



# KAISERSLAUTERN LEGAL INFORMER

## OSJA WELCOMES NEW CIVILIAN ATTORNEY



***Rick Schwartz is the newest civilian attorney on the staff of the 21st TSC OSJA. He began work in May in the Administrative & Civil Law Division, where he specializes in fiscal law and ethics. See his first "Ethics Corner" column on page 13.***

### by Steve Smith

The 21st TSC Office of the Staff Judge Advocate is pleased to announce that Richard L. Schwartz has "joined the firm." A *magna cum laude* graduate of Notre Dame Law School, and a former associate with the Wall Street law firm of Skadden, Arps, Slate, Meagher & Flom, Rick will serve as an attorney in our Administrative and Civil Law Division, specializing in fiscal law and ethics.

This is a key position in a logistics command which, by its very nature, spends a lot of money to procure tons of materiel and all kinds of services for the Army. Rick will carry on the good work of other attorneys who kept 21st TSC on the right track, fiscally and ethically: Jeannine Smith, Bruce Ensor, and Warren Argue, to name just a few.

Rick is no stranger to the 21st TSC. For much of the last year he worked as a volunteer in the Kaiserslautern Legal Services Center's Legal Assistance Office, where he became well-acquainted with our practice. In addition to working for Skadden, Arps in New York and Frankfurt, Rick served as an honors legal intern in the DoD Office of General Counsel in the Pentagon. He also served on active duty in the 1st Armored Division as an Infantry officer in Baumholder, Kosovo, and Baghdad.

Rick and his wife, Andi, live in Landstuhl. Andi serves as a civilian nurse in the Oncology Department of Landstuhl Regional Medical Center.

We are delighted to welcome this talented new attorney and his wife to the OSJA family. Wall Street's loss is K-town's gain.

### IN THIS ISSUE...

- Volcanic Ash & Air Travel
- Passports & Immigration Visas
- German Mover Goes Bankrupt
- Puerto Rico Birth Certificates
- Used Car Sales
- Government Procurements
- Gifts to Superiors
- And much more!



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

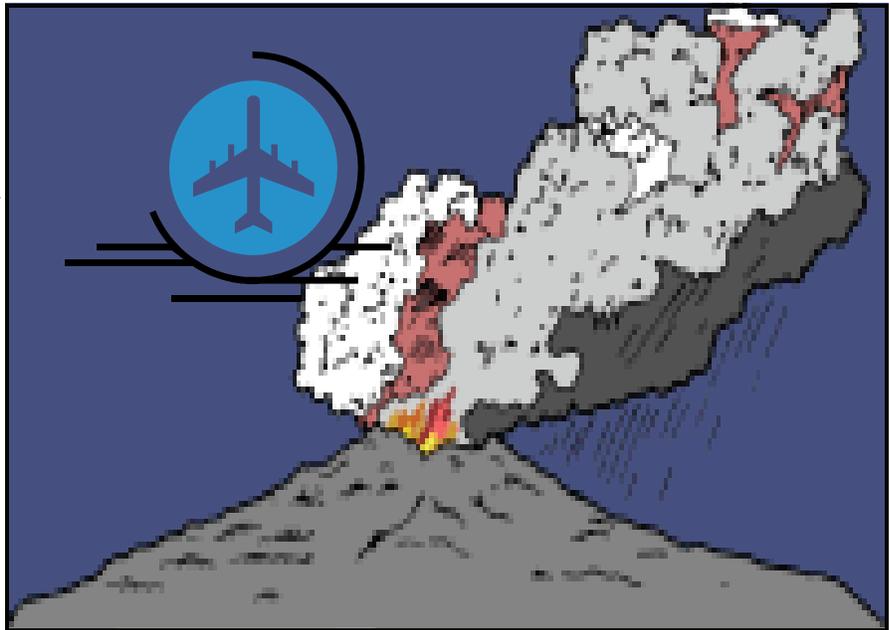
## **Volcanic Ash "Clouds" Air Travel Plans**

### **A German attorney explains travelers' rights under EU law...**

by Joerg Modellmog

The eruption of the Eyjafjallajökull volcano in Iceland this spring severely disrupted air travel in Europe. Airline passengers were stranded all over the world, awaiting the latest clearing news from Eurocontrol, the European Organization for Safety of Air Navigation (<http://www.eurocontrol.int>). Many travelers found themselves asking: **"what are my rights?"**

