KAISERSLAUTERN LEGAL SERVICES CENTER

KAISERSLAUTERN LEGAL INFORMER

MANNHEIM LAW CENTER CLOSES ITS DOORS

Current and past members of the staff of the Mannheim Law Center gathered on Taylor Barracks in July to formally close down the Law Center and celebrate its many years of exceptional service to the greater Mannheim military community.

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by Steve Smith

As part of USAREUR's continuing transformation, many Army facilities in Mannheim and Heidelberg are scheduled to be handed back to host nation authorities between now and 2015. One of the first to close will be Taylor Barracks in Mannheim, which for decades was home to the Mannheim Law Center.

The Mannheim Law Center formally closed its doors at the end of June. On July 2nd, current and former members of the 21st TSC Office of the SJA staff gathered to celebrate the important role the Law Center played for so many years in improving the quality of life in the Mannheim military community. There was much to celebrate.

The Mannheim Law Center was repeatedly recognized by the Army Chief of Staff and The Judge Advocate General for its outstanding legal assistance and claims services. It also ran one of the largest and busiest tax assistance centers in Europe. Clients from neighboring military communities beat a well-worn path to its door.

Limited legal assistance services (*e.g.*, powers of attorney and notarizations) are provided at the new Mannheim Legal Office in Building 244 on Sullivan Barracks. The Mannheim Legal Office provides military justice and administrative law support to the remaining units in Mannheim. For clients who need to see a legal assistance attorney or file a claim, the closest office offering these services is located in Building 107 on Patton Barracks in Heidelberg. These services are also available at the Kaiserslautern Legal Services Center, which also provides year-round tax assistance services (see story on page 7).

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

The Dangers of Downloading

A German attorney explains the rules and pitfalls...

by Joerg Moddelmog

Music and movie downloads have become very popular. It's so easy and convenient to download entertainment in the privacy of your own home. Unfortunately, not everything that is available online for downloading is a legal download. Even if you obey the rules and are careful which websites you visit, you may put yourself at risk if you use an unsecured Wireless Local Area Network (WLAN) router for downloading. "Uninvited visitors" may use your WLAN for improper downloading. You could easily wind up getting sued for copyright infringement.

This is no laughing matter. More than 30 clients have sought my help in recent months because they received letters from German attorneys representing license holders of copyrighted downloaded material. These letters contained demands of various sorts, with the implicit threat of a lawsuit if those demands are not met. ***If you use a WLAN or have one in your home, you can't afford not to read this article...***

In Germany, internet providers are required by law to disclose the physical address/identity of an individual whose IP address is involved in illegal downloading. That's how they track you down. It may be that you were away from home when the downloading took place. If so, you will be unpleasantly surprised when you receive a registered letter in the mail from a German law firm demanding that you pay monetary damages, attorney fees, penalties, and the like.

Let's break these demands down:

- **Monetary damages.** Damages are owed if you were the one who actually performed the illegal download. Face it, you got caught and you should be happy you weren't prosecuted for it. The amount of damages claimed is generally around €500.
- **Attorney fees.** The license holder for the copyrighted material is the victim as his rights were violated by the illegal download. Under the German legal system, the wronged party can always recover his attorney's fees from the other party in the case of a legitimate claim. The only good news is that, in most of the cases in which the illegal download happened on an unsecured WLAN router, the courts have limited the attorney fees to €100.
- **Statement of forbearance with contractual penalty clause.** Even if you did NOT perform the illegal download, you will be required to sign a statement of forbearance. You don't have to say that you will not perform, aid, or foster any future illegal download but merely that you will no longer leave your WLAN router unsecured. Nevertheless, for any future violations you will be required to pay a "reasonable" penalty, which could easily be around €5,000, because the illegal download would have not happened had you properly secured your WLAN router. By leaving it "open" or insufficiently locked, you allow third parties to download highly illegal materials via your WLAN router.

[continued on page 3...]

The Dangers of Downloading *[continued...]*

How do you secure your WLAN router, to avoid the consequences discussed above? You should take the following precautions:

- Change your password often. All passwords can be hacked; it's just a matter of time. Never keep/use the default password but pick a new password immediately. The default passwords might "leak" and be published online. It's also advisable to simply switch off the WLAN router when you are not home, or at night when you have no intention of going online.
- If you are using a wireless router, you should disable the server set identifier (SSID), to prevent the name of your network from being broadcast.
- Allow configuration only to be made via hardwire. That way admin rights can only be exercised if a cable is physically put into the device. Use an additional password and username protection for any hardwire configuration.
- Change the settings in order to block download ports, *e.g.*, bittorrent sites.
- Think also of encryption. The current state-of-the-art standard is WPA2 and, although legally you are not required to constantly upgrade to the highest standard, you may want to stay current on your protective software.

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]

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

NATIONAL MILITARY PRO BONO PROGRAM

by CPT Mike Gilbertson

The Secretary of Defense has launched an initiative to assist the American Bar Association's National Military *Pro Bono* Program (MPBP) by educating judge advocates about the program and providing all possible assistance to ensure the program works as smoothly and efficiently as possible. The MPBP accepts case referrals from legal assistance offices worldwide on behalf of income-eligible service members with civil legal issues and then places these cases with volunteer *pro bono* attorneys anywhere in the United States. Military legal assistance attorneys can register at the website that appears below and refer cases to the MPBP. The MPBP then attempts to place eligible cases with *pro bono* attorneys wherever legal assistance is needed. [Note: *pro bono* is a legal term that connotes free legal services.]

