



# KAISERSLAUTERN LEGAL INFORMER

## K-TOWN'S FIRST RESIDENT JUDGE ARRIVES



*Chief Circuit Judge Colonel Pete Masterton returned to Kaiserslautern on June 18th, after spending the last year trying cases all over Southwest Asia.*

by Steve Smith

*"Here come da judge"...* one more time.

A year ago, Colonel R. Peter "Pete" Masterton arrived in K-town, moved into the military judge's office in the Kaiserslautern Legal Services Center, then deployed to Camp Arafjan, Kuwait. He spent most of the last year trying cases in Kuwait, Iraq, and Afghanistan. Now he is back, ready to pick up where he left off. He will serve here as the Chief Judge of the Fifth Judicial Circuit, one of two military judges stationed in Europe.

This marks the first time Kaiserslautern has had a resident military judge. Prior to this, most Chief Circuit Judges in Europe had their offices in Mannheim or Heidelberg. As those communities draw down and as Kaiserslautern grows, it makes more sense to locate the Chief Judge here.

A native of Storrs, Connecticut, Colonel Masterton is no stranger to Germany. His first assignment in the JAG Corps was in Baumholder. He also had tours of duty in Garlstadt, Wuerzburg, and Mannheim. His wife, Ilona, is a native of Freisen, and their daughter, Jenny, is pursuing a master's degree at Wuerzburg University.

"I'm looking forward to working with many old friends and new friends in Germany," said the Judge upon his return.

Colonel Masterton brings a wealth of military justice experience to the bench, having served as a Trial Counsel, Senior Defense Counsel, Chief of Justice, Regional Defense Counsel, and Military Judge, not to mention three years spent as a Criminal Law Professor at The Judge Advocate General's School in Charlottesville, Virginia.

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*United States Army  
Judge Advocate  
General's Corps -  
America's Oldest  
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## ***K-TOWN'S FIRST RESIDENT JUDGE (continued)***

In addition to his military justice experience, Colonel Masterton is one of the leading claims experts in the JAG Corps. I first met him in 1984 when we were both Claims Judge Advocates in the 8th Infantry Division. Pete went on to serve as Chief of Claims at Aberdeen Proving Ground, Deputy Chief of Personnel Claims and Executive Officer of the US Army Claims Service, Commander of the Armed Forces Korea Claims Service, Chief of the US Army Claims Service, Europe, and Commander of the US Army Claims Service.

A prolific author, Colonel Masterton has published articles in *The Army Lawyer*, *The Military Law Review*, *The International Lawyer*, and the *New England Journal on Criminal and Civil Confinement*.

We're privileged to have this seasoned Connecticut Yankee in our courthouse. The Kaiserslautern Legal Service Center's Warren J. Argue Courtroom, which recently underwent a significant upgrade of its audio-visual and IT equipment, is likely to see an increase in hearings now that the Chief Circuit Judge is in residence next door.

Other improvements to the Kaiserslautern Legal Services Center that will take place this summer include new offices for a Senior Defense Counsel and two Trial Defense Counsels, a new TDS waiting room and reception area, and new offices for visiting attorneys and our Victim-Witness Liaison, Claims Examiner, Claims Judge Advocate, and Legal Assistance Attorneys.



*Left: The author (third from left) and then-CPT Masterton (center) at a Law Day event in Baumholder in 1985.  
Right: COL Masterton in a more recent photo, wearing a few more decorations than he wore as a Captain.*

### ***BREAKING NEWS!***

**The Judge Advocate General's Legal Center and School has just released the Commander's Legal Handbook, a standardized legal reference to help commanders prepare for and succeed during their command. While the handbook cannot, and does not, replace the independent legal advice of a Judge Advocate, it is a tremendous tool for commanders. The handbook will be made available only in digital form. It will be posted for commander access through forums hosted by the Combined Arms Center at Fort Leavenworth. It can also be accessed at <https://www.jagcnet.army.mil/CdrsLegalHandbook>. It is currently a linked PDF document, but efforts are underway to convert it to an app. Commanders should contact their Trial Counsel for more information on this new resource, which will help them avoid potential legal problems, and manage those that do arise, pending consultation with their servicing Judge Advocate.**

## ***K-Town Hosts High-Profile Court-Martial***

by CPT Mike Eaton

A court-martial has been described as (more or less) controlled pandemonium. For every day spent in the courtroom, weeks of preparation take place prior to trial. Those who watch events unfold in the courtroom during a court-martial trial are usually unaware of the detailed planning and coordination that is required to make a trial proceed effectively. This is particularly true in a high profile case, such as *United States v. COL James H. Johnson*, which took place in the Kaiserslautern Legal Services Center's Warren J. Argue courtroom from 12 to 15 June 2012.

Because *United States v. Johnson* had garnered media attention—the trial was attended by reporters from the *Stars and Stripes* and the *Army Times*—it was vital that the trial run smoothly and efficiently in order to present both the military justice system and the 21st Theater Sustainment Command in the best possible light.

Although *United States v. Johnson* was not a 21st TSC case, the 21st TSC Office of the Staff Judge Advocate had been planning for the case since at least mid-May. In addition to offering informal support and advice to the trial team, the 21st TSC was formally tasked with providing logistical support to this important case. The 21st TSC delegated much of the responsibility to coordinate this vital logistical support to the OSJA.

