

Company Man: Thirty Years of Controversy and Crisis in the CIA¹

Reviewed by Major Dustin B. Kouba*

*The main thing to know about “Company Man,” John Rizzo’s memoir of his three decades as a C.I.A. lawyer, including seven years as the agency’s chief legal officer, is that its title is not the slightest bit ironic.*²

I. Introduction

In *Company Man: Thirty Years of Controversy and Crisis in the CIA*, autobiographer John Rizzo details his thirty-four year career as an attorney with the Central Intelligence Agency (CIA). Rizzo’s career begins in the mid-1970s, not long after the U.S. Senate’s Church Committee investigation into illegal intelligence gathering activities by the CIA and other agencies.³ His career highlights include involvement in the Iran-contra scandal⁴ in the 1980s; the Ames spy case⁵ and the hunt in Iraq for weapons of mass destruction issue in the early 2000s.⁶ Rizzo’s career culminated in his periodic service as acting CIA General Counsel, mostly from July 2004⁷ until his retirement in October 2009.⁸ His thirty-four years of service to the Agency was marred by an embarrassing Senate confirmation hearing that led to his decision to withdraw his nomination to be the CIA’s General Counsel.⁹

While the book has been well received,¹⁰ *Company Man* actually does little to explain the inner workings, processes or legal foundations of the most controversial CIA programs of recent history. Rizzo fails to shed any meaningful light on his legal opinions, advocacy and love for a government bureaucracy. Instead, Rizzo spends much of his time praising his good-old-boy network, criticizing those who stood in the way of questionable intelligence tactics for which he provided legal justification and providing a roadmap of how not to practice as a government attorney. He unknowingly creates a tenuous relationship with his employer by considering agency employees his clients.¹¹ He plays fast and loose with legal

advice that finally catches up to him as a result of the downfall of the Enhanced Interrogation Program and the destruction of the “Torture” tapes.

In the end, the book’s introduction and its discussion of the creation of Enhanced Interrogation Techniques (EITs) become the only portions of the book worth reading for a military lawyer.

II. Enhanced Interrogation Techniques

The book’s introduction recounts the destruction of the 2002 interrogation tapes of a highly-prized Al Qaeda operative, Abu Zubaydah, who was captured in March of 2002.¹² Once the high-value target Zubaydah was captured and his physical condition stabilized (he was shot during his capture), the CIA and FBI interrogators quickly found their subject uncooperative and nonresponsive.

According to Rizzo, this is when Zubaydah begins taunting and lying to his captors.¹³ After Zubaydah’s psychological profile is built, CIA psychologists call for “something to change the equation with Zubaydah”¹⁴ largely based on him being a “cold-blooded psychopath”¹⁵ and the need for information. About a week later, attorneys from the Counterterrorist Center (CTC) within the CIA first describe “Enhanced Interrogation Techniques” (EITs) to be used on Zubaydah in attempt to further the gathering of intelligence.¹⁶

EITs were approved by President George W. Bush in the

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¹ JOHN RIZZO, *COMPANY MAN: THIRTY YEARS OF CONTROVERSY AND CRISIS IN THE CIA* (2014).

² Fred Kaplan, *The Spy Who Came Into the Fold*, N.Y. TIMES (Jan. 3, 2014), http://www.nytimes.com/2014/01/05/books/review/john-rizzos-company-man.html?_r=1

³ RIZZO, *supra* note 1, at 31. Congressional hearings revealed questionable and illegal covert CIA operations from the preceding twenty-five years, including assassination plots, drug experiments, illegal surveillance of U.S. citizens, and mail monitoring of U.S. citizens opposed to the Johnson and Nixon administrations. *Id.*

⁴ RIZZO, *supra* note 1, at 122-25. In May of 1987, Rizzo spent forty days watching every single minute of the Iran-contra committee hearings. The highlight Rizzo provides in his memoir from the endeavor is his independent approval of releasing classified information in the form of a public statement by a CIA witness. This revelation is the first of many that shows Rizzo plays fast and loose with the law. *Id.*

⁵ *Id.* at 139-43. Rick Ames sold CIA secrets resulting in the unexplained disappearances and deaths of multiple CIA sources within the Soviet Union.

Rizzo advised an investigating officer regarding financial privacy of the subject, and remained loosely connected to the case until it resolved. *Id.*

⁶ *Id.* at 301.