Common rules on compensation and assistance to airline passengers in the event of denied boarding, cancellation, or long delay of flights are set forth in European Union (EU) Regulation 261/2004 of 11 February 2004. This regulation applies to individual separate bookings, but does not cover the Gibraltar Airport, and it also does not cover holiday "package deals" (e.g., a cruise or the booking of a hotel and flight through one tour organizer). Package



deals have one price and contain several services (e.g., ads like "transportation, sight-seeing, overnight stay: all for €299.00!"). In the case of package deals, the traveler's rights have to be exercised against the travel organizer rather than the airline.

If a flight is canceled because the air space is closed due to bad weather conditions, the traveler can exercise his rights under Article 8 of the EU regulation and ask to:

- (a) have the ticket price reimbursed within seven days, or take a return flight to the first point of departure at the earliest opportunity; or
- (b) be re-routed under comparable transport conditions to the final destination at the earliest opportunity; or
- (c) be re-routed under comparable transport conditions to the final destination at a later date at the passenger's convenience, subject to availability of seats.

Additionally, the traveler is entitled to exercise his rights under Article 9 of the EU regulation, requiring the airline to offer to the traveler:

**[continued on page 3...]**

## Volcanic Ash “Clouds” Air Travel Plans *[continued...]*

- ⇒ two phone calls, two faxes, or two e-mails free of charge, and
- ⇒ hotel costs, if an overnight stay becomes necessary, and
- ⇒ transportation costs to and from the hotel.

Since the closure of air space due to the ash cloud constitutes an event beyond the airlines’ control, *a.k.a. force majeure*, the flight cancellation does not trigger any compensation rights under Article 7 of the EU regulation, and precludes any claims for further damages.

When it comes to holiday “package deals,” the travel organizer and the traveler can cancel the contract if the ash cloud prevents the departure to the holiday destination. However, any hotel cancellation fees or visa expenses will have to be shared equally. If the departure to the holiday destination is merely delayed, the traveler may demand reduction of the price of the holiday package accordingly.

If the return flight from the holiday destination is canceled, similar rules apply. If the travel organizer cancels the contract, the traveler and the travel organizer have to split any extra flight costs. However, the traveler alone bears the costs for any extra nights at the holiday destination. If the travel organizer does not cancel the contract, the travel organizer must bear these costs.

Finally, if your spouse works on the German economy, any delayed return to her workplace entitles her employer to cut her salary proportionally. If her employer needs to close his business because of the ash cloud (*e.g.*, because supplies can’t get through), he will have to continue to pay her salary but may ask her to take leave during that period.

***If you have other legal questions related to similar scenarios, make an appointment to see a legal assistance attorney by calling DSN 483-8848 or Civilian 0631-411-8848.***



### 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 483-8165

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

Administrative Law 484-7450

Criminal Law 484-8311

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

**AIR PASSENGER RIGHTS**

**DENIED BOARDING?  
CANCELLED?  
DELAYED FOR  
A LONG TIME?**



Airlines have a legal obligation to inform you about

**YOUR RIGHTS**  
AND WHERE TO COMPLAIN



For more information on air passenger rights within the European Union, download this helpful brochure. Just click on: [http://ec.europa.eu/transport/passengers/air/doc/2008\\_apr\\_leaflet/apr\\_leaflet\\_en.pdf](http://ec.europa.eu/transport/passengers/air/doc/2008_apr_leaflet/apr_leaflet_en.pdf)

**Hails & Farewells:** This issue we bid farewell to our Legal Administrator, CW3(P) Manuel Molina, our Chief Paralegal NCO, SGM Diana Clark, our OIC of the Kaiserslautern Legal Services Center, MAJ Carl Hill, our Chief of Criminal Law, CPT Mark Oppel, our Chief of Operational Law, CPT(P) Kristy Radio, and our Operational Law NCOIC, SFC Everett Wilson.