The MPBP is a very valuable asset to legal assistance attorneys and their clients. As of July 2010, there are 740 *pro bono* attorneys and coordinators registered with the MPBP website, demonstrating the strong willingness of civilian attorneys across the nation to assist service members with civil matters back home. Recent analysis showed that 75% of cases referred to the MPBP were for family law matters (including child custody issues). In response to this need, the MPBP successfully reached out to the family law community and was able to increase *pro bono* registrants that practiced family law. In one recent month alone, 167 new cases were placed with attorneys. The total cases placed represent approximately $1,060,618 in donated billable hours by the MPBP volunteers.

For more information on the MPBP, visit http://www.militaryprobono.org/

Hails: We welcome our new Legal Administrator, Chantel Lee, who arrived in August and was promoted to CW3 in September. We also welcome the new OIC of the Kaiserslautern Legal Services Center, CPT Nancy Lewis, our new Claims Judge Advocate, CPT Michael Gilbertson, our new Operational Law NCOIC, SSG Angela Burke, and our new Paralegal Specialists, SPC John Atley II, who works in Legal Assistance, and PFC Maya Bates, who works in our Administrative Division.

Congratulations! PV2 Blair Berry, a Paralegal in our Criminal Law Division who arrived in K-town this spring, was recognized as 21st TSC's Warrior of the Quarter in September. ***Hooah!***

Taking the program to the people, Kaiserslautern Chief of Client Services, Mark Christensen (left), prepared wills and powers of attorney for deploying Soldiers at Landstuhl.

Operational Law Attorney CPT Kristy Radio was promoted to Major this summer. Her young sons, Eli and Jack, affixed the new field grade rank to her uniform.

21st TSC SJA COL Claes Lewenhaupt presented Melissa Molina with the Commander's Award for Public Service for her dedicated service as a volunteer in the KMC.

Parking has become a real challenge on Kleber Kaserne. Mark Christensen and Martina Berndt have found a solution—drive smaller cars to work!

Family Law Services at the Kaiserslautern Legal Services Center

by Mark Christensen

Most folks in the Army community are aware that Army legal offices provide advice and assistance in divorce cases to Soldiers, retirees, civilian employees (overseas), and their family members. The process can be long and traumatic, and can affect spouses, children, and coworkers in different ways. This article provides commanders, supervisors, colleagues, or friends of someone whose family is experiencing a marital separation or divorce some basic information about what that family may be going through.

Marital separation is an unfortunate reality in the delivery of our legal services. So far this fiscal year, lawyers at the Kaiserslautern Legal Services Center have drafted 321 separation agreements. One out of every three appointments for legal advice is for divorce. Since only one party to a dispute can be advised at our office, the other spouse often obtains legal advice from the Baumholder, Wiesbaden, or Heidelberg Army legal assistance offices, or from a CONUS legal assistance office or a private lawyer. While Air Force legal offices do not provide divorce advice and assistance, our Army legal assistance offices are open to Air Force personnel and their family members.

In OCONUS locations, we do not have American courts where divorces can be processed. Most couples, unless one of them is a German national, will not use the German courts to get divorced. That means a divorce trial or final hearing will eventually take place in a state where one of the spouses is a legal resident. We try to help our clients obtain and prepare state court divorce forms they might be able to use without hiring a private lawyer back home.

Most of our assistance in divorce cases centers on negotiating separation agreements. A separation agreement is a contract between the husband and wife about what will happen until they either reconcile or are divorced. A separation agreement can settle the same issues a divorce decree addresses, including division of property and debts, child custody, visitation and child support, and spousal support. A couple can also determine tax filing rights, name changes, and responsibility for legal bills. For a non-military spouse, the separation agreement might be a step towards getting orders for early return of dependents (ERD) so the spouse can travel back to the U.S. from the OCONUS duty station.

Someone in your unit, office, or social circle going through a marital separation or divorce may be stressed, depressed, anxious, or angry. They'll be looking for support, answers and information on how they can plan for the transition. A divorce affects child care, school and extracurricular activities for children, transportation and housing arrangements, as well as general life security issues most of us take for granted.

If you know someone facing a separation or divorce, insure they have talked to a lawyer about legal options and plans. Talking to an Army legal assistance attorney can help someone identify and focus on manageable and important issues as they go through this difficult transition.

For more information on family law services, or to set up an appointment to speak to a legal assistance attorney, call DSN 483-8848 or Civilian 0631-411-8848.

The Hatch Act — A Pre-Election Primer

by Rick Schwartz

With the increase in campaign rhetoric since Labor Day in anticipation of the upcoming fall elections, it might be a good time to discuss the limitations placed on civilian employees of the Executive Branch by the Hatch Act. (Similar restrictions on electioneering by active military personnel are governed separately). This article is meant to provide only an overview of Hatch Act considerations, and you should bear in mind that the analysis for each individual situation is fact-specific.

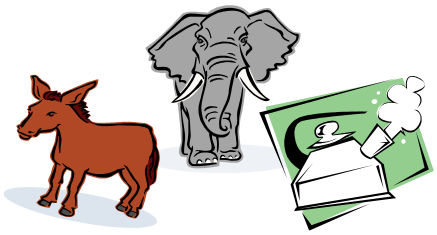
In the 21st TSC, most, if not all, of us will fall into the Hatch Act category of "less-restricted" employees. Less-restricted employees are prohibited from:

- using their official authority or influence to interfere with or affect the result of an election;
- knowingly soliciting, accepting, or receiving a political contribution from any person (this may be done in certain limited situations by federal labor or other employee organizations);
- knowingly soliciting or discouraging the participation in any political activity of anyone who has business pending before their employing agency;
- being candidates for public office in partisan political elections; or
- engaging in political activity while: on duty, in a government office, wearing an official uniform or using a government vehicle.