⁷ *Id.* at 213.

⁸ *Id.* at 291.

⁹ *Id.* at 274.

¹⁰ See, e.g., Tobias Gibson, LAW AND POLITICS BOOK REVIEW, <http://www.lpbr.net/2014/04/company-man-thirty-years-of-controversy.html> (last visited Sept. 21, 2016).

¹¹ RIZZO, *supra* note 1, at 46.

¹² *Id.* at 1.

¹³ *Id.* at 183.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

days after the 9-11 attacks.¹⁷ While Rizzo describes the birth of the CIA's Enhanced Interrogation Program in the book,¹⁸ at no point does he provide a legal basis for supporting the use of said operations, a "substance-free" pattern throughout the memoir.¹⁹

The EIT program and the methods used were based primarily on the U.S. military's Search, Escape, Resistance, and Evasion program. The techniques ranged from an attention grasp to sleep deprivation and waterboarding.²⁰

When presented with recommendations by the CTC attorneys, Rizzo considered the idea that the proposed EITs violated the federal anti-torture statute.²¹ He concluded the issue wasn't straightforward and ordered his staff to conduct research over the course of a week. Apparently little was learned from the hurried examination of the issues considering Rizzo's response:

Well, some of the techniques seem okay, but others are very harsh, even brutal. What I can't do is sit here and tell you now if it legally constitutes torture. And if it does meet the torture threshold, it doesn't matter what the justification is, even [if] it's being done to prevent another nine-eleven.²²

As opposed to providing his own actual legal opinion, Rizzo punted the request for use of EITs to the Department of Justice (DOJ), as the "binding arbiter inside the Executive Branch for legal interpretation of all federal statutes and the U.S. Constitution."²³ Finally in August 2002, DOJ breathes life into the EIT program through the production of the infamous "Torture" memos and the CIA quickly creates guidance for implementation on Zubaydah.²⁴

In the book and related interviews,²⁵ Rizzo provides conflicting justifications for the use of EITs. He is convinced EITs work,²⁶ and believes they were necessary to prevent a

second 9/11-like attack and ultimately led to the killing of Osama bin Laden.²⁷ But in hindsight Rizzo seems to be distancing himself from his original position. During a radio interview Rizzo punted to DOJ one more time when he said, "[I]f the Justice Department concluded that these techniques constituted torture, we would never have done them. So, I mean, I can't say they were torture. I didn't concede it was torture then, and I don't concede it was – it's torture now."²⁸ As will be discussed below, Rizzo's faulty logic based on unreliable evidence and loss of objectivity are startling considering he rose so high in the CIA.

III. Not the "Company" Man, but maybe the "Yes" Man

Throughout *Company Man*, Rizzo demonstrates time and time again that he's simply a "yes" man for the executives and employees at the CIA. As a result, he fails to properly identify his actual client, the CIA itself, and thus practices law haphazardly. Fred Kaplan of the New York Times captured these ideas best in his review of the book, "The main thing to know about *Company Man*, John Rizzo's memoir of his three decades as a C.I.A. lawyer, including seven years as the agency's chief legal officer, is that its title is not the slightest bit ironic."²⁹

Rizzo, in his own words, reveals his misplaced loyalties. He discloses, "I always considered everyone in the CIA as a 'client,' from the director down."³⁰ Rizzo viewed himself as "an attorney for all Agency personnel, and that [his] job was to advise them on the law and protect them from jeopardy for doing their jobs."³¹ Reflecting on the Iran-contra scandal, Rizzo recalls that the "arms-for-hostages initiative was conceived and approved at the highest levels of our government, including the CIA director."³² He admits, "In all likelihood I would have gone along . . .,"³³ a clear example of the "yes" man choosing the CIA employees over the actual client.

¹⁷ RIZZO, *supra* note 1, at 172-73.

¹⁸ *Id.* at 183.

¹⁹ Angelo M. Codevilla, 'Inside Story' Misses the Mark, WASH. TIMES (Jan. 20, 2014), <http://www.washingtontimes.com/news/2014/jan/20/a-self-licking-ice-cream-cone/>.

