



KAISERSLAUTERN LEGAL INFORMER

CHANGING THE GUARD AT THE OSJA



The 21st TSC Commanding General, MG Patricia E. McQuiston, presented the Meritorious Service Medal to the departing Deputy SJA, LTC Harper Cook, in the 21st TSC Current Operations Integration Cell (COIC) on May 26th.

Photo courtesy of 21st TSC PAO

by Steve Smith

As the summer PCS season approaches, the 21st TSC Office of the Staff Judge Advocate will experience a lot of personnel turnover within its leadership ranks.

Deputy SJA LTC Harper Cook departs on June 1st for his new assignment in Warminster, England, where he will spend the next two years as an exchange officer to the British Army. He will be replaced by MAJ Sean McMahon, who is coming to us from Fort Leavenworth, Kansas.

Our SJA, COL Claes Lewenhaupt, will turn over the reins to COL Ralph Tremaglio on July 15th, before heading downrange. COL Tremaglio is no stranger to Kaiserslautern, having served as Chief Counsel of the 409th Contracting Support Brigade.

Our Legal Administrator, CW3 Chantel Lee, heads to JMTC in Grafenwoehr in August. She will be replaced by CW2 Jah'love Shakur.

Our Chief of Military Justice, MAJ Rob Abbott, will be replaced by MAJ Brian Owens, who formerly served in our Northern Law Center in Belgium. Our Senior Trial Counsel, CPT Ryan Howard, will be replaced by CPT Mike Eaton.

The Officer-in-Charge of the Kaiserslautern Legal Services Center, CPT Nancy Lewis, will be replaced by CPT Jeffrey Rohrbach. CPT Rohrbach formerly served as a Trial Counsel in Kaiserslautern.

Our team of experienced Department of the Army Civilian and local national employees will provide institutional memory and continuity as the guard changes.

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- And much more!



*United States Army
Judge Advocate
General's Corps -
America's Oldest
Law Firm*

German Government Conducts 2011 Census

by Joe Hall

The German government is currently conducting an EU-mandated two-part nation-wide census to collect both population data (“*Haushaltsbefragung*”) and information on German residential buildings (“*Gebäude- und Wohnungszählung*”). The census should be over by the end of the summer. It will reoccur every 10 years. Regardless of their citizenship/nationality, US Forces personnel, including dependents, are only obligated to comply with the residential buildings part of the census, and only if they are the **owner** of the residence. Tenants living in rented quarters need not comply.

Most of the information for the population portion of the census will be obtained from German public records. However, census takers will go to approximately 10% of the on-the-economy residences to ask supplemental personal questions.

According to § 2, paragraph 1, of the German Census Act, in connection with Article 6 and Article 7 of the Supplementary Agreement to the NATO Status of Forces Agreement, all persons with SOFA status are exempted from participation in the population census (“*Haushaltsbefragung*”). If you are visited by a German census taker, you should first insist that the interviewer produce proper identification, before you show the interviewer your ID card, and then politely turn the interviewer away. If you have questions about the legitimacy of the interviewer, you can call the local census office at 0631-365-2011 for verification before providing proof of your SOFA status.

Members of the US Forces, the civilian component, and their dependents who own German housing are subject to the residential building census (“*Gebäude- und Wohnungszählung*”). The census questionnaire entitled “*Gebäude- und Wohnungszählung*” will normally come in the German mail to the on-the-economy residential address.

This form must be filled out, except for question W1 on page 3. Question W1 should be left entirely blank, unless the property is rented to a person without NATO SOFA status. If the property is rented out to a non-ID card holder, that person’s information should go in block W1.

When answering question W9, mark the second alternative - “*Diplomatenwohnung/ Wohnung der ausländischen Streitkräfte*” - unless the property is rented to a non-SOFA status person. If the residence is rented out to a non-ID card holder, mark the third alternative “*keines von beiden.*”

An English translation of the “*Gebäude- und Wohnungszählung*” form can be found at: https://www.zensus2011.de/uploads/tx_templavoila/Musterfragebogen_GWZ_englisch_02.pdf However, only the original German form should be completed and returned. Failure to return the original German survey form can result in a heavy fine.

Any questions on the German census should be addressed to your servicing Legal Assistance Office.



End-of-Tax-Season Reminders

by Mark Christensen

Deadline Reminders: June 15th is the filing deadline for Americans who were outside the U.S. on April 18th to file their federal income tax returns. If you haven't filed yet, come see us!

June 30th is the deadline for U.S. persons to report financial interests or signature authority over non-U.S. financial accounts. U.S. persons are defined as citizens or residents of the U.S. (including Green Card holders). Accounts in foreign countries include banks or other financial institutions in Germany, but do not include military banking facilities such as Service Credit Union or Community Bank. The June 30, 2011 deadline is for reporting a financial account or accounts which, in the aggregate, had a converted value exceeding \$10,000 on any day in 2010. The required form is Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts, at <http://www.irs.gov/pub/irs-pdf/f90221.pdf>, and it is not filed with a tax return. It is filed separately with the U.S. Treasury Department office in Detroit. Married couples with joint non-U.S. accounts should each file the report. Contact the Kaiserslautern Legal Services Center at tax@eur.army.mil if you have questions. The penalties for not reporting can be 25% to 50% of the value of the accounts, and currently all German banks report U.S. accounts to the IRS. There is no cost associated with filing the report, unless the IRS finds out you did not disclose your off-shore interests!