We welcome our new Chief Paralegal NCO, MSG Scott Haarer, our new OIC of the Kaiserslautern Legal Services Center, CPT Nancy Lewis, our new NCOIC of the Kaiserslautern Legal Services Center, SFC Larnell (“Ray”) Austin, our new Court Reporter, SFC Joni Austin, our new Paralegal Specialist, PV2 Blair Berry, our new Chief of Administrative & Civil Law, MAJ Christian Beese, and our new Fiscal Law & Ethics Attorney, Rick Schwartz (see cover story). We also welcome our JAG Corps summer interns, Brian Hartley, from Boston University School of Law, and Matt Kozyra, from the University of Florida Levin College of Law. We look forward to the arrival of our new Legal Administrator, CW2(P) Chantel Lee, in August.



*21st TSC Commanding General, MG Patricia McQuiston, presents the American flag to retiring Paralegal NCO SFC Lamont Gilliam at a Retreat ceremony on Panzer Kaserne.*



*21st TSC Command Sergeant Major, CSM James Spencer, frocked 21st TSC Chief Paralegal NCO, MSG Diana Clark, to Sergeant Major on 30 April.*



*The Deputy Judge Advocate General, MG Butch Tate (right), coins longtime 21st TSC criminal investigator Tahzib Hasnain during an Article 6 visit to 21st TSC.*



*21st TSC Deputy Commanding General, BG Jimmy Jaye Wells (left), joined German and American jurists to celebrate Law Day 2010 (see related story on page 11).*

## **Passports & Immigration Visas — Plan Ahead!**

by Mark Christensen

Those of us who watch AFN television might sometimes tune out the public service announcements concerning immigration issues. The spots advise you to plan in advance when you need personal identification or travel documents after a marriage, birth, or expiration of existing documents. During a recent conference hosted by immigration officials at the US Consulate in Frankfurt, the importance of planning ahead was stressed many times.



What kinds of documents might you need? To start, children born outside the US to military or civilian members of the US Forces cannot travel across international borders without a passport. Even an infant child, only a few weeks old, must have a passport. But the passport is not the first step. After your child is born, get the child's birth certificate, either AE Form 40-400B (if born at a US military facility) or *Geburtsurkunde* (if born in a German facility). Take that birth certificate to your passport office (the Army Passport Office is located in Building 3245, Kleber Kaserne) and apply to have the birth of your child recognized by the US, and for a US passport. The Consular Report of Birth Abroad is an acknowledgment by the US Government that your child, born outside the US, is a US citizen. The passport lets your child travel across international boundaries. Obtaining each of these documents takes time. Plan ahead.

What else? If you have non-US citizen family members you might want them to travel to the US with you, or maybe travel to the US to stay there permanently. To do this your family member must have a proper immigration visa or transportation letter. Each of these documents takes time to acquire, and Consulate personnel cannot adjudicate your request before requests filed earlier except in a few exceptional circumstances. Unless you or another family member is gravely ill and there is no one else to provide care, you probably do not have an exceptional situation that will permit your application to cut to the front of the line of existing applications.

Immigration visas normally take four to six months to obtain if all application requirements are met and there are no background investigation issues. The renewal of expired green cards and passports takes several weeks. Obtaining transportation letters to travel to the US with an expired green card requires planning and a visit to the Frankfurt Consulate.

**Bottom line:** If you anticipate changes to your family, by marriage or birth, or notice any identification documents that are about to expire, plan ahead to acquire or renew the documents you will need to stay in Germany, travel outside Germany, or return to the US.

**For more information on passports, visas, and related issues, contact Sean Osborne at the Kleber Passport Office at DSN 483-7662 or Civilian 0631-411-7662.**

## **The 2010 Tax Season — By The Numbers!**

by Steve Smith

The 21st TSC Office of the Staff Judge Advocate operated seven tax assistance centers in Germany and the Benelux during the 2010 overseas tax filing season, which ended on June 15th. Thousands of taxpayers used the service and got back millions. Here are the results:

**8,194** customers signed in.



**9,632** Federal and State tax returns were generated.

We saved our customers **\$1,784,279**. [This is what they would have had to pay a commercial tax preparer for the same services we provided for free.]

And our customers got back **\$17,770,830** in tax refunds.

