

# THREE THINGS: TWO USAS AND A BEAR

Three things not worth a full post but perhaps they're worth a brief look. This is an open thread.

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## WHY IS JOSE RODRIGUEZ HANGING OUT JOHN BRENNAN NOW?

I'm no fan of either Jose Rodriguez or John Brennan. So I take no pleasure that the former is blaming the latter for a big intelligence scam carried out against the CIA back in the day.

As head of the multi-agency Terrorist Threat Integration Center in 2003 and 2004, Brennan disseminated to the Bush White House a stream of CIA intelligence from a bogus source, former CIA officials say. Ridiculed by some within the CIA, the bogus intelligence nevertheless led to disruption in the U.S. and abroad, including an orange terror alert and the cancellation of dozens of international flights.

[snip]

At the CIA, the information was controversial from the beginning, and many agency officials said at the time that it should not have been distributed. Jose Rodriguez, who was directing the CIA's Counterterrorism Center, said the CTC viewed the intelligence as "crazy."

"We were very skeptical," Rodriguez recalled.

[snip]

"It was briefed by John. He was the guy who was bringing it there," said Rodriguez, who added that he believes Brennan was trying to build up his own profile. "My own view is he saw this, he took this, as a way to have relevance, to take something important to the White House."

But I am interested in why Rodriguez is doing this now—particularly since, as Defense News points out, he chose not to do so in his own book.

I can think of three possible reasons this is coming out now—they're all wildarsed guesses. It's possible that Brennan's star is fading, so he's vulnerable now in a way he wasn't before.

It's possible that some story behind the underlying scam this guy—Dennis Montgomery—carried out against the government is about to unfold. As the video above and the rest of the Democracy Now report makes clear (the original Playboy article is unavailable), part of Montgomery's scam consisted of high level financial contacts. Part of it involved targeting Al Jazeera and old Europe.

**AMY GOODMAN:** And how did he get these contracts? And what exactly did he say? I mean, explain what you're saying, because, I mean, this is not just the crazy fantasizing of one guy. You have Donald Rumsfeld, the Secretary of Defense, talking about, you know, Al Jazeera being a terrorist network.

**ARAM ROSTON:** That's very true. So people were — people saw Al Jazeera in this light, this negative light. The administration did already, perhaps. But what he was saying is it had no — it

didn't matter what the content was. He was saying in the electronic feed from Al Jazeera, there was little secret bits of information injected in it technologically, just little technologic – little bits and so forth. Perhaps the pixels were rearranged. And he was able to decode it all. He was able to decode it all and translate it into numbers.

Those numbers, he said, were latitudes and longitudes. In other words, it was a stream of video, and he was finding these latitudes and longitudes, times, flight numbers. And he would just churn that out. As he would call it, "This is my output." This is the Al Jazeera output. And he had figured out a way that somehow Al Jazeera was al-Qaeda's method of transmitting this data secretly. What it would have required, of course, is all these terrorists around the world to have some sort of decoding equipment that could have unscrambled it, which was, I think --

**AMY GOODMAN:** And these longitudes and latitudes were supposedly of attacks?

**ARAM ROSTON:** Yeah. Sometimes it wasn't even a latitude and longitude; sometimes it was just a latitude, just one number. And he was like, "It's somewhere around here." And he would just work and say, "It's here." And then, you know, you'd have scares like Tappahannock, Virginia was one place, a little town of Virginia, or, you know, somewhere in Seattle or Galveston, Texas, near the fuel tanks. And they would react.

**AMY GOODMAN:** And they would cancel planes, for example, around the holidays, like the French airlines.

It's possible, then, that the scam was deliberately fed intelligence, another form of

yellowcake, and the people who planted it know that's going to become clear shortly, so they're trying to blame Brennan for magnifying it.

But there is one other variant possibility of that.

Back before the whole intelligence scam became clear, Montgomery accused then Congressman and future NV governor Jim Gibbons of accepting bribes to get eTreppid contracts (note, this investigation was revealed in the wake of the US Attorney firings, as the scope of the Duke Cunningham bribery was becoming clear).

