



Soldiers assigned to the 416th Theater Engineer Command conduct a commanders update brief during Avenger Triad 25 at Grafenwohr, Germany, on 27 October 2025. Avenger Triad is a US Army Europe-Africa Command computer-assisted command-post exercise designed to train US and multinational partner units in large-scale combat operations in a competitive simulated environment. The authors of this article note that by including judge advocates early in the planning process, commanders and staffs can avoid common pitfalls in execution and achieve better outcomes. (Photo by Staff Sgt. Anthony Torres, US Army)

# Staffs, Planning, and the Law

## Integrating Legal Advice Early in the Operations Process

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The original working title of this article was “Send Lawyers, Guns, and Money,” the title of Warren Zevon’s 1978 top ten hit song.<sup>1</sup> The title and lyrics reflect the authors’ too-familiar experiences in operational planning where a well-crafted plan has turned “pear-shaped” in execution (or in Zevon’s terminology: “the \$&!# has hit the fan”), and only a sufficient influx of resources can remedy a likely, inglorious end. The authors, writing from the perspective of a multitenured chief of staff and operational legal counsel, suggest that the inclusion of a lawyer and a realistic, systematic consideration of the legal matters influencing an operation at the outset of planning may help avoid many of the pitfalls experienced in execution. This imperative is especially critical given leaders’ recent emphasis on keeping judge advocates focused on “what matters most: advising commanders in the fight, on operations [and] in deployed environments where seconds and minutes count.”<sup>2</sup> By including the judge advocate general’s (JAG) representative early in the planning process—not merely as an advisor, but as a fully vested member of the Army problem-solving process (APSP) and military decision-making process (MDMP)—planners can avoid common pitfalls and achieve better, more sustainable outcomes.

## Recent Scholarship and Doctrinal Gaps

Recent articles by Army senior leaders reflect a clear awareness of the law and its applications on the modern battlefield. Current scholarship focuses on converting the Army’s mindset from the constraints placed on soldiers during counterinsurgency (COIN) operations to a more permissive approach in large-scale combat operations (LSCO). This interest must persist, as an understanding of the law and the role of judge advocates (JA) is essential and enduring to all military operations and functions.<sup>3</sup> As our title and experiences reveal, commanders and staff typically wait far too long to include the military law experts in the problem-solving and decision-making processes. This delay often results in missed opportunities to mitigate risks and optimize operational outcomes.

Our doctrine requires the inclusion of JAG Corps personnel in the planning process. As stated in Field Manual (FM) 3-84, *Legal Support to Operations*: “JAG Corps personnel must be integrated into staff and

operations process during all phases of the operations process. JAG Corps personnel must participate in every step, to the extent possible ... to identify potential legal issues.”<sup>4</sup> Despite this doctrinal stricture, we frequently see the operations officer or chief of staff run to the staff judge advocate’s (SJA) office for a rubber-stamp legal review merely hours, if not minutes, before orders publication. We often default to a review after the fact (a.k.a. an investigation), and we leave our legal professionals out of the process because we perceive them as possible obstacles to speed and efficiency. This perception is misguided and counterproductive. Channeling Benjamin Franklin, we fail to see that an “ounce of prevention” is often better than a “pound of cure.”<sup>4</sup> Sound legal advice at the outset can often not only preclude disaster but also open doors to opportunities and unique ways of solving the problem. This article offers possible ways commanders and coordinating staff can integrate legal advice into operational planning from receipt of the mission to orders production.

The complex operational environment and the changing characteristics of war are constant challenges to our ability to anticipate and plan, with or without sound legal advice.<sup>6</sup> The Army’s operations across the continuum of competition, crisis, and conflict and its integration across all domains (land, sea, air, space, and cyber) and dimensions (human, information, and physical) offer challenges and opportunities in the

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application of combat power.<sup>7</sup> A further complication is the Army's transition from a twenty-year-plus engagement in COIN operations to a focus on LSCO. Lt. Gen. Charles Pede and Lt. Col. Peter Hayden cite this as our "COIN hangover," which they suggest inhibits our thinking about warfare and its legal implications. In their article, "The Eighteenth Gap," Pede and Hayden describe our Army's perceived diminished "legal maneuver space" as an inhibitor to effective operations.<sup>8</sup> To overcome this hangover, understanding the evolving dynamics of the battlefield and its legal implications requires a studied and deliberate approach.

In their article, "Lethal Force, Risk, and LSCO," Lt. Gen. Milford Beagle Jr., Lt. Gen. Joe Berger III, and Lt. Col. Jack Einhorn emphasize the need for "debate" between commanders and their subordinates to arrive at workable solutions in applying the Law of Armed Conflict (LOAC). The authors establish "commanders must be confident in their ability to conduct a LOAC analysis without a JA and have confidence their subordinates can do the same. This confidence can only be achieved by engaging in debates about the LOAC and sharing ideas up, down, and across echelon."<sup>9</sup>

We contend that interactions between commanders and their legal advisors are not true "debates," but are more accurately characterized as "unequal dialogues." This term, coined by Eliot Cohen in *Supreme Command* to describe the relationship between statesmen and military leaders, better acknowledges the decision-maker's ultimate authority while ensuring the staff expert's legal input is heard. Regardless of the label, these dialogues are essential during the "execute" phase. However, a more inclusive planning environment—with a JA integrated early—minimizes the need for these intellectual exchanges during high-stakes, fast-paced operations. By framing the dialogue during the "plan" and "prepare" phases, the commander and staff can preclude lengthy discussion when action, not debate, is of the essence.

