



Legal Assistance in a Deployed Environment: Issues and Perspectives

LTC Perry Wadsworth
U.S. Army Reserves

UNCLASSIFIED

1

Overview

- Background
- Deployment Conditions
- Issues
- Command Perspectives
- Conclusion



Historical Background



Intersections of Empires



Mesopotamia – Tower of Babel

Old Babylonian Empire (c. 2000-1270 B.C.)

- Code of Hammurabi
- Akkadian Language
- Cuneiform script
- 6th King in 1790 B.C.
- Spoils of conquest – taken in 12th Century by Elamite King (southern Persia)
- Found in 1901 in Kuhzistan, Iran (Susa)
- Now: Louvre Museum, Paris

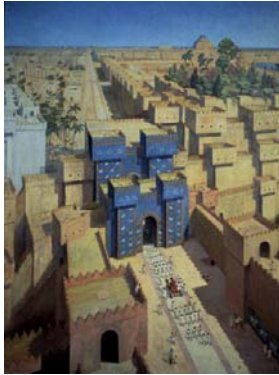


The Assyrian Empire (721 BC)



Neo-Babylonian Empire

- 606 – 536 B.C.
- The Ishtar Gate
- Procession Way
- Euphrates River
- gods Marduk and Ishtar
- King Nebuchadnezzar
- Daniel
- Conquered by Persian-Media Empire



"Hanging Gardens of Babylon" by Martin Heemskerck (Dutch)

Persian Empire

- Cyrus the Great (559 – 530 BC)
- Darius the Great (521-486 BC)
- Xerxes or Ahasuerus (486-465)
- Artaxerxes (464-424)
- Greek historian Herodotus details Persian history
- Religion: Zoroastrianism



"The armoured Persian horsemen and their death dealing chariots were invincible. No man dared face them."
- Herodotus (484 - 430 BCE)

- Achaemenid Imperial Army
- 5th – 4th Century B.C.
- Defeated by Alexander the Great in 330 B.C.



Religious, Ethnic, Political Factors

- Religions – Sunni-Islam, Shia-Islam, Yezidi, Christian
- Ethnicities – Arab, Kurd, Turkomen, Persian
- Iraq – 1960's – 2003 – Sunni dominated
- Iran – 1979 – Islamic Revolution – Shia dominated
- 1979-1987 – Iran-Iraq War
- 1990 – Kuwait Invasion / Desert Shield and Storm
- 2003 – Operation Iraqi Freedom
- Democracy, Politics, and Violent Extremists
- 2010 – Operation New Dawn

Sovereigns

Iraq (1918)

Iran (1935 and 1979)



Iraqi Shia Leadership: Political

- Supreme Council for Islamic Revolution in Iraq (SCIRI; now *Supreme Islamic Iraqi Council* "SIIC")
 - Ayatollah Muhammad Baqir al-Hakim (d. 2003)
 - Abdul Aziz al-Hakim (d. 2009) – son Ammar (successor)
 - Al – Dawa Party (Tribe of Nouri Al-Maliki)



Iraqi Shia Leadership: Religious (& Political?)

Grand Ayatollah Ali al-Husayni al-Sistani (1930 - ___)

- Born in Iran
- Lives in Najaf
- Litihad – passes own judgments



- Moderate
- Political views not aligned with [deceased] Ayatollah Khomeini
- Global Shia respect

Cleric Muqtada Al-Sadr (1973 - ___)

- Born in Iraq
- Lives in Sadr City and Iran
- Low to mid-level cleric
- Father was a Grand Ayotallah



-Militant →
-Aligned with Iran
-Mahdi Army Militia

Current Events

- Iraqi Gov't
- US Troop Movements
- Iranian Influences & aspirations
- Syrian-Lebanese
- Israeli-Palestinian
- Afghan-Pakistani
- Extremist Networks
- Etc.



Legal Assistance in a Microcosm: United States Division – North Iraq

UNCLASSIFIED

16



LA Microcosm

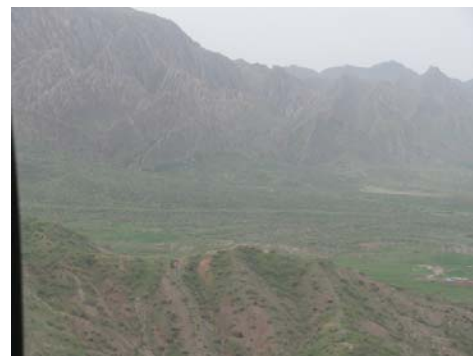


- Environment
- Office Limitations
- Geographic Spread
- Breadth of locations
 - BDEs and Units from different states and jurisdictions

UNCLASSIFIED

17

Environment: Mountains



18

Environment: Desert



19

Environment: Urban



20



LA Microcosm: USD-N-Iraq



USD-N: Legal Assistance Composition:

- 6 Legal Assistance Judge Advocates (JA)
 - 8 Noncommissioned Officer paralegal
 - 9 Junior enlisted paralegal
- * LA is not the singular focus for this staff. All JA's are tasked with other concentrations as well.