Software designer Dennis Montgomery was also on that cruise with Gibbons. He estimates the trip cost "probably \$20,000 a person," claiming he saw the invoice. Montgomery says his former business partner Trepp chartered a 727 to fly guests from Nevada to Florida and back and picked up the tab for penthouse rooms, private meals and expensive wines.

In an exclusive interview with NBC, Montgomery — who's now at war with his former partner — makes an explosive charge. He says that near the end of the cruise, he saw Trepp pass money to the congressman.

**Dennis Montgomery:** There was a lot of alcohol and a lot of drinking. And that's when I first saw Warren give Jim Gibbons money.

**Lisa Myers:** How much?

**Montgomery:** Close to \$100,000.

**Myers:** How can you know?

**Montgomery:** Because he gave him casino chips and cash.

**Myers:** Are you sure about what you saw?

**Montgomery:** I'm absolutely, positively sure.

Gibbons was ultimately not charged. But there were also a series of law suits in which the US declared state secrets to hide details about what eTreppid was doing for the government.

After a bitter falling out between Mr. Montgomery and Mr. Trepp in 2006 led to a series of lawsuits, the F.B.I. and the Air Force sent investigators to eTreppid to look into accusations that Mr. Montgomery had stolen digital data from the company's systems. In interviews, several employees claimed that Mr. Montgomery had manipulated tests in demonstrations with military officials to make it appear that his video recognition software had worked, according to government memorandums. The investigation collapsed, though, when a judge ruled that the F.B.I. had conducted an improper search of his home.

### **Software and Secrets**

The litigation worried intelligence officials. The Bush administration declared that some classified details about the use of Mr. Montgomery's software were a "state secret" that could cause grave harm if disclosed in court. In 2008, the government spent three days "scrubbing" the home computers of Mr. Montgomery's lawyer of all references to the technology. And this past fall, federal judges in Montana and Nevada who are overseeing several of the lawsuits issued protective orders shielding certain classified material.

The secrecy was so great that at a deposition Mr. Montgomery gave in November, two government officials showed up to monitor the questioning but refused to give their full names or the agencies they worked for.

And Montgomery also got charged with writing bad checks to Las Vegas casinos.

Now, I will need to dig deeper. But it's possible some of the stuff that the government did so well hiding has seeped out (note the Obama Administration has started looking more closely at money laundering in casinos in connection with its HSBC and Sheldon Adelson investigations).

That is, this intelligence scam may still not be what it seems. And it may be that Rodriguez is trying to pre-spin some new news on this front.

Cause when Jose Rodriguez is involved, it's usually smart to assume a cover-up.

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## **OBAMA & HOLDER PUSH AZ USATTY BURKE OUT OVER ATF GUNRUNNER COCK-UP**

Coming across the wire this morning was this stunning announcement by the Department of Justice:

Statement of Attorney General Eric  
Holder on the Resignation of U.S.  
Attorney for the District of Arizona  
Dennis Burke 08/30/2011 01:01 PM EDT

"United States Attorney Dennis Burke has demonstrated an unwavering commitment to the Department of Justice and the U.S. Attorney's office, first as a line prosecutor over a decade ago and more recently as United States Attorney," said Attorney General Holder.

Say what? Maybe I am not as plugged in as i used

to be, but holy moly this came out of the blue. What is behind the sudden and “immediate” resignation of Dennis Burke, an extremely decent man who has also been a great manager of the Arizona US Attorney’s Office through some of the most perilous times imaginable? The USA who has piloted the office in dealing with such high grade problems such as those stemming from SB1070, to traditional immigration issues, to the Giffords/Loughner shooting tragedy, the corruption and malfeasance of the Maricopa County Sheriff’s Office to voting rights and redistricting controversies brought on by the ever crazy Arizona Legislature, has now resigned in the blink of an eye? Really?

Why?