## The Operations Process

The Army organizes for and engages in operations using the operations process. The operations process is a continuous process of planning, preparing, executing, and assessing the operation. The unit commander uses this process to drive the conceptualization and planning of unit activities. Commanders engage their staff

and subordinate commanders within the operations process to understand, visualize, describe, direct, lead, and assess the conduct of operations.<sup>10</sup> At each stage and in the multiple touchpoints with the commander, there are key instances where inclusion of the SJA can have a positive influence in creating understanding, identifying legal risks, and verifying adopted courses of action (COA) that are both operationally and legally sound. Staff efforts in the *planning* phase are likely the most impactful in this process.

**Plan.** The Army has five planning methodologies: the APSP, the MDMP, the Army design methodology, troop leading procedures, and the rapid decision-making process.<sup>11</sup> The APSP and portions of the MDMP will be the focus of our analysis as they serve as the intellectual and/or procedural basis for the other methodologies and apply broadly to both operational and other problems commanders and staff will likely encounter. Participation by the legal team in a few key portions of the planning process will have a significant impact on influencing the overall operations process and its adherence to legal principles. Whether planning an attack to seize an objective in a heavily defended urban area or presenting the commander with a recommendation on adopting a specific contract vehicle to perform a key function, both tasks require critical thinking by the staff and likely present legal challenges.

The APSP and MDMP each have seven steps that roughly parallel one another. The APSP is an analytical approach used to identify and solve a variety of problems, while the MDMP is most often used in an operational setting with the aim of producing a plan or order. There are four steps in both the APSP and the MDMP that are analogous and most important in terms of offering opportunities for early integration of legal professionals into the planning process.<sup>12</sup> For simplicity, we will address these steps using the MDMP titles.

**Mission analysis.** The two main purposes of mission analysis are to enhance understanding and help define the problem the unit must resolve to accomplish its mission. Contained within its seventeen substeps are three critical points that lend themselves to an early incorporation of the JA. These are determining constraints, determining key facts and assumptions, and beginning risk management.<sup>13</sup>

In determining constraints, the JA may be uniquely positioned to divine key limitations imposed by a

higher headquarters' order or unique characteristics of the operational environment that may influence operations or preclude the consideration of available options. JAs offer more than regulatory compliance; they provide foresight into how laws, policies, and authorities shape the operational environment. They should probe for jurisdictional constraints, permissions required under status-of-forces agreements (SOFA), and legal thresholds that affect the timing or execution of certain missions. They also help decipher complex layers of authority, distinguishing what units *may* legally do from what they are authorized or ethically *expected* to do under current rules of engagement (ROE) or host nation frameworks.

Similarly, when developing facts and assumptions, a staff officer focused on the legal aspects of the operation may highlight a relevant environmental condition that may not be readily apparent to others. A trained lawyer will also serve to check the logic of assumptions, which are presumed truths in the absence of definitive knowledge, that must be made to continue planning.<sup>14</sup> Assumptions must be both valid and necessary. Assumptions failing to meet these criteria expose commands to possible overreach or unduly limiting a wider range of possibilities. The JA's input during assumption development is critical in challenging weak logic or highlighting where legal ambiguity might turn into strategic friction. For example, assuming blanket authority to operate in cyberspace or presuming positive identification in dense urban terrain can have serious legal consequences—and sometimes international repercussions—if not scrutinized in advance. Legal advisors can mitigate this *risk* early by flagging assumptions that overreach or overlook key limitations, while also surfacing underexplored *opportunities* enabled by law (e.g., expanded use of humanitarian assistance channels or dual-use agreements).

A balancing act also occurs in the process of risk management. In mission analysis, staff officers focus on identifying risks and begin to measure risk costs against mission benefits. Understanding the consequences of potential actions, particularly when these consequences could have *legal* repercussions, makes legal opinion essential to this discussion. However, legal risk is not confined to battlefield losses or collateral damage—it also touches legitimacy, accountability, and even coalition cohesion. A sound legal analysis

helps ensure chosen COAs will stand under scrutiny, both to contemporary audiences and after the fact. Mission analysis is the chance to frame these risks not as roadblocks or barriers but as vectors for smarter, more defensible operations.

Nevertheless, there must be acknowledgment during risk analysis that JAs are inherently risk averse. Their role is to identify all relevant risks but also to weigh them appropriately in terms of likelihood and severity of potential consequences. However, it remains the commander's decision what risks will be assumed (as long as that respective level of command can assume the risk) to accomplish the mission. The *best* JAs thus are not conservative obstacles but strategic enablers. To ensure JAs most effectively advise staffs in managing risk while seeking optimal COAs, the challenge is for the team to ask not simply, "Is this allowed?" but "Is this the best legal path to achieve our desired operational effect?" Reframing legal counsel as "risk calibrators," not just "risk flaggers," gives commanders the legal maneuver space to succeed with confidence and foresight.

Considering these three areas of mission analysis from a legal perspective provides an early check of the legal jurisdictions involved and an assessment of its logical foundation. A well-considered analysis from a legal point of view establishes a foundation to build viable COAs.

**COA development.** COA development seeks to generate options for the commander to accomplish the mission. All COAs must be feasible, acceptable, suitable, complete, and distinct. Legal analysis is a key consideration in determining suitability, meaning it "solves the problem and is legal and ethical."<sup>15</sup> The process of generating options and developing a concept are the two substeps that provide the greatest opportunities for input and impact from the JA. Generating options is a creative process that requires open-mindedness and imagination to produce viable ways to accomplish the organization's essential tasks. FM 5-0, *Planning and Orders Production*, encourages planners to generate options in an "unconstrained" environment.<sup>16</sup> The "developing a concept" step then exercises the critical thinking component to ground the "good ideas" in reality.

