

# **AIR AMERICA: DECLASSIFIED – A SYMPOSIUM**

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The Symposium, sponsored by the Air America Association, featured revelations and analysis primarily derived from declassified documents uploaded to the CIA's Website from its CREST system in 2017.

The focus of the presentation was the administrative history of Air America and its related companies within the CIA, and how it came to pass that the former employees ended up without the federal retirement credit they earned and deserve. The Symposium demonstrated that declassification has made clear that the CIA leaders in the era of Air America had no intention of depriving Air Americans of retirement credit; it was for them a question of how to do so as required by law without revealing the paramount secret of US Government ownership and control of Air America. It was only later, after the dissolution of the Air America complex in 1976, that CIA lawyers first presented the position against federal recognition with false information. That narrative morphed over the years into an institutionally held posture emanating from the General Counsel's office but not from elsewhere within the Agency. It is hoped that CIA leaders today will revise the position in light of the truth is revealed in the 2017 document upload, and will not object to Congressional legislation to correct the situation.

The Symposium began with welcoming remarks from Cynthia Chennault, CAT Association President and daughter of CAT founder General Claire Chennault. Kay Merkel Boruff, General Secretary of the Air America Association and the widow of Air America pilot Jon Christian "Merk" Merkel (KIA 1970) provided introductory remarks and then introduced the panelists, whose presentations are set forth below. The Symposium concluded with a lively Q&A session.

## **PRESENTATIONS**

### **LEGISLATIVE EFFORTS FOR PROPER FEDERAL RECOGNITION**

William Merrigan, former Legal Counsel, Air America

**CAT/AAM BACKGROUND AND OPERATIONS** CAT/Air America (AAM) was a government owned corporation operated in support of our country from 1950 to 1976 during the Cold War, the Korean War and the Vietnam War.

Our employees worked worldwide under direct supervision of the White House and Departments of Defense and State and were often in the thick of the action.

The company employed several hundred U.S. citizens, mainly flight crew members, and several were killed in action while engaged in dangerous aircraft missions. Some 286 employees died in scope of employment for CAT/Air America and others are missing in action or died in captivity. The last helicopters rescuing personnel from the rooftops of Saigon in 1975 were operated by Air America pilots.

**TOP SECRET** The company acted with strict secrecy, and its top-secret ownership was successfully hidden. Only a few employees were told of who they really worked for since access to this knowledge required a top-secret clearance.

In a December 5, 1978, response to the Civil Service Commission the CIA stated, "In the case of Air America it would have been virtually impossible to preserve the cover story had all corporate employees been advised they were really employees of the United States Government."

**STATUS OF GOVERNMENT CORPORATION EMPLOYEES** Under the law employees of Government corporations are automatically Federal employees entitled to Civil Service Retirement. Historically, Federal employees were hired into the civil service by means of a government appointment form or

through an employment letter signed by the employee and a corporation official. This was authorized in the Civil Service regulations at the time.

CAT/Air America employees could not be appointed using a government form as that would reveal its ownership. We were hired, as authorized at the time, under employment letters on company letterhead.

**OPM CHANGE IN REGULATION** However, when employees filed retirement claims with the Office of Personnel Management in the 1980s, the claims were rejected. The decisions were based on a new OPM regulation stating you could only be a federal employee if appointed by means of a standard government form such as SF52 and could no longer be hired by means of a employment agreement.

This new federal policy was not the law in effect in the 1950-1976 period when CAT/AAM existed and when its personnel concerned were hired. OPM adopted this new regulation when AAM employees began filing retirement claims. OPM made this new regulation retroactive thereby preventing our personnel from receiving the benefits they were entitled to.

**CONGRESS QUESTIONED THIS** Congress criticized the application of the new rule retroactivity after OPM had denied a group of undercover Navy civilian employees. Congress passed legislation correcting OPM and granting credit to this Navy group. This legislation was identical in nature to that being sought now for CAT/AAMs. The related House Report 100-374 stated:

“While OPM’s action may be appropriate as a matter of law, individuals who performed such service prior to this policy change should be able to rely on published OPM instructions and prior administrative actions granting credit for such service. OPM’s actions in denying this credit have been extremely unfair, particularly in view of the apparent inconsistent administration of the policy in the early 1980’s and the fact that it took more than four years from the time OPM began denying retirement credit until it changed its publicly available instructions.” (Page 25).

**APPEAL TO CIRCUIT COURT** On appeal to the Circuit Court of Appeals for the Federal Circuit the court upheld the negative OPM action applying the revised law on hiring employees. As the information on government ownership was Top Secret it was not apparent these persons were already Federal employees, nor was the Court told that they had been legitimately hired by authorized employment letters, in order to protect this secrecy.

**NEW LEGISLATION** Since the facts were still classified the only feasible course after the Appeals Court decision was to either wait several years until the facts were declassified or to amend the current law so it could be applied favorably under the new rules.

In 2003 three prominent Senators, Ted Stevens, Harry Reid and Daniel Inouye recognized the inequity here and introduced bills in Congress to give the employees civil service status as Federal employees. For reasons not related to the merits this proposed legislation has not been enacted.