According to a task order issued on 17 May 2012, the OSJA was tasked to provide two offices for the *Johnson* trial team, including computers, printers, Internet access, and phones with DSN access to United States Army – Africa and the Southern European Task Force. Additionally, other 21st TSC units were tasked to provide ten Soldiers to drive panel members and witnesses to and from the court-martial, two senior non-commissioned officers to act as bailiffs during the court-martial, three senior non-commissioned officers to escort the accused, and twenty parking spaces for use by court-martial personnel, members of the media, and other attendees. CPT Mike Gilbertson, Chief of Operational Law at the 21st TSC OSJA, took the lead not only in ensuring that each of these requirements was met, but also in making sure that backup plans were in place and that Soldiers identified to support the court-martial were trained and in the right place, at the right times, and in the right uniforms.

Working behind the scenes, the officers and enlisted Soldiers of the 21st TSC OSJA rose to the occasion to ensure the *Johnson* court-martial was completed on schedule. Although these Soldiers' efforts were largely unnoticed by the media and the other trial participants, the professionalism and dedication to justice of the trial team, the 21st Theater Sustainment Command, and the Office of the Staff Judge Advocate was clear.



*Editor's Note: CPT Eaton serves as Senior Trial Counsel in the Criminal Law Division of the 21st TSC Office of the SJA.*

## Foreign Bank Account Report Deadline Fast Approaching

by Dan Rifkin

Do you have a foreign financial account? If so, you could face civil penalties or even criminal liability if you don't report the existence and value of the account to the U.S. Department of the Treasury in the very near future! U.S. taxpayers, including U.S. citizens, U.S. resident aliens (*a.k.a.* "green card holders"), and non-resident aliens who elect to be treated as Americans for tax purposes by filing jointly with their American spouse, should take note.

Any U.S. taxpayer who has a financial interest in or signature authority over foreign financial accounts that had more than \$10,000 in them, in the aggregate, at any time during calendar year 2011 must disclose this information to the U.S. Department of the Treasury using form TD F 90-22.1 (also known as the "FBAR"), available at <http://www.irs.gov/pub/irs-pdf/f90221.pdf>. The deadline for this disclosure is **June 30, 2012**; the form must be **RECEIVED** (not merely postmarked) by that date at the Treasury Department's Detroit office (the mailing address is listed on the form). You may want to consider using Express Mail so you can track and confirm the form's receipt in Detroit.

This requirement does not apply to accounts held in U.S. financial institutions located on American military installations (*e.g.*, Community Bank or Service Credit Union), but it does apply to German Postbank and other foreign bank and investment accounts. Note that the reporting obligation is triggered if an individual's offshore account(s) exceeded \$10,000 in value on **ANY** day of the calendar year. Also, it is important to remember that this reporting threshold is counted in U.S. dollars, not Euros. If the maximum value of the account(s) exceeded 7,118 Euros in 2011, then you probably need to file an FBAR.

This reporting requirement does not normally increase your tax obligations—the rule only requires you to disclose the existence and the maximum value of the account(s) during the calendar year so that the government can more easily identify illegal offshore accounts. Nevertheless, failing to disclose information about foreign financial accounts could result in both criminal penalties and very heavy fines. FBAR civil penalties vary widely, depending on whether the failure to disclose was willful, but can be as much as \$100,000 or 50 percent of the balance in the account at the time of the violation.

If you should have been filing the FBAR in past years and were unaware of the requirement to do so, you should speak to a tax attorney about the IRS's Overseas Voluntary Disclosure Initiative (OVDI) program, which is designed to help those not in compliance to "come in from the cold." Don't delay. The IRS could terminate that program at any time.

*If you have questions about how to fill out the FBAR form, whether you are obligated to file it, or the OVDI program, contact the Kaiserslautern Legal Services Center's Legal Assistance Office at DSN 483-8848 or Civilian 0631-411-8848 and make an appointment to speak with a tax attorney.*



### KAISERSLAUTERN LEGAL SERVICES CENTER

**Building 3210  
Kleber Kaserne**

Legal Assistance 483-8848

Tax Assistance 483-8848

Claims 483-8414/8862

International Affairs 483-8854

Trial Defense Service 483-8397

**[Civilian: 0631-411-XXXX]**

Administrative Law 484-8747

Criminal Law 484-7419

**[Civilian: 0631-413-XXXX]**

## 21st TSC 2012 Tax Assistance Program Results:

**Federal & State Income  
Tax Returns Prepared:**

**7,132**

**Tax Refunds Generated:**

**\$13,982,727**

**Savings to Taxpayers:**

**\$1,269,945**

Note: These figures do not include the Baumholder Tax Center's statistics. Baumholder did not become a 21st TSC OSJA branch office until April 1, 2012.

**THANKS FOR USING  
OUR SERVICE!**

## **French to Require Breathalyzer Kits**

by Joerg Modellmog

30% of the fatal traffic accidents in France are due to alcohol consumption. In an effort to reduce that not-so-vital statistic, new requirements for all those driving in France have been instituted.

Beginning July 1, 2012, anyone driving in France must carry an unused breathalyzer kit on board. Violations are punishable by a fine of €11, which must be paid on the spot. The fine increases to €90 if a breathalyzer kit isn't presented to authorities within five days of the incident. However, during a grace period that runs from July 1 to October 31, 2012, only a warning notice will be issued if you are caught driving without an unused breathalyzer kit.