Area of Operations:

- US Division-North (~22,000 Service-members)
- Hub-Spokes methodology

UNCLASSIFIED

21

DIV LAO Entrance



UNCLASSIFIED

22

BDE LAO #1



UNCLASSIFIED

23

BDE LAO #2 Entrance



UNCLASSIFIED

24

BDE LAO #2 Work Space



UNCLASSIFIED

25

LA: Limitations: Communication

- Commercial line - Not available.
 - Use of DSN operator to dial commercial, however:
 - Many parts of the U.S. are not accessible if they are not close enough to a military installation;
 - Other areas only allow a 15 minute morale call;
 - Connection often interrupted/disconnected; and
 - Approx. 5-10 minute process to connect per call, no call back or voicemail option. During peak times, connection becomes very difficult.
- SKYPE – Unsecure or Secure?

UNCLASSIFIED

26

LA: Limitations: Communication

- Time zone difference
 - Eastern Standard Time = Iraq – 7 hours
 - Pacific Standard Time = Iraq – 10 hours
 - Alaska Standard Time = Iraq – 11 hours
 - Hawaii Standard Time = Iraq – 12 hours
- Telephonic consultation
 - Common to represent client on satellite FOB by telephone.
 - Difficulties: Client access, delays in connection
- Internet connectivity
 - Access limited to theater approved websites

UNCLASSIFIED

27

LA: Eligible Population

- Eligible Clients:
 - Service members (SM), or retired SM
 - Family of SM
 - DoS, DoD
 - Contractors if authorized by contract:
 - Predominantly not authorized by contract
 - If authorized, often limited in scope
 - Civilian attorney referral

UNCLASSIFIED

28

LA: Resources Available

- <https://www.iagcnet2.army.mil/Legal>
- <http://legalassistance.law.af.mil/content/locator.php>
- <http://www.divorcesource.com/>
- http://www.statelawyers.com/AttorneyDirectory/US_Attorneys.cfm
- <http://www.archives.gov/veterans/military-service-records/>
- <http://www.alllaw.com/calculators/childsupport/>
- <https://www.dmdc.osd.mil/scra/owa/home>
- www.municode.com
- <http://www.defenselink.mil/faq/pis/PC04MLTR.html>
- <https://odr.bbb.org/odrweb/public/getstarted.aspx>
- <http://www.justice.gov/a-z-index.html>
- <http://www.servicememberscivilreliefact.com/link/text-of-act.php>

UNCLASSIFIED

29

LAO Locator



UNCLASSIFIED

30

LA: Common Issues: Overview

- Command actions / Military / Personnel
- Family Law
- Consumer Law
- Servicemember's Civil Relief Act (SCRA)
- Immigration and Naturalization (& Passports)
- USERRA

UNCLASSIFIED

31

LA: Clients



32

LA: Command Perspectives: Administrative Law



LA: Command Perspectives

- Release of Information
- Personnel Actions
 - Reprimands
 - Evaluations
- Investigations / inquiries
- Mental Incompetency
- Complaints
 - IG
 - EO
 - Congressional



UNCLASSIFIED

Release of Information

- HIPAA
- FOIA
- CID / NCIS/ OSI
- Adverse Action Rebuttals
- Congressional Inquiries
- Inspector General Complaints

UNCLASSIFIED

35

Release of Information: HIPAA

- References:
 - DOD Regulation 6025.18-R
 - AR 40-66
- Commander or Designee (limited reasons, e.g., fitness for duty, security)
- Patient Consent
- Attorney / Power of Attorney / Court-Appt.
- **TIPs:**
 - Many sources – electronic, paper, verbal (HCP);
 - Protection survives death (unlike Privacy Act)

36

Release of Information: FOIA

- **United States Central Command CCJ6-RDF (FOIA)**
7115 South Boundary Boulevard
MacDill AFB, FL 33621-5101
Comm'l: (813) 827-1810/6413
DSN: 651-1810/6413
foiaoffice@centcom.mil
 - **United States Forces – Iraq**
J-6 (FOIA)
DSN: 318-485-3707
- **What do people request?**

UNCLASSIFIED

37

Release of Information: FOIA

- Casualty information for Family / NOK
- Claims potential
- Incident information
 - Legal Investigations (15-6, JAGMAN, etc.)
 - Line of Duty – benefits?
- Exclusions (eg, CID, NCIS, OSI)
- **TIPs:**
 - Storage issues: parent units vs. deployed units
 - Classification issues: SIRs, SIGACTS, reports

UNCLASSIFIED

38

Release of Information: CID

Department of the Army
U.S. Army Crime Records Center
6010 6th Street, ATTN: CICR-FP
Fort Belvoir, Virginia 22060-5585
Comm'l: 800-511-4786
CRCFOIAPA@conus.army.mil