Tax Assistance Center Operations: Due to loss of personnel we closed our Landstuhl Tax Assistance Center at the end of May. Tax services continue to be available at the Kaiserslautern Legal Services Center on Kleber Kaserne, as they are all year long. Landstuhl clients who need tax assistance should contact the Kaiserslautern Tax Assistance Center at DSN 483-7688/8848, Civilian 0631-411-7688/8848, or by e-mail at tax@eur.army.mil. We are always available to assist in preparing or amending federal and state tax returns, to advise taxpayers who are facing IRS examinations or audits, or to answer federal and state income tax questions. Thanks to everyone for their support of our Tax Assistance Centers this year. The 2011 tax season saw a marked increase in the number of clients using our services, and an increase in the complexity of returns. These free professional tax services continue to be among the most popular benefits in the Kaiserslautern Military Community; the value of the services is immediate and relevant to each and every Soldier, civilian employee, retiree, and family member. The numbers in the yellow box to the right tell the rest of the story.



KAISERSLAUTERN LEGAL SERVICES CENTER

**Building 3210
Kleber Kaserne**

Legal Assistance 483-8848

Tax Assistance 483-7688*

Claims 483-8414/8862

International Affairs 483-8854

Trial Defense Service 483-8165

[Civilian: 0631-411-XXXX]

Administrative Law 484-7450

Criminal Law 484-8311

[Civilian: 0631-413-XXXX]

** for tax help after 15 June 2011,
call DSN 483-8848*

**USAREUR-WIDE
TAX CENTER REPORT
31 JAN — 20 MAY 2011**

**Total Returns Prepared:
26,507**

**Total Amount of Tax
Preparer Fees Saved:**

\$3,950,355

**Total Amount of Refunds:
\$52,936,711**

*It's a good program;
use it or lose it!*

On the Road Again, Paying Fines You've Never Seen Before...

by Joerg Modellmog

It's a familiar tune, but the words of Willie Nelson's song have been slightly altered to reflect that German traffic fines have been increased recently and a new European decision now makes traffic fines from other European Union (EU) countries enforceable in Germany, too.

From the Kaiserslautern Military Community you can easily reach the neighboring countries of France, Belgium, Luxembourg, and the Netherlands. There was a time when you might have been able to avoid paying a speeding ticket from those countries if you were not stopped on the spot and you had no intention of ever returning to that country. Those days are over.



On October 28, 2010, the European "Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties" came into force.

While the non-German tickets will have to be accompanied by a summarized translation in German (not English!) if enforcement is sought in Germany, any protest against such tickets must be filed abroad in the official language of the EU country that issued the ticket. Any objections relating to the facts of the underlying incident need to be raised when the ticket is issued and generally cannot be raised later on, at the enforcement stage.

However, you can submit objections against the enforcement process within two weeks after service of process, which will trigger an in-court review of the enforcement procedure (not of the underlying incident). Finally, the applicable statute of limitations of the EU country that issued the ticket will determine how long a non-German ticket can be enforced or whether the offense is time-barred.

It is therefore advisable and more important than ever to familiarize yourself with the applicable traffic rules in other EU countries, particularly since traffic fines in other EU countries are usually much higher than in Germany. Ask yourself questions like: Do I need to have my lights on during daylight hours (you do in Poland, Italy, Sweden, Finland, and Estonia)? Am I prohibited from entering the city center without prior registration (you are in parts of Italy and Great Britain)? Do I need a sticker to drive on the Autobahn (you do in the Czech Republic, Austria, and Switzerland)?

While it is no longer necessary to be in possession of a green insurance card [*"Grüne (Versicherungs-)Karte"*] when crossing borders within the EU, it is still recommended that you carry one with you as you may still need it if driving outside the EU. It can be obtained at no cost from your car insurance company.

Please keep in mind that despite the abolition of border controls due to the so-called Schengen Treaty, you are still required to carry a valid passport when crossing international borders. Furthermore, you need to have an international driver's license when driving in other countries as your "U.S. Forces Certificate of License," often incorrectly referred to as a "USAREUR driver's license," is **NOT** a driver's license but merely a certificate confirming that the holder is in possession of a valid stateside license, which is only sufficient for use in Germany based on Article 9 of the German Supplementary Agreement to the NATO SOFA. For more information on how to apply for an international driver's license, see page 2 of the Summer 2006 edition of the Kaiserslautern Legal Informer: <http://www.21tsc.army.mil/aerja/LegalAssist/News%20Letters/newsletter%20summer%202006%20final%20Aug%202006.pdf>

In addition to the hails & farewells in our cover story:

Hails: We welcome 1LT Austin Ribelin, our new Legal Assistance Attorney, SGT Jerry Gant, our new Administrative Division NCOIC, and two new Court Reporters, SSG Danielle Bernabe and SPC Tamika Tutt.