These prohibitions effectively prevent less-restricted employees from doing any of the following:

- hosting or inviting anyone to a political fundraiser;
- accepting or receiving a donation or contribution for a partisan political party, candidate for partisan political office, or partisan political group;
- using an official title or position while engaged in political activity; or
- inviting your subordinate employees to political events or otherwise suggesting to subordinates that they attend the political event or undertake any partisan political activity.

In addition, less-restricted employees are prohibited from any of the following while on duty and/or in any federal room or building:



- distributing or displaying campaign materials or items;
- wearing partisan political buttons, t-shirts, or other items;
- performing campaign-related chores;
- making political contributions to a partisan political party, candidate for partisan political office, or partisan political group;
- posting a comment to a blog that advocates for or against a partisan political party, candidate for partisan political office, or partisan political group; or
- using any e-mail account to distribute, send, or forward content that advocates for or against a partisan political party, candidate for partisan political office, or partisan political group.

Penalties for violating the Hatch Act are steep: an employee "shall be removed from their position, and funds appropriated for the position from which removed thereafter may not be used to pay the employee or individual. However, if the Merit Systems Protection Board finds by unanimous vote that the violation does not warrant removal, a penalty of not less than a 30-day suspension without pay shall be imposed." (emphasis added)

Two recent cases illustrate the Office of Special Counsel and Merit Systems Protection Board's stringent application of the penalties for violations. Following its June decision in Special Counsel v. Pattie Ware, in which the MSPB ordered Ms. Ware's removal from her position for Hatch Act violations, the MSPB published an August decision in Special Counsel v. Phillip Mark, imposing a penalty of a 120-day suspension (reduced from the original penalty of removal).

Mr. Mark violated the Hatch Act when he forwarded one campaign e-mail, from then-presidential candidate Barack Obama soliciting online contributions, to a number of individuals, including co-workers who were not under his supervision. In the forwarded e-mail, which was sent on duty from his government office and contained his name, title, group, duty location, and telephone number, Mr. Mark stated: "FYI ... if you want to help out the campaign! PS ... If you are tired of getting e-mails from me, just let a brotha know! [*sic*]"

Since Mr. Mark admitted he had violated the Hatch Act, the MSPB only considered the penalty. In reducing Mr. Mark's original penalty of removal, the MSPB pointed out that in its June removal decision, Ms. Ware sent two e-mails seeking political contributions, one of which also invited a number of people to a fundraiser for Barack Obama. Since she also solicited money from three government employees over whom she had authority, the MSPB considered her offenses more egregious. Although the MSPB also found the fact that Mr. Mark was not a political operative or otherwise engaged in political fundraising to be a mitigating factor, his actions still warranted a 120-day suspension.

One last thing to keep in mind is that the MSPB did not accept Mr. Mark's contention that he was ignorant of the Hatch Act, proving the old adage that "ignorance of the law is no excuse."

TAX SERVICES STILL AVAILABLE AT KLSC

by Steve Smith

Free tax assistance services are available at the Kaiserslautern Legal Services Center all year round.

Taxpayers who have yet to file their federal or state tax returns for 2009 or earlier years can do so by calling DSN 483-8848 or Civilian 0631-411-8848 to set up an appointment to see Donald Davis, our tax program coordinator. He can prepare original tax returns and amend tax returns that have already been filed. He can still electronically file 2009 income tax returns through October 15, 2010.

Taxpayers who need assistance in deciphering or responding to notices they receive from the Internal Revenue Service or a state Department of Revenue should call the same phone numbers and ask for an appointment with our tax attorney, Mark Christensen, or e-mail him tax questions at ***tax@eur.army.mil***.

The Kaiserslautern Legal Services Center provides tax services to all eligible legal assistance clients, regardless of their branch of service or physical location. If you are willing to make the trip to Kleber Kaserne or send us your supporting documents, we will assist you to the best of our ability. ***"First in $$$$$$support!"***

SERVICEMEMBERS CIVIL RELIEF ACT — PROTECTING THOSE WHO DEFEND AMERICA

by CPT Mike Gilbertson

The Servicemembers Civil Relief Act (SCRA) was passed in an effort to alleviate certain legal burdens on service members when they are ordered to active duty. It expands upon the protections formerly afforded service members under the Soldiers' and Sailors' Civil Relief Act. The SCRA, among other things, allows service members the right to terminate housing leases when ordered to active duty for 90-days or more. The SCRA also limits interest on credit obligations incurred before military service and allows for a delay of most civil court actions when service members are unable to appear in court due to active duty service. These are only a few of the civil protections the SCRA provides to service members serving on active duty.

To assist those seeking to verify a service member's duty status, the Defense Manpower Data Center (DMDC), an agency of the U.S. Department of Defense, provides a website at https://www.dmdc.osd.mil/appj/scra/scraHome.do where the user must enter, at a minimum, a last name with either a month and birth year or a Social Security Number. The more information provided in the search (*e.g.*, middle name and birth date), the better the accuracy of the search. This site will assist those seeking to confirm a service member's duty status, thus allowing service members to benefit from the SCRA.

For health care professionals and legal personnel, section 703 of the SCRA states that professional liability insurance for health care and legal services and "other services determined by the Secretary of Defense to be professional services" is suspended during an order to active duty under certain authorities.

The U.S. Army Office of Legal Policy is working an action requesting that the Secretary of Defense designate additional professions that can take advantage of the favorable treatment with regards to professional liability insurance which health care professionals and legal personnel now receive under section 703. http://veterans.house.gov/documents/scra.pdf.