Single-use breathalyzers cost between €0.50 and €3.00 and are available at French supermarkets, pharmacies, and gas stations. ADAC and German shops close to the French border will also stock up. The test kits should bear the French "NF" (*"norme français"*) label. The idea is to encourage drivers to administer a self-test before starting their car, but remember that an unused test kit has to be presented during a police check, so you might want to carry at least two kits on board. Since these kits generally have a short expiration period, you may want to buy them right before you plan to drive in France. As is the case in Germany, the legal limit in France is 0.5 grams per liter [= 0.05 g per 100 ml], and it is always best not to drink any alcoholic beverages at all if you plan to drive.

Anyone driving in France is already required to have a fluorescent safety vest (*"le gilet réfléchissant"*) on board. It has to be carried inside the vehicle and not in the trunk, so you can put it on before you leave your car in the event of a roadside repair stop. Radar detectors have been illegal in France since the beginning of 2012, but that shouldn't upset your routine, as you're not allowed to use them in Germany, either (§ 23 para. 1b StVO, German Road Traffic Ordinance). If your GPS system identifies radars or traffic cameras, you must disengage those features on your GPS when driving in France, too.

Although a box with spare bulbs for car lamps, lenses, and reflectors (*"la boîte d'ampoules de rechange"*) is merely recommended in France, you should have one on board as you can be fined for not being able to replace a broken light right away.

Let the good times roll (*"laissez les bons temps rouler"*), but don't roll into France without the right equipment.

P.S.: It might be less hassle to take the train...



*Editor's Note: The 21st TSC OSJA has several French speakers on its staff, including Joerg Modellmog and Steve Smith, who can assist clients in deciphering any tickets or correspondence they may receive from French authorities. First in Support! ("Premier en Soutien!")*

***Meet Our Summer Interns:***

We are fortunate to have three “2Ls” (students who have completed two out of three years of law school) working as interns in the 21st TSC OSJA and Kaiserslautern Legal Services Center this summer. From left to right: Zachary Jacobson (Hamline University School of Law), Daniel Rifkin (George Washington University School of Law), and Nelson Faerber (Florida State University College of Law). They’re making valuable contributions in all sections of our office while observing how we practice law in the Army Judge Advocate General’s Corps.



*21st TSC’s Command Team presented the Commander’s Award for Civilian Service to Angie Stepholt on the occasion of her retirement at a Retreat Ceremony on March 29th.*



*Artist Brooke Haarer, daughter of 21st TSC Chief Paralegal NCO MSG Scott Haarer, puts the finishing touches to a mural she is painting in the OSJA hallway.*



*AFRICOM Commander and former USAREUR Commander General Carter Ham underscored his strong support for our free tax assistance program with a visit to the 21st TSC’s Stuttgart Tax Center this spring.*



*Legal Administrator CW2 Jah’love Shakur and his wife, Chantal (left), and Fiscal Law/Ethics Attorney Rick Schwartz and his wife, Andrien (right), are looking forward to the birth of baby boys this summer.*

# **Getting Rid of Unfavorable Information in Your OMPF** *Before the Army gets rid of you...*

by Mark Christensen

Your Official Military Personnel File (OMPF) is a source of information about you that will be reviewed by boards or other selection processes for promotion, assignments, and schools. Your OMPF is an administrative record containing information about your service history, including performance evaluations, duty stations and assignments, training and qualifications, awards, and disciplinary actions. Periodic review of your OMPF will help you manage your career and identify errors in your records.

It is no secret that current reductions in the size of the Army will affect Soldiers, some of whom have been in the Army many years. Adverse information in your OMPF might result in non-selection for favorable actions, or even separation from the Army. If your OMPF contains unfavorable information, you may consider whether to request that the unfavorable information be removed from your OMPF, or transferred to your restricted fiche. Official documents properly filed in the OMPF are presumed to be administratively correct and filed by competent authority. Here are some options:



1. **Appeals for removal of OMPF entries.** This appeal is normally restricted to Soldiers in grades E6 and above, and to commissioned and warrant officers, and does not concern evaluation reports or court-martial orders. To prevail, you must prove the document is untrue, or unjust, in whole or in part.
2. **Appeals for transfers of OMPF entries.** This appeal is for transfer of letters of reprimand, admonition, or censure to the restricted fiche. This option is for grades E6 and above, and for commissioned and warrant officers. To prevail, you must prove the document is untrue, or unjust, in whole or in part, or that the intended purpose of the document has been served and transfer would be in the best interest of the Army. At least one year must have elapsed since the imposition of the letter, and at least one (non-academic) evaluation report must have been received in the interim.
3. **Petition for transfer of Article 15 records.** This option is also for grades E6 and above, and for commissioned and warrant officers. Transfer of Article 15 records is possible upon proof that the intended purpose of the Article 15 has been served and the transfer is in the best interest of the Army.

Making a request to remove or transfer a document in the OMPF should be carefully prepared with supporting relevant and substantive evidence. You will want to obtain proof of exemplary service and duty performance since the unfavorable information was filed. Include letters of recommendation evidencing your continued future potential service. Legal Assistance Attorneys can help you identify your theme and package your request for appropriate filing.

***For more information on how to remove unfavorable information from your OMPF, consult Chapter 7 of Army Regulation 600-37. To make an appointment to see a Legal Assistance Attorney, call the Kaiserslautern Legal Services Center's Legal Assistance Office at DSN 483-8848 or Civilian 0631-411-8848.***

## Getting in Gear for Your Next PCS Move

by CPT Dan O'Connor

The summer permanent change of station (PCS) season is about to begin, so now is the time to prepare for shipping your household goods and hold baggage. Here are some tips on what you can do **before**, **during**, and **after** your move to protect your right to file a claim for any loss or damage that might occur during Government-sponsored shipment.

