

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

SUHAIL NAJIM ABDULLAH	.	Civil Action No. 1:08cv827
AL SHIMARI, TAHA YASEEN ARRAQ	.	
RASHID, SA'AD HAMZA HANTOOSH	.	
AL-ZUBA'E, AND SALAH HASAN	.	
NUSAIF JASIM AL-EJAILI,	.	
	.	
Plaintiffs,	.	
	.	
vs.	.	Alexandria, Virginia
	.	September 22, 2017
CACI PREMIER TECHNOLOGY, INC.,	.	11:06 a.m.
	.	
Defendant.	.	
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TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFFS:	ROBERT P. LoBUE, ESQ. Patterson Belknap Webb & Tyler LLP 1133 Avenue of the Americas New York, NY 10046 and BAHER AZMY, ESQ. Center for Constitutional Rights 666 Broadway, 7th Floor New York, NY 10012
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FOR THE DEFENDANT:	JOHN F. O'CONNOR, ESQ. LINDA C. BAILEY, ESQ. Steptoe & Johnson LLP 1330 Connecticut Avenue, N.W. Washington, D.C. 20036
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(APPEARANCES CONT'D. ON PAGE 2)

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COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

APPEARANCES: (Cont'd.)

FOR THE DEFENDANT:

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ALSO PRESENT:

J. WILLIAM KOEGEL, JR., ESQ.

OFFICIAL COURT REPORTER:

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P R O C E E D I N G S

1
2 THE CLERK: Civil Action 8-827, Suhail Najim Abdullah
3 Al Shimari, et al. v. CACI Premier Technology, Inc. Would
4 counsel please note their appearances for the record.

5 MR. O'CONNOR: Good morning, Your Honor. John
6 O'Connor, Bill Dolan, and Linda Bailey for defendant, also
7 joined at counsel table by J. William Koegel, Jr., the general
8 counsel of CACI.

9 THE COURT: Good morning. We have more tables and
10 chairs now, so I think everybody should be able to get a seat
11 hopefully in the well, all right? But we'll put the lead
12 speakers at the front table, please.

13 MR. AZMY: Good morning, Your Honor. Baher Azmy and
14 cocounsel, Bob LoBue, for plaintiffs, both admitted pro hac
15 vice, with the understanding, the Court's permission, we can
16 present --

17 THE COURT: Mr. Zwerling has been released.

18 All right, this is -- the defendant's motion to
19 dismiss plaintiffs' third amended complaint is the matter
20 that's before the Court today, and again, this has been
21 extensively briefed by both sides, but I would give each side a
22 brief opportunity to highlight anything that they feel may have
23 been underplayed or in light of the reply brief from the
24 plaintiffs' standpoint, anything that you want to focus on, so
25 I'll let the plaintiffs begin.

1 MR. AZMY: Thank you, Your Honor. And if I may, I'd
2 like to address the political question issues and give my
3 colleague an opportunity to address the 12(b)(6) issues.

4 THE COURT: That's fine.

5 MR. AZMY: With respect to political question, I want
6 to start by underscoring that I believe the Fourth Circuit made
7 this Court's job considerably easier than defendants suggest.
8 If you look at page 160 of the most recent opinion, of the
9 reported opinion, the court sets out a number of plaintiffs'
10 allegations and then states, "Counsel for CACI conceded at oral
11 argument that at least some of the most egregious conduct
12 alleged, including sexual assault and beatings, was clearly
13 unlawful, even though CACI maintains that the plaintiffs cannot
14 show that CACI interrogators perpetrated any of these abuses,"
15 and soon after says, "Nevertheless, as noted above" --
16 referencing that phrase -- "some of the alleged acts plainly
17 were unlawful at the time they were committed and will not
18 require extensive consideration by the district court."

19 So that's one way in which there is clear evidence
20 that the beatings and sexual humiliations that all of our
21 plaintiffs endured are unlawful and therefore justiciable by
22 this Court.

23 The second way in which I think the Fourth Circuit
24 made this Court's job easier is it suggests that this Court
25 itself does not have to decide whether or not this conduct

1 meets the definition of torture, although we very strongly
2 believe that it does and can argue as much.

