July 2006.**