

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA,	)	Criminal No. 08CR0079-JCC
)	
	)	Wire Fraud
Plaintiff,	)	(18 U.S.C. §§ 1343 & 1346)
	)	Counts 1-14
)	
v.	)	Mail Fraud
	)	(18 U.S.C. §§ 1341 & 1346)
	)	Counts 15-18
)	
	)	Conflict of Interest
KYLE DUSTIN FOGGO,	)	(18 U.S.C. § 208)
aka "Dusty" Foggo,	)	Counts 19-20
)	
	)	Conspiracy to Commit Unlawful Monetary
Defendant.	)	Transactions
	)	(18 U.S.C. § 1956(h))
	)	Count 21
)	
	)	Unlawful Monetary Transactions
	)	(18 U.S.C. § 1957)
	)	Counts 22-24
)	
	)	False Statements
	)	(18 U.S.C. § 1001)
	)	Counts 25-28
)	
	)	Criminal Forfeiture
	)	(18 U.S.C. § 982)
)	
	)	Aiding and Abetting
	)	(18 U.S.C. § 2)

SECOND SUPERSEDING INDICTMENT

May Term - At Alexandria

INTRODUCTORY ALLEGATIONS COMMON TO ALL COUNTS

THE GRAND JURY CHARGES THAT:

1. From on or about July 6, 2001 to about November 3, 2004, defendant KYLE DUSTIN FOGGO, aka "Dusty" Foggo, was the senior officer in charge of support operations at an "Overseas Location" of the Central Intelligence Agency ("CIA"), and as such directed the Overseas Location's daily operations supplying equipment to personnel overseas.

2. From on or about November 4, 2004 to on or about May 12, 2006, defendant FOGGO was the Executive Director of the CIA (then the third-highest position in the CIA), and as such directed the CIA's daily operations.

3. As a public official, defendant FOGGO owed the United States and its citizens his honest services, as reflected, among other places, in Title 5, Code of Federal Regulations, Sections 2635.101(a) and 2635.702(a), which provide:

Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws, and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each employee shall respect and adhere to the principles of ethical conduct set forth in this section, as well as the implementing standards contained in this part and in supplemental agency regulations.

5 C.F.R. 2635.101(a).

An employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

5 C.F.R. 2635.702(a).

4. From in or about 1993 through in or about 2005, defendant FOGGO completed CIA ethics training eight times, and served approximately two years as a Deputy Ethics official.

5. At all times material to this indictment, Brent Roger Wilkes was defendant FOGGO's best friend. At no time material to this indictment did Wilkes possess a security clearance allowing him to receive or possess classified information.

6. At all times material to this indictment, Brent Roger Wilkes controlled ADCS, Inc. and numerous related entities, including Archer Defense Technologies, Inc., Archer Logistics, Inc., Group W Advisors Inc., Group W Transportation Inc., TPG Advisors, and Wilkes Corporation.

7. From late 2002 on, Brent Roger Wilkes's main corporate office was at 13970 Stowe Drive, Poway, California. Wilkes also maintained an office located at 14020 Thunderbolt Place, Chantilly, Virginia.

8. At all times material to this indictment, "J.C." was Brent Roger Wilkes's nephew. Among other roles, J.C. held the title of President of Archer Logistics, Inc.

9. "E.R." was an individual with whom defendant FOGGO entered into a romantic relationship beginning no later than February 2005 and continuing up to and including part of 2006.

10. At all times material to this indictment, "Contractor X" was a CIA contractor who was awarded contracts with the CIA through FOGGO's Overseas Location.

11. At all times material to this indictment, "A.J." was a foreign national and associate of defendant FOGGO while FOGGO was stationed at the Overseas Location.

Counts 1 through 14

WIRE FRAUD

THE GRAND JURY CHARGES THAT:

1. Paragraphs 1 through 11 of the Introductory Allegations are hereby realleged as if fully set forth herein.
2. Beginning in or about December 2002, and continuing through in or about September 2006, within the Eastern District of Virginia and elsewhere, defendant KYLE DUSTIN FOGGO, aka "Dusty" FOGGO, devised and intended to devise a scheme: (1) to defraud, including depriving the United States and its citizens of their right to defendant FOGGO's honest services, including their right to his loyal, faithful, disinterested, unbiased service, to be performed free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing, concealment, fraud, and corruption; and (2) to obtain money and property by means of materially false and fraudulent pretenses and representations, and concealment and omissions of material facts; said scheme more fully described immediately below.