**REID LETTERS** In December 2003 Senator Reid sent letters to OPM and the CIA saying he planned to file legislation to give retirement to AAM members and asking their comments. OPM responded promptly saying under current law we were not eligible and noting that the only alternative was new legislation. This of course is what Reid was proposing.

The CIA did not respond until 2005, over a year later, and its answer was copied word for word from OPM’s letter. The CIA did not argue that this proposal would be harmful to national defense although this was the chance to do so, but merely stated it was not in favor of Reid’s plan.

The Director of National Defense (DNI) was directed by Congress to write a report on retirement of AAM employees, to include the views of the CIA. The final report did not contain the views of the CIA, which apparently did not cooperate with the DNI on this matter and the DNI hired the contractor Booz Allen to write the DNI report for several hundred thousand dollars.

**AIR AMERICA FLIGHT SUPPORT** During the Vietnam war our pilots rescued dozens of military crew members who were shot down in Vietnam and Laos. The CIA said "... more than 150 downed U.S. Airmen" were rescued. CAT/AAM helicopter crew members, often at great risk, would fly to the scene, and rescue these aviators saving them from death or years of imprisonment at the "Hanoi Hilton".

This action by CAT/AAM pilots was ordered by the State Department and DOD. At one time the CIA distributed a booklet which stated these pilots were not acting as government employees but were saving military pilots as voluntary acts carrying out an altruistic practice called the 'Airman's Bond'. The agency did not explain how these pilots could be flying randomly over Southeast Asia in government owned aircraft on government fuel. This incorrect and misleading information is repeated in a Report on Air America issued by the Director of National Intelligence in 2011 (at page 12). The DNI used this to argue our pilots were not working for the government when they performed these rescue missions.

After the unfavorable decision by OPM and the appeals court, several top secret documents were made public, including a Top Secret State Department message, from Dean Rusk, which stated that all search and rescue missions in Laos would be performed at government direction and expense only by AAM pilots, with the search and rescue missions in Vietnam to be conducted by the Air Force. This makes it clear that the rescue action by AAM pilots was official duty performed as government employees under orders from the DOD and State Departments. It is unfortunate this was not known to the authors of the DNI report.

In view of such conflicting information, here and elsewhere, many legal positions taken by government agencies, apparently were not made by officials who had access to top level information.

In practice the corporation was regularly managed by the White House, and Departments of State and Defense with decisions made by such officials as Dean Rusk, Henry Kissinger, Lyndon Johnson and Robert McNamara.

**TREATMENT OF AAM PERSONNEL** The injustice of the OPM position in denying retirement claims is obvious when it is realized that of the estimated 508 employees who could benefit from this retirement, 86 of them were killed in action while flying in support of our country beginning with flights over communist China, Korea and Dien Bien Phu in the early 1950's through the end of the Vietnam War.

One "issue" raised by OPM was that AAM personnel were already adequately covered by a retirement plan. This "Retirement Plan" was actually a saving plan whereby employees contributed money that was invested with a New York bank. The company added matching contributions of 25% to 100%. Payments were in one lump sum. There was no provision for an annuity.

As it happens regular employees of the CIA participate in a similar savings plans and also participate in the civil service retirement system. Other government corporations, such as the Tennessee Valley Authority, also have two plans, one for civil service retirement and one for employee savings. It is unfortunate that the AAM savings plan was mistakenly called a retirement plan and our personnel were overlooked and not included in civil service retirement.

The actual Payments under the Savings Plan were small or nonexistent as most employees were not covered as it was created many years after the company was formed. Eighty-six (86) crew members were killed in aircraft incidents. The widows and survivors of 56 of these received absolutely zero money in savings or "retirement" payments. The remaining savings received were pitifully small, one widow received \$2.74 and another widow received a similar total payment of \$10.28.

These are the amounts OPM and others claimed was "adequate" for their retirement in lieu of the amounts other government employees were receiving.

We estimate that some 500 employees, or survivors, will benefit from this legislation. The potential cost is minuscule compared to the million plus persons now receiving civil service retirement benefits and also minuscule when compared to the services provided to our country in times of war. The surviving widows and family members of deceased employees will surely appreciate it if our country finally recognizes their crucial work by acknowledging their service and paying the amounts long due them.

### **MANDATORY DECLASSIFICATION**

Carolyn Dowling, CAT Association Member, Air America Association Member

In 2009, Maureen and I joined CAT/Air Americans Bill Merrigan, Felix Smith and Gary Bisson in the effort to get legislation passed to provide federal recognition and retirement credit to the former employees of CAT and Air America.

Actually, our relationship with Mr. Merrigan goes back to 1964, when our father, Henry Bevans' new position as an executive and Legal Counsel for the Air America complex took us from New York to Taiwan, and we became part of what we Air Americans now call "the second generation." Mr. Merrigan and our father worked closely together on the war effort, and we all spent the next decade in Asia. After that, together we became Washingtonians, as the Vietnam War wound down and work on the dissolution of Air America continued on K Street until 1976. Like those of the many Air Americans here today, our friendship is a long one, spanning more than half a century.