Farewells: We bid farewell to SFC Chrystal Drummonds, our NCOIC of Military Justice, SSG Matthew Searcy, NCOIC of the Regional Trial Defense Service Office, and SGT Joshua Glober, a Military Justice Paralegal NCO.

Hooah! LTC Harper Cook congratulates SPC John Atley on making the Commandant's List at the Warrior Leader's Course.



SPC Jasmin Hunter receives the Army Achievement Medal from Chief Paralegal NCO MSG Scott Haarer for winning the Paralegal Specialist of the Quarter competition.



SGT Joshua Glober receives a commemorative plaque from Military Justice NCOIC SFC Chrystal Drummonds, before heading downrange.



21st TSC Staff Judge Advocate COL Claes Lewenhaupt (9th from right) was the guest speaker at the Northern Law Center's Law Day Luncheon in Mons, Belgium. The 21st TSC OSJA provides legal services to the Benelux region. Coverage of Law Day Activities in Kaiserslautern begins on page 7.

Don't Build a Castle in the Sand: ***Things to consider when building a house in Germany...***

by Joerg Moddelmog

The Kaiserslautern Military Community is growing, and more and more people stationed here are considering building a house. Unfortunately, some of these future homeowners will experience unexpected challenges and frustrations along the way when dealing with construction companies: *e.g.*, allegations of promises not kept, timelines not met, hidden fees, misleading information, and unqualified subcontractors.

This article attempts to address and pre-empt their frequent lament of "Had I only known before!" by providing some basic information on things to consider before building a house in Germany.



First of all, remember you are dealing with a builder, who is a businessman, trying to make a profit.

Ask for references. Ask to be shown houses that your builder already constructed and for permission to talk to the owners. Even if the builder only shows you his happy customers, you will at least know that these exist. What's more, these customers might be willing to share with you their experiences living in the house and tell you if there is anything they would have done differently if they "had it to do over again."

Do not sign a contract before you have secured financing. Most importantly, read the contract and make sure you understand it. Don't shy away from seeking legal advice. After all, contracts are full of legal terms.

If the eloquent salesperson's verbal statement deviates from the written text of the contract, insist that corresponding changes be made to the text. The company wants your signature. Once you have signed the construction contract, you generally obligate yourself to pay damages if you later change your mind or if your financing is subsequently disapproved.

Under German law, verbal contracts are binding and enforceable, provided they can be proven. Therefore, be careful when talking to an architect and agreeing to a proposal that he provide you with some "sample" sketches. Chances are you just entered into a verbal contract, impliedly promising to pay him reasonable monetary compensation based upon the statutory fee chart for architects - absent an express written statement to the contrary.

Are landscaping fees required to be paid and, if so, are they included in the basic contract price? Where does it say so in the contract?

It is your home and it is your responsibility to think ahead about any needed improvements. Don't rely on the company to make suggestions for improvements, like a drainage system if your home is built at the bottom of a hill. Installing such a system would increase the basic contract price and might scare you away as a customer. Don't put the blame on the company, but try to apply common sense and learn from experiences shared by your neighbors or other homeowners.

It is also important to clarify the quality and quantity of the work that your construction company will do, as opposed to the work that will be done by any subcontractors that they may hire.

[continued on page 7...]

The prices for tiles and plaster/gypsum are generally low because subcontractors perform these jobs. But who will be responsible if the subcontractor's work turns out to be unsatisfactory? What does your contract say about these responsibilities? Will your architect supervise the building project? If yes, will he merely obtain confirmation statements or actually check for and verify proper performance?

Often the description in the contract is too general, covering several types of houses. Therefore, it is advisable to address each and every room in the house in detail in the contract. How many sockets do you expect in each room? Demand an itemized list of expenses and make sure your expectations are acknowledged in writing.

Sometimes building contracts are based on type classifications when it comes to bathroom equipment, giving you only the choice of inexpensive no-name (and sometimes low-quality) fixtures. Any high-priced, top-quality fixtures will likely cost extra and not be included in the basic contract price.

Last but not least, what if your builder should file for bankruptcy during or after the construction of your house? Does he have insurance that will cover the completion costs of his work or any warranty claims (note: the statute of limitations on making such claims is normally five years). Don't be afraid to ask him for proof of such insurance.

Follow these tips and you are more likely to end up as a happy homeowner.

If you have questions about a construction contract, or need general legal advice before building a home, please feel free to contact either the German Attorney-Advisor, Matthias Voelker, at the Ramstein Air Base Legal Office (DSN 480-2552 or Civilian 06371-47-2552) or the German Legal Assistance Attorney, Joerg C. Moddelmog, at the Kaiserslautern Legal Services Center on Kleber Kaserne (DSN 483-8848 or Civilian 0631-411-8848).

Legal Services Center Celebrates Law Day



The Legacy of John Adams
from Boston to Guantanamo

LAW DAY • MAY 1, 2011



Street Law students from Kaiserslautern High School participated in a mock trial in the Warren J. Argue Courtroom at the Kaiserslautern Legal Services Center on April 21st. The trial was a reenactment of the trial of the British soldiers who participated in the Boston Massacre. John Adams, who went on to become our first Vice-President and second President, defended those soldiers to ensure they received a fair trial. Photo courtesy of 21st TSC PAO.