### BEFORE:

- Make an inventory of your belongings before the moving company arrives. List the make, model, and serial number of items as you catalogue your household goods.
  - Consider having any antiques and unique items appraised (at your own expense) before the move.
  - Collect your receipts and take photographs of high-value items; a video where you observe the various rooms of your home and their contents is also very helpful when you need to file a claim. DO NOT ship your receipts and photographs of high-value items with your household goods. Carry them with you when you PCS to retain proof of ownership and value.
  - Separate items like expensive jewelry and hand-carry them to your next duty station.
- Consider getting private insurance for high-value items for which you may not be able to obtain Full-Replacement Value (FRV). The maximum payment allowable for different types of property is listed at: [http://www.fincen.uscg.mil/HHg\\_files/Maximum Allowance List revised sep07.pdf](http://www.fincen.uscg.mil/HHg_files/Maximum Allowance List revised sep07.pdf)

### DURING:

- Once the movers arrive to pick up your household goods, compare your personal inventory with the one that the moving company has compiled.
  - Make sure that nothing has been omitted on the mover's list. Also, make sure that the movers do not list pre-existing damage (PED) to any of your items unless such PED is actually there (*e.g.*, the movers note scratches on a table when no scratches are present). These steps are crucial to ensuring that you get FRV from the movers if they lose or damage your property.
  - If the movers refuse to change any of the PED that is listed but is not accurate, note exceptions on the inventory when you sign the paperwork.
- When the movers arrive at your new residence, make sure that you supervise the unloading of your goods and have **them** unpack as many of the boxes as possible.



**What's Wrong With This Picture?**

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## Getting in Gear for Your Next Move *(continued)*

- Note any new damage to your property on either DD Form 1840 or the “Joint Statement of Loss or Damage at Delivery” form while the movers are unpacking your belongings. Damage that you see after the movers have left should be noted on the back of that same form (either the DD Form 1840R or the “Notice of Loss or Damage” form).
- Retain your broken items so that a claims examiner will be able to inspect them. Also keep any damaged boxes to show as evidence of how your property was damaged.

### AFTER:

- **GO TO YOUR LOCAL CLAIMS OFFICE!** Even though the Defense Personal Property System enables you to file your claim online, our claims examiners can help make sure that your claim has been properly filed, and improve your chances of obtaining a fair settlement from the carrier.
  - **MEET FILING DEADLINES!!!** The carrier must be put on notice that you are going to file a claim within **75 DAYS** of your household goods arriving at your new residence. To receive FRV, you need to give that notice and file your claim within **NINE MONTHS** of the date of delivery. Your local claims office can help make sure you meet those deadlines and protect your right to receive FRV, so visit the claims office as soon as you know that you plan to file a claim.

*The Kaiserslautern Claims Office is the place to go for claims help! Visit us in Room 112 of the Kaiserslautern Legal Services Center, or call us at DSN 483-8414/8862 or Civilian 0631-411-8414/8862.*



*Editor's Note: Meet our new Claims Judge Advocate, CPT Dan O'Connor (right), a 2010 graduate of Boston College Law School, and our new Legal Assistance Attorney, CPT Jilliane Jaeger (left), a 2007 graduate of Hamline University School of Law. Both of them recently went through three days of intensive claims training at the U.S. Army Claims Service, Europe, in Mannheim, where they learned all the ins and outs of the claims business. They, along with our Chief of Client Services, Mark Christensen, and our Claims Examiners, Martina Berndt and Karin Jordan, are ready and willing to assist you with any kind of claims issue. [Come to Claims!](#)*

***BREAKING NEWS: The Kaiserslautern Claims Office is one of only four winners in Europe of the FY 2011 Judge Advocate General's Award for Excellence in Claims. Congratulations to our hard-charging claims team! First in Support!***

# *What You Need to Know About FLIPLs*

## *What you don't know could cost you, big time...*

*Editor's Note: The 5th Amendment to the U.S. Constitution makes it clear: "no person shall ... be deprived of life, liberty, or property, without due process of law." How does that work in the military? Isn't your pay a form of property? Can the Army just take away a month's pay from a Soldier because he had an accident in a military vehicle? It's not that simple. There is a process involved, which used to be known as a "Report of Survey." That term was later changed to Financial Liability Investigations of Property Loss, or "FLIPLs" for short. As the articles below illustrate, Administrative Law Attorneys like CPT Cohen review FLIPLs to make sure they are legally sufficient before someone's pay is taken away, and that someone, known as "the Respondent," has the right to go see a Legal Assistance Attorney for help in crafting a rebuttal statement or request for reconsideration, or appealing an assessment. CPT Ribelin just spent a year in Legal Assistance helping clients respond to FLIPLs. It should be of some comfort to know that before the Army can take up to a month's worth of your pay (and under certain circumstances, even more), at least two different lawyers are involved in making sure you are accorded "due process of law."*

### Helpful Hints for Financial Liability Officers



by CPT Courtney Cohen

FLIPLs are the Army's way of accounting for lost or damaged Government property. When negligence caused the loss or damage, the Government may seek reimbursement from those involved. Often, the appointing authority assigns a Financial Liability Officer (FLO) to gather evidence of the circumstances surrounding the loss or damage to determine who, if anyone, should be held financially liable for it. Having a firm grasp of the elements of liability and the purpose of a FLIPL will allow the FLO to submit a thorough, accurate, and organized investigation to the FLO's Commander.