Since 2009, we've spent a lot of time working together on the legislative effort. In doing so, we have taken advantage of a number of document declassifications, mandated by the 25-year Mandatory Declassification Act and supported by the Public Interest Declassification Board under the National Archives.

Today we want to share with you a relatively new set of declassified documents, and to talk about how we found them and why they are so important, to both our legislative effort, but to accurate U.S. intelligence and military history that we can pass on to future generations.

Past Air America reunions have featured CIA-sponsored symposia to introduce "discretionary releases" called "Collections", which are encouraged by the Mandatory Declassification Act. These releases included "Upholding the Airmen's Bond," in Dallas in 2009 and "Stories of Sacrifice and Dedication" in Dayton and San Francisco in 2011.

But a key word with respect to these Collections is "discretionary"; the documents are selected by CIA staff in support of a particular narrative they have chosen to present. In this case, these releases actually created narratives that distanced Air Americans from appropriate recognition as federal employees of the U.S. Government.

"Upholding the Airmen's Bond" characterized Air Americans as "volunteers in the sky", operating on their own initiative, rather than as integral participants in search and rescue and other critical missions. With declassification, however, we now have on page 5 in your booklet the "Top Secret" Joint State/Defense Message, sent by Secretary of State Dean Rusk to the American Embassy in Laos in 1966. It says: "Political Factors require that Air America helicopters continue to have responsibility for all Search and Rescue missions in Laos." Going off this, our research also led us many corroborating documents from the State Department's Office of the Historian regarding the absolutely critical role you CAT/Americans played in saving so many lives.

Apart from these "Collections", it actually took a long time for declassified documents relevant to Air America retirement credit to see the light of day. It wasn't until January 2017 that we finally got access to what we needed. In response to a series of very helpful FOIA requests, by others, along with a determined individual funded by a Kickstarter campaign, the CIA was mandated by court order to take 12 million pages of declassified documents that it had been storing as hard copies at an outside facility in

Maryland, and upload them onto its Website, complete with a CIA Records Search Tool, which is known as CREST.

Now most of the history of Air America told to date has been about the operations, not the administration, and admittedly, administrative history might not be not the stuff of movies. It does provide, however, a window into how the denial of federal recognition happened, and thoughts on a way forward to do something about it.

There are things we know personally as Air Americans, things that current CIA staff members wouldn't know. Our problem was that we had no documentation, until CREST came on line. When we met with the group in charge of declassification at the National Archives, we learned that the 12 million pages are indexed in such a way that information is not easy to find. And the answers we were looking for are not in a single document, but in a compilation of different documents that bring the story together.

But with declassification and our background as Air Americans, we could research those documents. We knew from personal experience that our father had interacted with people like Cy Vance, the CIA's Win Brown, CIA lawyer Jim Bastian, Deputy Director of Support Bob Bannerman, and Vientiane Station Chief and later Director of Personnel Jim Cunningham. We started with them. Eventually we moved on to the Daily Journal of longtime CIA General Counsel Larry Houston, various Legislative Counsel's Memoranda for the Record, Minutes of CIA Retirement Board Meetings run by Harry Fisher, National Security Council Meeting Minutes, and other internal communications of senior CIA leaders during the operating years. We also learned about the CIA's reflections as it dealt with the increasingly skeptical Congress of the mid-1970s.

One key thing we learned, is that Air Americans were much more important to U.S. foreign policy than has been revealed to date. Air Americans here today may not know that you were such a huge deal. Air America was not just a CIA proprietary, but an instrument of U.S. foreign policy, discussed regularly at the top echelon of the US Government. Air America featured often in the President's Daily Brief. Presidents from Kennedy to Johnson to Nixon to Ford, and National Security Advisors from McGeorge Bundy to Henry Kissinger, discussed Air America in National Security Council meetings at the White House throughout the Cold War.

Our Symposium Booklet includes just a few of the declassified documents we found as examples of the communication about you all at the highest levels.

You can see that memos concerning Air America were sent around the world, because one of the biggest foreign policy priorities of the U.S. Government at the time was maintaining integrity with our allies, especially with respect to Laos and the Geneva Accords. The activities of Air America were reported regularly to U.S. Embassies in London, Ottawa, Brussels and Paris, among others, to keep our allies on board against Russia and China. You all were a very big deal.

You can see in the booklet that it was the National Security Council that agreed in 1955 that "CAT was essential to the national defense and security ... and that it should be maintained." And later, in 1970, again, the CIA's Deputy Director of Support Bob Bannerman wrote a proposal for discussion at the National Security Council about continuing the utility of Air America as a national asset, given its utmost importance to entire scaffolding of U.S. foreign policy.

President Johnson was certainly intimately involved. He held what was called the "Tuesday breakfast," with the likes of Secretary of State Dean Rusk, Secretary of Defense Clark Clifford, General Wheeler and CIA Director Richard Helms. In 1968, when they discussed the fact that US Ambassador to Laos William Sullivan was "is worried about 3 sites for Air America flights being knocked out," President Johnson replied, "Let's get the defense supplemental up."

Another interesting exchange showing who was really in charge of you all, is that between Secretary of State Henry Kissinger and CIA Director William Colby at a National Security Council Meeting in 1974.