METHODS USED IN EXECUTION OF THE SCHEME

3. Defendant FOGGO used the following methods, among others, to carry out the scheme:
 - a. Defendant FOGGO, through direct and indirect instructions, as well as direct and indirect threats, abused his supervisory positions with the CIA in order to cause the CIA, and Contractor X, to hire as contractors or employees one or more individuals with whom FOGGO had a personal relationship (Foggo's Friends).

b. Defendant FOGGO misrepresented to others at the CIA the background and experience of Foggo's Friends, including Wilkes, J.C., and E.R. in order to influence the CIA to hire them as contractors or employees and resulting in payments made by the CIA to benefit Wilkes, J.C. and E.R.

c. Defendant FOGGO provided Brent Roger Wilkes with classified and sensitive information, and caused others to do so, in order to assist Wilkes in his pursuit of government and private contracts, despite Wilkes's lack of the requisite security clearance required to receive such information.

d. After the hiring of Foggo's Friends, defendant FOGGO through direct and indirect instructions, as well as direct and indirect threats, abused his supervisory positions with the CIA in order to protect or assist them, as well as to perpetuate their roles as either a CIA contractor or employee.

e. Through the hiring of Foggo's Friends, and the maintaining of their roles with the agency, defendant FOGGO derived for himself indirect present and future benefits in the form of meals, gifts, vacations, sexual companionship, the enrichment of a planned future employer, and the enrichment of a mistress.

f. Defendant FOGGO concealed the present and future benefits he was deriving by, among other things, concealing from others at the CIA: (1) his close personal relationships with Brent Roger Wilkes and J.C.; (2) his relationship with E.R.; (3) his outstanding offer of employment from Wilkes; (4) his future potential employment plans with Wilkes; (5) Wilkes's connection to CIA contracts; and (6) by omitting from his financial disclosure statements, which he signed under

penalty of perjury, reportable benefits and future employment arrangements involving Wilkes and J.C.

g. Defendant FOGGO concealed his close personal relationships with Foggo's Friends through, among other things: (1) adopting false cover stories regarding the bases for, and the nature of, his relationships with these individuals; (2) using straw men and shell companies to conceal Wilkes's financial interest, personal stake, and controlling role in certain CIA contracts; and (3) disguising his direct role in E.R.'s initial pursuit of employment with the CIA.

MEANS USED IN EXECUTION OF THE SCHEME

4. In furtherance of the scheme and to effect its purpose, defendant FOGGO committed, and caused to be committed, the following specific acts, among others, within the Eastern District of Virginia and elsewhere:

(1) By no later than December 2002, Wilkes offered FOGGO a high-level, high-paying position in Wilkes's companies, which offer remained open throughout all times material to this indictment.

(2) By no later than December 2002, Wilkes reserved an office for FOGGO in the executive suite of Wilkes's new Poway headquarters.

(3) On or about February 21, 2003, Wilkes executed a Certification of Trust naming FOGGO, upon the death of Wilkes and his wife, as one of three Trustees of the "Brent and Regina Wilkes Family Trust."

(4) On or about March 30, 2003, FOGGO sent Wilkes an email inquiring whether he could get "Duke" [Randall H. Cunningham] to assist in obtaining an immigration visa on behalf of an individual related to A.J.

(5) On or about May 14, 2003, FOGGO sent Wilkes an email stating, in part, that, "I have been throwing millions at [Contractor X's] company for about 18 months – and I'm thinking we should be able to leverage some Wilkes Group contacts."

(6) On or about June 17, 2003, Wilkes paid over \$1,700 for a dinner with FOGGO and others at the Capital Grille in Washington, D.C. (during which FOGGO introduced Wilkes to Contractor X).

(7) Beginning on or about July 25, 2003, FOGGO concealed from a CIA employee the identity and contact information of A.J., an associate that FOGGO knew could supply bottled water to the CIA at a lower price than the CIA was then paying.

(8) Beginning on or about August 3, 2003, Wilkes paid over \$50,000 for a vacation in Scotland for his and FOGGO's families.

(9) On or about September 10, 2003, FOGGO sent Wilkes an email titled "Scotland and Cigars," stating in part: "I'll work the water thing with [A.J.] - but you sending a follow-up email is a good idea, I want to insure [sic] that B-connection is not forgotten....Group W is in this deal."

(10) On or about September 17, 2003, FOGGO sent an email to Wilkes, stating that A.J. was ready to work with Wilkes, and that Wilkes should "work the price" with [A.J.] "and then have a US firm (Group W?) fax to me an offer to sell at X price."

(11) On or about October 22, 2003, Wilkes caused an assistant to send an email to J.C. reminding him of tasks Wilkes had assigned him in connection with the project to supply water to FOGGO's Overseas Location.

(12) In or about December 2003, at a party at Wilkes's offices in Poway, Wilkes introduced FOGGO as a future employee of Wilkes's company.

(13) In or about December 2003, at a party at Wilkes's offices in Poway, FOGGO told an ADCS employee working in human resources that he wanted to "get a profile" on some ADCS employees.

(14) Beginning on or about December 27, 2003, Wilkes paid over \$30,000 for a vacation in Hawaii for his and FOGGO's families.

(15) On or about January 7, 2004, FOGGO sent J.C. an email with the subject line "Re: Aloha," stating: "Had a great time - no diving, but still fun. I would like the 'President' or 'CEO' of 'Archer' to come visit. Brent told me that was you (smile), so lets [sic] get to it. I'll need to brief you a bit on how we need to play this, but that needs to be face to face, before you meet my people."

(16) On or about January 25, 2004, Wilkes paid approximately \$1,000 for a dinner with FOGGO and others at Ristorante La Perla in Washington, D.C.