A trained attorney, who will likely balk at any absence of constraints, can both add a source of realism and provide insights into ways and means that may not be readily apparent. The JA should not be perceived



as a deterrent but rather as an enabler of imaginative yet realistic thinking. As Pede notes, “The law of war is sufficient to enable and empower commanders to accomplish the ugly and brutal business of winning war while placing a premium on civilian protection. ... We, as soldiers, must clarify and defend the legal maneuver space in which we will fight.”<sup>17</sup> An initial check on option generation and concept development can limit flights of fancy before progressing too far in the planning process, while providing the commander with the legal maneuver space to accomplish the mission.

An illustrative vignette of this concept might involve a division staff developing multiple COAs for seizing a contested urban zone. One concept proposes establishing an evacuation corridor for civilians along a major highway simultaneously used for military logistics. Initially, this COA seems promising—it is an efficient use of terrain, minimizes displacement, and maintains tempo. However, during COA development, the SJA flags several legal concerns:

(a) **Feasibility.** The proposed corridor passes through an area where the host nation’s consent is still

pending. Without clearance, the COA may violate sovereignty or international agreements, rendering it legally infeasible.

(b) **Acceptability.** The simultaneous movement of civilians and military materiel may risk violating LOAC principles, particularly the requirement to distinguish between combatants and noncombatants. This could undermine the legitimacy of the mission if perceived as using civilians as cover or “human shields,” raising strategic and ethical red flags.

(c) **Suitability.** The COA meets tactical goals but might breach host nation law regarding civilian routing and protected infrastructure. Legal review shows it conflicts with recent SOFA amendments. The SJA works with planners to redesign the route

Spc. Joseph White from the 153rd Legal Operations Detachment and a fellow soldier look down a dirt road toward their ammo resupply point on 21 July 2019 at Fort McCoy, Wisconsin, during the 2019 Paralegal Warrior Training Course. (Photo by Sgt. James Garvin, US Army Reserve)

to comply, transforming a problematic plan into a legally sound one.

- (d) **Complete.** The initial COA lacks provisions for who controls checkpoints or how ROEs will be applied in mixed-use zones. The legal team helps define those protocols, ensuring clarity and reducing ambiguity for executing units.
- (e) **Distinct.** Compared with other COAs, this route offers unique operational advantage. However, it only becomes truly “distinct” when legal input identifies a niche authority allowing humanitarian relief efforts to support traffic flow. This turns a constraint into a *capability*.

In this example, the SJA’s early involvement did not kill the concept—in fact, it *strengthened* it. Early legal review thus refines planning logic, enhances legitimacy, and ensures a proposed COA wouldn’t collapse under scrutiny at the worst possible moment.

Next, in COA analysis, more commonly referred to as “war-gaming,” staffs visually display and test their developed courses of action against likely enemy COAs. War-gaming’s interplay between all friendly and enemy components exposes the proposed COAs to scrutiny and therefore affords an ideal venue for value-added JA participation. Using an action-reaction-counterreaction methodology, the staff synchronizes activities and tests the effectiveness of proposed applications of combat power against possible enemy reactions.<sup>18</sup> This is a whole-of-staff endeavor to ensure the analysis is comprehensive, incorporates all warfighting functions, and accounts for all possible variables.

In the staff exchange, the JA should not serve as judge or jury, but as sage counsel to comment as necessary on both friendly and enemy actions as the operations and intelligence offers “fight” their corresponding sides. A key war-gaming output is a synchronization matrix that, for the COA ultimately selected by the commander, becomes the basis of the execution paragraph and Annex C (Operations) of the operations order or plan. Active participation by the JA in war-gaming “bakes in” a legal perspective into the executable plan and directly influences how the organization will conduct operations.

JAs, by virtue of their legal education, are trained to work with hypotheticals, stress-test logic chains, and identify weak points in arguments or assumptions. Their similar education background (law school, Judge

Advocate Officer Basic Course, Graduate Degree Program, and other continuing legal education) and their similar experiences (from courtroom advocacy to command advising) equip them to challenge others’ reasoning—and their own—respectfully and constructively. Like a judge guiding attorneys toward clearer precedent and firmer conclusions in a courtroom, a command legal advisor is well-situated to attack the “gray area,” a crucial step in identifying ambiguity and clarifying COAs.

Bringing in the “judge” does not mean empowering the servicing JA to overrule decisions. However, it does mean leveraging their ability to interrogate a plan from multiple perspectives: What are the legal vulnerabilities? How might an adversary exploit ambiguity? Could coalition partners raise objections to certain language or tactics? War-gaming is a safe environment for these questions, and legal advisors are comfortable sitting in that tension, teasing out implications before they become liabilities. By leaning into their skills and training—working hypotheticals, surfacing counterarguments, and refining the legal underpinnings of operational options—SJAs inject rigor into war-gaming that improves both the product and process. It may not be a courtroom battle or law school debate, but it is close enough to make their input indispensable to reaching an optimal result.

**Prepare.** In the cyclical nature of the operations process, planning never really ends. However, there are key preparation activities that commence once planning reaches specific milestones. Confirmation briefs and rehearsals are two preparation events that help transition plans and orders to execution and serve as key activities to inject SJA expertise. The key element in both preparation activities is the opportunity for the legal team to hear and see, directly from subordinate commands, how they understand the tasks assigned to them and how they intend to prosecute their portion of the mission.