Remember that, at this time, President Nixon is wrapped up in the Watergate scandal, and Henry Kissinger is running the war. The CIA wants out of the war. William Colby says, "I want to get rid of Air America," to which Dr. Kissinger and Secretary of Defense James Schlesinger respond with a resounding "No!"

I worked for Henry Kissinger from 1983 to 1985. When Dr. Kissinger says "No!", its "No!"

Let's fast forward to today for a moment. Many of you here are familiar with the last year's success of the Defense POW/MIA Agency's accounting of Air America Captains George Ritter, Roy Townley and Kicker Edward Weissenback, and their removal from the MIA list. In the declassified documents, we found a discussion with Henry Kissinger about Captain Townley, in which Dr. Kissinger is briefed and asked to bring up the situation with Chinese leaders during his 1972 secret negotiations, in order to engage their help if possible. Along with that memo, we found Dr. Kissinger's handwritten note, saying, "I'll do so in Peking."

With the integration of all agencies in the war effort under the direction of the National Security Council, and with the dominance of the personalities of both Secretaries of State Dean Rusk and Henry Kissinger in running the War, we can see that Air Americans worked for the U.S. Government, not *for* CIA but *with* CIA, and even often times without CIA.

We now have a much clearer understanding of the extent to which Air America was a critical instrument of U.S. foreign policy, beyond just the CIA. We can now show through this set of declassified documents from CREST, why Air Americans should be considered not CIA staff employees, but federal employees. And this is now the essence of our Congressional legislation.

Now, as a second generation Air American, I would not presume to tell you anything about Lima Site 85 or any other Air America operation. I wasn't there. But we have asked an Air America pilot to talk about how it really was on any given day in Vietnam or Laos. You will see that Air Americans were certainly not "volunteers in the sky."

Here is Air America pilot Larry Stadulis.

### **THE 1967 RESCUE OF SENATOR CHAROLES PERCY (R-IL) AND THE EVACUATION OF SAIGON APRIL 1975**

Air America Pilot Larry Stadulis [No written transcript available]

Captain Stadulis spoke without written notes about his experience rescuing Senator Charles Percy (R-IL) and his wife in South Vietnam in 1967 when their visiting party came under fire in the village of Dok San. Captain Stadulis also described his harrowing experience as one of the last pilots out of Saigon on April 29, 1975 when he flew until dusk and nearly ran out of fuel before he landed safely on a US carrier in the South China Sea..

### **THE OPERATING YEARS**

Maureen Ebersole, CAT Association Member, Air America Board of Directors Member

Working on the legislation on Capitol Hill, we have found that legislators and their staff members typically begin to familiarize themselves with our issue by asking us two general questions:

First, given their heroic history, how did Air Americans end up without federal retirement credit?

And who, when, how or why would the CIA ever oppose such credit?

We really did not know the answers.

We could see how Air Americans working years ago in Asia might have been thinking more about survival than retirement, but we were bothered by some unanswered questions about the CIA. In its opposition to retirement credit, why did the CIA always focus on operational history and only discuss retirement credit as it was dealt with post-dissolution? We thought, there must be something in the administrative history during the operating years that is not being told. We asked ourselves:

- Was it possible in its 25 years of administering Air America that the CIA never considered the issue of employee retirement credit?
- Did CIA General Counsel Larry Houston, the legal mastermind behind the proprietary with an excellent reputation as a fine lawyer and a very decent human being, miss this issue entirely for a quarter century?
- Or did he think that of all the CIA personnel operating together in the field and in the air, Air Americans should be singled out in their senior years for no retirement credit at all?
- Did he deliberately establish hiring procedures that could legitimately exclude them?

None of this seemed likely. So what *was* the CIA's approach to the question of retirement credit in the operating years? We sought to find out.

And we discovered 5 things that had never been revealed:

FIRST, Air America was administered only from the very, very top at the CIA; which answered to the National Security Council as Carolyn has described. Air America was never the province of lower level CIA employees.

SECOND, the senior CIA officials in charge did not simply forget to think about federal retirement credit for employees of the Government-owned corporations they were assigned to administer. In your Booklet on Page 8: Larry Houston makes this clear: "We are subject to the general retirement act..."

THIRD, in opposing credit in more recent years, the CIA has implied that this was the CIA position from the outset, that the CIA had presumed since 1950 that Air Americans would not be credited for federal retirement, and that the CIA had always acted under this supposition. Declassified documents show that this was NOT the position of the CIA leaders in the era of Air America. The early leaders knew that such employees were federal employees under the law, that federal retirement laws applied to the CIA, and that retirement laws could not be altered without the permission of Congress. Larry Houston never sought to exempt the CIA from compliance with any aspect of federal law with respect to Air Americans. In addition to retirement laws, he knew for example that the Classification Act applied to Government-owned corporations and made sure Air America salaries were kept in line with the GS ratings for Government employees under this Act. On page 6 of your Booklet we have provided excerpts from various documents showing the US Government control over Air America compensation and the CIA's insistence on compensation equity among its personnel. Air America personnel were NOT permitted to be compensated more than other CIA personnel rated at the same GS level in the same locale.