Upon proper and timely notice to the insurance provider of release from active duty, the coverage must be reinstated under the previous terms (subject to any general increase in premiums charged by the insurance provider for persons covered by such insurance during the period of suspension). Hopefully, the favorable treatment provided health care professionals and legal personnel will be expanded to include other professions.

The Department of Justice, in partnership with other federal agencies, is committed to enforcing federal laws that protect the civil rights of service members. In addition to the SCRA, those laws include the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Uniformed and Overseas Citizen Absentee Voting Act of 1986 (UOCAVA).

For more information on how the Department of Justice and other federal agencies can help you, and what service members themselves can do to protect their rights under federal law, visit the Kaiserslautern Legal Services Center's Legal Assistance Office.

DoD FAMILY CARE PLAN POLICY EXPANDS

by CPT Mike Gilbertson

One of the most important considerations when it comes to family readiness is to ensure that a Soldier's family is taken care of during drills, annual training, mobilizations and deployments. A Family Care Plan (FCP) is very important for all military families, and is especially critical for single parents and dual military parents.

The Department of Defense (DoD) expanded its FCP policy to encompass a wider population of military parents in DoD Instruction 1342.19, Family Care Plans (7 May 2010) at http://www.dtic.mil/whs/directives/corres/pdf/134219p.pdf. The new policy requires military parents with custody of children from a previous relationship to file a FCP. This instruction expands the requirement to have a FCP and emphasizes the need to involve the noncustodial, biological parent in the process early on. It requires commanders and supervisors to ensure that service members and DoD Civilian Expeditionary Workforce (CEW) personnel provide the name of the noncustodial, biological parent, if not named as the caregiver, along with that person's consent in the FCP. If the noncustodial, biological parent does not consent, then the service member or DoD CEW employee should visit their local legal assistance office to discuss the associated risks and best courses of action, and document the absence of such consent in writing.

Service members who fail to produce a FCP may be subject to disciplinary or administrative action that may result in separation from the Service.

Additionally, while not required, contract offices should encourage contractors serving in officially designated contingency operations to have a current FCP which designates their choice of guardian(s) for permanent care of their dependent family members.

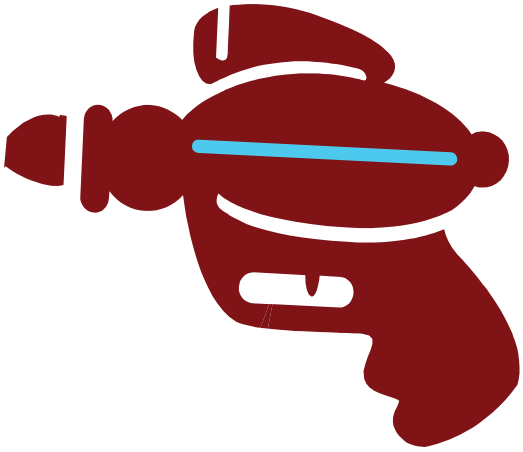
More information on family care plans is available on the Military OneSource website at: http://myarmyonesource.com/News/2010/04/MilitaryOneSource or on the Military Homefront website at: http://myarmyonesource.com/News/2010/04/MilitaryHomefront.

To initiate a family care plan, see your Company Commander or First Sergeant. Assistance in completing the powers of attorney for your family care plan is available at the Kaiserslautern Legal Services Center Legal Assistance Office on a walk-in basis. If you have legal questions pertaining to your family care obligations during deployment make an appointment to see a legal assistance attorney at the Kaiserslautern Legal Services Center by calling DSN 483-8848 or Civilian 0631-411-8848. We're here to help!

The Pitfalls of Paintball & "Airsoft" Guns

"Toto, I don't think we're in Kansas anymore..."

by Joe Hall



Around him in the darkness crickets chirped, a trickle of sweat rolled down his cheek and dripped onto his clinging camouflage T-shirt; with cramped muscles the warrior waited wedged deep in the brush, ready for the moment when his enemy would step into the clearing.

A snap – a cry – blinding lights – ***"Waffen runter!" "Polizei - Waffen runter – Polizei!" "Waffen runter oder ich schiesse!!!"***

Next day's news: "What started in fun, ended in tragedy last night when one of several dependent teenagers was shot by local police while the boy was playing 'capture the flag' using an 'Airsoft' pistol in the local German woods."

A work of fiction? No. A true story? Almost. In Stuttgart on July 7, 2010, a dependent family member had a run in with the German police under the above type circumstances. Had one of the boy's friends not yelled out that the boy did not understand German, and had the German police not been able to understand what was said and then call out their command to drop the weapon in English, a tragedy could very well have occurred.

Gun laws and reactions to guns differ among the various states in the U.S. They vary much more between the U.S. and Germany. Playing guns, playing cowboy, playing cops and robbers, and young children going off with real guns to shoot squirrels and rabbits in the woods is common practice in the U.S. That kind of activity is much less common in Germany, where even hunting in the woods for adults is a very highly regulated and controlled activity.

With very little exception, while living in Germany, members of the U.S. Forces – uniformed, civilian employees, and family members – fall under German law, whether we are on-post or off. One of the laws we fall under is the German Weapons Law. This law impacts two popular pastime activities – the use of "Airsoft" guns, and paintball.