Subordinate commanders provide a confirmation brief immediately following the receipt of an order to confirm their understanding of the higher organization’s order.<sup>19</sup> This is an important commander’s dialogue where a command looks to promote shared understanding and express perceived limitations or opportunities. Within this exchange, a legal advisor can listen to identify possible friction points and deviations,

coaching commanders on alternative approaches where appropriate.

Rehearsals are an even more powerful visualization tool and form of commanders' dialogue. Rehearsals provide leaders at echelon to practice synchronizing operations at critical times and places.<sup>20</sup> This is another golden opportunity for JAs to "see" the interplay of subordinate commanders, warfighting functions, and operational and tactical variables. By design, rehearsals encourage cross-talk between commands and identify friction points, legal and otherwise, that may surface in the execution of the mission. Rehearsals of concept (ROC) drills are akin to Beagle et al's "vignettes" to discuss possible scenarios and engage in a meaningful dialogue before entering, and far from, the actual point and time of danger.<sup>21</sup>

The following hypothetical illustrates the import of legal advisor integration into ROC drill vignettes. During a brigade ROC drill, a maneuver unit rehearses seizing an objective near a large civilian shelter. The scheme of maneuver includes possible contact near this zone. The brigade JA (BJA) is tasked with presenting a "legal contact window" vignette:

- The commander prompts a subordinate commander to explain what happens if indirect fire lands within one hundred meters of the shelter due to enemy movement.
- The legal advisor steps in, not to *halt* the conversation but to *encourage* it by asking: "Have we confirmed positive identification? What is our duty of care under LOAC if civilians begin evacuating into our zone of fire?"
- The vignette opens dialogue on issues *beyond* ROE (which, the authors must emphasize, is the determination of specific levels of commanders, not their legal teams), touching on legal authorities for medical response, obligations to report civilian harm, and strategic messaging implications if media is present.<sup>22</sup>

This dialogue injects legal realism into tactical and operational planning. The commander, staff, and subordinate leaders rehearse not just movement but also the anticipated chaos of war through their response, reporting, and restraint. In this way, JAs bring the rigor and moral-legal-ethical complexity into the field without dampening operational tempo. They thus can help teams uphold the integrity of the mission, rehearsing the decisions that will define the mission's legitimacy in

the long run, along with the tactics that will win terrain in the short term.

These types of ROC drills should not be treated as mere walkthroughs of ROE application but as high-impact visualization tools where servicing JAs must be central players, not peripheral observers. Placing the legal advisor front and center creates an environment where difficult questions get answered *before* the first round is fired. Because there is rarely time in execution for debate, preparation and training during these rehearsals must absorb the full weight of that dialogue.

The legal team should not be relegated to coffee runs or post-huddle summaries during ROC drills; they should have a scenario to walk through, speak to, and stress-test in real time. Legal teams are no strangers to these types of stress-test rehearsals. Any lawyer who has served in a public policy or criminal justice billet will have experience with analogous "murder boards," challenging and rigorous reviews and rehearsal processes designed to thoroughly scrutinize and identify weaknesses in a court case, strategy, presentation, or political proposal.<sup>23</sup> Regardless of the depth of a plan, because "the enemy [always] has a vote," whether on the battlefield or in the courtroom, JAs are uniquely situated to add immense value to rehearsals to effectively bridge the gap between plans and execution.<sup>24</sup>

**Execute.** The above planning and preparing activities happen concurrently, in parallel, and frequently intersecting with execution activities. The integration of these multiple functions occurs within the structure of a battle rhythm that modulates the boards, bureaus, centers, cells, and working groups (B2C2WG) to drive the operations process. The battle rhythm logically sequences command and staff activities in support of current and future operations.<sup>25</sup> In the meeting-infested world of the battle rhythm, the reality will always be that there are not enough lawyers to go around.<sup>26</sup> In this resource-constrained environment, JAs and staff usually default to prioritizing JAs' time to the targeting process. Since targeting deals with applying lethal and nonlethal effects, it is a high-stakes endeavor that demands legal attention.<sup>27</sup> However, it cannot be the sole focus for the JA. Each component of the B2C2WG provides multiple opportunities for dialogue. Since legal professionals cannot be present for them all, the SJA (or better yet, the chief of staff) should prioritize those events where the commander or key principles render



decisions. In the world of the read-ahead and prebriefs, providing legal inputs at these lead-in “prep” venues offer an opportunity for lower-stakes dialogue prior to command performances.

Given the constraint of low-density SJA presence, how do we mitigate the impact of not having a legal advisor in every venue? One solution is to shift *part* of the legal contribution from *presence* to *product*. SJAs can—and often already do—develop tailored legal visualization tools that serve as stand-ins for their expertise during rehearsals, planning events, and working groups where their physical attendance isn’t feasible.<sup>28</sup> These products might include the following:

- **“Legal risk cards”** that identify and map out high-friction decision points across mission phases (e.g., displacement operations, targeting, detention),
- **“Red flag matrices”** that overlay legal constraints on terrain or timelines to preempt planning missteps,
- **“If-then briefs”** or diagrams that walk commanders through decision trees tied to key legal authorities (e.g., if civilian presence exceeds threshold X, then escalation must follow protocol Y), and
- **Annotated ROE scenarios** (again, based on the respective command’s determination as to ROE,

Soldiers assigned to the 2nd Infantry Brigade Combat Team, 25th Infantry Division, communicate tasks in the tactical operations center during Lightning Forge 20 at Kahuku Training Area, Hawaii, on 15 July 2020. Including judge advocates early in planning phases adds rigor and moral-legal-ethical complexity without disrupting the operational tempo. (Photo by Staff Sgt. Jonathan McElderry, US Air Force)

not the JAs) with scripted “legal contact” vignettes for subordinate unit rehearsals or MDMP walkthroughs.<sup>29</sup>

These deliverables, prepared in advance and embedded into the battle rhythm, empower planners and commanders to rehearse legal thinking without waiting for JA availability. They also reinforce a culture of legal literacy across the staff—shifting “legal” from being viewed as a bottleneck to an enabler.