(17) Beginning on or about January 25, 2004, FOGGO asked J.C. if he could write a letter indicating (falsely) that A.J.'s son was going to work for a Wilkes-controlled company so that A.J.'s son could obtain a visa to stay in the United States.

(18) On or about January 27, 2004, FOGGO hosted a meeting with Wilkes, J.C., and Contractor X at CIA headquarters, during which FOGGO told J.C. that FOGGO would get J.C. a procurement services contract with the CIA.

(19) On or about January 28, 2004, Wilkes paid over \$1,000 for a dinner with FOGGO and others at the Capital Grille in Washington, D.C.

(20) On or about January 28, 2004, based on discussions with FOGGO, Contractor X agreed to: pay a Wilkes company \$375,000 every three months for lobbying services; form a joint venture with Wilkes to explore non-CIA business; and pay Wilkes (through Group W Advisors, Inc.) 30 percent of the joint venture's net income in 2004, and 20 percent in subsequent years.

(21) On or about January 29, 2004, Wilkes (through Group W Advisors, Inc.) received a \$375,000 payment from Contractor X.

(22) On or about February 5, 2004, FOGGO sent an email to ADCS offering to act as a "broker" in order to convince a CIA client to rent space in a Sensitive Compartmented Information Facility ("SCIF") that Wilkes had built in ADCS's Chantilly office.

(23) On or about February 9, 2004, FOGGO received an email from Wilkes asking FOGGO to suggest to Contractor X that Wilkes was playing a role in structuring a prospective CIA contract because doing so, "[d]oesn't cost you anymore but gives me a %."

(24) On or about February 9, 2004, FOGGO sent Wilkes an email stating that he would arrange for J.C. to "meet with [FOGGO] and [CIA] procurement people to see how Archer Defense might be able to help out [his] outfit."

(25) In or about late February 2004, Wilkes and J.C. traveled to FOGGO's Overseas Location to discuss a procurement services contract.

(26) On or about February 26, 2004, FOGGO instructed J.C. not to tell other CIA employees about the long-standing personal relationship they had through Wilkes, but rather to tell CIA employees that J.C. and FOGGO had met in a cigar bar in Washington, D.C.

(27) On or about February 26, 2004, FOGGO introduced J.C. to lower-level CIA employees as someone who could assist them in procurement activities, and both FOGGO and J.C. acted as if they were arms-length business associates.

(28) On or about February 28, 2004, in a meeting at FOGGO's overseas home, FOGGO, Wilkes, and J.C. discussed the importance of ensuring that any procurement services business obtained from the Overseas Location could not be directly traced back to FOGGO and Wilkes's relationship, and that Wilkes would therefore take his share of the proceeds through subcontracts.

(29) On or about March 14, 2004, FOGGO sent an email to Contractor X stating that he had discussed Contractor X's recent classified contract proposal with Wilkes, and stating further: "I must tell you - I am very pleased that you and Brent are working together."

(30) In or about March 2004, J.C. (using Archer Defense) caused to be delivered to the Overseas Location a shipment of bottled water, for a price that was marked-up over 60% from the price that A.J. had charged for the water.

(31) On or about April 5, 2004, FOGGO filed and falsely certified the truthfulness, completeness, and accuracy of his 2003 "Public Financial Disclosure Report" (Form SF-278), which called for disclosure of all gifts ("such as tangible items, transportation, lodging, food, or entertainment received from one source totaling more than \$285"), and agreements or arrangements for future employment. In this Report, FOGGO omitted any mention of (a) the thousands of dollars in benefits he received from Wilkes in 2003, and (b) his standing offer of future employment from Wilkes.

(32) On or about April 5, 2004, FOGGO, in an email to a CIA ethics officer (attaching his 2003 Form SF-278) stated, in part: "Having been the 'Ethic's [sic] Guy' in both the DS&T and the DA, I wish you the best with this annual exercise."

(33) On or about May 27, 2004, FOGGO executed a "Certification of Trust" naming him as Sole Trustee of the "Brent Wilkes Life Insurance Trust" and naming the Trustor as Brent Wilkes.

(34) On or about June 11, 2004, J.C. paid over \$200 for a dinner with FOGGO at a restaurant located near the Overseas Location.

(35) On or about June 16, 2004, FOGGO sent an email to a private security firm, referencing "a possible venture that could be useful for Archer Defense" and the private security company.

(36) On or about July 29, 2004, at Wilkes's direction, J.C. formed Archer Logistics (a corporation in which J.C. was nominally the only director, officer, or employee), in order to enter into a contract with the CIA, to supply procurement services, without revealing Wilkes's involvement.

(37) On or about August 19, 2004, FOGGO sent emails to J.C., informing him that FOGGO had instructed his deputy to "check and push [the procurement contract] along to insure completion" and also stating with regard to J.C.'s request for an advance payment of one-half the total amount of service fees for the procurement contract: "I can help with that. I'll work it."