Where the CIA struggled in the operating years was with the secrecy requirements of what had begun as a CIA Project but grew beyond its originally intended scope. The multinational nature of the entities created legal obligations on many fronts, including to the employees. Secrecy requirements did not erase those obligations and the early CIA leaders were aware of this.

FOURTH, Our research clarified some terminology. We discovered that internally, the Agency referred to "CIA personnel" in describing its "manpower worldwide". "CIA personnel" included staff employees, contract employees, military employees, contract agents, proprietary employees, and a few other categories. The claim of Air Americans to federal retirement credit is not based on their status as CIA staff or contract employees. The CIA has argued that Air Americans were NOT CIA staff employees. Indeed most were not. Air Americans were federal Government employees of a federal Government entity. The

CIA claimed them as “CIA personnel” based on the administrative responsibilities for Air America that the CIA was assigned by the US Government.

In declassified documents, we learned that the Agency’s leaders in Air America’s day spoke of the CIA’s responsibility for the livelihood of *all* of its personnel and discussed its moral obligation to ensure retirement benefits, particularly to individuals working overseas in challenging conditions.

FIFTH, The CIA’s narrative had always led us to think that perhaps the CIA was just too preoccupied with the war effort in the operating years to concern itself with retirement. Maybe this was why in its post-dissolution arguments against retirement credit the CIA never identified any earlier retirement discussions. Maybe there were none.

Actually, we learned, that our assumptions were wrong. We had been led astray. Declassified documents showed us that during the operating years, the CIA had in fact discussed retirement at great length.

We discovered that beginning in the early 1960s, the CIA began lobbying Congress for a separate, enhanced retirement system, with a 10-20% premium over civil service retirement benefits to a select group of employees.

The basic qualifications for inclusion in this system, called CIARDS, were a senior management position in the Agency, OR: a minimum of 5 years of experience working abroad in any locale, in any capacity, OR for domestic positions: working under hazardous conditions, OR not being able to explain one’s connection to the CIA or to the US Government.

These qualifications actually describe all of the Air Americans for whom we seek only civil service credit today.

In promoting its proposal to Congress, the CIA described the kind of employees deserving of premium credit as those who faced:

- Hostile action and the clinical health hazards of spending time abroad
- Travelling and working overseas...
- Frequenting remote areas under primitive conditions
- Travel via by poorly maintained local air transport
- Use of crude landing fields, which do not meet U.S. safety standards

The CIA leaders also singled out employees responsible for maintaining a secret cover as bearing a particularly heavy burden worthy of premium credit.

Now, who else was subject to the “use of crude landing fields” if not Air America pilots?

Who was primarily responsible for maintaining the cover of Air America if not Air Americans, many of whom carried false identification cards issued by the US Government and some who were regularly subjected to polygraph tests, a practice not followed at the time by DOS, DOD or even the FBI. In fact, the Federal Personnel Manual at that time expressly forbade polygraph examination by federal agencies, except those that have “*a highly sensitive intelligence or counterintelligence mission directly affecting national security*, such as Air America.

So, were Air Americans included in CIARDS?

We continued researching.

We learned that after extensive CIA lobbying, Congress finally agreed to CIARDS in 1964 on the basis of these descriptions of employee conditions, but Congress hesitated to turn over retirement matters fully to the CIA. From the outset, Congress maintained a significant degree of control, limiting the number of employees the CIA could transfer from Civil Service to the new system to 400 in each of two 5-year quota periods, 1964 -1969 and 1969 - 1974.



In implementing CIARDS, the CIA established a Retirement Board that handpicked people for eligibility in classic "old boys' club" fashion. They even referred to CIARDS as "the Club." Declassified Board Meeting Minutes show that the Board discussed at least one Air American at length and included him in CIARDS. They also included senior executives of other proprietaries.

In 1973, toward the end of the second 5-year quota period, the Board was aware that it was pressing up against the quotas. During one of the discussions of approving an Air American, the Board raised the issue of the sheer number of employees coming up who were eligible for consideration in "the Club". It was reported that Top Management's suggestion was to push off as many people as possible until after 1974, when Congressional babysitting with its quotas was due to end. In late 1973, a CIA actuary realized he had in fact made a very significant error in his calculations. He reported that the number of CIARDS retirements already approved exceeded the Congressional quota by a factor of 3. There would be no CIARDS retirement slots at all for 1974 without another uncomfortable trip to Congress.

Now, let's remember what else was going on at that point in time:

REMEMBERING 1973:

Henry Kissinger's Paris Peace talks had not brought an end to the fighting in Southeast Asia; in fact the war was escalating.

The CIA's relationship with Congress was deteriorating and investigative committees were forming to look into, among other issues, the CIA's administration of its proprietaries, principally Air America.

And very significantly, Larry Houston retired in June 1973

John Warner, who had worked with Larry Houston since 1947, stepped in as CIA General Counsel and was left to cope with the CIARDS quota fiasco. The CIA had to go back to Congress to explain its quota violation. Congress was not at all amused and reacted by extending the CIARDS quota period for an additional 5 years, from 1974 - 1979.