Additionally, SJAs can train and deploy *legal liaisons* or designated proxies—individuals from other staff sections (e.g., ethics-trained chaplains or red team members) who carry forward specific legal sensitivities and flag concerns for later deep dive. Even when the lawyer can’t be there, their logic can be.<sup>30</sup> Nevertheless, caution must be advised whenever commanders seek to supplement the advice of their legal advisors, even in times of low density. Commanders, staff officers, and designated

proxies must distinguish between someone providing a legal *tool* or battle drill and *actual legal advice*, which any nonlawyers (including paralegals) are strictly prohibited by law and regulation from engaging in as the “unauthorized practice of law.”<sup>31</sup> To analogize to other dual professions, you wouldn’t ask nonsurgeons to perform a complex medical operation or nonchaplains to provide in-depth spiritual counsel.

## Pitfalls

Up to this point, we endeavored to provide key windows or opportunities for commanders to integrate legal advice into the operations process before the point of crisis. Having a lawyer in the room at the right time goes a long way in positively influencing operations and avoiding problems, but it does not eliminate every point of friction. Every commander and staff want to get the mission accomplished with the greatest efficiency and minimize the loss of resources and especially people. The SJA is part of this staff and process and pulls their plan-prepare-execute weight, but they also serve as a legal conscience and arbiter in a unique role. Preserving the distinction between productive staff officer and principled counsel is essential in ensuring the legal, moral, and ethical application of combat power. There are at least three pitfalls where commanders, staff, and their legal advisors can find themselves.

**Words mean things.** Contorting the definitions of words to overfit the desired action into the situation leads to the blurring of lines. For example, consider an operations order directing personnel to “temporarily secure and repurpose” private telecommunications equipment during an operation’s stabilization efforts. The phrasing avoids the terms “seizure” or “commandeering,” even though the action removes property from civilian control for military use without consent. By substituting euphemisms like “repurpose” or “redirect,” the staff may be attempting to cloak potential LOAC or domestic law violations under operational urgency.<sup>32</sup> Even if well-intentioned, these semantic contortions may provide short-term clarity—or cover—but they invite long-term risk. If challenged externally or reviewed post hoc, the language used in the order will be dissected. The safest course is generally to preserve plain meaning and ensure the terminology reflects the actual intent and legal basis of the action. SJAs should thus be trusted to advocate for candor in

wording, not cleverness, to protect the command from ethical and legal fallout.

**“Get me to ‘yes’” is a slippery slope.** Staffs will frequently “lean on” SJAs to “find” a justification for a preferred COA. The pressure to give the commander an answer they are looking for can drive creativity, but failure to adhere to solid legal, ethical, and moral foundations can lead to problematic flights of fancy. Overfitting of solutions frequently does not stand up to basic logic. If a staff officer cannot explain the approach in a way that makes sense to a layperson, there may be problems. Privates, sergeants, lieutenants, and captains will have to execute your plans in challenging environments. If they cannot understand the logic connecting the COA to the intent and purpose, there is a strong chance the approach is not properly grounded and exposes the command to legal risk.

A hypothetical vignette illustrates the need for legal integration to focus on the command’s desired *effect* (“right”) over its desired or stated *position* (“yes”). During a logistics planning meeting, a sustainment brigade proposes establishing a resupply hub inside a zone with disputed territorial claims between a host nation and a coalition partner. The planners, eager to meet timeline objectives, ask the BJA: “Can you get us to ‘yes’ on this?” Instead of simply hunting for a legal loophole, the BJA reframes the question: “What’s the operational effect you want? Secure throughput? Civil-military stability?” With the desired mission *effect* clarified, the BJA helps guide the planning team toward alternatives, which might include the following alternative COAs: negotiating use of an adjacent neutral corridor under existing SOFA provisions, leveraging third-party agreements to enable access, and building public messaging that supports strategic legitimacy. The result of this discussion? The planners abandoned the legally shaky COA in favor of one that meets the mission’s goals more effectively while remaining defensible under international law and coalition policies. All this is necessary to ensure long-term operational and strategic success.

The BJA in the previous example didn’t obstruct. They redirected and clarified the discussion using what the authors call “*effects-based lawyering*.”<sup>33</sup> That is, they shifted the staff’s focus from approval-seeking to effect-seeking, delivering a COA that was legally viable, strategically sound, and tactically executable. The

commander who fosters this type of planning environment and relationship with legal doesn't just get to "yes"; they get to *right*, and they get there faster in the long run.