(38) On or about September 16, 2004, FOGGO sent an email to Wilkes regarding concerns that Contractor X had raised about Wilkes, stating: "As you know I do have influence with him [Contractor X] and know I could get him to listen . . . that said if this issue is beyond repair in

your mind - I am now, have been in the past, and will continue to as long as I breath [sic] - be your partner . . . so what do you want me to do?"

(39) On or about September 20, 2004, FOGGO caused the Overseas Location to enter into a one-year procurement services contract with Archer Logistics, effective September 1, 2004, with a firm fixed-price fee of \$1,699,904 for services to be provided.

(40) On or about September 23, 2004, FOGGO caused the CIA to wire-transfer to Archer Logistics an \$850,000 advance payment on the procurement services contract.

(41) On or about September 24, 2004, J.C. caused \$555,000 to be wire-transferred from Archer Logistics to another entity controlled by Wilkes.

(42) On or about October 28, 2004, J.C. caused \$150,000 to be wire-transferred from Archer Logistics to another entity controlled by Wilkes.

(43) On or about November 11, 2004, FOGGO sent an email to E.R., inviting her to come to CIA headquarters to meet with him.

(44) On or about November 13, 2004, E.R. visited FOGGO at CIA headquarters, where he introduced her to high-ranking agency officials and discussed her employment options.

(45) On or about November 20, 2004, Wilkes paid over \$700 for a dinner with FOGGO and others at the Serbian Crown restaurant in Great Falls, Virginia.

(46) On or about November 20, 2004, J.C., acting at Wilkes's direction, gave FOGGO a cigar humidor that cost over \$2,000.

(47) On or about November 21, 2004, Wilkes paid approximately \$700 for a dinner with FOGGO and others at the Capital Grille in Tyson's Corner, Virginia.

(48) On or about November 22, 2004, Wilkes paid approximately \$900 for a dinner with FOGGO and others at Ruth's Chris Steak House in Fairfax, Virginia.

(49) On or about November 29, 2004, E.R. sent an email to FOGGO informing him about her scheduled interview with the CIA's Office of General Counsel ("OGC"), and thanking him for "recruiting" her.

(50) In or about December 2004, FOGGO discussed with Wilkes and J.C. the idea that FOGGO might be able to get Wilkes a classified government contract to supply air support services for the CIA.

(51) In or about January 2005, Wilkes directed various ADCS employees to begin developing an air support proposal that would be designed to answer the CIA's classified needs as outlined by FOGGO.

(52) On or about February 3, 2005, an employee of Wilkes Corporation emailed J.C. with an offer to update him on their work developing the air support proposal.

(53) On or about February 9, 2005, Wilkes paid approximately \$1,400 for a dinner with FOGGO and others at the Capital Grille in Washington, D.C.

(54) On or about February 11, 2005, Wilkes paid approximately \$400 for a dinner with FOGGO and others at P.F. Chang's in Fairfax, Virginia.

(55) On or about February 14, 2005, FOGGO and E.R. met for a private dinner in or around Vienna, Virginia.

(56) On about February 15, 2005, FOGGO asked of his former deputy at the Overseas Location regarding if J.C. "was put in for his Secret Clearance?"

(57) On or about February 19, 2005, FOGGO caused an email to be sent to the security office of the CIA, inquiring about the status of E.R.'s security clearance.

(58) On or about February 28, 2005, J.C. caused \$110,000 in additional funds to be wire-transferred from Archer Logistics to another entity controlled by Wilkes.

(59) On or about March 2, 2005, FOGGO summoned the Managing Associate General Counsel of the CIA to his office and discussed OGC's decision to reject E.R.'s application for employment. In this meeting, FOGGO told the Managing Associate General Counsel that he had a "special interest" in E.R.'s hiring, and words to the effect of "when the ExDir has a special interest, you had better take notice."

(60) In or about March 2005, FOGGO told the Managing Associate General Counsel of the CIA that E.R. was vital to the CIA's mission at the Overseas Location.

(61) In or about March 2005, FOGGO told his Chief-of-Staff that E.R. was one of his five personal heroes due to service she rendered to the CIA mission while she was stationed at an Overseas Location.

(62) On or about March 3, 2005, FOGGO sent a member of his executive staff an email stating, in part, "Make sure the acting acting OGC understands I expect the document and the analysis on why the rejection [of E.R.'s application] soonest. (Friday at the latest)."

(63) On or about March 9, 2005, a Wilkes employee emailed J.C. informing him that Wilkes believed that they were ready to set up a new corporation to support the air support proposal, which they tentatively decided would be called "JC industries."

(64) On or about March 14, 2005, Wilkes paid \$800 for a dinner with FOGGO and others at the Capital Grille in Tyson's Corner, Virginia.

(65) On or about March 19, 2005, FOGGO sent the CIA Acting General Counsel an email stating, in part, that his staff would tag E.R.'s conditional offer of employment as "ExDir Interest" in order to "zip her to the top of the pile." This email also falsely claimed that E.R.'s hiring would allow FOGGO "to close out another debt of honor with the uniformed service members" who had assisted the mission of the CIA.