What Congress had done without realizing it, was to have eliminated the CIA's possibility of including Air Americans in CIARDS given their numbers. And because of the escalating situation in SE Asia, the secrecy surrounding Air America remained a top priority of the National Security Council and therefore of the CIA. The CIA saw it as impossible at this point in time to reveal to Civil Service Commission the US Government connection to Air America. The Air America retirement situation remained unresolved.

Between 1973 and 1976, John Warner's problems continued to pile up.

In the fall of 1973, a major problem arose unexpectedly, a federal agency called the Renegotiation Board, charged with reviewing Government contracts with private entities to guard against "excessive profits", suddenly contacted Air America, requesting to review all of its contracts with DOD going back to 1966.

The Renegotiation Board appeared to be unaware that Air America had only been posing as a "defense contractor". The burdensome task of retroactive review, combined with rumblings about criminally prosecuting Air America executives for overcharging the Government, compelled John Warner to reveal in writing that Air America was in fact the US Government. This is the first time we found the CIA putting in writing to another Government Agency, albeit on a classified basis, that Air America was synonymous with the US Government. On page 9 of your Booklet we have included excerpts from some of the documents related to the Renegotiation Board issue.

While the Renegotiation Board was trying John Warner's patience for 3 long years, 1973-76, remember what else was happening toward the end of this period:

In 1975:

The Church Committee started investigating the CIA and its proprietaries.

Air Americans, now mostly in Washington DC, were engaged in the complexities of selling off its assets.

Air Americans in Southeast Asia were evacuating Danang and most famously, on April 29, 1975, Larry and his Air America colleagues are rescuing CIA employees and evacuating Saigon.

In 1976:

Air Americans working alongside their CIA colleagues completed the dissolution of the Air America complex.

Air America returned \$25 million to the US Treasury, of which 60% was required to go into the Civil Service Retirement Fund where it remains recorded as an asset today.

John Warner retired from the CIA in June 1976.

In spite of his adamant admission that Air America was “the US Government”, John Warner never found a way to work with Congress or the Civil Service Commission to properly credit Air Americans in either CIARDS or Civil Service. For all of their decades of heroic work, depicted so dramatically the year before in the iconic rooftop helicopter photo, the Air America retirement issue was still unresolved upon dissolution in 1976, and upon Mr. Warner’s own retirement that year.

We discovered it was at this point that the CIA first began its opposition to retirement credit, and Carolyn will now tell you how things went amiss.

## **POST-DISSOLUTION 1976-PRESENT: THE BEGINNING OF THE INACCURACIES AND THE OPPOSITION**

Carolyn Dowling

This retirement predicament could have been avoided if the CIA had been upfront with Congress and the Civil Service Commission about the federal nature of Air America in 1976 or shortly thereafter, when Air America was dissolved and national security was no longer a valid rationale for secrecy.

The CIA could have asserted that growing Air America had not been the intent of the Agency alone, and that the whole National Security Council, and therefore the U.S. government, should be responsible for federal recognition of Air Americans. Funds to do so were available at the time in the \$25 million dollars that Air America had returned to the Treasury.

Instead, the CIA got stuck.

It was in the period from 1976 to 1978 that things fell apart.

After dissolution, and after the investigations of the Church, Rockefeller and Pike Committees, inaccuracies regarding Air America began to be advanced by the Agency. What was put in writing to outside agencies and when, is significant, because once it was put in writing, it became a position that had to be defended to this day.

Prior to 1976, the CIA hadn’t disclosed to other agencies of the Government that Air America was a US Government corporation. When it had no choice but to put that in writing to the Renegotiation Board, it did so, but on a classified basis, not taking a public position.

As Maureen explained, though, Larry Houston had retired in 1973 and John Warner did so in April 1976. These men had been with the CIA since the OSS days, and they had worked with Air America throughout its existence. Their departure left John Morrison, to fill the void as the next General Counsel, but he served only in an Acting Capacity and only from April until June 1976.

At that time, former Air Americans were applying directly to the Civil Service Commission, and they were being turned away. Mr. Morrison was under pressure to maintain the secrecy about Air America.

Needing to respond to inquiries regarding these applicants, yet finding no clear alternative, Mr. Morrison responded with numerous inaccurate statements regarding the US Government's connection to Air America employee status, pay, and federal supervision. You will find a few examples on page 11 in your Booklet.

In his letter to the CSC, now declassified, Mr. Morrison wrote that Air Americans were not hired or appointed by US Government officials but by Air America "corporate personnel." However, this is contradicted on page 8 by the 1956 CIA Memorandum, which describes the CIA Director's approval of the appointment of Air America pilots by the CIA Deputy General Counsel, with implementation including the assistance of CIA personnel department staff.

Mr. Morrison's statement, downplaying the U.S. Government's supervision and direction of Air America, is refuted in a 1968 letter on page 11 in your Booklet, from Jim Cunningham to my father, Henry Bevans, remarking the CIA's long distance micromanagement of Air America.

And CIA Director William Colby had already disclosed the extent of government control in his statement to the House Intelligence Committee in August 1975, saying that CIA proprietaries are operated "under close control by Agency officials."

In conducting our research, we found that Mr. Morrison wrote his letter to the CSC on the very one-year anniversary of the April 29, 1975 final evacuation of Saigon.