The elements of liability are (1) responsibility, (2) negligence, (3) proximate cause, and (4) loss or damage. The elements are all linked in chronological order. Every element must be proved to hold an individual liable. The individuals meeting the criteria should grow fewer and fewer with each element until the FLO has identified the liable parties. While many people may be responsible for a certain article of property, only a few may have acted negligently. Out of those few, probably only one or two people's negligence caused the damage.

It is important to understand the distinction "negligence" and "proximate cause." Many FLOs lump these two elements into one, but each element must be analyzed individually. Negligence describes an individual's actions that did not live up to the level of care a reasonable person would have given to the property. Failing to create and maintain a proper Command Supply Discipline Program, failing to inventory items according to regulatory guidelines, signing a hand receipt without getting "eyes on" the equipment, and failing to judge proper clearance in a vehicle are all examples of negligent acts.

Now that we've established what constitutes negligence, let's discuss how it differs from proximate cause. Proximate cause is the link between the negligent act and the damage or loss. If that link is close enough, then the element of 'proximate cause' is met. If the link is too attenuated or broken by an intervening cause, then although there is negligence and damage or loss there is not proximate cause. Because one of the elements of liability is unproven, that individual cannot be held liable. It is also very important for Commanders and FLOs to understand the purpose of the FLIPL process and what purposes are inappropriate. The goal of a FLIPL is to account for lost or damaged property, adjust property books to accurately reflect inventory, and seek reimbursement for damage or loss caused by negligence. FLIPLs are **NOT** meant to be corrective action or punishment.

*[continued on page 11...]*

It is not uncommon to see recommendations of liability against a certain person not because the person met the elements of liability, but because that person “needs to be taught a lesson” or “must be held accountable for his poor decision-making.” Often, authorities will point to a specific action the Soldier did that should be “addressed.” These statements are signs that the FLIPL process is being used inappropriately as a way to impose punishment.

The FLIPL process does not preclude adverse administrative or disciplinary measures. If the Commander believes a Soldier’s actions warrant adverse action, he should certainly address them with the myriad tools available, such as an adverse NCOER, MOS reclassification, bar to reenlistment, or nonjudicial punishment or other UCMJ action.

Your legal advisor can assist in framing the issues, identifying information required, planning the investigation, and interpreting and analyzing the information obtained. Attorneys in the 21st TSC OSJA’s Administrative & Civil Law Division are available to help focus the FLO and authorities on the narrow scope and purpose of a FLIPL and to inform Commanders of alternative measures available to address Soldiers’ conduct. When FLOs and Commanders put the FLIPL process to use as it was designed, the process can be a straightforward and organized duty for the FLO and an effective accountability and loss recovery tool for the Command.

### What to Do Once Liability Has been Recommended



by CPT Austin Ribelin

So you damaged or lost some Government property. After an agonizing wait, you finally receive the findings and recommendations of the Financial Liability Officer (FLO). To your unpleasant surprise, the FLO has recommended that you be held liable for the loss to the Government and that a month’s worth of your pay be taken to compensate the Government. Now what?

The first step in assessing financial liability is for the FLO to provide you, the “Respondent,” a notification memorandum with a copy of the FLIPL report and all its exhibits. You have seven days from the date you receive this memorandum to submit a rebuttal statement, unless you have PCS’d to a different country, in which case you have 30 days from the date the notification memorandum was mailed to submit your rebuttal.

As the Respondent, you have the right to consult a Legal Assistance Attorney. When making an appointment, be sure to mention that you have a very short suspense. Before your appointment, take a look at AR 735-5, paragraph 13-42, which lays out the Respondent’s rights, and draft a proposed response to show the Legal Assistance Attorney. Be sure to take the notification memo, all supporting documents, and your draft response with you on the day of your appointment. The Legal Assistance Attorney will review all the paperwork, and help redraft your rebuttal statement so you make the best case possible for being relieved of financial liability.

The FLO will review your rebuttal statement. Sometimes the FLO will be persuaded by your rebuttal to recommend that financial liability not be assessed against you. Sometimes the FLO remains unpersuaded. Either way, the entire packet will be forwarded to the appointing authority or the approval authority, as appropriate, for final action.

If financial liability is ultimately assessed by the approval authority, the Respondent may submit a request for reconsideration. Requests for reconsideration must be based solely on legal error. If the approval authority denies the reconsideration request, the request will be sent to the appellate authority, who will make the final determination on whether liability will be assessed.

Once you have been informed in writing by Finance that they will begin taking money out of your pay, you can request an extension of the collection period. Enlisted Soldiers can request remission or cancellation of indebtedness under AR 600-4. You can also appeal to the Army Board for Correction of Military Records.

Unfortunately, when you have damaged or lost Government property there is no way to just “make it all go away.” However, the options outlined above illustrate that you, as the Respondent, have certain rights, and that the Army cannot simply take your pay without according you administrative due process of law.

**To make an appointment to see a Legal Assistance Attorney, call the Kaiserslautern Legal Services Center’s Legal Assistance Office at DSN 483-8848 or Civilian 0631-411-8848.**

## OSJA Celebrates Law Day 2012

### "No Courts, No Justice, No Freedom"

by CPT Jilliane Jaeger

In the words of President Dwight D. Eisenhower, who established Law Day in 1958, it is "fitting that the people of this Nation should remember with pride and vigilantly guard the great heritage of liberty, justice, and equality under law which our forefathers bequeathed to us." Thus, every May the 21<sup>st</sup> Theater Sustainment Command OSJA hosts a luncheon with members of the German legal community to facilitate collegial discussion about the Law Day theme. Army lawyers in Kaiserslautern also help the Kaiserslautern High School "Street Law" class conduct a mock trial.

