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Roy Krieger and Mark Zaid have a typical employment practice- if you leave out elements such as embassy bombings and the fear of eavesdropping during depositions.

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BODY:

One morning last June Federal Bureau of Investigation agents rolled handcarts bristling with electronics gear into the Washington, D.C., offices of Krieger & Zaid. The team peeked, probed, and poked into the recesses of a standard-issue conference room. Three hours later, the agents pronounced the space "clean," with the provisos that no cell phones were to be allowed inside and fluorescent lights were to remain off-because they could conduct sound waves that could be tapped. This is clearly not how the day starts at most law firms, but for Mark Zaid, 36, and Roy Krieger, 49, it was run-of-the-mill stuff. The pair has built a practice around a niche that's about as narrow as any out there: They represent operatives of the Central Intelligence Agency.

The occasion for the FBI sweep was an interview with a former operative whom Krieger and Zaid were defending in connection with a criminal investigation into a leak of information classified above "top secret." The operative had refused to be interviewed at a CIA facility, based in no small part on a well-developed antipathy to his former employer. He is not alone. In the year since Krieger & Zaid opened its doors, intelligence operatives from a variety of agencies have been walking in at a pace of roughly one per week. Additionally, the firm is in the midst of a five-year-old class action against the agency that was initiated by Krieger even before the formation of the firm.

Krieger's secret agent practice began by accident in 1996. An undercover CIA operative identified in court papers as "G.A." walked into the office building that houses the Alexandria, Virginia, municipal court. Described by Krieger as a man "who has changed history on several occasions," G.A. scanned the building directory and entered the firm of Paleos & Krieger, unannounced. Krieger, who then specialized in insurance and aviation litigation, met with G.A. only because he had slightly more criminal experience than anyone else at the small firm.

Krieger will not say much about G.A.'s career, other than that he was a high-ranking operative in paramilitary operations. Over the course of a dangerous career, G.A. was awarded the CIA's most distinguished honors and awards. He was, according to Krieger, a real-life James Bond. But a change of fortunes in a CIA career can be abrupt, according to Krieger: "One day you're powerful, the next day you're escorted out of the building, and the FBI is waiting at home." Which is almost exactly what Krieger says happened to G.A.

G.A.'s troubles began in 1995 with an FBI intelligence report. The document, according to Krieger's complaint, alleged that in 1993 an operative with a name similar to G.A.'s "had boasted of having access to \$2 million . . . claimed the ability to facilitate business deals through access to Western oil industry contacts, expressed disenchantment with the U.S. government, and engaged in sexual contact with a foreign national female identified . . . as Galina." G.A. insisted that all of the claims were untrue, but found himself subjected to repeated interrogations and polygraph exams. In a twist that would have made Kafka proud, G.A. was unable to obtain a "clean" polygraph result, because the examiners didn't have high enough security clearance to hear the answers to the questions they were asking. G.A. was barred from all CIA facilities and placed on "indefinite administrative leave" until he obtained a clean polygraph.

How does an operative with a sterling record suddenly find himself jobless? G.A. insists that it was retribution for claims he had made in the wake of the 1994 arrest of Aldrich Ames, the since-convicted Soviet spy. Ames had operated as a "mole" within the CIA for years, turning over sensitive information and the names of agents to the Soviets. But G.A. told a CIA task force that the Soviets had intentionally given up Ames to steer attention away

from an even more valuable mole. This information was not well received at CIA headquarters, which was still reeling from the Ames disclosures, and G.A. was reprimanded by his boss. He was confronted with the FBI report shortly thereafter. Subsequently, with Krieger's help, he sued the CIA for failing to follow its own regulations and procedures in forcing him out of the agency.

In retrospect, G.A.'s warning seems eerily prescient. In 2001 FBI agent Robert Hanssen was exposed as a longtime Soviet mole. G.A.'s precise claims are classified, and no public record indicates that he warned of Hanssen by name [although Krieger says he knew him "very well"]. But the coincidence is remarkable. In 1998 G.A. reached a settlement [on classified terms] with the CIA.

As with this and all Krieger and Zaid's agency-related caseload, the CIA refused repeated requests for comment.

Krieger says he "fell" into his espionage legal practice. But he maintains that Zaid "has it in his DNA." Zaid's interest in foreign intelligence was sparked by a longtime fascination with the assassination of John F. Kennedy. [He believes the CIA was involved in a cover-up to protect its activities in Cuba.] One of Zaid's first intelligence cases came shortly after his 1992 graduation from Albany Law School of Union University. He was introduced to a man whose father had been the CIA station chief in Mexico City when Lee Harvey Oswald visited shortly before the assassination. The man wanted access to a classified manuscript written by his since deceased father that had been made available to the Warren Commission. The case was settled in a way that gave the son access to new information, and Zaid's career was born.