The GunWalker mess. Also known as “Project GunRunner” and “Operation Fast and Furious” (yes, the idiots at ATF actually did call it that). From the Arizona Republic:

Burke’s resignation, effective immediately, is one of several personnel moves made in the wake of a federal gun-trafficking investigation that put hundreds of rifles and handguns from Arizona into the hands of criminals in Mexico. Burke’s office provided legal guidance to the federal Bureau of Alcohol, Tobacco and Firearms on the flawed initiative called Operation Fast and Furious.

The news comes on the same day as a new acting director was named to oversee the Bureau of Alcohol, Tobacco, Firearms and Explosives following congressional hearings into Fast and Furious, an operation that was aimed at major gun-trafficking networks in the Southwest.

Irrespective of the name attached to the program – I have always known it as the GunWalker operation, so i will stick with that – is has been a first rate clusterfuck from the outset.

And, unlike so many things bollixing up the government, it cannot be traced back to the Bush/Cheney Administration; this beauty was the product of the Obama and Holder Department of Justice. In fact, the entire effort was, believe it or not, a byproduct of the vaunted Obama Stimulus Package, known as the American Recovery and Reinvestment Act of 2009.

What this ill fated venture accomplished instead was to stimulate deadly gun possession and crimes of violence in Mexico. Again, from the Arizona Republic:

Questions about the Fast and Furious program began to emerge in the spring as a member of Congress began pressing ATF officials for answers about an operation that was designed to track small-time gun buyers until the guns reached the hands of major weapons traffickers along the southwestern border.

Instead, ATF agents ended up arresting low-level suspects and nearly 2,000 of the weapons were unaccounted for, with nearly two-thirds of those guns likely in Mexico, according to testimony federal firearms investigators gave to a House committee in June.

Investigators also confirmed that two of the weapons connected to the ATF operations were found at the scene of a December gunbattle near Rio Rico, Ariz., that left Border Patrol Agent Brian Terry dead.

Terry's slaying effectively ended the operation.

Dozens of so-called straw buyers have been arrested, and more than 10,000 guns confiscated. However, the ATF came in for criticism from the Justice Department's Office of Inspector General last year because Project Gun Runner was catching only the straw buyers – small fish in the smuggling business.

At a news conference in February, the ATF in Phoenix announced that 34 suspects had been indicted and that U.S. agents had seized 375 weapons as part of Operation Fast and Furious. None of those arrested was a significant cartel figure.

In short, it is, and has been, a cock-up of epic proportions. Who has paid the accountability price for this operational disaster? Well, two weeks ago, on August 16, the Los Angeles Times had this to report:

The ATF has promoted three key supervisors of a controversial sting operation that allowed firearms to be illegally trafficked across the U.S. border into Mexico.

All three have been heavily criticized for pushing the program forward even as it became apparent that it was out of control. At least 2,000 guns were lost and many turned up at crime scenes in Mexico and two at the killing of a U.S. Border Patrol agent in Arizona.

The three supervisors have been given new management positions at the agency's headquarters in Washington. They are William G. McMahon, who was the ATF's deputy director of operations in the West, where the illegal trafficking program was focused, and William D. Newell and David Voth, both field supervisors who oversaw the program out of the agency's Phoenix office.

Now, to be fair, the ATF complained about the LAT report, and the paper has issued a correction as follows: "The ATF said in a statement Aug. 17 that the three supervisors were "laterally transferred" from operational duties into administrative roles, and were not promoted."

So McMahon, Newell and Voth were “laterally transferred” instead of being promoted. well, that’s convincing. The three men most responsible for the operational program still have cushy federal jobs at their regular status and pay grade, and Dennis Burke and the acting head of ATF are going to take the fall for it all. How nice.

Now, to be fair, as the sitting US Attorney for Arizona, Dennis Burke would have had to provide some legal guidance for the project and, perhaps, sign off on related warrant applications; but that is a far cry from being the one who designed the program and ran it operationally which, by all appearances, was done straight out of ATF and DOJ Main. Burke appears to be a convenient fall guy for an Obama Administration too craven to stand up for its own mistakes in DC. Former high level prosecutor and US Senator Dennis Deconcini had this to say:

If his resignation is tied to Fast and Furious, it’s ridiculous. It would be absolutely outrageous for ‘Justice Main’ to take it out on Dennis and make him the fall guy,” DeConcini said. “It’s just typical Washington cronyism. It just shows you how incompetent government can be to save themselves. It appears they screwed up, based on congressional hearings.