**Important Note:** While the filing season is over, tax assistance is still available through the Kaiserslautern Legal Assistance Office. We can prepare current and past year federal and state tax returns for those who missed the filing deadline and for those returning from deployments. **We can still electronically file 2009 returns through October 15th.** We can also amend federal and state tax returns, and help our clients respond to IRS notices. Tax help is available on an appointment basis. Call DSN 483-8848 or Civilian 0631-411-8848 to make an appointment.

### **TAX TEAM MAKES AFN HISTORY...**

21st TSC's team of tax experts (from left to right, Donald Davis, Steve Smith, Joerg Moddelmog, & Mark Christensen) participated in their second AFN Open-Line tax call-in program of the season on April 7, 2010. For the first time, AFN Europe streamed a live Open-Line radio call-in show on the Internet. This gave listeners who have poor radio reception due to low-power signals the chance to hear the program. If you missed the show, you can download it from the AFN Europe website and listen to it: <http://www.afneurope.net/Home/ArticleDisplayDD/tabid/649/Default.aspx?cid=666>



# IRS Cracking Down on Nonfilers of Form If you had over \$10,000 in foreign financial accounts...

by **Steve Smith**

[Editor's Note: this is an update of an article that first appeared in this newsletter a year ago...]

Taxpayers who have a financial interest in or signature authority over any foreign financial accounts, including bank, securities, or other types of accounts in a foreign country, must file a special 8-page form (the top of it is pictured below) with the Treasury Department by **June 30th** if the aggregate value of these accounts exceeded \$10,000 at any time during 2009.

Form TD F 90-22.1 is not a new form. It has been around for years. It is not a tax form, and is not supposed to be included with your income tax return. Instead, you must send it separately to the U.S. Department of the Treasury, P.O. Box 32621, Detroit, MI 48232-0621. The 30 June deadline is fast approaching, and it cannot be extended.

The form helps the Treasury Department keep tabs on money laundering and related activities. There are criminal penalties for failure to file this form. The IRS has been cracking down on taxpayers who fail to file this form.

Accounts in military banking facilities such as Community Bank or one of the various credit unions that serve the military community overseas are not considered "foreign bank accounts" for purposes of filing this form. However, many members of the military community maintain bank accounts on the German economy (*e.g.*, Postbank accounts) that they use for paying bills or their mortgages. Considering that the average exchange rate for calendar year 2009 was .72 Euros to the U.S. dollar, if you had more than 7,200 Euros in such an account (or accounts) at any time in 2009, you need to file this form.

U.S. citizens and resident aliens must file the form. So must those who filed a joint return with a non-resident alien spouse. By filing a joint return, you are electing to treat your spouse as if they were a U.S. resident alien for tax purposes, whether or not they currently hold a green card. Foreigners generally save much more than Americans do, so if you have a foreign spouse with a sizable foreign bank account or investments and you filed a joint tax return, you should take a good hard look at the instructions to Form TD F 90-22.1 to determine if you must file the form.

Form TD F 90-22.1 can be easily downloaded from the IRS web site at <http://www.irs.gov/pub/irs-pdf/f90221.pdf>

*If you have further questions, contact the Kaiserslautern Legal Assistance Office at DSN 483-8848 or Civilian 0631-411-8848 and ask to speak to Mr. Donald Davis.*

## TD F 90-22.1

(Rev. October 2008)  
Department of the Treasury  
Do not use previous editions of  
this form after  
December 31, 2008

## REPORT OF FOREIGN BANK AND FINANCIAL ACCOUNTS

Do NOT file with your Federal Tax Return

OMB No. 1545-2038  
1 This Report is for Calendar  
Year Ended 12/31

Amended

### Part I Filer Information

2 Type of Filer			
a <input type="checkbox"/> Individual    b <input type="checkbox"/> Partnership    c <input type="checkbox"/> Corporation    d <input type="checkbox"/> Consolidated    e <input type="checkbox"/> Fiduciary or Other—Enter type _____			
3 U.S. Taxpayer Identification Number		4 Foreign identification (Complete only if item 3 is not applicable.)	
If filer has no U.S. Identification Number complete Item 4.		a Type: <input type="checkbox"/> Passport <input type="checkbox"/> Other _____	
b Number _____		c Country of Issue _____	
5 Individual's Date of Birth MM/DD/YYYY			
6 Last Name or Organization Name		7 First Name	8 Middle Initial
9 Address (Number, Street, and Apt. or Suite No.) _____			
10 City	11 State	12 Zip/Postal Code	13 Country
14 Does the filer have a financial interest in 25 or more financial accounts?			
<input type="checkbox"/> Yes    If "Yes" enter total number of accounts _____			
(If "Yes" is checked, do not complete Part II or Part III, but retain records of this information)			