"Airsoft" Guns. The German Weapons Law generally does not apply to "toys." However, there is one big exception. It does regulate toy guns that look like real guns – unfortunately, that includes almost all "Airsoft" guns that are sold today. The rule is, if the gun (toy or not) gives the appearance of being a real gun (size, shape, color, etc.), that gun may not be carried around outside in public areas (*e.g.*, outside your apartment or home). For violators, the gun will be confiscated and the individual is subject to administrative fine.

So, what if my 12-year-old son's "Airsoft" gun does not look like a real weapon; can he run around and shoot it in the housing area?

- No. "Airsoft" guns may not be used in public areas (housing areas or the woods). They can only be used in specially-designed shooting areas or possibly inside private residences/yards, but in any case, wherever used, the area needs to be enclosed so that the pellets cannot go outside the boundaries of the facility. Third parties may not be endangered.

- Also, your 12 year old is not authorized to have an "Airsoft" gun. For "Airsoft" guns of limited power (less than 0.5 joules), the minimum age is 14. For higher power "Airsoft" guns (greater than 0.5 joules), the minimum age is 18.

Paintball. Paintball markers (guns) usually do not look like real weapons, so that aspect of the German weapons law usually does not apply – but no matter, paintball markers and their use are also very strictly regulated in Germany.

German law dealing with paintball provides that a person normally needs to be 18 years old to play; paintball may only be played in specifically designed courses that will prevent a round from leaving the course property; the round being fired cannot exceed 7.5 joules in power (otherwise the marker is classified as a real gun); and the marker must have a special imprint stamped into it (a pentagram with a letter "F" in the center) in order to verify that its power does not exceed 7.5 joules.

Army in Europe Regulation 215-144 sets out rules and policy on paintball activities in USAREUR. You should consult that regulation and call the local MWR Rod and Gun Club for more specifics on paintball play. Possession of guns with greater than 7.5 joules of power is prohibited.

Remember these rules of thumb for "Airsoft" guns and paintball markers:

- No carrying any type of realistic looking guns, toy or not, in any public areas, including the woods.

- No playing "Airsoft" games or paintball in any outside areas not specifically designated and approved for that type activity.

- No shooting at neighbors, their pets, street lamps, or street signs.

- *"Waffen runter"* means, put your weapon down; and *"Waffen runter oder ich schiesse"* means put your weapon down or I'll shoot.

"May it please the court!" German judges from the Rheinland-Pfalz State Supreme Court in Koblenz greet a delegation from the 21st TSC Office of the SJA in their courtroom.

Mr. Ralf Bartz, President of the Rheinland-Pfalz State Supreme Court in Koblenz, welcomes 21st TSC SJA COL Claes Lewenhaupt.

Comparing Legal Systems. 21st TSC SJA COL Claes Lewenhaupt and members of his staff travelled to Koblenz on September 20th to visit the Rheinland-Pfalz State Supreme Court, at the invitation of the President of the Court, Mr. Ralf Bartz. They and their German counterparts discussed German and US rules of evidence in criminal cases. The focus was on the "exclusionary rule," and the "fruit of the poisonous tree" doctrine pertaining to derivative evidence. The exchange highlighted a significant difference in the two systems' approach to the issue. In Germany, the "exclusionary rule" is known, but very sparingly applied. Under the US system, trial and defense counsel must be very much aware of the rule and doctrine, and anticipate their application as they prepare and present their cases.

The visit grew out of similar discussions begun at last May's Law Day legal liaison event in Kaiserslautern, hosted by the 21st TSC OSJA. Such discussions are highly beneficial on various levels. At the trial level, they help US military trial and defense counsels better understand the expectations and frame of reference of German police officers called to testify at courts-martial. At other technical levels, these meetings and discussions are helpful in getting a better perspective on why a particular procedural rule or practice exists, and to help think about ways to modify or to reinforce the rule or procedure. And finally, these meetings help maintain the good working and good neighbor relationships that we have with our host nation.

Both delegations look forward to continuing similar dialogues in the future.

THE "TRIPLE-THREAT" TRIAL COUNSEL

by CPT Ryan Howard

While many new Judge Advocates believe their time as a trial counsel (the military term for a prosecutor) will be spent exclusively on litigation, the successful trial counsel is committed to developing three distinct functions: acting as a sound staff officer, adept diplomat, and skilled lawyer.

The Staff Officer

Staff Officership is the cornerstone to a successful tour as a trial counsel. Trial counsel should digest and live LTC Mike Ryan's "10 Basics for Every Officer:" (1) Be in the right place, at the right time, with a professional military appearance; (2) Be patient, have perspective, and maintain a positive attitude; (3) Stay calm – anger never wins; (4) Learn the craft - ask questions, admit mistakes, and share credit; (5) Never question motives; (6) Offer solutions, not just problems – after spotting an issue, what are *you* going to do to solve it; (7) Be a problem solver – start at the beginning of a problem, think through a solution, and work hard; (8) Rise to the occasion – don't shy away from difficult missions, jobs, or schools; (9) Know that your efforts contribute to mission success – you are relevant; and (10) Be bigger than yourself – being an officer means putting the needs of your Soldiers, unit, and country ahead of yourself.*

When I served as a Brigade Judge Advocate, my brigade commander was fond of saying "good staff officers CAV – they communicate, anticipate, and validate." Mission success depends on the trial counsel's ability to communicate effectively with each echelon of command, with the Office of the Staff Judge Advocate (OSJA), and within their immediate office. There are a number of techniques to facilitate effective communication with commanders: secure regular office calls, attend command and staff**, publish reports that track the progress of legal actions, and publish newsletters that brief the results of those actions. Communicating clearly within one's office and to the OSJA is equally as important. Two simple questions facilitate such communication: (1) Does the Chief of Justice know the status of my actions and (2) Do the paralegals know what I need next?