Without downplaying that the Arizona US Attorney’s Office would have had some involvement in the Gunwalker fiasco, it is extremely hard to see how Deconcini is off the mark with his assessment.

Why is the Obama Administration selling out a man like Dennis Burke? Because the Gunwalker fiasco is really that big of a total cock-up, they own every ounce of it, and would rather paint a scapegoat than own up to it. The mess has not gotten more play in the news and political discourse because the Obama Administration and Holder Department of Justice

have done everything within their power to tamp down any investigation and/or discussion of the case because it really is that ugly.

Shamefully, the only sources of dedicated inquiry to date have come from Darrell Issa at House Oversight and Chuck Grassley at Senate Judiciary.

Sen. Charles Grassley, R-Iowa, ranking minority member of the Senate Judiciary Committee, has pressed the ATF for two months to disclose details of Project Gun Runner and to justify a policy that allowed weapons into a nation where there were more than 36,000 drug-related murders in four years.

Last month, William McMahon, the head of ATF's Western region, testified that the agency had good intentions when it launched Operation Fast and Furious in 2009. But looking back, there are things ATF would have done differently, he said.

Appearing before the House Oversight and Government Reform Committee, McMahon said he was committed to dismantling criminal networks on both sides of the border and that "in our zeal to do so, and in the heat of battle, mistakes were made. And for that I apologize."

Say what you will, Darrell Issa and Chuck Grassley are right to be asking questions on the GunWalker affair, and others, including our fine Democrats, should be too. The Obama Administration should quit obfuscating, and trying to divert attention by sacrificing scapegoats, and make a full accounting for a failed program. Dennis Burke is owed that.

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# MONICA GOODLING FINALLY GETS REPRIMANDED

According to the Virginia Bar and in a filing that she agreed with, Monica Goodling committed “a criminal or deliberately wrongful act” that reflected badly on her “honesty, trustworthiness or fitness to practice law.”

Monica Marie Goodling, the key figure in the controversy about the political hiring and firing of U.S. Attorneys during the Bush Administration, has received a public reprimand from the Virginia State Bar.

A VSB subcommittee concluded that Goodling, a member of the VSB since 1999, had violated ethics rules by committing “a criminal or deliberately wrongful act” that reflected adversely on her “honesty, trustworthiness or fitness to practice law.” The subcommittee’s reprimand, to which Goodling agreed, was handed down in March and made public late yesterday.

Mind you, they stopped short of finding it an illegal act, largely because she broke civil service rules rather than other criminal laws.

And maybe it doesn’t matter, since she’s working in market research now and not—unlike Kyle Sampson, for example—practicing law.

But labeling what Goodling and others did to politicize the Bush DOJ as “criminal or deliberately wrongful” is at least a start to describing what they did.

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# TIM GRIFFIN: ROVE'S US ATTORNEY PROJECT COMES FULL CIRCLE

Remember the entire point of Karl Rove's plot to fire a bunch of US Attorneys and replace them with partisan hacks? It was to advance the political career of the new USAs.

Perhaps his most prominent success on that measure is Chris Christie. Though Christie abandons his state even in the face of blizzards—and then blames the resulting chaos on New Jersey's cities—he is still (implausibly) mentioned as a potential 2012 presidential candidate.

But the true measure of Rove's success at politicizing the DOJ comes in the form of Tim Griffin.

Griffin, you'll recall, has a history of leading the GOP's vote caging operations in 2000 and 2004. Seemingly to reward Griffin for doing such important dirty work—and also to boost the career of such a loyal hack—Rove pushed hardest to make sure that Griffin got the US Attorney position he wanted in his native Arkansas. And though he only stayed on the job until it became clear the Republicans were trying to “gum [his appointment] to death”—to basically run out the clock on any confirmation—he was actually only US Attorney for a matter of months.