## ***German Moving Company H.T.O. Declares Bankruptcy — Claims Service Reacts***

by CPT Jerrod Fussnecker

Who is moving your household goods? If a German company named H.T.O. is/was your moving company for an intra-European move, please pay special attention to this article. Under the full replacement value program, claimants generally have the option to file directly with the moving company that damaged or lost their goods. However, claimants whose goods were damaged or lost by H.T.O. will need to file with their local claims office because H.T.O. has recently declared **bankruptcy**.

A bankruptcy administrator has been appointed to administer H.T.O.'s financial affairs. Under German law, H.T.O. can neither be the recipient of household good claims nor can H.T.O. pay such claims.

Individuals whose household goods were transported by H.T.O. should file their claims directly with their military claims office rather than with H.T.O. Individuals who have already filed a claim with H.T.O. should withdraw their claim and file it with their military claims office. Claimants must give notice of damage to or loss of their property to the claims office within **75 days** of their household goods' delivery, and file their claim within **nine months** from the date of delivery.\*

Since H.T.O. has already declared bankruptcy, claimants are being asked to file with the military claims office so that the United States Army Claims Service, Europe (USACSEUR) can assert these claims on their behalf in the bankruptcy proceedings. Claimants may still be able to recover the full replacement value, even if H.T.O. is excused from paying all claims by the bankruptcy court.

Obtaining full replacement value for claimants whose goods were shipped with H.T.O. is a two-step process. First, the military claims office will pay the claim on the basis of the depreciated replacement value or repair cost, whichever is less. USACSEUR will then attempt to recover the difference between the initial payment and full replacement value from the cargo liability insurance companies that insured the shipments of H.T.O. The cargo liability insurance companies remain liable for the full amount of the claimant's loss, despite the fact that the company they insured filed for bankruptcy. If USACSEUR recovers the full replacement value, the claimant will then receive a payment for the difference between the initial payment and the full replacement value.

***If you have claims questions or need help filing your claim, contact the Kaiserslautern Legal Services Center Claims Office at DSN 483-8414 or Civilian 0631-411-8414.***

\* Note: the nine-month deadline only applies if the claimant wants to pursue full replacement value. If the claimant is willing to accept depreciated replacement cost, the claimant has the traditional **two years** from the date of delivery to file their claim.

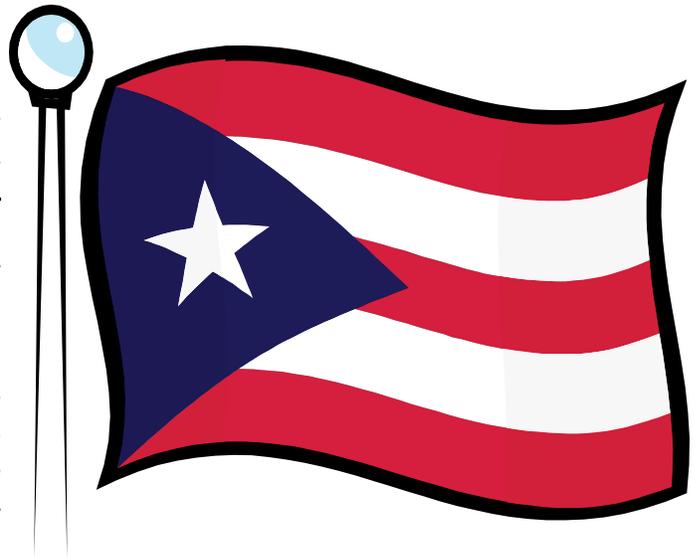


## ***PUERTO RICANS NEED TO OBTAIN NEW BIRTH CERTIFICATES AFTER 1 JULY!!!***

by CPT Joshua Zell

If you or your dependent(s) were born in Puerto Rico, this article is for you. On 1 July 2010, all Puerto Rico birth certificates issued before 15 June 2010 will become invalid, and anyone who needs a Puerto Rico birth certificate will have to apply for a new one through the Puerto Rico Vital Statistics Record Office.