Celebrating the Legacy of John Adams

by Joe Hall

Each spring, the 21st TSC Office of the Staff Judge Advocate hosts a German-American legal liaison luncheon in observance of Law Day. The event is designed to build and maintain good relations with our host nation that help ensure we can effectively accomplish our mission within Germany and help enhance the quality of life of our forces and their families enjoy here. The luncheon is also a time to share insights and views on the similarities and differences between our two legal systems, and to celebrate the fact that both our nations believe firmly in the rule of law as the basis for maintaining a just and democratic society.

The theme for Law Day 2011 was “The Legacy of John Adams: from Boston to Guantanamo.”

This year’s Law Day luncheon was held at the Armstrong Club on May 4th. 75 guests attended. CPT Mike Gilbertson and the Kaiserslautern Legal Services Center International Law team, along with a little help from some friends (thanks Christine Gebhard), did an excellent job organizing all the logistics and translations for the event.

Our host nation attendees came from a wide spectrum of the German legal community. There were civilian attorneys, who represent Americans in German civil and criminal trials. There were legal advisors from the German Forces support commands, with whom we interact within Germany and on deployments. There were Kaiserslautern City officials, who provide assistance to our families who are experiencing domestic problems. And there were the senior and supervising district attorneys, the presidents of various regional state courts of Rheinland-Pfalz and the Saarland, representatives from the Rheinland-Pfalz Ministry of Justice, and the Chief of Police of Western Rheinland-Pfalz, all of whom have an impact on our military justice system.

Before, during, and after lunch, there was lots of spirited, friendly discussion. The 21st TSC Commanding General, MG Patricia E. McQuistion; delivered warm welcoming remarks, followed by informative and well-received speeches by the Deputy Minister of Justice of Rheinland-Pfalz, Frau Staatssekretarin Beate Reich, and by the 21st TSC Staff Judge Advocate, COL Claes Lewenhaupt.



German-American Legal Round Table

From left to right: Polizeipraesident Wolfgang Erfurt, 21st TSC Chief of Staff COL Mitch Brew, 21st TSC Staff Judge Advocate COL Claes Lewenhaupt, Staatssekretarin Beate Reich, 21st TSC Commanding General MG Patricia McQuistion, 21st TSC Legal Liaison Advisor Karl-Heinz Oberlaender, and Kaiserslautern State Court President Willi Kestel.

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Celebrating the Legacy of John Adams *(continued)*

The program also included a recognition ceremony for local high school students who won this year's Law Day essay/multi-media presentation competition. MG McQuiston, along with Frau Reich and COL Lewenhaupt, presented framed award certificates, and \$20.00 gift certificates that were kindly donated by the Kaiserslautern Landstuhl Spouses Association, to Larissa Barahona, the first-place essay winner (who unfortunately could not be present, but was represented by her teacher, Mr. Telle), to Lisa Marinelli, the second-place essay winner, and to Tiarri Robinson, the multi-media presentation winner.

MG McQuiston also presented Frau Reich with a 21st TSC coin of recognition and friendship.

Frau Reich's speech emphasized the importance and the independence of defense counsel in German criminal proceedings. Frau Reich also graciously invited the three high school Law Day contest winners to come to Mainz for a tour of the capital of Rheinland-Pfalz.

The closing speaker was COL Lewenhaupt, who focused on the "to Guantanamo" aspect of the Law Day theme. He acknowledged the domestic and international controversy regarding the Guantanamo detainees; and emphasized the role the legal community has played in trying to develop a balanced, reasonable legal position in this new area of the law. He also reminded us that a number of our fellow military attorneys, whose loyalty and dedication to their country is beyond question, have followed in the tradition of John Adams and provided detainees with effective and zealous legal representation. He closed by challenging all of us to preserve the rule of law and public respect for it.

WINNERS OF THE 2011 LAW DAY ESSAY/MULTI-MEDIA CONTEST



Essay Contest: Kaiserslautern High School junior Lisa Marinelli (left) won second place in the Law Day essay contest. A coloring book contest for grades K-4 and a poster contest for grades 5-8 were also sponsored by the OSJA.



Multi-Media Contest: Kaiserslautern High School freshman Tiarri Robinson (second from left) won first place in the Law Day multi-media contest. Thanks to all students who participated in our various Law Day contests!

Street on Daenner Kaserne Dedicated to Memory of Reserve Judge Advocate

by Steve Smith

Friends and family of LTC (Ret.) Douglas J. Yocum gathered from near and far on Saturday, April 2nd as the street in front of 7th Civil Support Command headquarters on Daenner Kaserne was named “Yocum Way” in his honor.

LTC Yocum, who lost a battle with cancer in 2010 at the tender age of 45, had served as both a civilian attorney (in Bamberg, Wuerzburg, and Vicenza) and a Reserve Judge Advocate (in Schwetzingen, Vicenza, and Kaiserslautern) since 1999. He was the Senior Civilian Attorney for the US Army Africa OSJA in Italy and a 7th CSC Reservist at the time of his death.