Secondly, great staff officers anticipate. The trial counsel who can identify "what is next" for his command is extremely value-added. While any lawyer can prosecute misconduct, great Judge Advocates *prevent* misconduct. Trial counsel should examine blotters for high risk groups (age, race, gender, etc) within the formations they serve. The value-added trial counsel will pull last year's blotters for next month and try to spot any trends. For example, in August of 2010, pull the September 2009 blotters and note the increase in alcohol related incidents for the high risk population. Having analyzed the data, the successful trial counsel with then brief "what is coming" at their next command and staff *and* provide a recommendation. For example, "Based on my review of misconduct from this quarter last year, I anticipate an increase in junior enlisted alcohol related misconduct. I recommend first line supervisors meet individually with Soldiers E-4 and below under the age of 24 every Friday during the weeks of Oktoberfest."

Finally, great staff officers validate, they do not "fire and forget." Within the office, the successful trial counsel will task subordinates to provide back-briefs throughout the life of an action. Outside the office, the successful trial counsel

* Lieutenant Colonel Mike Ryan, *Azimuth, Distance, and Checkpoints – Thoughts on Leadership, Soldiering, and Professionalism for Judge Advocates*, The Army Lawyer (August 2005).

** If you attend command and staff regularly, listen to your S-3 brief and then brief like him. Speak in terms of COAs, recommendations, and risk. Never guess and don't be afraid to ask for more time if another staff section or commanders hits you with a difficult question.

will instinctively provide status reports to his commanders and legal supervisors. Not only is it right to keep commanders informed, but there are great efficiencies in taking the initiative to brief the status of actions rather than responding to requests for information. As the trial counsel validates the status of their actions and briefs the interested parties, the requests from commanders and the OSJA will slow, more time will exist to complete actions, and processing times will be reduced. In sum - communicate, anticipate, and validate.

The Diplomat

The successful trial counsel also recognizes the need for diplomacy as they navigate actions through various echelons of command and staff offices. Trial counsel serve as liaisons between echelons of command, between the command and the OSJA, and between different sections of their Special Court-Martial Convening Authority's staff. Additionally, trial counsel develop courses of action, build consensus in support of the best course of action, and take action to secure the command's desired end-state. To achieve these ends, the trial counsel must be a diplomat.

While there are a number of ways to "be diplomatic," a few are worth emphasizing. First, trial counsel must understand their role. As staff officers, trial counsel do not provide guidance or take action; they recommend. Consequently, the diplomatic trial counsel rarely, if ever, briefs "no." In the alternative, the diplomatic trial counsel couches their legal analysis in terms of recommendations, risk, and courses of action. For example, "Ma'am, I strongly recommend against this course of action because you are accepting considerable risk of…"

Second, trial counsel should be a member of the team. The successful trial counsel appears to be indigenous to every ever circle in which they operate. More simply, when a trial counsel is at a brigade meeting, he is a TF Thunder staff officer, and when he is at the OSJA VTC he is one of the trial counsel, and when he is in the office, he is a member of the K-town justice team. To the extent it is clear the trial counsel is on "the team" for both their unit and the OSJA, their value to the command and the OSJA will increase significantly.

Finally, trial counsel must acknowledge and reward the efforts of their strategic enablers – but for the efforts of paralegals, translators, court reporters, and other logistics support, the trial counsel would fail. No court-martial is possible without orders for witnesses. Trial counsel should take time to acknowledge the outstanding efforts of these key contributors.

The Lawyer

Finally, successful trial counsel know their craft. There is no substitute for the new trial counsel sitting alone in her office late a night simply reading the relevant authority, mastering the facts of the case, and then applying the facts to the law. While trial counsel should always know reach-back support from the Senior Trial Counsel and Chief of Justice is available, they must be prepared to answer the questions "Have you researched this? What do you think?" The rationale for these questions is simple: there is no substitute for a lawyer hitting the books. Close your door, give your phone to the paralegals, and read. *Then* call a fellow trial counsel, the Senior Trial Counsel, or the Chief of Justice.

The successful trial counsel has a mission statement that nests his personal goals with the SJA's vision and the Commander's guidance. My trial counsel philosophy was: "Seize the initiative by swiftly advancing each action daily, promote good order and discipline by securing the command's end-state, and prevent misconduct by anticipating trends and demonstrating the nexus between crime and punishment." Such a mission statement helps to provide perspective and focus on the task at hand when it appears that the job is overwhelming. When actions mount and pressure builds, the successful trial counsel steps back, turns to his mission statement, attains perspective, and shifts focus to the task at hand.

The "triple-threat" trial counsel is a sound staff officer, a master diplomat, and a skilled lawyer – three distinct skill sets that stretch all judge advocates in unique ways as we navigate careers in the one of the most interesting and challenging professions in the world – the profession of being an Army Lawyer.

Editor's Note: CPT Howard serves as Senior Trial Counsel for the 21st TSC Office of the SJA.

POV Storage During Deployment

Some Helpful Tips from a Claims Judge Advocate

by CPT Josh Zell

When you hear that you are deploying, what to do with your car is probably not the first question that will pop into your mind. However, making the proper arrangements for your POV before you deploy may save you some money and headaches when you get back. Here are some POV storage pointers.

