

Worried CIA Officers Buy Legal Insurance

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I thought this very interesting and thank one of the MC Forum members for bringing it to my attention.

Worried CIA Officers Buy Legal Insurance

Plans Fund Defense In Anti-Terror Cases

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CIA counter-terrorism officers have signed up in growing numbers for a government-reimbursed, private insurance plan that would pay their civil judgments and legal expenses if they are sued or charged with criminal wrongdoing, according to current and former intelligence officials and others with knowledge of the program.

The new enrollments reflect heightened anxiety at the CIA that officers may be vulnerable to accusations they were involved in abuse, torture, human rights violations and other misconduct, including wrongdoing related to the Sept. 11, 2001, attacks. They worry that they will not have Justice Department representation in court or congressional inquiries, the officials said.

The anxieties stem partly from public controversy about a system of secret CIA prisons in which detainees were subjected to harsh interrogation methods, including temperature extremes and simulated drowning. The White House contends the methods were legal, but some CIA officers have worried privately that they may have violated international law or domestic criminal statutes.

Details of the rough interrogations could come to light if trials are held for any of the approximately 100 detainees who were held in the prisons. President Bush announced last week that he had transferred the last 14 detainees in the facilities to the military prison at Guantanamo Bay, Cuba, and had submitted a proposal to Congress for the rules under which the administration would like the suspects to be tried.

Terrorism suspects' defense attorneys are expected to argue that admissions made by their clients were illegally coerced as the result of policies set in Washington.

Justice Department political appointees have strongly backed the CIA interrogations. But "there are a lot of people who think that subpoenas could be coming" from Congress after the November elections or from federal prosecutors if Democrats capture the White House in 2008, said a retired senior intelligence officer who remains in contact with former colleagues in the agency's Directorate of Operations, which ran the secret prisons.

"People are worried about a pendulum swing" that could lead to accusations of wrongdoing, said another former CIA officer."

The insurance policies were bought from Arlington-based Wright and Co., a subsidiary of the private Special Agents Mutual Benefit Association created by former FBI officials. The CIA has encouraged many of its officers to take out the insurance, current and former intelligence officials said, but no one interviewed would reveal precisely how many have bought policies.

As part of the administration's efforts to protect intelligence officers from liability, Bush last week called for Congress to approve legislation drafted by the White House that would exempt CIA officers and other federal civilian officials from prosecution for humiliating and degrading terrorism suspects in U.S. custody. Its wording would keep prosecutors or courts from considering a wider definition of actions that constitute torture.

Bush also asked Congress to bar federal courts from considering lawsuits by detainees who were in CIA or military custody that allege violations of international treaties and laws governing treatment of detainees.

The proposals have won mixed reviews in the Senate, where they are generally opposed by Democrats and a group of dissident Republicans. The proposals were deliberately omitted, for example, from competing legislation circulated last week by Senate Armed Services Committee Chairman John W. Warner (R-Va.), Sen. John McCain (R-Ariz.) and Sen. Lindsey O. Graham (R-S.C.).

Several former intelligence officials who said CIA officers do not need insurance because they can rely on the government to defend their lawful actions depicted the growing number of policies as a barometer of the uncertainty officers have of the legality of their work.

A recently retired CIA officer who said he had not bought insurance contended that "if an individual does get sued in the course of their official duties, then you get the biggest law firm in the world to step in" -- the Justice Department. Justice regulations allow defending federal workers if the conduct is within the scope of an employee's job and doing so is in the government's "interest."

The insurance, costing about \$300 a year, would pay as much as \$200,000 toward legal expenses and \$1 million in civil judgments. Since the late 1990s, the CIA's senior managers have been eligible for reimbursement of half the insurance premium.

In December 2001, with congressional authorization, the CIA expanded

the reimbursements to 100 percent for CIA counterterrorism officers. That was about the time J. Cofer Black, then the CIA's counterterrorism chief, told Bush that "the gloves come off" and promised "heads on spikes" in the counterterrorism effort.

"Why would [CIA officers] take any risks in their professional duties if the government was unwilling to cover the cost of their liability?" asked Rep. Rob Simmons (R-Conn.), a former CIA officer, during congressional debate that year.

Although suing federal officials for their actions is not easy, it is possible; the Supreme Court left the door ajar in two rulings. It ruled in 1971 that six narcotics agents could be sued for monetary damages arising from a warrantless search. Eleven years later, it held that government officials should be immune from civil liability only if their conduct does not violate clear statutory or constitutional rights that should be known by "a reasonable person."

William L. Bransford, a senior partner at the law firm that defends people who take out the insurance, said he is unaware of any recent increase in claims. But agency officials said that interest has been stoked over the years by the \$2 million legal bill incurred by CIA officer Clair George before his 1992 conviction for lying to Congress about the Iran-contra arms sales; by the Justice Department's lengthy investigation of CIA officers for allegedly lying to Congress about the agency's role in shooting down a civilian aircraft in 2001 in Peru; and by other events.

One former intelligence official said CIA officers have recently expressed concern that lawsuits will erupt if details of the agency's internal probe of wrongdoing related to the September 2001 attacks become public.

In his report, CIA Inspector General John L. Helgerson recommended that the agency convene an accountability board to examine the actions of senior officials. But last October, then-CIA director Porter J. Goss rejected the advice and decided the report should remain secret.

CIA spokesman Mark Mansfield said Friday that "it's fair to say that more employees have chosen to get this insurance, including those who work in counterterrorism." He said the agency's office of general counsel "advises employees to consider it" and called it a "prudent measure, in case of legal claims." But he said more employees at other federal agencies are also enrolling.

CIA employees outside the counterterrorism field who are eligible for reimbursement include the agency's supervisors, attorneys, equal-opportunity-employment counselors, auditors, polygraph examiners, security adjudicators, grievance officers, inspectors general and internal investigators, he said. One in 10 eligible employees sought reimbursement last year, Mansfield said, adding that

the fraction from previous years and a breakdown on those in the counterterrorism field were not immediately available.

Brian Lewis, president of Wright and Co., confirmed that the number of new policies "has gone up, especially in the last two years." But he said that the company lumped CIA officers with Justice Department employees who also have the insurance and that he did not have exact numbers for the CIA.

Robert M. McNamara Jr., the CIA's general counsel from 1997 to November 2001, said he advised station chiefs to buy the insurance. "The problem is that we are the victims of shifting winds here," McNamara said he told the officers. "I can't sit here and tell you in all cases that I will be able to defend you."

However, McNamara's predecessor as CIA general counsel, Jeffrey H. Smith, said: "I'm deeply troubled that CIA officers have to buy insurance. . . . There should be clear rules about what the officers can and can't do. The fault here is with more senior people who authorized interrogation techniques that amount to torture" and should now be liable, instead of "the officers who carried it out."