3 The question really, because the jurisdictional facts
4 are so intertwined with the merits, that that question should
5 ultimately be deferred to the jury, and that therefore, this
6 is, this is where the *Al Shimari* court cites *Kerns* to -- in
7 evaluating a 12(b)(1) motion, political question, where
8 jurisdictional facts are intertwined with the merits, it should
9 be left to the jury, and so I think then the question becomes
10 could a reasonable juror believe that the evidence presented
11 constitutes torture or cruel, inhuman, and degrading treatment.

12 And so we respectfully submit that certainly a
13 reasonable juror could conclude on both counts.

14 And I want to stress, as we do in our papers, when
15 evaluating torture, we not look technique by technique. The
16 Court is required to look at conduct cumulatively and ask
17 whether an individual, taking into account their subjective
18 position, including, as we stress, their certain religious
19 perspectives about the phobias that were exploited here around
20 dogs and sexual humility, did they suffer severe pain or
21 suffering, mental or physical?

22 And so the Court cannot simply ask is being kept in a
23 freezing shower for 20 minutes itself torture. The Court
24 should be asking is that torture after having been beaten, kept
25 naked, dragged, humiliated in front of women, and before being

1 subjected to attacks by dogs, additional beating, kept naked in
2 the cold for days, deprived of food and sleep, and then
3 internalize the torment of religious humiliation propagated by
4 the defendants?

5 I want to -- and I think the evidence is plain that
6 each individual did, in fact, suffer severe pain or suffering,
7 mental and physical, and the record establishes that almost ten
8 years after their ordeal in Abu Ghraib, they bear scars from
9 their torture, physical and mental. Each of them, our expert
10 doctor opined, is suffering from posttraumatic stress disorder
11 and other related anxieties.

12 I want to clarify two kind of technical points about
13 the torture statute and the CIDT standard. With respect to the
14 torture statute, there is some dispute between the parties
15 about the definition of mental torture and whether or not 2342,
16 which requires that the mental torture emerge from physical
17 pain, that is not a requirement that's in the convention
18 against torture that courts often look to in evaluating mental
19 torture.

20 Nevertheless, that provision also would -- renders
21 something mental torture and there is the threatened infliction
22 of physical pain, and all of our plaintiffs had their families
23 threatened, they themselves were threatened even with dogs or
24 with additional beatings, and that caused mental harm.

25 And then, you know, without getting too metaphysical,

1 of course, the distinction between physical and mental pain is
2 often elusive, and things like food deprivation, sleep
3 deprivation, enduring very cold temperatures, naked for a
4 period of days, can cause prolonged mental harm, and, of
5 course, as I already mentioned, our experts demonstrate that
6 ten years hence, they suffer mental harm from their physical
7 pain.

8 Next on the question of cruel, inhuman, and degrading
9 treatment, CACI suggests that we are bound by the definition of
10 CIDT contained in the particular amendments, criminal law
11 amendments, the 2006 War Crimes Act, that is, the amendments
12 that appear at 2441(d)(2)(D), and I want to be clear that we
13 and the court in citing the 2006 War Crimes Act cited (d)(2),
14 which describes prohibited conduct, and we cited that simply --
15 and the court did, too, I believe -- to demonstrate that even
16 in 2006, CIDT is an accepted international law norm as --
17 because what (d)(2) says -- sorry, (d)(1), forgive me, (d)(1)
18 is cited; (d)(2) is the provision we think does not apply --
19 (d)(1) states that certain conduct is prohibited, references
20 Common Article 3 of the Geneva Conventions, and offers a
21 definition of CIDT, and the court was and we were citing (d)(1)
22 and (B), which is cruel, inhuman, and degrading treatment, to
23 simply establish the existence of the norm; second, a -- these
24 sort of -- there's no way that the customary international law
25 definition of CIDT is somehow exhausted by recent amendments to

1 a domestic criminal statute that are embodied in (d)(2), which
2 ratchets up the definition of CIDT nor could it.

3 If I can just take a minute, it may seem like
4 hair-splitting, but it's very important, (d)(2) says where CACI
5 imports the higher standard of cruel, inhuman, and degrading
6 treatment, (d)(2) says, "Definitions," and says, "In the case
7 of an offense under subsection (a)," that is, a criminally
8 chargeable offense, then you can apply this definition, but
9 that's not, of course, what we're talking about. We were just
10 simply articulating the norm.