UNCLASSIFIED

39

Personnel Actions: Administrative

- Administrative vs. UCMJ
- General Officer Memorandum of Reprimand
- Letter of Concern
- Basis – Complaint, Investigation, Inquiry,
- Rebuttals
- Filing Determinations

UNCLASSIFIED

40

Personnel Actions: Responses

Tips:

- Be accurate
- Be brief
- Be consistent

Format:

- State BLUF or Relief requested
- Avoid mud-slinging
- Do not rebut until there is something to rebut

UNCLASSIFIED

41

Personnel Actions: Evaluations

- References
 - AR 623-3
 - DA PAM 623-3
- Types of Redress
 - Unit Personnel office can request minor changes
 - Commander's or Commandant's Inquiry
 - Appeal
 - Board of Correction for Military Records
- Each is mutually exclusive

UNCLASSIFIED

42

Personnel Actions: Evaluations

- Commander's or Commandant's Inquiry
 - Review of a Subordinate's Report of ratee
 - Determine: Illegal, unjust, or in viol. of regulation?
 - Can provide to Subordinate but *cannot* force Subordinate to change rating
 - Can forward to Human Resources Command
- Appeals
 - Administrative Error
 - Substantive Error
 - Substantiated evidence required

UNCLASSIFIED

43

Investigations: HCP

- Homosexual Conduct Policy
- General Officer Inquiries
- Credible Information to initiate (sworn)
- Evidence Required (Conduct-based - S.A.M.)
- General Officer Disposition
- **Tip:** Encourage clients to listen to your legal advice, not news reports
- Current Events:
 - Policy under Executive Review
 - Judicial Involvement

44

Investigations: Line of Duty

- Reference: 10 USC 1074; AR 600-8-4
- Findings:
 - “in line of duty”
 - “not in line of duty – due to own misconduct”
- Misconduct:
 - Does not include simple or ordinary negligence per se
 - Lose benefits, including possible VA
 - Maintain medical while on Active Duty
 - Soldier may appeal w/n 30 days of receipt of notice
 - HRC or Disability Board may change finding
- Suicide cases (an exception)

45

Mental Incompetency: Payments

- References:
 - 10 USC §§ 601-604 – Pay and Allowance of the Uniformed Services, Chapter 11, Payments to Mentally Incompetent Persons
 - Title 32: National Defense, Part 726, Payments of Amounts Due Mentally Incompetent Members of the Naval Service
 - Army OTSG/MEDCOM Policy Memo 10-068
 - Implementing Guidance

UNCLASSIFIED

46

Mental Incompetency: Payments

37 USC Chapter 11 - PAYMENTS TO MENTALLY INCOMPETENT PERSONS

§ 602. Payments: designation of person to receive amounts due

- (a) Active duty pay and allowances, amounts due for accrued or accumulated leave, or retired or retainer pay, that are otherwise payable to a member to whom this chapter applies and who, in the opinion of a board of medical officers or physicians, is mentally incapable of managing his affairs, may be paid for that member's use or benefit to any person designated by the Secretary concerned, or by any officer to whom he delegates his authority under this section, without the appointment in judicial proceedings of a committee, guardian, or other legal representative.
- (b) The board shall consist of at least three qualified medical officers or physicians, one of whom is specially qualified in the treatment of mental disorders, appointed from available medical officers or physicians under his jurisdiction by the head of whichever of the following is providing medical treatment for the member, or by a person designated by that head—
- (1) Department of the Army;
 - (2) Department of the Navy;
 - (3) Department of the Air Force;
 - (4) Department of Health and Human Services; or
 - (5) Department of Veterans Affairs.
- If the hospitalization or medical care of the member is not provided by the United States, the board shall be appointed by the Secretary of the department having jurisdiction of the member.
- (c) A payment made to a person who is designated under this section discharges the obligation of the United States as to the amount paid.
- (d) A person serving in a legal, medical, fiduciary, or other capacity, may not demand or accept a fee, commission, or other charge for any service performed under this chapter.
- (e) This section does not apply in any case in which a legal committee, guardian, or other representative has been appointed by a court of competent jurisdiction, except as to payments made before the paying agency of the department concerned receives notice of that appointment.
- (f) A person who is designated to receive payments under this section shall furnish satisfactory assurance that the amounts received by him will be applied to the use and benefit of the incompetent member, and, where the payments may reasonably be expected to be more than \$1,000, shall provide a suitable bond to be paid for out of amounts due the incompetent member.

Complaints

- Inspector General (IG)
 - Violations of regulation, procedure, law
 - Equal Opportunity (EO)
 - Discrimination: Race, color, gender, national origin, or religion
 - Sexual Harassment / hostile work environment
 - Article 138, UCMJ – Complaints to GCMCA
 - Congressional Inquiries
- Intended and Unintended Consequences?

UNCLASSIFIED

48



Conclusion



Thank you for supporting our American
Soldiers, Sailors, Marines, and Airmen!