LTC Yocum’s widow, Yumiko, and children, Naomi and Tyler, traveled from Okinawa for the ceremony and unveiled the street sign. His sister, Jocelyn DiChiara, flew in from New Jersey. Many of his former colleagues also travelled great distances to participate in this salute to their fallen friend.

BG(P) Jimmy Jaye Wells, 7th CSC Commander, and COL Jeffrey Yocum, brother of the deceased, paid tribute to LTC Yocum’s exemplary service and the extraordinary courage he displayed in the face of death.

COL Yocum, Vice Commander of the 501st Combat Support Wing at RAF Alconbury in England, captured the qualities that made his brother so special. “When you walk or drive down Yocum Way, I hope it will spark in your mind a fond memory of Doug and bring a smile to your face. Doug Yocum the family man, who loved his wife and children dearly, who coached them and cared for them. Doug Yocum the big brother, who blazed a trail into adulthood for his younger siblings to follow, never getting so far ahead though that he couldn’t reach back and pull us along. Doug Yocum the son, whose parents beamed with pride at his many accomplishments in life.”

COL Yocum concluded his remarks by noting that “Yocum Way is more than just a tribute to Doug. It’s a testament to the human spirit shared by Doug and all the people gathered here today. It’s about the goodness in people’s hearts, it’s about friendship, camaraderie, and love. That might be the Yocum name up there, but this street now belongs to all of us. Doug would not have wanted it any other way.”



LTC Douglas J. Yocum, 1964-2010



Photos courtesy of 7th CSC Public Affairs Office.



Improving Administrative Separations with Lean Six Sigma (LSS)

by LTC Harper Cook

We did it, team.

Thanks to your collective hard work, creative thinking, and openness to change, we have completed all five phases of our LSS project to improve chapter processing. This is no small feat, and one you should be proud to celebrate. Here are some numbers that highlight your efforts:

- This was the very first Black Belt project completed in the US Army JAG Corps.
- Processing time was cut by 40% for actions through battalion commanders.
- Our ability to meet customer specifications was increased by 79%.
- Process Cycle Efficiency improved by 46%.
- Sigma Quality Level was more than doubled.

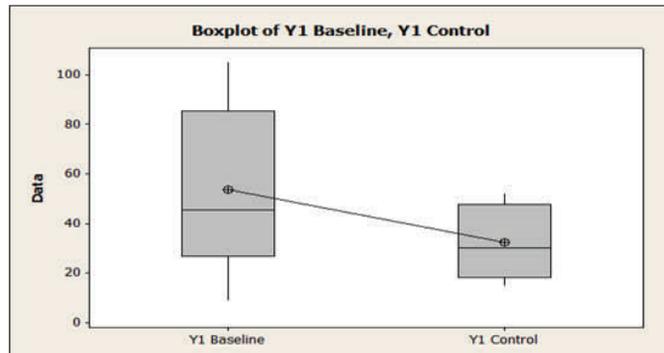
These numbers mean more satisfied customers, and our commanders in each of our communities have eagerly shared their praise. CPT Margaret Marcello, commander of the 515th Transportation Company in Mannheim, stated that the improved chapter process is better because:

- Packets can be sent to legal instantly, including after duty hours;
- It saves the Army time and money not having to drive back and forth every time;
- E-mail allows a trail of paperwork to know who sent the item and when.

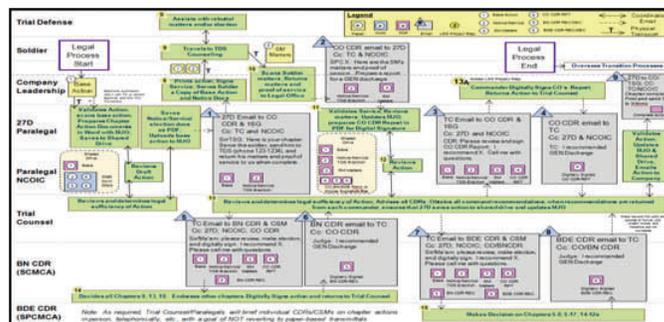
CPT Marcello specifically praised the paralegals in the Mannheim JAG office for helping chapter 13 soldiers in under three months. She stated, "I have valued their work and quick reaction time so much that I presented each Soldier with a company coin to say thanks and let them know how much I value their work."

To close out the project, we have instituted control plans to sustain the gains you've made. Remember, though, none of our processes function without the hard work of good people like you. So, stay at it, look for new ways to improve, and always remember that we are here to serve commanders and Soldiers.

It has been my pleasure leading you through this project, and as your Deputy SJA.



Processing times through battalion commanders were reduced from 54 to 32 days, a 40% improvement. The boxplots above visually show reductions in mean and variation.



The team designed and instituted "near paperless" processing for chapter actions, which was lauded by commanders and is being considered for replication throughout Europe and the Army.