11 And that definition could not apply because it
12 references another provision of the War Crimes Act, (c)(3), for
13 the proposition that all that will be chargeable criminally
14 under this definition are grave breaches in the
15 non-international armed conflict context. We are in an
16 international armed conflict context.

17 So that's a long way of saying that that criminal
18 provision does not constrain the definition of cruel, inhuman,
19 and degrading treatment. Your Honor had it right in
20 identifying numerous other customary international law sources
21 for that definition, and that definition is with respect -- in
22 relation to torture, where certain things can be CDIT if they
23 do not rise to the level of torture.

24 If it's okay to turn to my colleague to address
25 the --

1 THE COURT: Well, let me hear any response on the
2 political question issue.

3 MR. AZMY: Okay.

4 MR. O'CONNOR: Your Honor, on the political question,
5 we also agree that the Fourth Circuit's instructions to the
6 Court were very clear on remand, and what the Fourth Circuit
7 said was that this Court should conduct a discriminating
8 analysis that involves, quote, examining the evidence regarding
9 the specific conduct to which plaintiffs were subjected and the
10 source of any direction under which the acts took place.
11 That's *Al Shimari IV*, at 160 to -61.

12 THE COURT: Now, we have half of that; that is, we
13 have the depositions of the three plaintiffs remaining in this
14 case, right?

15 MR. O'CONNOR: We do have the three plaintiffs
16 deposed.

17 THE COURT: Right. How much evidence is yet to be
18 developed about CACI's alleged involvement in that conduct?

19 MR. O'CONNOR: There's basically been no development
20 at this point, Your Honor, because --

21 THE COURT: That's the problem.

22 MR. O'CONNOR: Your Honor is preaching to the choir.
23 I mean, we feel very strongly that we need discovery, and we've
24 said so at every step, that --

25 THE COURT: Which means it's premature to be talking

1 about dismissing a political question case. I haven't finished
2 the job for the Fourth Circuit, have I?

3 MR. O'CONNOR: Well, Your Honor, we would say that
4 briefing the political question was premature, and that's why
5 we had -- when Your Honor had --

6 THE COURT: We wanted to get -- we've been taking
7 this case sort of step by step --

8 MR. O'CONNOR: Yes, Your Honor.

9 THE COURT: -- because in the previous iterations of
10 this case, you know, there had not been enough development.

11 We've now gotten the depositions of the three
12 plaintiffs. We now have the very specific description of all
13 the alleged conduct upon which the plaintiffs are relying, so
14 that half of the assignment from the Fourth Circuit, I think,
15 has been achieved.

16 MR. O'CONNOR: Well, I wouldn't say completely
17 achieved, Your Honor, because the second part of the
18 assignment, as Your Honor has cast it, would be sorting out
19 what, if any, involvement CACI personnel had with that
20 treatment.

21 THE COURT: Correct.

22 MR. O'CONNOR: But as part of that, it would also
23 double back to the first point, because at this point, we just
24 have to accept what the plaintiffs say about what happened
25 because we don't have any access to information from anyone

1 else who can say, well, I was the interrogator, or I was the
2 linguist, or I was the analyst at that interrogation, and
3 that's not what happened. This is what happened.

4 THE COURT: Right.

5 MR. O'CONNOR: So the second step, if that's where
6 we're going to go, will also inform the first steps. So I
7 wouldn't say it's complete, but we do at least, I think, have
8 clarity on what the plaintiffs say happened to them.

9 Now, our, our assumption when Your Honor directed us
10 to file a Rule 12 motion was that we were not going to be
11 dealing with political question at this point because, as the
12 parties had said back in the summer, we thought that sort of
13 trying to narrow the case, if 12(b)(6) motions and things like
14 that made sense, before we confronted some pretty difficult
15 questions on political question, but Your Honor said: Brief
16 it, so we did, and they do have the burden, and so if --

17 THE COURT: Well, the briefing has helped the Court
18 to see even more clearly, although still not totally clearly,
19 some of the other legal arguments that you have percolating in
20 this case.