Then came 1977, and more inaccuracies. By this time, Congress was much more engaged, and the House Intelligence Committee asked the CIA whether proprietary employees were included in the CIARDS system. Well, then Acting CIA Deputy Director John Blake couldn't have known back in 1977 that the Retirement Board Meeting minutes would someday be declassified and accessible to the public. Still protected by secrecy, Mr. Blake responded that: "*Proprietary employees are not participants in CIARDS because they are not employees of the United States Government.*"

But as Mr. Merrigan has explained, this was not accurate. The law in 1977 was clear, and the CIA had in fact selected more than one proprietary employee, including at least one Air American, for CIARDS.

The Agency knew in 1978 that its position was in conflict with the law at the time, and that the secrecy rationale was receding.

At this time the Agency even considered proposing changes to the law to address this waning rationale for its lack of compliance with federal retirement law. One attorney suggested proposing even greater CIA authority over federal retirement for its employees. And further on, in 1982, the Agency contemplated asking Congress to eliminate the legal rights of proprietary employees, by amending their right to appeal to the Merit Systems Protection Board and the federal courts. Determinations instead would be made by the CIA Director, with no right of appeal.

Ultimately, Congress was not receptive to any of these CIA suggestions that Congress cede its authority over federal retirement credit to the Agency. In fact, Congress ended the preferential CIARDS system in 1984.

By this time, the Air America retirement issue had become siloed within the General Counsel's office. Air Americans lost their court cases in the late 1980's, because the fact that Air America was a wholly owned government-owned corporation with government-level salaries and restrictions on employees was still classified up until the year 2000. The court cases presumably would have been decided much differently if the courts had been allowed to consider that fact. But the CIA didn't speak up.

Despite its opposition since 1976, the CIA has never been able to completely get out from under the retirement credit issue. The State Department and Congress ensured that the employees of a group referred to as the Radio Frees, the Asia Foundation and other former CIA fronts were granted credit in

1980. And in 1986, as Mr. Merrigan mentioned, Congress granted retirement credit to a navy civilian intelligence group whose situation mirrors that of Air Americans.

But after 1986, the CIA was able to rely the OPM rule change that Mr. Merrigan discussed, and which was, and continues to be, in a most un-American manner, applied retroactively to Air Americans.

Looking at how the situation developed over time, what the declassified documents now tell us is how much the CIA has continued to rely on these old arguments. In 2009, when the Senate asked for a Report on the retirement situation with an eye toward completing the legislative effort, DNI/CIA researchers, without any real expertise on Air America, looked back only to those inaccuracies laid out by John Morrison, John Blake and others in the 1976-1978 time period, and to the court cases wherein the fact that Air America was a wholly owned U.S. Government corporation was omitted. They repeated those arguments. And they continue to do so now.

So, this is where we are today. Outside the beltway, we can't find anyone who isn't appalled at the current situation. We have been told on a number of occasions that the DNI does not wish to revisit the issue and wishes it would just be considered settled. No wonder! But with continuing declassification, this CIA position cannot continue to hold up.

## **MOVING FORWARD**

Maureen Ebersole

There are a number of points we want to leave you with as we go forward in continuing to press for appropriate legislation and an accurate reset of Air America history. What are the takeaways from today? How can we best move forward with the CIA and Congress?

Just two weeks ago, James Clapper told us that the role of the Intelligence Community is to "Speak Truth to Power". We are here to speak truth to those who profess to Speak Truth to Power. For any intelligence agency, it is just as important to hear Truth. We hope you're listening, Gina Haspel and others of the "7<sup>th</sup> floor" at Langley.

We respectfully ask you to take a fresh look at the Air America situation and bring it in line with the declassified materials now readily accessible to the public. We have learned that those at the top at the Agency have left this issue to lower level employees. We have communicated with former DCI Leon Panetta, with former Director of National Security James Clapper, with a former General Counsel of the CIA, and a former General Counsel of the ODNI, and none were familiar with the essence of the objections, or so they told us.

A higher-up at the Defense Intelligence Agency was appalled at the current situation and told us that and the IC's culture and the incentives at lower levels do not encourage employees to refute previous positions or to undo what has been done. The Air America retirement issue requires action from the very top level of leadership—the same level that took responsibility for administering Air America in its day.

Top leadership may be surprised to learn that last spring, in discussing the Air America Retirement Credit Legislation, a Senate staff member asked CIA staff why they opposed federal recognition of the former employees of Air America for their very federal work for the entire U.S. Government. A CIA staff member responded: "Because Air America was a private company." The Senate staff member was taken aback, and said, "This is 2018. We all know that Air America was not a private company," and he produced a declassified document fully supporting the fact that Air America had been wholly owned, directed and controlled by the U.S. Government. The CIA staffer looked surprised and asked, "Where did you get that?" and the Senate staff member replied, "Off of your website."

