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Death before pay for CIA's Air America

By John McBeth

JAKARTA - The United States Directorate of National Intelligence (DNI) has again refused to recommend paying federal retirement benefits to the surviving employees of Air America, despite overwhelming evidence the legendary secret airline was created, controlled and funded by the Central Intelligence Agency (CIA) during 25 years of service in Indochina.

In a long-delayed report to the US Congress in late July, the DNI said granting retirement benefits and civil service status would "undermine national security proprietaries, creating a costly precedent for granting such benefits to other proprietary employees and would not stand legal or public scrutiny".

But former Air America counsel William Merrigan says congress has already granted benefits to other formerly CIA-funded

corporations, including Radio Free Asia, Radio Liberty and Radio Free Europe, and can easily avoid setting a precedent by only identifying specific beneficiaries in any new law.

As difficult as it may be, the only recourse the claimants and their spouses have now is to try and persuade their chief congressional sponsor, Democrat Senator Harry Reid, and other sympathetic congressmen to go back to the original plan of

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proposing stand-alone legislation to get what they feel they rightfully deserve.

While the DNI report has been a blow to Air America veterans, the real obstacle now may well be opposition in both houses to any new costs being incurred by the Federal government, particularly at a time when reducing the retirement benefits of future military personnel is under consideration.

The irony in all this is that US\$23 million was returned to the CIA following the company's dissolution in 1975. In today's dollars, that amount is sufficient not only to cover all employer-employee contributions in the Civil Service Retirement Fund, but also the benefits that accrue if congress does eventually pass the retirement legislation.

More than 240 pilots and crew members were killed during the lifetime of Air America and its predecessor, Civil Air Transport (CAT), between 1950 and 1975. Most of them perished as a result of hostile fire during the so-called secret war in Laos, where their existence was never officially acknowledged.

With the courts already ruling against the survivors - and specific legislation rarely successful in such cases - Senator Reid slipped a provision into the 2009-2010 Defense Appropriations Bill, giving the DNI 180 days to submit a report on the advisability of providing the benefits.

Unwilling to go along with the process from the beginning, the CIA initially proved so obstructive to supplying information that the DNI finally paid the consultancy firm Booz Allen Hamilton \$350,000 to get the job done.

In the end, despite Merrigan's voluminous inventory of easily-authenticated documents that would have fast-tracked the process, it took 15 months for the authors to pore through the personal records of 2,429 former employees - and the CIA another three months to conduct a review of the finished product.

Time is a luxury the aging Air America claimants don't have. In the seven years their unpaid lawyers worked to get the DNI's attention, 15 of the 34 survivors who flew with the airline for two decades or more died, as did more than 70 of the 466 crewmen with five to 20 years experience.

Another seven of the longer-term employees passed away during the preparation of the report and 93-year-old former company president Hugh Grundy died just a few days ago. Says Merrigan: "The delay is unseemly because they know many of these people are old and dying."

He and fellow legal counsel Gary Bisson have fought a lone battle to secure the benefits denied their fellow employees because the clandestine nature of their work meant none were directly appointed to a government position. It is a convoluted bureaucratic argument that critics say defies logic.

A US government corporation is defined in the Civil Code as one "owned or controlled by the United States." That's how the airline was defined in the letter congress sent to the DNI asking for the report and, more crucially, that's how it was referred to in the subsequent report itself.

Paradoxically, however, the DNI and CIA argue that Air America can't be legally called a government entity because it did not

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conform as such to Section 9102 of the Civil Code. The reason is that its existence was classified top secret and remained so long after the end of the Vietnam War.

The report also points out that pilots and crewmen did not fill in the standard forms when they were hired. Again, that's because it would have given away the secret - as well as raising questions among the majority of the employees who were unaware of the government's ownership and therefore of their right to Federal benefits.

"Any fair assessment will tell you that since the employees are entitled by law to the benefits, the lack of any expectation is no more germane than an opposite argument that an individual who is not aware of a criminal statute is excused for not complying with that statute," says Merrigan. "It is unjust and unfair to deny benefits based on this 'Catch 22' situation."

Congress has been critical of the US Office of Personnel Management (OPM) for only applying the requirement for the proper forms retroactively, after the veil of secrecy was finally lifted and the airline's employees began filing retirement claims. Merrigan points to what he says are numerous misleading claims sprinkled through the DNI report, including an effort to compare normal Federal civil service benefits with contributions made to the airline's own retirement plan, first introduced in March 1963.

In fact, there are huge disparities between a true annuity under the Civil Service Retirement Act and what Bisson calls "a very poor substitute" - a thrift savings-type plan under which there were no annuities and no employee/employer contributions for nearly half of Air America's life-time.

"Had Air America employees been given the right to have their services credited under the Civil Service Retirement Act, which was actually the Federal law at time, they would gladly have participated in the Federal Plan," he says. "But they were prevented from doing so due to the covert nature of the organization."

Air America's base pay, stretching from \$2,500 for captains to \$1,200 for mechanics, did not reflect the danger the airline's crewmen lived with in the mountains of central Laos, where they flew helicopters and small fixed-wing aircraft in support of a CIA-funded Hmong hilltribe army fighting to keep communist North Vietnamese and Pathet Lao forces at bay.

When communist troops were on the offensive, the operational tempo picked up and bonuses were earned for braving enemy fire on remote landing strips. But that extra pay was exceptional. In most years, captains took home only \$30,000 - \$35,000 - without any of the other benefits that should have come with working for the US government.

What has angered many Air America flight crew more is the CIA's assertion they were not required to conduct search-and-rescue missions for US military personnel in distress. In fact, it was so much part of their job that - often at great personal risk - they rescued at least 150 downed US airmen, including three who later went on to become admirals.

Why the CIA would make that claim is as baffling as is its disloyalty to its former employees, many of whom kept faith with the code of silence long after the airline was disbanded.

"Information was classified for 30 years," says veteran pilot John Wiren. "We didn't talk about Air America for so long that it became a habit not to talk. There are still a few guys out there today who deny any involvement with Air America."

John McBeth is a former correspondent with the Far Eastern Economic Review. He is currently a Jakarta-based columnist for the Straits Times of Singapore.

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