(66) On or about March 20, 2005, FOGGO sent an email to a bank loan officer stating, in part: "I plan to retire in circa 3 years - while I have a big offer from a company in California - I may stay in the area due to my worth to local companies...I guess I can't give you a firm answer - I would bet we will be elsewhere - which leads me to consider renting..."

(67) On or about March 28, 2005, FOGGO caused OGC to send a conditional offer of employment to E.R., reversing the rejection they sent out four weeks earlier.

(68) On or about March 31, 2005, Wilkes sent J.C. an email stating: "I talked to the big guy last night. He will sprinkle some magic dust today that should solve your problem. BRW."

(69) On March 31, 2005, FOGGO sent an email to the acting head of the Overseas Location inquiring about delays in payments to Archer Logistics, which resulted in three payments totaling \$231,792 being sent to Archer Logistics within the next 30 days.

(70) On or about March 31, 2005, Wilkes sent FOGGO an email thanking him for intervening with the Overseas Location (in order to obtain payment for Archer Logistics).

(71) On or about April 2, 2005, FOGGO expedited E.R.'s security clearance and start date by designating her as an "ExDir Interest."

(72) On or about April 11, 2005, FOGGO agreed to speak with J.C. about a proposal for one of Wilkes's companies to supply armored vehicles to the CIA.

(73) On or about April 14, 2005, J.C. sent Wilkes an email indicating, among other things, that he was concealing – from the other CIA employees – Wilkes's participation in an upcoming dinner with FOGGO and J.C. (held on April 24, 2005).

(74) On or about April 24, 2005, Wilkes paid approximately \$1,000 for a dinner with FOGGO and J.C. at the Capital Grille in Tyson's Corner, Virginia, during which they discussed, among other things, the classified air-support services proposal.

(75) On or about April 28, 2005, FOGGO filed and falsely certified the truthfulness, completeness, and accuracy of his 2004 "Public Financial Disclosure Report," which called for disclosure of all gifts ("such as tangible items, transportation, lodging, food, or entertainment received from one source totaling more than \$285"), and agreements or arrangements for future employment. In this Report, FOGGO omitted any mention of (a) the thousands of dollars in benefits he received from Wilkes in 2004, and (b) his standing offer of future employment from Wilkes.

(76) On or about May 6, 2005, J.C. caused \$50,000 in additional funds to be wire-transferred from Archer Logistics to another entity controlled by Wilkes.

(77) On or about May 12, 2005, FOGGO helped with E.R.'s clearance by asking an administrative officer to look into a scheduling conflict that E.R. had with a CIA Program Officer helping with her processing.

(78) On or about May 17, 2005, Wilkes provided a round-trip, international business-class airline ticket for FOGGO's wife.

(79) On or about May 24, 2005, FOGGO directed that CIA staff call E.R. to set up her starting date with the CIA.

(80) In or about early June 2005, FOGGO told a CIA employee involved with air operations that he had a friend involved with civil aviation who could assist the agency with a problem involving the exposure of CIA air operations.

(81) On or about June 5, 2005, Wilkes paid approximately \$2,900 for a dinner with FOGGO and others at the Capital Grille in Tyson's Corner, Virginia.

(82) On or about June 6, 2005, at a meeting held at the CIA, FOGGO introduced Wilkes to CIA employees as an individual who was involved in aviation and could assist the CIA in providing cover for its air operations.

(83) On or about June 6, 2005, Wilkes sent FOGGO an email indicating that "the meeting is over" and that he would "like to know what they think."

(84) On or about June 9, 2005, FOGGO sent an email to the head of the CIA's air operations inquiring how the June 6, 2005 meeting went with Wilkes.

(85) On or about June 10, 2005, Wilkes sent an email to FOGGO requesting that he provide him with information "that would be helpful in the development" of Wilkes's proposal directed at providing cover for CIA air operations.

(86) On or about June 13, 2005, FOGGO sent an email to J.C. asking him about a meeting at the CIA involving the proposal by one of Wilkes's companies to supply armored vehicles to the CIA.

(87) On or about June 15, 2005, at a meeting held at the CIA, Wilkes presented a multi-million-dollar air support proposal to provide cover for CIA air operations, which was based on classified information that FOGGO had provided, and caused others to provide, to Wilkes.

(88) On or about June 15, 2005, Wilkes paid approximately \$180 for a dinner with FOGGO at Damon's in Chantilly, Virginia.

(89) On or about June 16, 2005, FOGGO instructed CIA employees that the agency would move forward on a program to provide enhanced capability for CIA air operations, and suggested that Wilkes could provide cover for the enhanced capability.

(90) On or about June 16, 2005, FOGGO spoke with a CIA employee and indicated that he "definitely wanted [the CIA] to use [SCIF] space" that would be rented from Archer Logistics.

(91) On or about June 16, 2005, Wilkes paid approximately \$600 for a dinner with FOGGO at the Capital Grille in Tyson's Corner, Virginia.

(92) On or about June 20, 2005, FOGGO sent an email to the head of the CIA's air operations offering to use some "EXDIR grease" in order to ensure that Wilkes's attorney was quickly cleared to receive classified information.