OSJA LSS Belt Status		
Black Belt: LTC Cook (PCS JUN 2011)		
Green Belts:		
CPT Howard	CPT Fussnecker	CPT Gilbertson (in training)
Yellow Belts:		
COL Lewenhaupt	SSG Eaddy	SPC Smith
LTC Takushi	SSG Denney	Gary Mathes
MAJ Abbott	SGT Beckwith	
MSG Haarer	SGT Saenz	
SFC Drummonds	SPC Jancek	

To become a yellow belt, you must (1) Have some level of LSS Training (online, formal, or belt-led training); (2) Have participated on an LSS project team and listed on the project charter; and (3) If a DAC or U.S. Military, have a Power Steering account. The OSJA goal for Yellow Belts by the end of FY11 is 18 personnel.

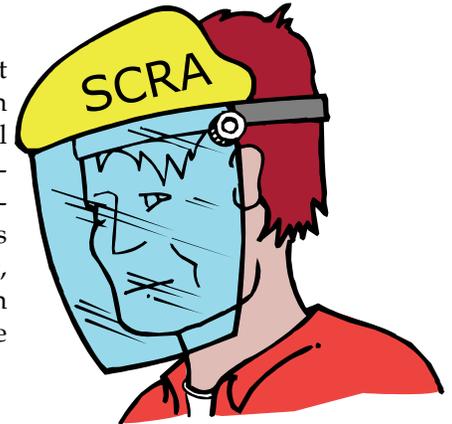
Green Belt and Black Belt training is also available for motivated people with suitable project proposals.

Contact LTC Cook or CPT Gilbertson for additional information.

"Protecting Ourselves" — A SCRA Primer

by CPT Yolanda Williams

Servicemembers make a lot of sacrifices to answer the country's call to protect and defend freedom. Although taking care of your personal affairs while serving in the military can be challenging, Congress has done its part to provide additional protections for servicemembers to ease some of those burdens. The Servicemembers Civil Relief Act (SCRA) was designed to postpone or suspend certain civil obligations of military personnel during their military service. The SCRA's protections apply in civil lawsuits, in bankruptcy proceedings, and in administrative hearings, but they do not apply in criminal proceedings. The SCRA seeks to alleviate certain legal burdens that confront servicemembers so they can focus their energies on the defense of the nation.



Here are a few of the protections afforded under the SCRA:

- A stay of proceedings is allowed when a servicemember with notice of proceedings in civil court or an administrative hearing is unavailable and whose ability to appear is materially affected by military service. A court shall grant a stay for not less than 90 days upon the servicemember's application.
- A servicemember neither acquires nor loses his or her domicile based on presence in a state due to military orders. As of November 11, 2009, this taxation provision applies to spouses living with servicemembers if the spouse's domicile is the same as the servicemember's. Military income is deemed earned in the state of domicile and personal property (*e.g.*, a car) is deemed located in the state of domicile. Note: the SCRA does not protect the servicemember's nonmilitary income (*e.g.*, wages earned after duty hours as a bouncer at a nightclub).
- The SCRA limits interest to 6% on pre-service obligations. Lenders are required to forgive interest above 6% and cannot accelerate payment of the principal. This interest cap requires the servicemember to give notice only and has no requirement to show material effect. Interest rates on mortgages may be reduced to 6% during active duty and for one year after being released from active duty.
- A court cannot enter a default judgment against a servicemember until the court appoints an attorney to represent the defendant servicemember. The default judgment protection applies only if the servicemember has not appeared. The plaintiff is required to file an affidavit as to the defendant servicemember's military status. Upon application by the servicemember, the court shall reopen any default judgment rendered while the servicemember was on active duty or within 60 days of release from active duty.
- The SCRA tolls the running of the statute of limitations in civil and administrative proceedings. This protection applies whether the servicemember is the plaintiff or defendant. This protection does not apply when it comes to tax matters.
- Residential lease termination is covered for pre-service leases, permanent change of station moves, and deployments over 90 days. The protection releases dependents' obligations along with the servicemember's. This protection requires written notice with a copy of your military orders.
- The eviction protection rule provides that a servicemember can only be evicted upon court order. Foreclosure without a court order is prohibited and applies to pre-service obligations secured by a mortgage. The servicemember is required to show material effect and the court may stay the proceedings or adjust the obligation as equity requires. The period of protection was extended in 2008 from 90 days to nine months. Self-help repossession of items purchased on installment contracts is prohibited. The contract must be a pre-service obligation; common examples are contracts for appliances, furniture, and motor vehicles. A court order is required prior to termination for breach of contract or repossession and material effect must be shown.

[continued on page 13...]

"Protecting Ourselves" (continued...)

Who Gets SCRA Protections?

Active Component servicemembers, Reservists when on Active Duty in a Title 10 status, National Guard when on federal duty (Title 10) and sometimes when on state duty (Title 32), and family members (in certain instances) are protected under the SCRA.

When Do SCRA Protections Begin?

SCRA protection begins upon entry on active duty, upon receipt of induction orders for new enlistees, or on receipt of mobilization orders for Reservists.

If you have any concerns about the issues addressed above or your rights under the SCRA, make an appointment to see a Legal Assistance Attorney at the Kaiserslautern Legal Services Center by calling DSN 483-8848 or Civilian 0631-411-8848, and let us help you protect your legal rights.