This year's luncheon took place on May 10th at the Ramstein Officers' Club. The distinguished guests included retiring COL Karl M. Goetzke, the Judge Advocate for United States Army Europe, and Frau Beate Reich, Undersecretary of the Rheinland-Pfalz Ministry of Justice. In keeping with the 2012 theme "No Courts, No Justice, No Freedom," both speakers highlighted the historic roles courts have played in protecting the fundamental rights and liberties of Americans and Germans alike.



COL Goetzke spoke about his time deployed in Bosnia-Herzegovina and Iraq. He shared his personal observations about how the reinforcement of the Bosnian courts and the re-establishment of the Iraqi courts were key to building a functioning government that could ensure civil justice, social order, and public safety. He also shared how recent funding cuts in the United States are impacting our judiciary's ability to function effectively, and how this issue, if not addressed, will negatively impact our public safety, the economy, and our system of government.

Frau Reich spoke about how important the third branch of government – the judiciary – is to ensuring Germany's free and constitutional social state. She also noted that, like the United States, Germany is facing an increasing shortage of budget resources for its court system resulting from its debt crisis and budget limits.

Following these remarks, COL Ralph J. Tremaglio III, Staff Judge Advocate of the 21<sup>st</sup> Theater Sustainment Command, presented Frau Reich with a small token of appreciation, the book *Die Amerikaner in der Pfalz und in Rheinhessen* by Karl-Heinz Rothenberger. The event closed with spirited, friendly discussion amongst the American and German guests about the foreseeable difficulties caused by an underfunded court system.

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## ***OSJA Celebrates Law Day 2012 (continued)***

On the following day, students from the Kaiserslautern High School “Street Law” class participated in a mock trial in the Warren J. Argue Courtroom at the Kaiserslautern Legal Services Center. The students on the prosecution and defense teams were taught and coached throughout the semester by Judge Advocates MAJ Jeffrey Rohrbach and CPT Yolanda Williams. The mock trial was the culminating event for the class; the students presented their case in front of a judge, played by Regional Defense Counsel LTC Charles A. Kuhfahl, and before a panel comprised of Judge Advocates and paralegals. For the students, it was an opportunity to put what they learned in the classroom to use in a realistic setting, and a tremendous growth experience. Many lawyers and paralegals got their start in similar Law Day programs in schools all over the USA.



*The “Street Law” mock trial prosecution team with their coach, MAJ Jeffrey Rohrbach (left).*



*Coach CPT Yolanda Williams (center), with her mock trial defense team.*



*Students who acted as paralegals, court reporters, and the courtroom sketch artist during the mock trial.*



*The Official 2012 Law Day USA Theme...*

## ***The Military Extraterritorial Jurisdiction Act***

by Joe Hall

### ***Getting Away With Murder!***

#### **Berlin - Before “MEJA”**

In the 1960s, 70s, 80s and 90s, U.S. Forces civilian employees and family members stationed in Berlin could commit crimes, even very serious ones like murder, and not be punished.



Why? First, Berlin was still an “occupied city” from World War II. For policy reasons, local Berlin courts had no jurisdiction over U.S. Forces or their civilian component members and family members. Second, in the late 1950s, the U.S. Supreme Court ruled that U.S. Forces affiliated civilians could no longer be tried by court-martial. So with no court having jurisdiction over them, our civilian component members and our family members could, literally, get away with murder.

This loophole in the law was one of the reasons why Congress eventually passed the Military Extraterritorial Jurisdiction Act (MEJA) (18 U.S.C. § 3261 *et seq.*)

MEJA is a gap filler - it places our civilians under a U.S. District Court’s jurisdiction to try them for crimes that the U.S. Forces and the host nation cannot or will not.

The key elements for a MEJA case are:

- The offense constitutes a felony under U.S. Federal law.
- The offender is a U.S. Forces affiliated civilian (*e.g.*, member of the civilian component or a family member).
- The host nation has not and does not intend to try the case.
- The U.S. Department of Justice agrees to try the case.
- The case will be presented in a U.S. District Court and prosecuted by a U.S. Attorney.

A typical MEJA case would be when the crime was committed in the host nation (*e.g.*, Germany) and the civilian perpetrator fled to the U.S. to avoid host nation prosecution. However, MEJA procedures do exist for MPs to apprehend a U.S. Forces civilian perpetrator who remains in the host nation, have that perpetrator placed in a military confinement facility, and eventually have him or her escorted to the U.S. by U.S. Marshals for trial in a U.S. District Court.

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## ***Military Extraterritorial Jurisdiction Act (continued)***

### ***MEJA is not Just Theory!***

#### **Kaiserslautern - Soldier dies from gang beating during initiation ritual**

In July 2005, SGT Juwan Johnson was being initiated into the Gangster Disciples gang. As part of that initiation, gang members severely beat and kicked SGT Johnson. Although the seriousness of his condition was clearly evident and he asked for help, the gang leader prohibited anyone from taking SGT Johnson to any clinic or hospital. Instead, SGT Johnson was taken to his room and placed in his shower, where he died later that night.

Several of the gang participants were military members. After a long delay, when a witness finally came forward, those military members were eventually court-martialed. The gang leader was a Mr. Rico Williams. He was a family member husband at the time of the incident. He chose to flee back to the US to try to avoid German prosecution.