We do not operate under the constraints of Agency employees, but feel a deep loyalty to the Agency's history and its missions. It is not our objective to undermine the Agency, but we cannot allow the use of

the CIA's name or power to override historical truth about OUR Air America. Our foremost intelligence Agency cannot be perceived as misrepresenting the truth or worse, not knowing its own historical truths laid bare in publicly available documents. Requiring or expecting today's younger generation of CIA employees to uphold yesterday's narrative leaves too many questions without defensible answers in the face of declassified documents.

Why, if one Air American was eligible for CIARDS, others are not eligible for at least civil service retirement credit?

Given the description of the qualifications for CIARDS, why would Air Americans not qualify for at least civil service retirement credit?

If other CIA personnel working with Air Americans in the same locale with the same Government-controlled compensation deserve premium credit, why would Air Americans not qualify for at least civil service retirement credit?

Why would CIA "Senior Management" qualify for premium credit but "Senior Management" at Air America not qualify for any credit at all?

How would "Support personnel" in Washington, supporting Air America operations overseas, be eligible for premium credit, but the Air Americans themselves eligible for nothing at all? This is like giving the MVP award in the current NBA finals to the head coach, or the training staff, or the popcorn vendor in the stands, as opposed to the best player on the court.

Air Americans played a heavier role daily in the shared burden of maintaining the cover, part of which included random Government polygraph tests as directed by the Agency. Why would Agency employees earn credit for administering such tests, but not the Air Americans subjected to such polygraph tests?

Why does the CIA discourage credit in light of the clearly federal work Air Americans did, not just for the CIA but for the entire US Government? What is the value to US Intelligence today for CIA employees to be spending time and resources opposing retirement credit for elderly Air America---why would current employees have any interest whatsoever?

And the question that everyone asks: Why on earth does that helicopter pilot on the Saigon rooftop in April 1975 not have federal retirement credit?

The CIA's opposition to Air America retirement credit has hurt many patriots and their families, with no benefit whatsoever to the CIA or the American public.

Pushing the issue down to the level of "CIA Historians" has not resulted in an accurate history. "Historians" have the same accountability as sportscasters, stockbrokers, and weather forecasters, although they are of course expected to revise their analysis in light of new information.

According to one analyst, those defending the passé narrative today are reminiscent of soldiers emerging from hiding decades after a war has ended, still devoutly loyal to their long dead leaders and unaware that their cause has no relevance to the realities of the current day.

We have heard from young CIA employees who tell us of the glorification of Air America at the Agency---the paintings, the plaque, the challenge coins in the gift shop and the almost mythical reputation. The retirement situation is never mentioned to younger employees. When made aware of the situation, one asked us: "What's up with "the schizophrenia" at Langley?"

On Capitol Hill, phrases have been coined such as "Glory without responsibility" and "technicality without morality"---this is not the optimal CIA legacy for its history with Air America or for the CIA image today.

It is clear that the CIA does not speak with one voice on Air America. The Agency today uses Air America extensively as a recruitment & training tool, promoting the characteristics of patriotism, truth, honor, and humility that Air America symbolizes. The glorification of Air America is impossible to reconcile with a position against retirement credit. It pins a bureaucratic rationale against the heroism of CAT/Air America; desk jockeys vs. pilots in war zones. The opposition to retirement credit does not jive with five CAT/Air Americans on CIA Wall of Stars. This is reminiscent of the legendary market fail of New Coke in the Cola Wars. The denial of credit to Air Americans is the market fail of the Cold War for the CIA.

The Air America issue has been alive in Congress for 15 years---there is a desire among many to understand what has happened and to get it right.

Legislative action will be greatly facilitated when today's CIA leadership makes clear to Congress that the Agency is not continuing an unjustifiable position against credit. This does not require any admission of error on the part of the Agency or any fanfare that would make the Agency look bad.

We will continue working on the Air America legislation on Capitol Hill. The Senate Intelligence Committee voted last year not to include the legislation in the Intelligence Authorizations bill, but we lost by only 2 votes and the ultimately, the bill did not pass anyway. But, coming as close as we did, the issue will be revisited and voted on again. The CIA will hopefully cease lobbying against our efforts.

As we move forward, we want to thank Intelligence Committee Senators Marco Rubio of Florida, Dianne Feinstein of California, John Cornyn of Texas, and Vice Chair Mark Warner of Virginia and their remarkable staff members, especially those on the Intelligence Committee and the Military Legislative Assistants in their personal offices.

We also extend our appreciation to Senators Tom Cotton of Arkansas and James Risch of Idaho who supported us with their votes---we appreciate their expertise in US foreign relations and commitment to people who served this country. Their Committee staff members and their military staff assistants have our deepest gratitude. Senator Cotton sent a message yesterday that he would have been here today had he been in Washington this weekend.

We also appreciate Senator Patty Murray of Washington and to Senator Maisie Hirono of Hawaii, and their staffs. They are always first to cosponsor our legislation. Other cosponsors we thank include: Senators Baldwin, Cantwell, Casey, Gillibrand, Klobuchar, Menendez, and Schumer.

We have provided a list of the Senators on the Intelligence Committee. We encourage all of you to call as many as possible, to thank those indicated and to encourage all of them to cosponsor the Air America Retirement Credit Legislation in the near future.

We look forward to Congressional action and to celebrating our joint history with the CIA on an accurate basis.

We will keep moving forward.