Zaid spent most of the next decade working as a solo practitioner and of counsel in the Law Offices of Allan Gerson [former chief counsel to the U.S. Mission to the United Nations], where he represented members of the U.S. intelligence community, as well as journalists and media organizations [including American Lawyer Media] in Freedom of Information Act applications and appeals. He quickly appreciated the importance of the court of popular opinion when confronting government bureaucracy. "I learned early on to embarrass them in public," he says. Pamela Stuart, a solo practitioner who also brings cases against the agency, says Zaid never went through the "adolescent stages" of lawyering: "He took on very major cases from the very beginning."

Krieger's approach was more academic. Before entering American University's Washington College of Law, he acquired a master's degree at its School of International Service and held a fellowship in the U.S. Department of State's Office of Counterterrorism. Thereafter, he concentrated in aviation litigation, until the day G.A. walked in.

Today Krieger and Zaid are ensconced in small offices leased from Tighe Patton Armstrong Teasdale. The principal decor is piles of books on foreign intelligence and overflowing file boxes marked with notations such as "al-Fayed." [Dodi Fayed's father, Mohammed, has hired the firm to represent him in his private investigation into the death of his son and Princess Diana.] The partners' casual banter and dress code-khakis and work shirts are acceptable-belie their knowledge of secrets they cannot share with their spouses, and sometimes even with each other.

Not many attorneys have the experience-or the security clearance-to represent intelligence operatives. Zaid estimates the universe at no more than a handful. In that small world, Krieger and Zaid had cooperated on several cases over the years, and the two realized it made sense to join forces, which they formalized in 2002. They usually work without the support of associates, hiring additional lawyers and support on a case-by-case basis. But Carol Elder Bruce, a partner at Tighe Patton, says the pair has taken on so much extra work that they would "benefit by having additional hands on board."

A lot of what Krieger and Zaid do for the majority of their more than 100 intelligence agency operatives is routine civil practice, with one big difference: Most of the relevant facts, rules, and regulations are classified "secret," "top secret," or even "sensitive compartmented information." Whenever the CIA is involved, according to Zaid, "it fundamentally changes the landscape of the case, significantly."

Although the Jeffrey Sterling case is unusual in its details, it typifies what Krieger and Zaid claim is a pattern of callous and unlawful behavior by the agency toward certain of its employees. Sterling, a former CIA operative, alleges that during his employment with the agency he was subjected to racial discrimination, because he is African American, then retaliated against for pursuing his claim. Despite speaking Farsi and gaining the skills to work covert operations, he alleges that he was repeatedly denied work opportunities by the agency that trained him. According to

Sterling's complaint, management told him that he "could not be operationally inconspicuous based on his size, skin color, and the use of a language not typically spoken by an African American." Sterling informed the agency that he planned to file suit in 2000; all employees must alert the CIA about any suit they intend to file, even those against superiors. After that, Sterling says, the CIA ordered a complete security check even though he was not scheduled to undergo one of the exhaustive reviews for another year.

Exploring that claim-and others-would be easier if files were not so often heavily redacted and classified. And beyond the sometimes labyrinthine defenses erected by the agency, says Krieger, lies an emotional cost suffered by many plaintiffs. "It's a very lonely fight," he says. "When something bad happens to people in this community, they are ostracized."

Janine Brookner, a former CIA station chief turned lawyer, agrees. In 1994 she successfully sued the agency for falsely accusing her of harassment. "You are so isolated and so alone when you decide to sue the agency," she says, "partly because of the supposed secrecy of everything you do." Brookner, who has represented some 20 CIA employees in cases against the agency and is author of the just-published *Piercing the Veil of Secrecy: Litigation Against U.S. Intelligence*, says that litigating against her former employer is not for the faint of heart: "It's emotionally difficult, it's financially difficult, and the CIA puts so many obstacles in your way."

In some cases, say Krieger and Zaid, their role transcends that of traditional attorney. Using client privilege, they become friends, advisers, even psychologists. "It's a strain on us," says Zaid. "We're not trained to do this, to [psychologically] counsel someone."

Whether the facts are mundane or earth-shaking, Krieger contends that "there was an obvious pattern that was beginning to emerge." The attorneys concluded the practice was so widespread that in 1999 they filed a suit on behalf of a class now numbering 13 current and former CIA operatives. The suit is based on what they argue is their clients' First Amendment right of "petition to seek redress." Specifically, they claim that the operatives' access to the courts is being blocked by the agency's obstruction of their right to the effective assistance of counsel. Krieger, citing an emerging body of case law, expects eventual review by the U.S. Supreme Court.

David Adler, another onetime CIA operative turned attorney, at least partly confirms that observation: "There certainly is a sentiment of 'Don't talk to anyone.'" A labor lawyer who recently won a reversal of one of the convictions of alleged rogue CIA operative Edwin Wilson, Adler adds that the practice is even worse than what can happen at large corporations and other bureaucracies. "It gets bad when secrecy is added to the equation," he says. "They try to get an upper hand on a lot of problems by claiming national security or secrecy."