A MEJA case was initiated against Mr. Williams when the Germans released jurisdiction over the offense. Mr. Williams was eventually apprehended by the FBI and tried before the U.S. District Court for the District of Columbia, where he was convicted in November 2010 of second degree murder and witness tampering.

In April 2012, Mr. Williams was sentenced to 22 years in Federal prison for his offenses.

With the MEJA statute in place, it's a lot harder for our civilians overseas to "get away with murder."

**\$25,000.00**  
**REWARD**

**FOR INFORMATION LEADING TO THE ARREST  
AND CONVICTION OF THE PERSON(S)  
RESPONSIBLE FOR THE DEATH OF SGT JUWAN L.  
JOHNSON, 66<sup>TH</sup> TRANS CO, APO AE 09227. SGT  
JOHNSON DIED ON 4 JUL 05 ON KLEBER KASERNE.**



*Editor's Note: Joe Hall is Chief of International Law for the 21st TSC Office of the SJA. The poster shown above was widely displayed throughout the Kaiserslautern Military Community, and led to the arrest of Rico Williams.*

## Prohibited Personnel Practices

by Teresa Robison

Most Federal employees have heard the phrase “prohibited personnel practices,” but few are aware of the full scope of these prohibitions. These practices are a list of actions prohibited by Congress in 5 U.S.C. § 2302, as implemented by the Office of Personnel Management. Violation of any of these prohibitions can result in an investigation by the Office of Special Counsel (OSC), and serious consequences for any member of management found to have committed such a violation. What follows is a brief overview of the most commonly occurring prohibited personnel practices. If nothing else, the ability to recognize a potential pitfall may alert you that a phone call to the Civilian Personnel Advisory Center (CPAC) or the Office of the Staff Judge Advocate (OSJA) may be in order.

**Discrimination:** Management may not engage in discrimination based on race, color, religion, gender, national origin, age, disability, marital status, or political affiliation. While an abundance of training has been provided on this issue, recent events have greatly broadened the definition of “disabled” for purposes of disability discrimination and accommodation; and recent cases have, under *limited circumstances*, made discrimination based on sexual orientation actionable as gender discrimination.

**Political Activity:** Management may not take action against an employee because of his/her political affiliation, or coerce an employee into taking political action. Restrictions on political activity in the workplace are also found in the Hatch Act, 5 U.S.C. §§ 1501 – 1508. Political conduct is a timely issue in an election year and any manager encountering political issues in the workplace should consult with CPAC and/or JAG before taking any action.

**Obstruction:** Management may not deceive an employee with respect to the right to compete for a position; management is also prohibited from obstructing an employee from competing for a position. The most common scenarios arise where a desirable position is coming up and management, for whatever reason, does not want a particular employee to apply, or wants to place a particular employee in that position. If management misleads potential applicants about the position in any way to prevent the employee from applying, this is likely to be considered a violation. Along these lines, management may not attempt to influence an employee to withdraw so that another applicant may be offered the position. Again, this occurs most often where management is looking to hire a specific applicant, and such conduct may incur the wrath of OSC. Allow competitive hiring practices to run their course.



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## ***Prohibited Personnel Practices (continued)***

**Granting a Preference:** Management may not give desired applicants an “edge” in competing for a position. A common violation here would be providing an applicant with “inside information,” such as details on selection criteria to be used by selecting officials.

**Nepotism:** Management may not hire relatives into positions in which the manager has “jurisdiction or control.” This includes hiring actions and promotions, but also includes encouraging others to hire your relatives. For these purposes, “relative” alludes to the whole span of family relationships: aunts, uncles, cousins, in-laws, and so on. Some managers have attempted to finesse this rule by placing relatives within their organization, but not under their direct supervision. If a manager rates the supervisor of their relative, the manager may be in violation of this prohibition.

**Whistleblowers:** Management may not take, or fail to take (or threaten to take or fail to take), action because an employee has made a disclosure protected by law, or exercised a right protected by law. Disclosures might include reports of fraud, waste, and abuse, or violations of law or regulation. Exercising a right might include appeals, complaints, or grievance rights, testifying against management, cooperating with investigations, or refusing to obey an order which would violate the law.

**Unrelated Conduct:** Management cannot take action for or against an employee for conduct unrelated to performance at work or conduct at work. For example, you cannot promote an employee *solely* because that employee volunteers at a soup kitchen every weekend; and you can’t discipline an employee because you find out the employee is a member of a racist organization. Personnel actions in the workplace should arise from performance and conduct in the workplace.

**Veteran’s Preferences:** Management cannot take any personnel action which would violate the Veteran’s preference of an employee or applicant.

The principles outlined above are intended to maintain fairness in Federal employment and violation of any of these prohibitions is taken seriously. Management must refrain from engaging in the conduct outlined above, and should report such conduct within their workplace, should it arise. If appropriate action is taken once the violation is discovered, then the consequences of investigation by OSC can be mitigated or avoided completely.



## ***Child Support: How it Works in Germany***

by Holger Blug

*“Why should I have to pay the mother child support? She spends all the money going to clubs and buying herself new clothes!”* We hear this question all the time in Legal Assistance, usually when an American fathers a child by a German. The answer is very simple: child support has to be paid to the parent who has physical custody (not necessarily the mother, by the way), because German law says so.

By law, both parents have a legal obligation to support their child. When parents live together, no one questions this obligation. When parents separate, however, the situation changes. The custodial parent supports the child by physically caring for the child, and the non-custodial parent supports the child by sending financial support. This obligation applies to parents whether the child was born in or out of wedlock.