**The SJA is not on retainer.** While their "client" is the command, military attorneys operate under a dual-profession construct, serving as both commissioned officers in the profession of arms and as licensed members of the legal profession with its own specific ethical standards. JAs must navigate this delicate balance with precision, adhering not only to the commander's intent but also to the military-legal profession's foundational obligations as defined in Army Regulation (AR) 27-26, *Rules of Professional Conduct for Lawyers*.<sup>34</sup> This regulation generally parallels the American Bar Association's Model Rules of Professional Conduct, albeit often with stricter requirements in light of its member's dual-professional responsibilities, which go far beyond internal loyalty. For instance, Rule 1.13, "Department of the Army as Client," clarifies that a lawyer represents the Army itself, not just its individual leaders. Although they serve their Army "client" through its authorized officials (like commanders and other heads of organizations), if the individual commander's intent conflicts with law or threatens to compromise ethical standards, the JA's duty is higher and must advise appropriately to protect the Army's best interests. In some cases, this may permit or even require them to elevate concerns within the chain of command or their technical legal channels without violating confidentiality.<sup>35</sup>

Although JAs should communicate with subordinate commanders and seek to resolve disagreements before escalating, this should be viewed as professional integrity rather than insubordination. The JA's duty includes protecting the command from legal missteps that may expose individuals or the institution to liability, reputational damage, or even criminal exposure. Therefore, AR 27-26 tasks JAs with identifying when legal boundaries are at risk of being crossed—even under pressure to "get to yes." In this way, as members of a dual profession, JAs are governed by legal doctrine that obliges them to prioritize lawful solutions, accurate risk disclosure, and moral clarity. Understanding this "profession within a profession" lens helps commanders and staffs better leverage their legal advisors. Doing so ensures that JAs are seen not as roadblocks but as road signs, identifying significant risks (as well as the likely severity and consequences of those risks) and

recommending alternate COAs to ensure the mission is accomplished lawfully, ethically, and effectively. To this end, they are trained extensively that their role is as an advisor and not as the policy- or decision-maker.

## Tips

Knowing when and where to intervene may be helpful, but to this point, we have been slim on the "how." Leveraging our experiences on multiple staffs, there are a few practical ways to ensure leaders and headquarters appreciate the lawyerly perspective in military operations.

**Make the battle rhythm your friend.** The acme of skill for any staff officer is to know how to get the right inputs into the right venues to produce the right outputs. Effective staff officers know how the battle rhythm operates within a given headquarters and where to best influence it. A good staff officer must know the people and the process and adapt their approach to be in the right venue at the right time. Once a staffer determines the key fulcrum points, they must tailor inputs and products to support that event's output.

**Lawyers must be knowledgeable on warfighting. Warfighters need to be knowledgeable on the law.** This equation must be perfectly balanced. Operational practitioners cannot hand wave the legal details to "the law dogs," and JAs cannot claim ignorance on the basics of warfighting. In fact, at echelons *above* brigade, JAs add most value when tied directly to the commander, helping them execute the warfighting function of command and control and mission command.<sup>36</sup> To the JAG Corps' great credit, FM 3-84 is a very helpful document in framing the operations process through a legal lens. We hope this article complements this doctrine with practical means to apply this legal expertise.

**Who else can help? As noted earlier, there are never enough lawyers to go around, and the battle rhythm never stops.** When the SJA is not available to sit in a working group or operational planning team, he or she may be able to deploy capable "scouts" to flag potential legal issues that can be followed up on or addressed in other venues (i.e., with actual legal advice). Perhaps the unit chaplain, a trained officer in morality and ethics, can be an acceptable scout to represent that perspective.<sup>37</sup> An established red team may also serve that function, likely with more capability and a broader warfighting function perspective.

## Conclusion

Warren Zevon found himself in Honduras “down on his luck” largely due to a lack of situational awareness and bad planning assumptions. He likely did not read FM 3-84, and he certainly did not read this article. The result of these errors was a call for help and expenditure of excessive resources.

Our world is much more complex than Zevon’s. Planning for and executing operations in a complex environment is already difficult. Failure is also much more costly. Considering the legal dynamics of an impending operation early in the process will save resources and decrease risk exposure. By emphasizing

portions of the Army’s operations process for deliberate inclusion of a legal perspective at earlier stages can help orient our efforts and ensure our commander’s maximum legal maneuver space. Amid increasingly complex future battlefields, no doubt with reduced or delayed access to legal advice, this focused direction and freedom of maneuver will be crucial to achieving mission success, both operationally and legally. ■

*The views expressed in this article are those of the authors and do not necessarily reflect the official policy or position of the Department of the Army, the Department of War, or the U.S. government.*

## Notes

1. “Lawyers, Guns, and Money,” Spotify audio, track 9 on Warren Zevon, *Excitable Boy*, Asylum Records, 1978, <https://open.spotify.com/track/64dHj8Zxal2Wj0brEehVMN>.

2. Matthew Olay, “Hegseth Calls for Assessment, Alignment of DOW Legal Functions, Operations,” US Department of War, 11 March 2026, <https://www.war.gov/News/News-Stories/Article/4431680/hegseth-calls-for-assessment-alignment-of-dow-legal-functions-operations/>.

3. The authors recognize that the staff judge advocate (SJA) and the JAG are both specific positions in the JAG Corps. That is, SJAs typically serve as the lead legal advisors for Army divisions and above, whereas subordinate commands may have other servicing judge advocates (JA) like a command judge advocate, regimental judge advocate, or brigade judge advocate. Additionally, other JAs from an Office of the Staff Judge Advocate—like trial counsel, national security law, administrative law, contract law attorneys—may serve as the staff’s primary legal point of contact for certain planned operations. However, the authors use the term SJA and JAG interchangeably with these other JA roles throughout the article for simplicity as we refer to a unit’s respective/servicing JA legal advisor.

4. Field Manual (FM) 3-84, *Legal Support to Operations* (US Government Publishing Office [GPO], 2023), 2-16.

5. “On Protection of Towns from Fire, 4 February 1735,” Founders Online, National Archives, accessed 17 February 2026, <https://founders.archives.gov/documents/Franklin/01-02-02-0002>.