If your unit has a designated storage lot for POVs of deploying service members, use it. No matter where your POV is parked, there is always a possibility it could be damaged. However, the claims office may be able to compensate you up to $20,000 for damage to your POV that occurs while it is in a storage lot under the control of the Garrison Commander or the Rear Detachment Commander. For POVs parked elsewhere the most the claims office may be able to compensate you for damage is $3,000. Also, the claims office can compensate you for more types of damage to your POV if it is parked in a designated storage lot. A POV parked elsewhere on-post is only covered for damage caused by government negligence (*e.g.*, a negligent GOV driver) or unusual occurrences (*e.g.*, fire, theft, vandalism, extremely severe storms), but a POV parked in a designated storage lot can also be covered for damage caused by a hit-and-run, mold/mildew, insects or vermin, or other types of damage that should not occur in a properly-run storage facility. Finally, for damage to a POV parked in a designated storage lot, you can file your claim with the claims office without first filing against your insurance company. For POVs parked elsewhere, you would have to complete the entire claims process with your insurance company before filing a claim with the claims office.

Do not leave household or personal items in your POV. The claims office may only compensate you for the loss of items normally left in a vehicle, such as jacks, first aid kits, jumper cables, small tools, etc. So, if someone breaks into your POV and steals the laptop or camera you left inside, the claims office cannot compensate you.

Decide how best to handle your car insurance while you are deployed. If you have both collision and comprehensive coverage, you may want to consider canceling the collision portion of your policy. Some insurance companies offer special storage insurance. The claims office does not recommend completely cancelling your insurance, because most installations require that you maintain some insurance to keep your POV properly registered. Keeping a vehicle insured may also be required by the bank or credit union that lent you the money to buy the vehicle, if it is not paid off yet. Also, the more valuable your POV is, the more you should consider maintaining full insurance coverage. The $20,000 maximum allowable payment only goes so far.

Before storing your POV, take lots of pictures to show exactly what the vehicle looked like and the condition it was in before you deployed. If your POV is damaged, these pictures will help you prove that the damage occurred after you stored the vehicle. Also, when you place your POV in a government-run storage lot or facility, make sure a DD Form 788 is filled out on intake, and accurately reflects any pre-existing damage. When you pick up your vehicle, make sure the 788 accurately documents any damage that occurred during storage before you drive away from the storage facility.

Leaving your POV parked on-post during deployment is strongly discouraged. If your registration lapses while you are deployed and you left your POV on-post, it will likely be towed and could easily be damaged in the process. Even if your registration does not lapse, your POV might be towed if work needs to be done in the area where it is parked. If you leave it in an area that is not appropriate for long-term parking, your negligence in parking there could be grounds for denying any claim you might later make for damages. The best course of action is to park in a storage lot under the control of the Garrison Commander or the Rear Detachment Commander.

For more information on where to store POVs in the KMC during deployment, contact your chain of command or the USAG-Kaiserslautern Directorate of Logistics. For more information on how to file a claim, contact one of our claims examiners at the Kaiserslautern Legal Services Center at DSN 483-8414 or Civilian 0631-411-8414.

The Ethics Corner...

by Rick Schwartz

FINANCIAL DISCLOSURE

Promoting Trust in Government...

In my last column, we talked about the rules governing gifts between government employees, and how those rules are designed to avoid the appearance that anyone is receiving special treatment in exchange for the giving of gifts to influential people. In this column, the principle is the same, but we're going to turn the tables a little bit. We'll be discussing the rules governing financial disclosure, in the context of ensuring that certain influential people in government don't appear to be providing special treatment to outside entities as a way to improve their own bottom line at the expense of competitors and the U.S. taxpayer.

The U.S. Government's Executive Branch, of which all Soldiers and civilian employees are a part, is committed to ensuring that its financial decision-makers are completely unbiased. The decision-making process should be open and transparent from start to finish, and our main objective is to provide the best value. Everyone involved in the process, and taxpayers in general, should be able to trust that those working in government don't endorse or show favoritism to any particular entity, product, or individual, and can't be "bought" or improperly influenced. Our acquisition regulations are designed to promote full and fair competition, and ensure that each potential vendor has an equal opportunity to provide its goods or services to the Executive Branch, provided they can deliver the best value.

Financial disclosure requirements are one way we ensure our decision-making process is living up to those ideals. The program requirements are administered through the Office of Government Ethics (OGE) and currently conducted annually Army-wide through a convenient online program called Financial Disclosure Management (FDM). FDM also has a module to complete the required annual ethics training for the approximately 44,000 confidential filers in the Department of the Army. There are two levels of disclosure—Public and Confidential—based on the filer's degree of responsibility.

Public Financial Disclosure and the SF 278. Each General Officer, member of the Senior Executive Service, and Presidential Appointee is required to annually file an Standard Form (SF) 278. It's available to the public upon request, and includes sections on real estate, gifts, securities, and outside positions and transactions, as well as certain information about the filer's spouse and dependent children. Items are listed in a range of dollar amounts, providing a rough idea of the value of the Secretary of Defense's holdings in Parker Drilling Company, for example. The "278 Program," as it's commonly known, is a way for senior executives to establish that their personal financial interests do not conflict with—or improperly influence—the decisions they make in their official capacity. After all, it's all transparent, for all to see.

Confidential Financial Disclosure and the OGE Form 450. For those individuals designated as OGE Form 450 filers, the most significant difference from the 278 Program is as the name suggests: their filings are confidential. Only the filer's supervisor and the organization's Ethics Counselor are able to review the disclosures. Those two individuals have responsibility for determining whether a filer's personal financial interests or affiliations pose an actual or potential conflict of interest with the filer's official duties. Where there is a potential or actual conflict based on particular holdings, the filer must either remove the conflicting holding (*e.g.*, by selling those particular shares of stock) or be prohibited from taking any official action that might affect that holding.