In order to calculate the amount of child support owed, German courts use the so-called *“Düsseldorfer Tabelle”* (Düsseldorf Chart) guidelines proposed by the Düsseldorf State Court of Appeal. The amount is based on two factors: the child’s age and the non-custodial parent’s income.

When considering the age of the child, it is important to know that the obligation to pay support does not end when the child turns 18. When the obligation will end depends on each child’s individual situation and needs. For example, a child is entitled to financial support all the way through college or professional school. There is no limitation on the financial obligation based on the child’s age.

The financial basis for the calculation of support begins with *“cleared net-income.”* That means the amount spent on all taxes and payments on marital debts can be deducted from the parent’s income before calculating child support. German courts will then average the cleared net-income over the previous twelve months.

However, there is no unlimited obligation to pay support. The law grants the obligated parent the right to keep a certain amount in order to keep up an appropriate standard of living (*“angemessener Selbstbehalt”*). But any amount for child support that you had negotiated with the other parent which is lower than the amount on the chart can later be amended by a court, and German courts almost always decide based on what is in the best interests of the child. Also, the expenses for visitation and any money that is voluntarily given to the child cannot be deducted from monthly child support.

The order establishing the amount of child support is normally handed down by a court, but there is also a cheaper way to do it. The local youth welfare service (*“Jugendamt”*) gives you the opportunity to set up a support order without incurring any fees.

It is important to understand that parents have a responsibility to support their children. The main reason is that children are just not able to support themselves, especially when they are young. And the amount that the non-custodial parent is paying every month is usually not sufficient to cover all the costs associated with rearing a child, *e.g.*, rent, heating, electricity, food, clothes, toys, school, hobbies, etc. So it is most likely not spent on the mother’s clothes, cigarettes, and entertainment.



***If you need more information on how child support works in Germany, call the Kaiserslautern Legal Services Center’s Legal Assistance Office at DSN 483-8848 or Civilian 0631-411-8848 and make an appointment to see one of our German Legal Assistance Attorneys.***

*The Ethics Corner...****FUNDRAISING IN THE ARMY:  
A SUMMER PRIMER***

by Rick Schwartz

The warm weather has finally arrived and it's time to properly take note by pulling off the cover of the grill and getting a little BBQ going. That's true at home, but if you're going to do it at lunch for the office, why not make a few dollars for your organization while you're at it? Days at the motor pool seem longer in the heat, too, so why not get the FRG to set up a stand and put out cold drinks for a reasonable price? No motor pool?—no problem—just hold a bake sale instead and watch how quickly the homemade treats disappear! Instead of relying on people's sweet tooth, why not actually set aside some space in your building and put out an e-mail that you're taking donations in exchange for lunch? After all, it's all for a good cause!



If you've thought about holding one of the above-listed events for your agency, or something similar, there are a few general considerations you should keep in mind to avoid running afoul of the rules regarding fundraising in the Army in Europe. It's one thing if you're going to have an office social function and you expect attendees who voluntarily participate to cover their fair share of the expenses of holding it; but when your event is effectively generating funds for a later date, these are some relevant guidelines:

- Units and DoD activities don't fundraise for their own benefit—it is always an **unofficial** action of the individuals or FRGs associated with that organization;
- Fundraising by FRGs and individuals on behalf of a unit informal fund (*i.e.*, a specially formed and documented fund under the authority of the commander and described by AR 600-20 (and AR 608-1 for FRGs)) **always** requires the prior written approval of the U.S. Army Garrison (USAG) commander for the applicable installation;
- To be eligible for the USAG commander's approval to fundraise, you **must** have an approved informal fund (referenced above) to which the funds can be applied [note, this is not the same as your office slush fund];
- The USAG commander will specify the location where fundraising may take place but it may **never** be in the Federal workplace or in the immediate area of Federal employees performing their official duties;
- Fundraising **must** be limited to those with SOFA status and Individual Logistical Support privileges [note, this is more stringent than being a military ID card holder]; money may not be solicited or accepted from our Host Nationals or others who do not meet those criteria; and
- Because it is an unofficial activity, individuals involved with the fundraiser **must not** be in a duty status and **must not** be in uniform.

Of course, any use of the funds you're attempting to raise, however worthy the cause, has to be consistent with the applicable informal fund SOP and may have its own separate Government Ethics implications. Keep in mind that our installations are not intended to be a constant venue for solicitation—it is *occasional* fundraising that is permitted. There are several sources of guidance that come into play (including DoD 5500.07-R, AR 210-22, and AER 210-22), even for the office BBQ or bake sale. So if you have any questions about your specific situation, be sure to contact your Ethics Advisor for guidance.



**The Deputy Judge Advocate General Visits 21st TSC OSJA: Major General Clyde J. “Butch” Tate II delivers a “State of the Corps” address to the staff of the 21st TSC OSJA, and members of the EUCOM, AFRICOM, and USAREUR legal community, who packed Daenner Chapel in Kaiserslautern on May 16th. General Tate went on to tour 21st TSC’s newest branch office in Baumholder on the 17th, and the 21st TSC’s Northern Law Center in Mons, Belgium, on the 18th, as part of his Article 6, UCMJ, visit.**

Photo by Mike Bowers, 21st TSC PAO

**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. Parking on Kleber Kaserne is difficult—allow a few extra minutes to circulate until you find an open spot. Bldg. 3210 is directly across from the former site of the Kleber Shoppette. Enter Bldg. 3210 from the door on the east end of the building.