No matter, between that and solid GOP backing, Griffin won election to Arkansas' 2nd Congressional District.

And now, TPMM reports, Griffin has been placed by Republicans on the House Judiciary Committee, the committee that spent months investigating the politicization of justice for which Griffin was the most obvious symbol.

Well, we had the equally corrupt Hans Von Spakovsky at the FEC (not to mention as head of

DOJ's Civil Rights Division), so I guess we'll survive Tim Griffin's "oversight" of the Judiciary Department. But if you were in any doubt about Republican's goals to continue to politicize justice in this country, Griffin's selection for HJC should answer that question.

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## **FINAL JEOPARDY ANSWER: SOMETHING THAT DOESN'T OBSTRUCT OR IMPEDE JUSTICE**

**Alex, I'm going with – "What is getting a prosecutor fired for not complying with your political agenda?"**

The investigation (not of the U. S. Attorney firings despite misleading headlines) into the Iglesias firing is done. bmaz is ready to change his name to Carnac and Holder's Department of Justice has shot off a letter-ary masterpiece to the House Judiciary Committee (HJC). As per ~~Carnac's~~bmaz's predictions, no charges.

What bmaz could not have predicted, but did link to in his post, is the actual content of the letter sent to Conyers. I don't think anyone would have predicted the cavalier way in which Holder's DOJ reaches its seemingly predetermined decision, while providing a roadmap to other legislators who'd also like to get a prosecutor fired for political convenience. Dannehy and Holder explain to Members of Congress – if a Federal prosecutor isn't filing or refraining from filing the cases you want, feel free to covertly conspire to get him fired. As long as you don't make any misguided attempt to "influence" him before you get him fired, you're

good to go. Oh, and btw, phone calls to him at home to fume over his handling – not to worry, those doesn't count as an attempt to influence.

Stripped and shorn, Holder and Dannehy have said –

1. We aren't gonna investigate anything but Iglesias and we aren't saying why: "The investigative team also determined that the evidence did not warrant expanding the scope of the investigation beyond the removal of Iglesias."

WHAT EVIDENCE? They freakin didn't expand the scope of the investigation to see what evidence there was, then they decide, *oh well, we don't have any of the evidence we didn't look for so we shouldn't look for it since we don't have it* ... whatever.

2. Hey, yeah, Domenici DID make a contact to smack on Iglesias about the handling of a matter currently in front of the USA's office but: "The evidence about the call developed in the course of Ms. Dannehy's investigation, however, was insufficient to establish an attempt to pressure Mr. Iglesias to accelerate his charging decisions."

So similar to the lack of intent to torture – I mean, if Domenici in good faith thought he was just gathering intel on the status of political prosecutions ... um, let's move on.

3. Instead of trying influence Iglesias, Holder and Dannehy think that Domenici \*just\* got Iglesias fired for not pursuing political bias in his prosecutions. "The weight of the evidence established not an attempt to influence but rather an attempt to remove David Iglesias from office, in other words, to eliminate the possibility of any future action or inaction by him."

4. This, they say, is fine. Seriously. They say there's nothing DOJ can do about it. It's no problem for politicians to get DOJ lawyers fired for not being political lapdogs. But to be

fair, they then finish up by saying both, "In closing, it is important to emphasize that Attorney General Holder is committed to ensuring that partisan political considerations play no role in the law enforcement decisions of the Department" and (bc that wasn't really the closing after all) "The Attorney General remains deeply dismayed by the OIG/OPR findings related to politicization of the Department's actions, and has taken steps to ensure those mistakes will not be repeated."

HUH? They've just said it is perfectly legal for politicians to get USAs who won't do their political bidding fired by covert contacts with the WH, but Holder is "committed" to ensuring partisan political considerations play no role at DOJ? WTH? I guess if you put those two concepts together and held them in your mind for long, you'd end up committed too.