Birth certificates issued between 15 June and 30 June 2010 will remain valid for 15 days after they are issued. So, if for some reason you need a valid birth certificate during the first two weeks of July, you should apply for and have a certificate issued as close to 30 June as possible (a 30 June certificate is valid until 15 July, a 29 June certificate is valid until 14 July, etc.). You can apply for a new, permanent birth certificate beginning on 1 July, but it may take several weeks because of the large number of people who will likely apply at the same time.



To apply for a new birth certificate, download and fill out the application form available at this website: [www.salud.gov.pr/Programas/RegistroDemografico/Pages/RequisitosparasolicituddeNacimiento.aspx](http://www.salud.gov.pr/Programas/RegistroDemografico/Pages/RequisitosparasolicituddeNacimiento.aspx). Collect the following documents: (1) the application, (2) a copy of a valid driver's license or passport, (3) a check for \$5.00 (this fee is waived for veterans and people over 60), and (4) a self-addressed, postage-paid envelope. Mail these to the following address: Puerto Rico Vital Statistics Record Office, Registro Demografico, P.O. Box 11854, San Juan, PR 00910 (for regular mail) or 171 Quisqueya Street, Hato Rey, PR 00917 (for FedEx and UPS).

The Puerto Rico government is invalidating all pre-July 2010 birth certificates in order to help prevent identity theft, and to help the US Department of State and Department of Homeland Security reduce passport fraud. Puerto Rico birth certificates are currently used in roughly 40% of all US passport fraud cases, because they are relatively easy to steal from schools and other institutions which have traditionally kept original birth certificates among their records. For that reason, the law also makes it illegal for any public or private entity in Puerto Rico to keep an original birth certificate – they can only make a photocopy of your birth certificate to keep for their records. So, the bad news is that you may have to apply for a new birth certificate soon, but the good news is that you may only need that one original birth certificate for the rest of your life.

*For more information on Puerto Rican birth certificates, contact the Kaiserslautern Legal Services Center Legal Assistance Office at DSN 483-8848 or Civilian 0631-411-8848.*

## ***BUYING & SELLING USED CARS IN GERMANY***

by Joerg Modelmog

Are you thinking about buying a used car downtown or are you about to sell your car to a fellow service member? Then you might be interested to know that in both cases the sale/purchase will be subject to German law. Therefore, it's good to know what host nation law says on the subject of warranties and defects.

Even though verbal contracts are valid and fully enforceable in Germany, only a written agreement enables you to adequately prove the terms of the agreement and clarify each other's obligations under it. All terms should be reduced to writing and signed by the parties because written contracts are presumed to be correct, complete, and without binding oral (side) agreements.

The buyer should have the car thoroughly checked out and tested before the sale is concluded. The car should be inspected by a trustworthy independent third party, e.g., a garage. Passing inspection is hardly enough proof that the car will remain a reliable one since it does not say anything about the real condition of the car. It just shows that the car is doing fine at that one moment. A clause like "inspection guaranteed" means only that the seller has the duty - and the right - to place the car into such a condition that it passes inspection.

Normal wear and tear usually does not constitute a legally relevant defect, even if it impairs the function of a used car, unless the buyer demanded a clear, concrete and binding representation from the seller to the contrary. Therefore, the buyer should ask the seller for specific assurances, express warranties, or guarantees if a certain condition is important to him or her. It should all be put down in writing.

Normal wear and tear is determined by taking into consideration the age and condition of the car. In Germany the average total life span of a car is 10 years. At least after eight years, the rust problem is a significant danger for almost every car in Germany and, therefore, considered to be normal wear and tear.