AFFIRMATIVE CLAIMS — GETTING \$\$\$ BACK

by CPT Mike Gilbertson

Have you or your dependents been injured because of someone else's fault? Or do you know of U.S. Government property that has been lost or damaged? If the U.S. Government provided medical care to you or your dependents or paid to have the Government property repaired or replaced, let your local military claims office know ASAP!

Under federal law, the U.S. can seek reimbursement, through an affirmative claim, against an individual who causes such injury, and/or their insurance company. This reimbursement includes recovering lost military pay and the reasonable value of medical care provided furnished by Military Treatment Facilities (MTF) by civilian medical facilities at Government expense. The U.S. can also recover the reasonable value of damage to and loss or destruction of Government property, such as fences, gates, barriers, tactical vehicles, vessels, aircraft, NAFI property, and GSA-owned property. So do your part to help reduce the deficit, and let your nearest claims office know about injuries or damage caused by others today!



I WANT YOU
TO HELP U.S. TAXPAYERS
NEAREST CLAIMS OFFICE

KAISERSLAUTERN LEGAL SERVICES CENTER
 BLDG. 3210, ROOM 109, KLEBER KASERNE
 DSN 483-8414 OR CIVILIAN 0631-411-8414

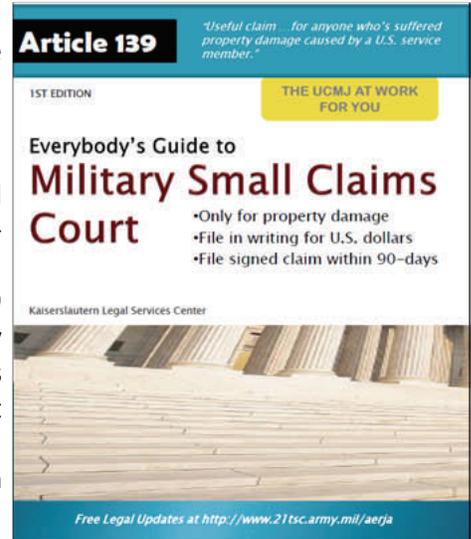
Breaking News: The Kaiserslautern Legal Services Center Claims Office has won The Judge Advocate General's Award for Excellence in Claims Support for the fifth consecutive year. Other winners included the 21st TSC Claims Offices in Stuttgart and Mons, Belgium. 21st TSC lives up to its motto: "First in Support!"

ARTICLE 139 CLAIMS — THE MILITARY EQUIVALENT OF SMALL CLAIMS COURT

by CPT Mike Gilbertson

Claims filed under Article 139 of the Uniform Code of Military Justice (UCMJ), are the closest thing the military has to small claims court.

If your personal property is willfully damaged or wrongfully taken by a U.S. service member, including active duty personnel, retired personnel who were on active duty when the claim was filed, and Reservists and National Guard while subject to the UCMJ, you may file a claim against the U.S. service member under Article 139. If the claim is substantiated, Article 139 allows Finance to pay the victim directly from the service member's military pay. If an individual offender cannot be determined, Article 139 authorizes commanders to direct Finance to withhold the pay of all members of a unit who were present at the scene of the incident that gave rise to the claim. Article 139 is entirely separate and distinct from disciplinary action taken under other sections of the UCMJ.



Examples of incidents upon which an Article 139 claim could be based include:

- A Soldier starts a fight with a civilian and breaks the civilian's home furnishings.
- A Soldier is off-duty and intentionally breaks a downtown storefront window.
- A Soldier "borrows" another Soldier's cell phone and sells it to a pawn shop.
- A Soldier deliberately pours a beer into the stereo system of another Soldier who dated his girlfriend.

Limitations: Article 139 claims cannot be based on personal injury, breach of contract, unpaid bills, or bad checks. Nor can Article 139 claims be based on property damage caused inadvertently or thoughtlessly. Article 139 claims do not cover indirect or consequential damages like loss of use or attorney's fees. An appropriated fund entity or a non-appropriated fund entity cannot file an Article 139 claim. However, just because a claim does not meet the filing requirements for Article 139 does not preclude you from pursuing other avenues of legal redress.

Process: A claimant must file within 90 days of the incident giving rise to the claim, unless the Special Court Martial Convening Authority (SPCMCA) acting on the claim determines there is good cause for delay. Good cause generally includes being unaware of Article 139 or the identity of the offender(s). The claim may be initially presented by the claimant, or an authorized agent, orally or in writing. The claim must be reduced to writing within 10 days of oral presentment, it must request a specific sum in U.S. dollars, and it must be signed. The victim does not need an attorney to file the claim and the claims system will not reimburse the victim for attorney's fees or a professional appraisal.