Determining who files the OGE 450. To ensure an efficient and effective confidential disclosure process, it is important that supervisors annually make a determination as to which of their subordinates should be designated as holding filing positions. It is based on 3 factors: pay, type of work, and level of responsibility. Specifically, the filer must (1) be a O-6/GS-15 or below, (2) perform work that affects the financial interests of outside entities (including through contracting or procurement) where there could be the appearance of favoritism or a lack of impartiality, and (3) exercise significant judgment in the decision-making process without substantial review by their own supervisor. Certain positions, such as Brigade-level or installation Commanders, are almost always designated. Other positions, however critical to the acquisition process, should not be designated as filing positions because they have another layer or two of supervisory review to provide added protection and objectivity. Careful consideration should be given to the third factor to ensure that only those positions requiring a filing are so designated.

[continued on page 16...]

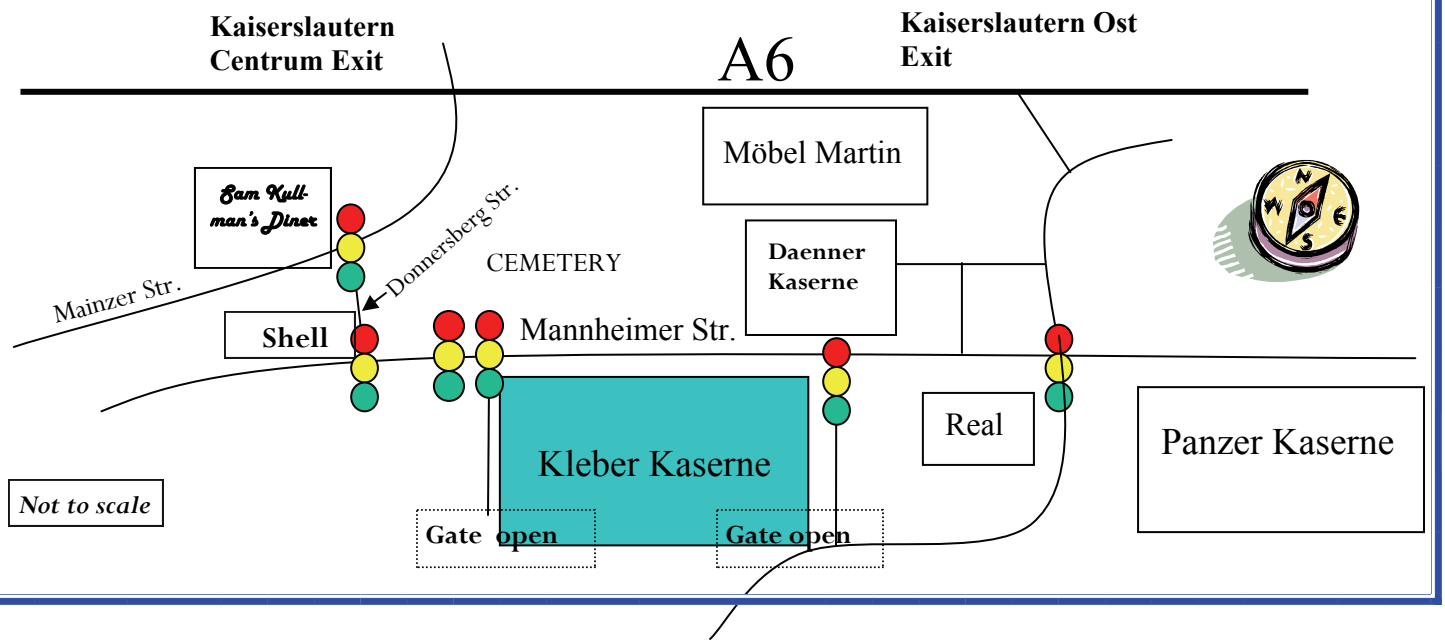
The End of an Era: CPT Zachary Boren, the last Officer-in-Charge of the Mannheim Law Center, presents a commemorative plaque to MSG Jeremy Gelfand, the last Noncommissioned Officer-in-Charge of the Mannheim Law Center, at the Law Center's closing ceremonies on Taylor Barracks in Mannheim on July 2nd. Hundreds of attorneys and paralegals served in the Mannheim Law Center over the years, earning a reputation for excellence in legal services. "First in Support!"

FINANCIAL DISCLOSURE (continued)

Consider if there were a Contracting Officer in your organization, to take a common example, who performs work that involves awarding, administering and modifying government contracts to qualified bidders. Because of the significant judgment exercised without substantial supervisory review, this particular position has been designated as a "filing" position, meaning the incumbent must annually receive ethics training and file the OGE Form 450. Disclosure might include that the incumbent, like Secretary Gates, has personal holdings in Parker Drilling Company. The OGE 450 won't indicate how many shares are owned or their value, but it will identify the interest at stake. The filer's supervisor (along with his ethics counselor), who knows the filer's individual responsibilities, must then review the filing for actual or potential conflicts of interest. If that person might be in a position to take official action involving Parker Drilling Company, even the appearance triggers the requirement to divest or refrain from taking action, because even if our Contracting Officer is totally objective, the mere appearance that he might be inclined to steer contracts to Parker as a way to increase the value of his own portfolio is enough to generate a conflict of interest.

Whether you have a stake as a filer, supervisor, or taxpayer, remember that the financial disclosure rules are yet another tool to prevent conflicts of interest, promote transparency, maintain procurement integrity, and promote trust in the Executive Branch.

If you have any questions on Financial Disclosure requirements, contact your servicing Ethics Counselor for guidance.

Directions to Kleber Kaserne:

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