Use common sense when looking for defects:

- ⇒ check the full maintenance history and mileage
- ⇒ a new baffle plate might be there to hide a defective muffler
- ⇒ check liquid levels and tightness of systems
- ⇒ uneven worn-out tires suggest bad alignment
- ⇒ paint film on window rubber or strips may indicate repair of accident damage
- ⇒ substantial stone chipping to the front area suggests high mileage
- ⇒ a turned on fan or open windows during a test drive can hide rattling or engine noise
- ⇒ rim flange scratches or spare tire damage proves curb contact leading to consequential damage
- ⇒ steering wheel judder and pulsating brake pedal indicate imbalance or braking discs problems

The private seller should make his intent to sell the used car "as is" and "with all faults" or "*Gebraucht wie besichtigt*" quite clear and give the buyer a fair chance to verify the condition of the car. That way both sides will know their risks and obligations. Note, if you are buying from a professional used car dealer, the car will come with a 1-year warranty. But that warranty is a very limited for it does not cover normal wear and tear or alleged misuse by the buyer. Therefore, the buyer is best advised to follow the above-stated rules in order to protect his interests.

***If you have other legal questions related to selling/buying a car, make an appointment to see a legal assistance attorney by calling DSN 483-8848 or Civilian 0631-411-8848.***



## **OSJA Celebrates Law Day 2010**

### ***"Enduring Traditions, Emerging Challenges..."***

by CPT Matt Freeman & Joe Hall

May 1<sup>st</sup> - May Day – May poles, dances; European Labor Day, when formerly, Soviet tank and missile formations paraded across Moscow's Red Square showing the might of the Communist way of life; and in the United States - "Law Day." Law Day was initiated by President Eisenhower in 1958 as a counter-concept to the Soviet's May Labor Day celebration. Eisenhower's intent was to extol the concepts of the rule of law and democracy as the values to be respected, celebrated, and instilled in the people, as opposed to the concept of "All power to the State" – based in force, fear, and oppression.



The Office of the Staff Judge Advocate and the Kaiserslautern Legal Services Center helped keep President Eisenhower's intent alive this year, as they helped the community celebrate this year's Law Day theme of, "Enduring Traditions, Emerging Challenges."

While the "Enduring Traditions" of the Law Day theme deal with the rule of law, democracy, voting, free speech, and fair trials, among other things, the 21<sup>st</sup> TSC OSJA and the KLSC have developed some other Law Day enduring traditions. Each year, members of the German legal community are invited to participate in a legal liaison luncheon; and activities such as mock trials and essay contests involving the Law Day theme are held in our local DODDS schools.

This year's German-American legal liaison luncheon was held on 12 May at the Armstrong Club. 21<sup>st</sup> TSC's Deputy Commanding General, Brigadier General Jimmy Jaye Wells; Frau Beate Reich, the Undersecretary of the Rheinland/Pfalz Ministry of Justice; our SJA, Colonel Claes Lewenhaupt; the Presidents of Rheinland/Pfalz' two Supreme Courts; Presidents of the Rheinland/Pfalz and Saarbruecken State Courts; other members of the "bench and bar" of Rheinland/Pfalz; and our attorneys and paralegals all were in attendance. After opening remarks by BG Wells, Frau Reich gave a presentation on the emerging challenges of the law as related to internet usage – and the hot topic of "illegal downloading." Colonel Lewenhaupt focused his remarks on bringing our enduring legal values into our legal support programs as we help work with the governments of Iraq and Afghanistan on broadening and strengthening the rule of law in those countries. After the speeches, all enjoyed a well-catered lunch with lively table talk on legal topics of mutual interest.

Our local students with the aid of members of the KLSC were also actively engaged in celebrating the Law Day theme and learning about our enduring legal values. Our head court reporter, Ms. Conchita Dunn, took her courtroom experience to the elementary school and coordinated the trial of "Humpty Dumpty" with the students. In the Middle School, another mock trial was held involving a student charged with copyright violations by illegal downloading from the web. In both trials, students assumed the various courtroom roles, wrote their own closing legal arguments, and displayed lots of promising talent as future courtroom litigators. Finally, a legal essay contest was held in the High School, where Michelle Bird's winning essay discussed the "Emerging Challenge" of the need to restructure the UN Security Council in response to world economic, political, and legal changes.

While this year's Law Day activities helped us focus and share our enduring values with our host nation guests and with our own next generation of future leaders – we should all remember that Law Day is not just a matter of one day a year. "Law Day" should be a part of our lives and actions all year round.

