

DUSTY FOGGO'S GIRLFRIEND, JOHN RIZZO, AND THE SALT PIT

The AP story on the Salt Pit death makes it clear that—at a time when Dusty Foggo was Executive Director of CIA—he was involved in an internal review of the death.

The current U.S. official insisted that the case was adequately scrutinized. The official also said a CIA accountability review board was held in connection with the death.

The CIA declined to discuss whether the two agency officers cited in the inspector general's report were punished.

But when the case was put before Kyle D. Foggo, the CIA's third-ranking officer at the time, no formal administrative action was taken against the two men, said two former intelligence officials with knowledge of the case.

This review must have happened some time after fall 2004, when Foggo started in the ExDir position (it seems to have been a follow-on to the CIA IG Report). That means that Foggo's decision not to act against any of the people in the Salt Pit killing came at around the same time that his girlfriend was hired at CIA's Office of General Counsel over the objections of staffers within OGC. That's significant because among the people in the chain of authorization between the Bybee Memo and the torture was then OGC head John Rizzo, who intervened to make sure Foggo's girlfriend got and stayed hired.

Details of how Foggo got his girlfriend hired appeared in the sentencing documents for his

conviction in the Brent Wilkes/Duke Cunningham case (they were included not just to show Foggo's corruption, but also because, over the course of the case, Foggo had repeatedly claimed to be happily and faithfully married).

As William Mitchell of the CIA Inspector General's office described, Foggo's girlfriend, ER, was at first rejected by OGC because she had previously been investigated for having an affair with her boss (elsewhere the sentencing materials include Foggo's claim that "she didn't fuck him"), and then destroyed evidence to cover up the affair. But after OGC rejected her application, Foggo harassed the Managing Associate General Counsel of CIA, who then passed on Foggo's concern to then Acting General Counsel John Rizzo.

John Doe #3, a 20-plus year employee of the CIA, served as the Managing Associate General Counsel of the CIA in 2004 and 2005. He was responsible for overseeing the recruitment and hiring processes for the Office of General Counsel ("OGC"). In February 2005, OGC's Recruitment Subcommittee recommended against hiring a female lawyer with the initials E.R. Archibald learned that there was an Inspector General's (IG) Report of Investigation, issued by E.R.'s former employer, which included information regarding E.R.'s improper conduct with a superior and her impeding the IG's investigation by destroying evidence. He was troubled by the Report's findings regarding E.R.'s conduct, concluding that if she could not abide by her prior employer's code of conduct, she would not be able to comply with CIA's code of conduct either. He instructed OGC to send E.R. a rejection letter dated on or about March 1, 2005. On March 2, 2005, Foggo summoned John Doe #3 to his office. In a conversation John Doe #3 described as blunt, unprofessional, loud, and

condescending, Foggo addressed OGC's rejection of E.R.'s application. Foggo made clear to John Doe #3 that the hiring of E.R. was of interest to him. Foggo referred to himself in the third-person, saying, when the EXDIR has an interest in a candidate for employment, you had better respect the EXDIR's interest. Foggo discussed how highly he thought of E.R. and lectured John Doe #3 about her professional attributes. John Doe #3 attempted to explain his concerns about hiring E.R. arising from the IG's Report. Foggo appeared to know about the Report, but gave the impression that he believed the allegations concerning E.R. were inaccurate. Indeed, Foggo twice warned John Doe #3 to be careful how he referred to E.R. Foggo also said that E.R. had performed a vital service to the success of the CIA's mission at the Overseas Location. John Doe #3 understood these statements to be Foggo's explanation for why he wanted OGC to reconsider its decision not to hire E.R. Foggo made it clear that he considered the matter "open." John Doe #3 was troubled enough by the conversation that he wrote a memorandum to record what had happened. A redacted copy of this memorandum is attached at pages 117-119 of the Appendix to the Government's Sentencing Memorandum. John Doe #3 spoke to his supervisor, the Acting General Counsel, and conveyed Foggo's interest in E.R.'s hiring. [my emphasis]

Rizzo's involvement appears to have been key to ER's hiring. In mid-March (the exact date on the letter, which is on page 79 of the PDF, is illegible), Rizzo wrote Foggo, clearly indicating past conversations on the topic, telling him that ER would be hired.

Dusty,

As is our practice, a conditional offer letter to her is here ready for my signature. We are offering her a staff attorney position at the GS-14, Step 6 level on our review of her level of job experience. This is also is the salary she asked for.

Normally, we would call the applicant before dispatching the letter. However, given your relationship with her, I thought you might want to orally convey the news first yourself if you have not already. In any case, I will hold off sending the letter until I hear from you.

To which Foggo responded,

I have not relayed to her the info you shared with me, and while I greatly appreciate the offer to tell her the good news myself—as the Agency's A/General Counsel—I believe that should be your honor.

As soon as you have a COE—let me know and I'll have my staff tag it with an "ExDir Interest"—which will zip her to the top of the pile in processing.

[snip]

Once again—thanks for your personal engagement on this one—as I have shared with you—this allows me to close out another debt of honor [line and a half redacted].

That wasn't the end of the scandal with Dusty Foggo's girlfriend, or John Rizzo's inappropriate involvement with her employment. It turns out that ER was a terrible employee who refused to take direction from her supervisor. But rather than do something about ER, John Rizzo had her supervisor—a 20-year CIA veteran—transferred to DOD.

In mid-2005, an attorney with the initial E.R. was assigned to work for me in [CIA's Administrative Law Division]. Mr. Foggo, as Executive Director, directed OGC to hire E.R. OGC previously had sent her a letter indicating she would not be hired. Although E.R. was new to the Agency, she made very little effort to perform the work required of her at an acceptable level. E.R. resisted my guidance and direction and outright refused my direction that she revise work that was sub-par. Instead of being receptive to my direction, E.R. made it clear to me that she had influence with Mr. Foggo, the Executive Director. I believe she complained about me to Mr. Foggo.

In late summer 2005, following these encounters with E.R. and the complaint I made to OIG, the Acting General Counsel [John Rizzo] informed me that I could no longer stay at the Agency, and that he had arranged that I would leave OGC/CIA to do a detail at the Department of Defense ("DOD"). After 20 years of service, it was absolutely not my choice to leave OGC. It was humiliating to be asked to leave my high-level Agency position and walk away from my long career with OGC. However, I understood that if I did not agree to leave and take the other position, I would not have a position at CIA.

Now, there is no definitive reason to think there's a link between Foggo's decision that two lower level guys who killed a detainee in Afghanistan should get off with no punishment and his girlfriend's remarkable career at CIA.

But it's clear from both the AP story on the Salt Pit and Yoo's response to the OPR Report that the Salt Pit death happened at least partly because of instructions that came from Langley, instructions that may have involved Rizzo

directly. And we know that within weeks of the time Foggo saw the details CIA revealed in his sentencing memorandum, he decided to get all chatty with John Durham about the torture tape destruction (note, this was before Durham's mandate was extended to include the Salt Pit death, so Foggo's testimony couldn't have pertained directly to this review). We also know that DOJ started to have a "real problem" with Carol Lam's investigation of Duke Cunningham and Brent Wilkes as soon as she asked for a search warrant of Foggo.

Dusty Foggo got incredible levels of protection while in his last two years at CIA, protection that probably goes beyond what you'd expect of his senior position. With each new detail of his involvement in the torture program, it seems more and more likely that that protection extended at least in part from the role he played in covering up torture.