²⁰ RIZZO, *supra* note 1, at 242. In late 2005, when the EIT program was experiencing intense national scrutiny, Senator John McCain was given a private briefing by Porter Gross, then CIA director. Gross walked McCain "through all the techniques, how they were applied, the safeguards that were in place, and the demonstrable results the EIT program yielded, and so on." In stark contrast to Rizzo's opinion of the legality of EITs, McCain is quoted as saying, "It's all torture." *Id.*

²¹ *Id.* at 186.

²² *Id.* at 187.

²³ *Id.* at 188.

²⁴ *Id.* at 187-93.

²⁵ *Morning Edition: CIA Lawyer: Waterboarding Wasn't Torture Then*

and Isn't Torture Now, NATIONAL PUBLIC RADIO, (Jan. 7, 2014) <http://www.npr.org/2014/01/07/260155065/cia-lawyer-waterboarding-wasnt-torture-then-and-isnt-torture-now>.

²⁶ RIZZO, *supra* note 1, at 193. Rizzo cites the capture of two Al Qaeda "big fish" as specific proof that the program worked. This information as gained after eighty-three applications of waterboarding on Zubaydah over several days. *Id.*

²⁷ Malcolm Wilkerson, *The Government Attorney's Client: An Examination of John Rizzo's Company Man: Thirty Years of Controversy and Crisis in the C.I.A.*, 47 CONN. L. REV. ONLINE 65, 69 (2015).

²⁸ NATIONAL PUBLIC RADIO, *supra* note 25.

²⁹ Kaplan, *supra* note 3.

³⁰ RIZZO, *supra* note 1, at 46.

³¹ *Id.* at 47.

³² *Id.* at 128.

³³ *Id.*

Similarly, when considering the legality of EITs it appears Rizzo again plays the role of “yes” man. This time, Rizzo quickly becomes a “true believer” of the interrogation tactics.³⁴ Rizzo considers the EIT program a success and justified because it worked, it prevented a second 9/11-like attack on American soil and resulted in the killing of Osama bin Laden.³⁵ But *Company Man* is void of any legal analysis on the issues and Rizzo’s policy rationales are weak.³⁶ Assuming Rizzo effectively analyzed the legality of EITs, it appears he put his quasi-client interests ahead of his actual client’s interests.

Taking a step back, generally government attorneys are viewed as gatekeepers who protect the public good.³⁷ This ideal fails when an administration or agency seeks out attorneys who will agree with its agenda and not present obstacles.³⁸ Also, and more important in Rizzo’s case, it’s critical that government attorneys properly identify their client. The client is either the government agency, the head of a specific agency, the government as a whole, or even the people/public interest.³⁹

IV. Conclusion

Long after losing objectivity in service to his actual clients, John Rizzo finds himself back in the EIT fray one last time by writing this book. In the end, he effectively protected his ex-quasi-clients from criminal liability for their participation in the EIT program.⁴⁰ Although we’ll never know if the EIT program was in the best interests of the United States, reading *Company Man* provides an interesting source to analyze the pitfalls of practicing as a government attorney.

³⁴ Kaplan, *supra* note 3.

³⁵ Wilkerson, *supra* note 27, at 69-70.

³⁶ *Id.* A Senate Intelligence Committee found that the EIT program “produced very little intelligence of value,” “did not effectively assist . . . in acquiring intelligence,” and the “CIA inaccurately characterized the effectiveness of the [EITs] to justify their use.” *Id.* (citing Brad Knickerbocker, *Senate Report: Interrogation Methods “Far Worse” than CIA Acknowledged*, CHRISTIAN SCIENCE MONITOR (Apr. 12, 2014), <http://www.csmonitor.com/USA/DC-Decoder/2014/0412/Senate-report-Interrogation-methods-far-worse-than-CIA-acknowledged>).

³⁷ Elisa Ugarte, *The Government Lawyer and the Common Good*, 40 S. TEX. L. REV. 269, 270 (1999).

³⁸ Note, *Government Counsel and Their Obligation*, 121 HARV. L. REV. 1409, 1423 (2008) (citing Jack Goldsmith, *THE TERROR PRESIDENCY: LAW AND JUDGEMENT INSIDE THE BUSH ADMINISTRATION*, 26 (2007)).

³⁹ Ugarte, *supra* note 37 at 270.

⁴⁰ Wilkerson, *supra* note 27 at 73. In 2012, the U.S. Attorney General declined to prosecute anyone involved in the EIT program based on a lack of evidence. *Id.*