## **GOVERNMENT PROCUREMENT\$ ... A PRIMER**

by Teresa Robison

Procuring items using taxpayer dollars is a significant responsibility, and accordingly is accompanied by a large and complex set of rules which must be followed. Professionals within the Government, contract personnel, and fiscal law attorneys, as well as Comptroller and Resource Management personnel, are ready and available to assist in navigating the complex rules and processes which must be observed. Early and frequent coordination with these experts will ensure a smooth and timely procurement.

Spending agency funds is governed by multiple statutes, regulations, and other types of guidance:

1. **Statutory Requirements:** overarching rules of fiscal law (purpose, time, and amount rules), as well as the statutes which comprise the Anti-Deficiency Act;
2. **FARS:** the contracting rules established by the various Federal Acquisition Regulations (the FAR, the DOD FAR, and the Army FAR);
3. **Regulatory Guidance on Spending:** other regulations and guidance such as AR 715-XX (the government purchase card SOP), the DOD Financial Management Regulation, and many more;
4. **Related Regulations and Guidance:** spending government funds may involve issues addressed by the Joint Ethics Regulation and regulations addressing government interaction with private organizations, commercial activities, and so on.

This list is far from all-inclusive.

Failure to abide by these rules, whether intentional, unintentional, or negligent, can result in consequences to the individuals, such as personal financial responsibility for misspent money, various administrative actions, and, in worst-case scenarios, termination of employment and/or criminal penalties. It can also affect your ability to accomplish the mission, or, at a minimum, delay mission accomplishment.

When contemplating a procurement:

1. Start the planning process as far in advance as possible; various procurements can take a month or more to accomplish.
2. Consult with the contracting office and/or the OSJA at the earliest possible time.
3. Do not attempt to enter into any agreements on your own. **ONLY A WARRANTED CONTRACT OFFICER IS AUTHORIZED TO ENTER INTO A CONTRACT ON BEHALF OF THE GOVERNMENT!**
4. Do not interact with private organizations or commercial ventures for these purposes without first consulting with the contracting office and/or the OSJA.
5. Be careful in using the government purchase card; for any type of non-typical purchase, you should first consult with OSJA or your contracting office.

The guidance provided above is intended to facilitate mission accomplishment, ensure prudent use of taxpayer funds, and protect individuals from the consequences of erroneous use of government funds.



*The Ethics Corner...*

by Rick Schwartz

**GIFTS TO SUPERIORS***Stay Within the Limits and Stay Out of Trouble...*

With the summer PCS season fast approaching, a quick refresher on giving gifts to superiors seems like a timely topic for my first “Ethics Corner” article. Your boss, after all, might be changing command, or be due for a promotion, making you wonder: “just what is appropriate to give as a gift?” Maybe, after three years in Germany, she really wants her family to see the 1FCK finally play in the First *Bundesliga* before she leaves. Can your section create a pool to jointly get her tickets as a PCS or promotion gift? The short answer is “it depends.” Since the facts and circumstances are going to vary, 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 term 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, they can create a lot of grief for all parties, forcing the recipient in some cases to either pay for the value of the gift, reject it outright, or figure out a way to donate it to some other entity.



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 an official relationship between a subordinate and a superior, 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 is not allowed to 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. For example, the section can pool its donations to buy tickets to mark the commander’s relinquishment of command as a farewell, provided that the tickets do not cost more than \$300 (so forget about getting her family the really pricey tickets when 1FCK plays Bayern München).

Now, you may ask, are there any rules governing how we go about raising the funds we need from our colleagues for those tickets?

*(continued on page 14)*



## **GIFTS TO SUPERIORS... (continued)**

Contributions of no more than \$10 may be solicited in the federal workplace, 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 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 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.

*If you have any questions about how giving or accepting of gifts applies to your specific situation, contact your servicing Ethics Counselor for guidance.*

*CPT Carl E. Hill, Officer-in-Charge of the KLSC, was promoted to Major in April. He previously served the 21st TSC OSJA as a Trial Counsel, Claims Judge Advocate, and Operational Law Attorney. He was a bachelor when he arrived in K-town in 2003, but is leaving for the Graduate Course with his wife, Karina, and three children, AJ, Mara, and Samuel. His in-laws, Hermann & Waltraud Wirth, also attended the ceremony.*

### **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.