(93) On or about June 21, 2005, the deputy chief of the CIA's air operations, acting at FOGGO's direction, sent an email to CIA legal counsel informing her that they planned to use Wilkes to provide cover for implementing an enhanced capability to the agency's air operations.

(94) On or about June 28, 2005, an air operations employee, acting at FOGGO's direction, sent an email to a supervisor containing estimated costs to the CIA "based upon preliminary pricing data" supplied by Wilkes.

(95) On or about July 6, 2005, FOGGO sent an email to the head of the Overseas Location informing him that he and J.C. should meet privately.

(96) On or about July 6, 2005, J.C. caused \$30,000 in additional funds to be wire-transferred from Archer Logistics to another entity controlled by Wilkes.

(97) On or about July 10, 2005, E.R. commenced employment with the CIA as an OGC attorney.

(98) On or about July 13, 2005, FOGGO indicated to a CIA employee that he was "keen to work with" Archer Logistics, which was offering SCIF space for use by the CIA.

(99) On or about July 14, 2005, FOGGO received an email from Wilkes requesting that FOGGO speak to the head of the CIA's air operations and "poke" him to respond to Wilkes.

(100) On or about August 6, 2005, FOGGO sent an email to the head of the Overseas Location discussing, among other things, Wilkes's proposal to supply armored vehicles for an agency-wide rollout.

(101) On or about August 10, 2005, E.R. sent FOGGO an email stating, "I think [E.R.'s supervisor] is on her way out. She's packing boxes and has her door closed." FOGGO responded, "I guess my note [requesting that E.R.'s supervisor be reassigned] got some attention - you can thank me later (smile)."

(102) On or about August 12, 2005, FOGGO sent Wilkes an email telling him that he would check on the status of his proposal to provide cover for CIA air operations.

(103) On or about September 8, 2005, J.C. caused \$60,000 in additional funds to be wire-transferred from Archer Logistics to another entity controlled by Wilkes.

(104) On or about September 8, 2005, J.C. caused a second wire transfer of \$20,000 in additional funds to be sent from Archer Logistics to another entity controlled by Wilkes.

(105) From in or about December 2005 through March 2006, FOGGO misled CIA employees (including public affairs employees) and actively concealed, among other things, the full extent and nature of his relationship with Wilkes and the full extent of his knowledge regarding Wilkes's relationship with CIA business.

WIRE TRANSMISSIONS IN EXECUTION OF THE SCHEME

5. On or about the dates set forth below, within the Eastern District of Virginia and elsewhere, defendant KYLE DUSTIN FOGGO, aka "Dusty" FOGGO and others, for the purpose of executing the above-described scheme, transmitted and caused to be transmitted in interstate commerce by means of wire communications, certain writings, signs, signals and sounds, as alleged below:

Count	From	To	Through	Date	Description
1	FOGGO	Wilkes Southern District of California ("SDCA")	Eastern District of Virginia ("EDVA")	9/10/03	Email re: "Re: Scotland & Cigars" Offering to "work" the "water thing" with his contact, insuring that "Group W is in this deal."
2	FOGGO	J.C. EDVA	SDCA	1/7/04	Email re: "RE: Aloha!" Addressing how to "play" J.C.'s role in procurement contract, "before you meet my people"
3	FOGGO	ADCS employee SDCA	EDVA	2/5/04	Email re: "Please pass to [J.C.]" Offering to act as a "broker" to rent out SCIF space built by Wilkes

Count	From	To	Through	Date	Description
4	FOGGO	J.C. EDVA	SDCA	6/16/04	Email re: "Introductions" Discussing possible joint venture involving Archer Defense and private security firm
5	FOGGO	Wilkes SDCA	EDVA	9/16/04	Email re: "Thanks for the detail" Offering help with Contractor X; stating he would be Wilkes's partner for as long as he breathed
6	Government Account Outside VA	Archer Logistics, Inc. EDVA	EDVA	9/23/04	Wire transfer of \$850,000 as advance payment on procurement services contract
7	Wilkes SDCA	FOGGO	EDVA	3/31/05	Email re: "Thanks" Thanking FOGGO for expediting payments to J.C.
8	Archer Logistics account	ADCS, Inc. account SDCA	EDVA	7/6/05	Wire transfer of \$30,000 in government contract funds
9	Government account Outside VA	E.R.	EDVA	8/4/05	Wire transfer of \$1,491.51 towards E.R.'s annual salary
10	Wilkes SDVA	FOGGO	EDVA	8/10/05	Email re: "Greetings" Asking FOGGO to check on status of air support proposal
11	Government account Outside VA	E.R.	EDVA	8/18/05	Wire transfer of \$1,334.16 towards E.R.'s annual salary
12	Government account Outside VA	E.R.	EDVA	9/1/05	Wire transfer of \$1,334.16 towards E.R.'s annual salary

Count	From	To	Through	Date	Description
13	Archer Logistics account VA	ADCS, Inc. account SDCA	EDVA	9/8/05	Wire transfer of \$60,000 in government contract funds
14	Government account Outside VA	E.R.	EDVA	9/15/05	Wire transfer of \$1,334.16 towards E.R.'s annual salary

In violation of Title 18, United States Code, Sections 1343, 1346 and 2.