For more information on Article 139 claims, and a form you can use to file such a claim, see our handout at: <http://www.21tsc.army.mil/aerja/Claims/Article%20139%20Claims%20FAQs.pdf>

For answers to questions about claims and assistance in filing any kind of claim, contact the Kaiserslautern Legal Services Center Claims Office at DSN 483-8414/8862 or Civilian 0631-411-8414/8862, and ask to speak to one of our claims examiners, Mrs. Berndt or Mrs. Jordan. You can also e-mail claims questions to us at:

legal@eur.army.mil

*The Ethics Corner...***GIVING GIFTS TO SUPERIORS
A PCS SEASON PRIMER...**

by Rick Schwartz

The summer PCS season is right around the corner, meaning it's a good time for a refresher on the rules applicable to accepting gifts from subordinates. You want to recognize your boss for his accomplishments in Europe before he departs, but also want to make sure that your gift doesn't put him in an awkward situation. For example, can your section create a pool to jointly purchase a PCS or promotion gift? The short answer is "it depends." Individual facts and circumstances are going to vary, so we always want to look to the Joint Ethics Regulation and the Code of Federal Regulations for specific guidance.

Generally speaking, employees are not allowed to directly or indirectly give gifts to, or solicit contributions for, superiors (note that this is broader than immediate supervisors). Further, superiors may not solicit or accept gifts from lower paid employees, unless the donor and recipient are personal friends and there is no superior-subordinate relationship. Rules in this area are intended to preserve integrity in the federal workplace: not only do they prevent unlawful influence or improper bias, but just as important, they prevent the very appearance of impropriety. When they are not observed, these rules can create a lot of grief for all parties, forcing the recipient in some cases to either pay for the value of the gift or return it to the donors.



There are, however, two common exceptions to the general rule at our disposal:

(1) Gifts may be given on an **occasional** basis, provided that the aggregate value of the non-cash gift is \$10 or less per occasion. Common examples of what constitutes an occasional basis include birthdays or gift-giving holidays, such as Christmas. Contributions of food or drink that will be shared in the workplace by several employees, inviting a co-worker or superior to a meal at one's home, as well as customary gifts to a host or hostess (e.g., flowers or a bottle of wine) when accepting such an invitation of personal hospitality, are also appropriate instances of the occasional basis exception.

(2) Gifts may be given on **special, infrequent occasions**, provided the gift is appropriate to the occasion and costs less than \$300 per "donating group." Special, infrequent occasions include those of personal significance, such as marriage, illness, or the birth or adoption of a child. They also include occasions that terminate a subordinate-official superior relationship, such as retirement, PCS, or ETS.

When talking about the second exception, keep in mind the \$300 limit per donating group. A "donating group" includes all employees contributing to a group gift, and an employee should generally not contribute to more than one group. If an employee does so, the value of all gifts from groups with the common donor must be aggregated as if the gift was from a single donating group for purposes of the \$300 limit.

Contributions of no more than \$10 may be solicited in the federal workplace from other Federal employees (contractor employees may not be solicited), but only for gifts that fit into our second exception above, or for the occasional sharing of food and refreshments in the workspace. The solicitor may recommend a specific amount up to \$10, provided they couple their recommendation with the statement that the contributing employee is free to contribute less than the recommendation or nothing at all. Although one should never ask a colleague for more than the \$10 limit, there is nothing to prevent an

[continued on page 16...]

GIFTS TO SUPERIORS (continued)



Former 21st TSC Chief of Justice and Senior Trial Counsel CPT Mark Oppel, who has served as a Contract Law Attorney for the last year, was promoted to Major on May 25th by the Commander of the 409th Contracting Support Brigade, COL Debra Daniels (left). Pictured here with his wife, Sarah, sons Kilian and Zachary, and the 409th's Chief Counsel, LTC Bobbi Davis, MAJ Oppel will remain in Kaiserslautern for the next year, and take on new responsibilities with the 409th. Congratulations to MAJ Oppel and his family on achieving this "major" milestone in a military career.

individual employee from donating more than that amount. To ensure that contributions are truly voluntary, the person doing the soliciting should not be anywhere in the supervisory chain and a list of those who contribute should not be made. Lastly, if the gift for this special, infrequent occasion is to be presented at a party for this purpose and the recipient's expenses are to be paid for by contribution, employees should be told that the funds will be used for both the gift and the party. They should also be told that they are free to contribute to both, either one alone, or neither. In such cases, the cost of food, refreshments, and entertainment received by the donor would not be included with the gift in determining whether the \$300 limit is exceeded.

Note also that absent an independent basis of support (e.g., a pre-existing personal relationship), gifts from one employee's spouse to another's spouse will be considered a gift between the two employees, and thus subject to the rules described above.

Lastly, keep in mind that these rules only apply to gifts between Federal government employees, and are not applicable to gifts from contractor employees.

If you have any questions about how the rules on the giving or accepting of gifts apply to your specific situation, be sure to contact your unit Ethics Advisor for guidance.

Directions to Kleber Kaserne: From Vogelweh, Ramstein, or Landstuhl take the A6 direction Mannheim. On your right you will see a large store called Möbel Martin. Make sure you are in the right lane as you take the Kaiserslautern Ost Ausfahrt (exit). Turn right as you leave the exit ramp and drive downhill until you reach the stop light. Turn right and proceed straight until the next stoplight. Turn left and you will be beside Kleber Kaserne. Follow the perimeter until you come to an open gate. Once you are on post, park in the Shoppette parking lot. Bldg. 3210 is directly across from the Shoppette. Enter Bldg. 3210 from the end door, closest to the Shoppette.