5. Anyway, they pull all of this off by giving a Bybee-esque review of "18 U.S.C. § 1503 [that] punishes anyone [at least, anyone the DOJ selectively decides to prosecute] who '*corruptly . . . influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice.*'" It's a simple thing – according to Holder and Dannehy, Domenici didn't try to "influence" Iglesias, he just had Iglesias fired. Which obviously isn't an attempt to obstruct or impede. I mean, there's nothing that *\*doesn't impede\** a case like getting the prosecutor handling it fired.

They also explain to us that they can't go after Domenici for trying to get, then getting, Iglesias fired – at least, not under 18 USC 1503, because that section "penalizes only forward-looking conduct." So Domenici would have to be doing something that would involve forward-looking conduct. And after all, as they just said (see 3 above) Domenici wasn't trying "in other words, **to eliminate the possibility of any future action or inaction** by [Iglesias]."

Oh, except for, you know, they actually say in the letter that's exactly what Domenici WAS

doing. Trying to affect future action or inaction – in a forward-looking way with his forward-looking conduct.

This clarifies so many things. Who knew, until now, that the only person who got things right during the Saturday Night Massacre was Robert Bork?

Nixon wrote the first act in DOJ's current play (which is only fair, since he also wrote their anthem that it's not illegal if the President does it) when he arranged for the firing of prosecutors who were bugging him, but in response to a livid Congressional response, using words like impeachment and obstruction, said:

“...[I]n all of my years of public life, I have never obstructed justice. And I think, too, that I can say that in my years of public life that I've welcomed this kind of examination, because people have got to know whether or not their President's a crook. Well, I'm not a crook!”

And now Dannehy and Holder have made that chapter and verse – nothing wrong with firing some prosecutors if they aren't playing politics. Poor Karl Rove – so much trouble could have been avoided if he had just known that a Democratic administration's DOJ would take the position that it would be perfectly ok for him to get Bush to fire Fitzgerald (something that apparently made even Buscho lawyers Gonzales and Miers flinch) – no obstruction, no impeding – as long as Rove never tried to “influence” the prosecutor first.

And now DOJ prosecutors now know exactly how things work. It's been spelled out. No one will try to influence them. It's just that if they aren't making Obama's favorite politicians and fundraisers happy, well – their career may have a little accident.

With AGewhiz's like Holder, we can rest easy.

Gonzales may have been afraid to come out and state DOJ's policy plainly. He never quite coughed out the admission that it is DOJ policy that Republican Senators who conspire with the Republican WH to get prosecutors fired for not carrying out the Republican Senator's political agenda are acting well within their rights. Holder is not nearly so timid. He's spelled it out. Prosecutors are fair game for Congresspersons, at least those with the right WH ties.

I guess we should be grateful he hasn't handed out paintball guns to Democratic legislators and encouraged them to mark the weak links in his legal herd – the ones that haven't been compliant enough to keep their jobs.

At least, not yet.

And besides, haven't we already learned what Holder just told Conyers in that letter?

Firing the Republicans in 2006 and 2008 didn't impede or obstruct the attacks on the rule of law one little bit.

Update: On the good news front – Happy Day fatster!

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## **SHOCKING RESULT IN DANNEHY US ATTORNEY PURGEGATE SCANDAL!**

The results are in from the Nora Dannehy DOJ investigation into the US Attorney firings by the Bush/Cheney Administration. And, shockingly, the Obama/Holder Department of Justice just cannot find any conduct, not one single instance, worthy of criminal prosecution.

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# **OBAMA ADMINISTRATION FOLLOWS BUSH/CHENEY ON POLITICIZATION OF DOJ**

The courts and government of the United States of America are open and unfettered. It is time for the Obama Administration to quit frittering away the American foundation of law to the whims and winds of personal electoral desire and perceived political necessity. There can be no greater show of strength and character than to demonstrate to the world that we live and die with the principles we were founded with. Put the September 11th defendants on trial where they belong, as criminals in the Article III Federal court of jurisdiction.

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# **DAVID IGLESIAS: OBAMA'S USED CAR SALESMAN FOR GITMO SHOW TRIALS**

The Obama Administration is using David Iglesias as a shill for its wholesale adoption of the military commissions and prosecution based on torture championed by George bush and Dick Cheney.

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# 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.