Counts 15-18

MAIL FRAUD

THE GRAND JURY CHARGES THAT:

1. Paragraphs 1 through 11 of the Introductory Allegations and paragraphs 2, 3, and 4 of the Wire Fraud Counts are hereby realleged as if fully set forth herein.

MAILINGS IN EXECUTION OF THE SCHEME

2. On or about the dates set forth below, within the Eastern District of Virginia, defendant KYLE DUSTIN FOGGO, aka "Dusty" FOGGO, for the purpose of executing the above-described scheme, caused to be delivered by mail or common interstate carrier, a letter or thing, as described below:

Count	From	To	Date	Description
15	Archer Logistics	Overseas Location	2/28/05	Two pallets containing assorted hardware, industrial stools, and shuffle board wax
16	CIA	E.R.	3/28/05	Letter extending conditional employment with the CIA to E.R.
17	CIA	E.R.	5/31/05	Letter confirming acceptance by E.R. of a position with the CIA
18	Archer Logistics	Overseas Location	9/8/05	Three pallets containing computer equipment, auto parts, and rolls of velcro

In violation of Title 18, United States Code, Sections 1341, 1346, and 2.

Count 19

CONFLICT OF INTEREST

THE GRAND JURY CHARGES THAT:

1. Paragraphs 1 through 11 of the Introductory Allegations and paragraphs 3 and 4 of the Wire Fraud Counts are hereby realleged as if fully set forth herein.

2. From in or about July 2003 to in or about May 2006, in the Eastern District of Virginia, defendant FOGGO, being an officer and employee of the CIA, knowingly and willfully participated personally and substantially as a Government officer and employee, in a matter, namely, a contract to provide procurement services to the CIA, in which to defendant's knowledge, a person and organization with whom he was negotiating and had an arrangement concerning prospective employment, namely, Brent Roger Wilkes, had a financial interest, in violation of Title 18, United States Code, Section 208(a).

Count 20

CONFLICT OF INTEREST

THE GRAND JURY CHARGES THAT:

1. Paragraphs 1 through 11 of the Introductory Allegations and paragraphs 3 and 4 of the Wire Fraud Counts are hereby realleged as if fully set forth herein.

2. From in or about December 2004 to in or about August 2005, in the Eastern District of Virginia, defendant FOGGO, being an officer and employee of the CIA, knowingly and willfully participated personally and substantially as a Government officer and employee, in a matter, namely, a proposal to provide air services to the CIA, in which to defendant's knowledge, a person and organization with whom he was negotiating and had an arrangement concerning prospective employment, namely, Brent Roger Wilkes, had a financial interest, in violation of Title 18, United States Code, Section 208(a).

Count 21

CONSPIRACY TO COMMIT UNLAWFUL MONETARY TRANSACTIONS

THE GRAND JURY CHARGES THAT:

1. Paragraphs 1 through 11 of the Introductory Allegations and paragraphs 3 and 4 of the Wire Fraud Counts are hereby realleged as if fully set forth herein.
2. Beginning on or about December 2002, and continuing through in or about September 2006, within the Eastern District of Virginia and elsewhere, defendant KYLE DUSTIN FOGGO, aka "Dusty" FOGGO, did knowingly conspire and agree with Brent Roger Wilkes and J.C. to knowingly engage and attempt to engage in monetary transactions by, through, or to a financial institution, affecting interstate and foreign commerce, in criminally derived property of a value greater than \$10,000, as alleged in Counts 22-24, in violation of Title 18 United States Code, Section 1957, all in violation of Title 18 United States Code, Section 1956(h).

Counts 22 through 24

UNLAWFUL MONETARY TRANSACTIONS

THE GRAND JURY CHARGES THAT:

1. Paragraphs 1 through 11 of the Introductory Allegations are hereby realleged as if fully set forth herein.

2. On or about the dates set forth below, within the Eastern District of Virginia and elsewhere, defendant FOGGO reasonably foresaw that, in furtherance of both the scheme to defraud alleged in Counts 1-18, and the conspiracy alleged in Count 21, Brent Roger Wilkes and J.C. would, and did, knowingly engage and attempt to engage in the following monetary transactions by, through, and to a financial institution, affecting interstate and foreign commerce, in criminally derived property of a value greater than \$10,000, such property having been derived from a Specified Unlawful Activity, that is, Mail and Wire Fraud in violation of Title 18, United States Code, Sections 1341, 1343, and 1346:

<u>Count</u>	<u>Date</u>	<u>Transaction</u>
22	1/29/04	Wire transfer of \$375,000 from a Contractor X's bank account outside of California to a San Diego bank account in the name of Group W Advisors, Inc.
23	9/24/04	Wire transfer of \$555,000 in government contract funds from the Virginia bank account of Archer Logistics to a San Diego account of Wilkes's companies.
24	2/28/05	Wire transfer of \$110,000 in government contract funds from the Virginia bank account of Archer Logistics to a San Diego account of Wilkes's companies.

