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## Recent Army JAG Corps Initiatives to Enhance Human Rights

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"is not unduly burdensome and appears reasonably calculated to lead to the discovery of admissible evidence." This allows the individual right of action appellant to request agency disciplinary files on other employees in hope of finding disparate treatment without consideration of the privacy rights of the other employees. Whenever the MSPB finds a prohibited personnel practice motivated a personnel action, either in an individual right of action or in an OSC corrective action, it "shall" award attorney's fees and costs and "can" award medical costs, travel expenses, and "foreseeable consequential damages." The Act places no limit on the amount of consequential damages. Employees of government corporations, such as the Postal Service, are now subject to the individual right of action provisions in the WPA.

Perhaps the most controversial amendment in the OSC Reauthorization Act directs agencies to include certain provisions in their collective bargaining agreements. These required provisions grant an arbitrator authority to issue stays of personnel actions in a grievance proceeding, equivalent to the MSPB authority, and to order the agency to take disciplinary action against a supervisor. A supervisor so disciplined can appeal the action through the normal appellate process. The supervisor is not a party to the grievance and has no right to call witnesses, present evidence, or even appear. The supervisor has no meaningful opportunity to respond to the charges or present evidence for consideration. Beyond the obvious issue of minimal due process, this amendment overlooks an obvious practical flaw: the agency must take, but need not defend, the disciplinary action. On the supervisor's appeal to the MSPB, the agency could fail to submit a timely response, allowing the MSPB to reverse. Should the agency satisfy the procedural requirements to defend the action, nothing prevents a deciding official from honestly testifying that the punishment imposed was reached without a meaningful opportunity for the supervisor to respond and without consideration of any *Douglas* factors. A deciding official might even testify that the ordered discipline was unreasonable and unjust, placing the MSPB in the position of reversing the discipline under otherwise applicable law and rules or allowing the unsupported disciplinary action to stand.

Experienced labor counselors easily can foresee the consequences of these amendments. Even for otherwise appealable actions, savvy attorneys *always* will file an OSC complaint alleging that their clients were victims of reprisal for whistleblowing. The MSPB has held that these actions are processed as otherwise appealable actions. However, the OSC complaint brings the appeal within the definition of an individual right of action and opens the door for recovery of consequential damages.

Amend your resource materials to reflect the changes in the OSC Reauthorization Act and do not be caught off guard by its changes. Just be thankful that the MSPB appeal process does not provide for a jury trial! Major Hemicz.

## International and Operational Law Note

### Recent Army JAG Corps Initiatives to Enhance Human Rights

#### Training at the School of the Americas

The Army Judge Advocate General's Corps (JAGC) Corps has recently undertaken two significant initiatives designed to enhance human rights training at the United States Army School of the Americas (SOA or School). First, in August of 1994, an Army judge advocate, Major Dennis Cruz-Perez, was assigned to a field grade officer staff position at the SOA. Second, the International and Operational Law Division, Office of The Judge Advocate General, has developed a new three-hour block of instruction designed to teach students how to conduct and institutionalize human rights training in their own militaries.

Initially founded in Panama in 1947, the SOA has been operating at Fort Benning, Georgia, since 1984. The School's mission is to develop and conduct military education and training, using United States doctrine, in the Spanish language for Latin American officers, cadets, and enlisted personnel to achieve a higher level of military professionalism and effectiveness.

The role of the newly assigned School Judge Advocate is to ensure that human rights are emphasized at every level of the training. This includes not only providing human rights training in the classroom, but integrating human rights training tasks into field training activities.

Thus, human rights training is now conducted in three phases at the School: first, the traditional classroom approach of teaching students the rights, duties, and responsibilities of soldiers; second, human rights "lane training" exercises in which realistic human rights scenarios are inserted into standard military training exercises; and third, a new human rights training course.

The new block of instruction developed by the International and Operational Law Division concentrates on the mechanics of how human rights training might be developed and provided to a state's military personnel. The class is patterned on the successful human rights training handbook developed for the Peruvian armed forces in 1992-93, "Ten Commandments for the Forces of Order."<sup>45</sup> Using the Peruvian program as a vehicle for classroom discussion (to include providing the students with a copy of the actual human rights handbook), the School demonstrates how human rights training can be incorporated into a military system.

The development of a new block of instruction that demonstrates to students how human rights can be institutionalized in a military clearly signals a new and dynamic approach to human rights training. Coupled with the addition of a full-time judge advocate to the SOA staff, this initiative signals a clear commitment to place human rights training in the forefront of the curriculum provided by the School of the Americas. Lieutenant Colonel Addicott, International and Operational Law Division, OTJAG.

<sup>45</sup>See Addicott & Warner, *JAG Corps Poised for New Defense Missions: Human Rights Training in Peru*, ARMY LAWYER, Feb. 1993, at 78.