6. FM 3-0, *Operations* (US GPO, 2025), 14.

7. FM 3-0, *Operations*, 17.

8. Charles Pede and Peter Hayden, “The Eighteenth Gap: Preserving the Commander’s Legal Maneuver Space on ‘Battlefield Next,’” *Military Review* 101, no. 2 (March-April 2021): 6–21, <https://www.armyupress.army.mil/Journals/Military-Review/English-Edition-Archives/March-April-2021/Pede-The-18th-Gap/>.

9. Milford Beagle Jr. et al., “Lethal Force, Risk, and LSCO: Preparing for Permissive Rules of Engagement in Large-Scale Combat Operations,” *Military Review* Online Exclusive, 17 January 2025, <https://www.armyupress.army.mil/Journals/Military-Review/Online-Exclusive/2025-OLE/Lethal-Force-Risk-and-LSCO/>.

10. Army Doctrine Publication (ADP) 5-0, *The Operations Process* (US GPO, 2019), 1-4.

11. FM 3-84, *Legal Support to Operations*, 2-14.

12. Army problem-solving process steps 4 through 7 are generate possible solutions, analyze possible solutions, compare possible solutions, and make and implement the decision. Military decision-making process steps 3 through 7 are course-of-action (COA) development; COA analysis; COA comparison; COA approval, and orders production, dissemination, and transition.

13. FM 5-0, *Planning and Orders Production* (US GPO, 2024), 85.

14. FM 5-0, *Planning and Orders Production*, 85.

15. FM 5-0, *Planning and Orders Production*, 51.

16. FM 5-0, *Planning and Orders Production*, 100.

17. Pede and Hayden, “The Eighteenth Gap,” 19.

18. FM 5-0, *Planning and Orders Production*, 111.

19. ADP 5-0, *The Operations Process*, 3-7.

20. ADP 5-0, *The Operations Process*, 3-7.

21. Beagle et al., “Lethal Force, Risk, and LSCO”; Judge Advocate Legal Services (JALS) Publication 1-1, *Personnel Policies* (Office of the Judge Advocate General, 31 January 2025). JAs (i.e., commissioned officers in the Army JAG Corps) undergo rigorous academic and experiential training designed to develop structured thinking, nuanced argumentation, and scenario-based analysis. They are all law school graduates (juris doctorates) with professional licensure through their respective state bars, and their foundational education emphasizes working through hypotheticals, identifying second- and third-order effects, and anticipating adversarial reasoning. In addition to civilian law school education, all JAs must graduate from the Judge Advocate Officer Basic Course at the Judge Advocate General’s Legal Center and School (TJAGLCS) on the University of Virginia campus in Charlottesville, Virginia, where they are trained not only in black-letter law but in applying legal concepts to dynamic, multidomain operations. Many JAs also complete regular continuing legal education at both civilian and JAG Corps training courses. This blend of civilian legal reasoning and military operational fluency makes them especially adept at participating in rehearsals, rehearsals of concept drills, and planning events that require agility, judgment, and strategic foresight.

22. As a point of emphasis, commanders establish the rules of engagement (ROE) as specified in law and regulation. JAs assist the commander in interpreting and applying the ROE. See TJAGLCS,

*Commander's Legal Handbook 2025*, Misc. Pub. 27-8 (TJAGLCS, July 2025), 323, 328; see Joint Publication 3-84, *Legal Support* (US GPO, 2016); US Government Accountability Office (GAO), *DOD Law of War Policies: Actions Needed to Ensure Proper Reporting and Retention of Alleged Violations*, GAO-24-107217 (US GAO, 2024), 6n16; see also Chairman of the Joint Chiefs of Staff Instruction 3121.01B, *Standing Rules of Engagement/Standing Rules for the Use of Force for U.S. Forces* (Joint Chiefs of Staff, 13 June 2005) (SECRET), unclassified excerpt in TJAGLCS, "Rules of Engagement," chap. 5 in *Operational Law Handbook* (TJAGLCS, 2024), <https://tjagls.army.mil/publications>.

23. John W. Troxell, "Litigate Like We Fight: A Primer for Trial Advocacy," *Army Lawyer*, no. 1 (2021), <https://tjagls.army.mil/Periodicals/The-Army-Lawyer/tal-2021-issue-1/Post/5719/No-3-Litigate-Like-We-Fight>; "The Murder Board: Getting Comfortable with Discomfort," Audacia Strategies, 30 October 2023, <https://audaciastategies.com/the-murder-board-getting-comfortable-with-discomfort/>.

24. Ben Zweibelson, "The Enemy Has a Vote and Other Dangers in Military Sense-Making," *Journal of Military Operations* 2, no. 2 (Spring 2014): 20–24, <https://www.tjomo.com/article/the-enemy-has-a-vote-and-other-dangers-in-military-sense-making/>.

25. FM 6-0, *Commander and Staff Organization and Operations* (US GPO, 2022), 4-1.

26. See JALS Publication 1-1, *Personnel Policies*, para. 5-2, 8-3. The structure of legal support within the US Army follows a tiered distribution model aligned with command echelons. At the division level and above, units typically have embedded staff judge advocate offices staffed by multiple JAs and paralegals covering operational law, administrative law, international law, and military justice. Brigade combat teams usually have one or two JAs, often supported by a paralegal, who must juggle diverse legal demands across operations, targeting, discipline, and contracting. At the battalion level, organic legal support is uncommon; these units rely on reach-back support to their higher headquarters or legal assistance from adjacent formations. The JAG Corps deployment model emphasizes modularity and mission alignment. Legal teams are deployed based on operational need, usually with at least one operational law JA per maneuver brigade and dedicated targeting support at division and corps level. Operational law teams or legal support teams may be task-organized to support key missions such as detainee operations, rules of engagement training, or contingency contracting. These teams are expected to flex across domains—offering advice on everything from cyber operations to humanitarian access. Given this model, commanders and staffs must assume proactive responsibility for integrating legal inputs. With limited boots-on-ground and simultaneous demands at multiple echelons, JAs can't cover every meeting, rehearsal, or working group in person. Instead, smart commands empower designated proxies, prioritize venues for legal presence, and develop standing products that extend legal thinking into operational timelines—even when the lawyer isn't in the room.