All in violation of Title 18, United States Code, Sections 1957 and 2.

Count 25

FALSE STATEMENTS

THE GRAND JURY CHARGES THAT:

1. Paragraphs 1 through 11 of the Introductory Allegations are hereby realleged as if fully set forth herein.
2. On or about April 5, 2004, within the Eastern District of Virginia, defendant KYLE DUSTIN FOGGO, in a matter within the jurisdiction of the Central Intelligence Agency ("CIA"), a department and agency of the United States, did knowingly and willfully falsify, conceal, and cover up a material fact by failing to disclose gifts totaling more than \$285, and a job offer, from Brent Roger Wilkes in his Public Financial Disclosure Report covering calendar year 2003, in violation of Title 18, United States Code, Section 1001.

Count 26

FALSE STATEMENTS

THE GRAND JURY CHARGES THAT:

1. Paragraphs 1 through 11 of the Introductory Allegations are hereby realleged as if fully set forth herein.
2. On or about April 28, 2005, within the Eastern District of Virginia, defendant KYLE DUSTIN FOGGO, in a matter within the jurisdiction of the Central Intelligence Agency ("CIA"), a department and agency of the United States, did knowingly and willfully falsify, conceal, and cover up a material fact by failing to disclose gifts totaling more than \$285, and a job offer, from Brent Roger Wilkes in his Public Financial Disclosure Report covering calendar year 2004, in violation of Title 18, United States Code, Section 1001.

Counts 27-28

FALSE STATEMENTS

THE GRAND JURY CHARGES THAT:

1. Paragraphs 1 through 11 of the Introductory Allegations are hereby realleged as if fully set forth herein.

2. Between on or about March 1, 2005, and March 19, 2005, within the Eastern District of Virginia, defendant KYLE DUSTIN FOGGO, in a matter within the jurisdiction of the Central Intelligence Agency (“CIA”), a department and agency of the United States, did knowingly and willfully make, to the below-listed individuals, false, fictitious and fraudulent statements and representations as to material facts as set forth below:

<u>Count</u>	<u>Individual</u>	<u>False Statement</u>
27	Managing Associate CIA General Counsel	E.R. was vital to the CIA’s mission at the Overseas Location
28	Chief-of-Staff to the CIA Executive Director	E.R. was one of his five personal heroes due to service she rendered to the CIA mission while she was stationed at an Overseas Location

All in violation of Title 18, United States Code, Section 1001.

FORFEITURE ALLEGATIONS

THE GRAND JURY CHARGES THAT:

1. Upon conviction of one or more of the felony offenses alleged in Counts 1 (limited to the objects set forth in subparagraphs a and b of paragraph 1) through 18 of this Indictment and pursuant to Title 18, United States Code, Section 981(a)(1)(c) and Title 28, United States Code, Section 2461(c), defendant FOGGO shall forfeit to the United States any property constituting or derived from proceeds traceable to said violations, including but not limited to \$945,493.99 in United States currency.
2. Upon conviction of one or more of the felony offenses alleged in Counts 22 through 24 of this Indictment, and pursuant to Title 18, United States Code, Section 982(a)(1) and Rule 32.2, Federal Rules of Criminal Procedure, defendant FOGGO shall forfeit to the United States all right, title and interest in any and all property involved in the financial transactions, in violation of Title 18, United States Code, Section 1957, and all property traceable to such property, including the following: All money or other property that was the subject of each transaction in violation of Section 1957, including but not limited to \$1,040,000.00.
3. Pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b) and Title 28, United States Code, Section 2461(c), defendant FOGGO shall forfeit substitute property, up to the value of the property described in paragraphs 1 and 2 above, if, by any act or omission of defendant FOGGO or a coconspirator, the property described in paragraphs 1 and 2 above, or any portion thereof, cannot be located upon the exercise of due diligence; has been transferred, sold to or deposited with a third party; has been placed

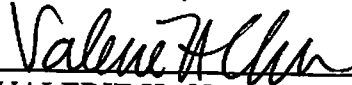
beyond the jurisdiction of the court; has been substantially diminished in value; or has been commingled with other property which cannot be divided without difficulty.

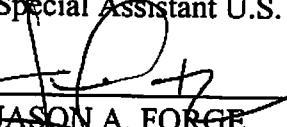
DATED: May 20, 2008

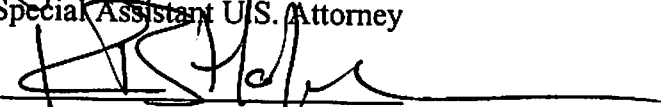
A TRUE BILL:

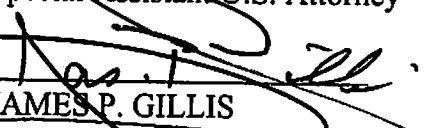
Foreperson pursuant to the E-Government Act,
the original of this page has been filed
under seal in the Clerk's Office.

CHUCK ROSENBERG
United States Attorney

By: 
VALERIE H. CHU
Special Assistant U.S. Attorney

By: 
JASON A. FORGE
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By: 
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Assistant U.S. Attorney