Although the CIA refuses comment, former lawyers for the agency variously dismiss those claims or else say they ignore the unavoidable demands of national security.

Some complaints read like absurdist, even silly, twists from a Joseph Heller novel. But the error that led to the accidental bombing of the Chinese embassy in Belgrade in 1999 makes no one laugh. One plaintiff alleges that he was scapegoated for the mistake. The Russian-born operative claims he suffered discrimination after a colleague failed to notice-on a map being used to identify coordinates-that a street changed names when it went under an overpass. [CIA superiors had approved the coordinates.]

While the fact patterns differ, all 13 plaintiffs allege they were denied effective counsel. Zaid and Krieger claim that the CIA does this routinely. When employees inform the agency that they plan to file a suit, they say, pressure is often brought to keep them away from attorneys; they are told they don't need lawyers, that they're too expensive, or that hiring counsel will make them look guilty. When a suit is filed, add the lawyers, the agency is extraordinarily tightfisted with documents. Says Zaid: "The government usually lies or misleads-usually misleads-about the nature of the classified information."

There are other allegations of intimidation, says Zaid. Several plaintiffs in the class action have been asked about their cases during routine polygraph sessions required to maintain security clearances. Any question not answered can result in the revocation of a security clearance-which remains the CIA's trump card. Without such clearance, operatives typically can't even receive assignments. Nor can they find work in their field on the outside. Every consulting firm and contractor working in the national security and defense industries requires its employees to have

secret clearances, says Joseph Trento, author of *The Secret History of the CIA*. "To lose that security clearance and access to the building [CIA headquarters], you can't work anyplace," he says. "It's draconian."

Logistics complicate matters still further. When attorneys are given access to documents, they are required to look at them in secure environs. "A 15-minute conversation becomes a two-and-a-half-hour field trip," remarks Krieger. In cases where classified information comes into the mix, billable hours add up quickly. Despite the class action having generated billings of some \$500,000-much of it not collected-it has yet to reach the discovery phase. The government has filed hundreds of pages of motions seeking dismissals. Before that, it was in mediation, but that approach was destined to fail. "The CIA refused to give [security] clearance to the mediator," says Krieger. "He was the only one in the room without clearance, so he had to get up and leave whenever we discussed anything of substance." Once headed to trial, this case and others would be handled by the U.S. Department of Justice.

An agency spokesperson would say only that "the CIA does not comment on ongoing investigations." But Robert McNamara, Jr., who oversaw the activities of 110 lawyers as CIA general counsel from 1997 to 2001 and is now a managing director with Manatt Jones Global Strategies [an international consulting service allied with Manatt Phelps & Phillips], takes issue with many of the claims. "I understand the frustration of some lawyers, but when you walk through the intelligence wall, you give up some things," he says. McNamara stresses that CIA employees do not surrender their rights, but he says that a balance must be achieved between justice and national security. "The CIA has a statutory responsibility to protect sources and methods and a constitutional responsibility to protect the chief executive's [the president's] authority in this area."

McNamara also stresses that during his years as general counsel, CIA employees had open access to private attorneys: "Never during my tenure did we suggest that an employee not contact an attorney. In fact, we would help them find counsel-ideally, counsel with appropriate security clearances." He acknowledges that it can take a long time for anyone, including lawyers, to be cleared above the top-secret level [Krieger and Zaid resent the mixed clearances they have as a result of what they call its patchwork approach], and even then there is no guarantee of gaining access to all they might be looking for. The same notion was echoed by Stanley Sporkin-the former U.S. district court judge, now a partner with Weil, Gotshal & Manges, who was agency general counsel during the 1980s. Sporkin also said that any attempts to impede employee counsel would represent a departure from practice during his tenure.

Beset by extraordinary time requirements, compounded by clients on government salaries, Krieger and Zaid carry a sizable sum in receivables. So Krieger continues his aviation practice, and Zaid continues handling FOIA appeals. They may find some solace in their growing reputation. Better-known litigators still get many high-profile cases [see "Plumbing the Legal Depths," page 86], but even former CIA director James Woolsey has referred disaffected CIA employees to the partners. "They're good at this," says Woolsey.

Although the agency does not care for their cases, it does take the lawyers seriously-so much so that it sent instructors to provide a crash course in spy craft. [Among other things, the pair now know the technique for shooting through bulletproof glass.] Similarly, Krieger and Zaid have developed their own tricks of the spy lawyer trade, which are decidedly low-tech. In recording information, for example, they'll take a fairly complete set of notes on one legal pad, leaving blanks or letters that correspond to sensitive information. A second pad provides the code. Separate locations for paired pads makes a breach much tougher.

It's no surprise that the stress of handling so much sensitive material has forged a strong bond between the two. Their shared sense of the stakes was the reason behind their firm's formation in the first place. Says Krieger: "If you've got only one lawyer who knows the details about these cases, and he gets hit by a car, you're in trouble."

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