27. FM 6-0, *Commander and Staff Organization and Operations*, 4-1.

28. See TJAGLCS, "Legal Support of Operations," chap. 1 in *Operational Law Handbook*, (TJAGLCS, 2025), <https://tjagls.army.mil/publications>.

29. TJAGLCS, "Legal Support of Operations."

30. See Nate Bankson and Keoni Medici, "The Place of Judge Advocates on the Next Battlefield," *Articles of War*, Lieber Institute

at West Point, 16 February 2021, <https://lieber.westpoint.edu/place-judge-advocates-next-battlefield/>.

31. See Army Regulation (AR) 27-1, *Judge Advocate Legal Services* (US GPO, 2017), para. 3-3, 3-4(a). Only JAs, civilian attorneys employed by the Department of the Army, and other attorneys authorized by the JAG may provide legal advice. Even legal assistance personnel or other support staff who are not attorneys may not provide legal advice or opinions. AR 27-26, *Rules of Professional Conduct for Lawyers* (US GPO, 2025), "Rule 5.5, Unauthorized Practice of Law." "Determining what conduct constitutes the practice of law defies mechanistic formulation, although it encompasses not only court appearances but also services rendered out of court and includes the giving of any advice or rendering any service requiring the use of legal knowledge. ... Limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons." Joint Service Committee on Military Justice, *2024 Manual for Courts-Martial* (MCM) (US Department of War, 2024), RCM 502(d)(2); see also Article 27, "Detail of Trial Counsel and Defense Counsel," 10 U.S.C. § 827 (2010). The trial counsel, defense counsel, and military judge must be detailed by competent authority and must be certified as qualified and competent to perform such duties by the JAG.

32. Military operations are typically assessed for compliance with both international and domestic law. Relevant to this example, Law of Armed Conflict generally prohibits the unlawful seizure of civilian property and requires respect for private property unless justified by military necessity. Article 46 of the Hague Convention asserts that "private property cannot be confiscated." Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, Oct. 18, 1907, art. 46, <https://ihl-databases.icrc.org/assets/treaties/195-IHL-19-EN.pdf>. Article 53 of the Fourth Geneva Convention prohibits the destruction or requisition of civilian property unless "absolutely necessary by military operations." Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 973 U.N.T.S. 322, <https://treaties.un.org/doc/Publication/UNTS/Volume%2075/volume-75-I-973-English.pdf>. In many jurisdictions, domestic laws also prohibit the seizure of private property without due process or compensation. For example, the takings clause in the Fifth Amendment states "nor shall private property be taken for public use, without just compensation." US Const. amend. V. This principle applies even during emergencies or military operations, unless explicitly authorized by law.

33. The concept of "effects-based lawyering" comes from the authors' discussion with a trusted operational law practitioner, who likely took inspiration from the U.S. military's historic "effects-based operations" concept. See Matthew Wyatt (TJAGLCS), interview by authors, 8 May 2025; J-9 Concepts Department, *A Concept Framework for Effects-Based Operations White Paper*, ver. 1.0 (US Joint Forces Command, 18 October 2001).

34. JAs are governed by AR 27-26, *Rules of Professional Conduct for Lawyers*, which mirrors the American Bar Association's Model Rules of Professional Conduct. This regulation articulates the ethical obligations military lawyers owe not only to their commanders but also to the organization. Notably, Rule 1.13, "Department of the Army as Client," clarifies that the JA's primary duty is to the military unit as a legal entity—not to individual leaders. If a commander's directive risks violating law or ethics, the SJA is obligated to escalate concerns through appropriate legal

channels. These rules ensure that JAs serve as stewards of professional integrity, able to provide fearless, honest counsel—even under institutional pressure. In this way, the JAG Corps functions as a “profession within a profession,” reinforcing the Army’s commitment to both operational success and legal accountability.

35. See AR 27-26, Rule 1.13(a), “Except when representing an individual client . . . , an Army lawyer . . . represents the Department of the Army . . . acting through its authorized officials. These officials include the heads of organizational elements within the Army, such as the commanders of armies, corps, divisions, and brigades, and the heads of other Army agencies or activities.” AR 27-26, Rule 1.13(b), “If a lawyer for the Army knows that an officer, employee, or member of . . . the Army is engaged in action, intends to act,

or refuses to act in a matter related to the representation that is a violation of a legal obligation to the Army, adverse to the legal interests or obligations of the Army, or a violation of law that reasonably might be imputed to the Army, then the lawyer shall proceed as is reasonably necessary in the best interests of the Army,” including elevating through technical channels.

36. Brian Lohnes (lieutenant colonel; student, Dwight D. Eisenhower School for National Security and Resource Strategy; and former 82nd Airborne Division SJA), phone interview by Curtis Cranston, 31 October 2025, 7:02 p.m.

37. Recommendations from various discussion groups during TJAGLCS’s Senior Officer Legal Orientation course for brigade and battalion commanders and command sergeants major.