21 MR. O'CONNOR: Yes, Your Honor.

22 THE COURT: I mean, you've made, you've made, you
23 know, arguments involving preemption and other issues that I'm
24 not going to address today, all right? Because the bottom, the
25 bottom line is that the Fourth Circuit has sent this Court, as

1 both sides agree, a clear direction to develop this record as
2 fully as it can be developed. And I've told you I've tried to
3 see if we can fully develop this record without having to get
4 into the whole morass of elements from the government. That's
5 hopefully way down the road. But the next step that has to be
6 taken is to thoroughly get discovery as to CACI, as to who from
7 CACI was on the scene, what was going on.

8 So where are you in terms of -- and this is another
9 Judge Anderson case. Have we stayed all discovery pending the
10 outcome of this particular round of briefing?

11 MR. O'CONNOR: Yes. Your Honor, we've asked for
12 discovery many times, and the Court has said: Hold on,
13 let's -- you've not permitted us to take discovery yet.

14 THE COURT: Well, wait. But that's you -- I'm only
15 looking at the plaintiffs getting discovery from you-all, from
16 CACI.

17 MR. O'CONNOR: Your Honor, I just want to make sure
18 the Court understands that they've taken discovery from CACI
19 personnel over the past 10 years --

20 THE COURT: Of course they have.

21 MR. O'CONNOR: -- or 12 years, but the problem is we
22 are -- without the United States, we are never going to find
23 out who, if anyone, was, as the Court said, on the scene with
24 these plaintiffs, because the United States has a monopoly on
25 that information.

1 It's not knowable.

2 THE COURT: All right, but here's the point: As I
3 understand the Fourth Circuit's position, and I think they're
4 correct, is that if the conduct -- first of all, the plaintiffs
5 have the hurdle of showing that the conduct actually was CACI's
6 conduct, right?

7 MR. O'CONNOR: Agreed.

8 THE COURT: But if that conduct was unlawful, it
9 doesn't make any difference whether the government ordered you
10 to do it or not. You're going to be liable.

11 MR. O'CONNOR: But they're never going to -- but my
12 only point is taking discovery from CACI will not shed any
13 light on whether anyone from CACI gave instructions for these
14 plaintiffs. We've never shirked -- we've never avoided
15 discovery. We don't have much to give because we don't know
16 who's on the scene for these plaintiffs. We've been trying to
17 get that from the United States for years, and until we get
18 that, that will tell them who they should ask about --

19 THE COURT: Why does CACI not know whether its own
20 employees or subcontractors were actually on the scene at any
21 particular time? Why would you not know that?

22 MR. O'CONNOR: Your Honor, when you say "on the
23 scene," if the Court means who was at Abu Ghraib prison, we
24 know that, but who, if anyone, from CACI was involved with
25 these plaintiffs? We don't know that because that information

1 is classified, and so we -- CACI management was not monitoring
2 or overseeing these interrogations. We put people in, and the
3 government, you know, the Army did that.

4 So we don't know -- management at CACI had no -- they
5 weren't getting operational reports. They have no idea who was
6 interrogating whom. So, but the information is classified, and
7 they --

8 THE COURT: I'm sorry, but CACI had to have had
9 supervisors on the scene. Let me ask the plaintiff, what
10 discovery have you actually gotten from CACI at this point? I
11 thought that you had gotten discovery in the past.

12 MR. LoBUE: Yes. Your Honor, Robert LoBue for the
13 plaintiffs.

14 THE COURT: Yeah.

15 MR. LoBUE: We had a significant amount of discovery
16 taken in a companion case, the one in the D.C. Circuit
17 ultimately, which by agreement is admissible here to the same
18 extent, and so we do have a significant amount of discovery,
19 and so here are some of the things that discovery shows:

20 We have the, the detainee files from the government
21 for our plaintiffs. So, for example, the government's records
22 identify who the lead interrogator for Mr. Al Shimari was, and
23 it was an employee of CACI.

24 We have testimony from our own, one of our own
25 plaintiffs that he saw a civilian interrogator outside his cell

1 instructing the MP what to do with him and then the MP came in
2 and committed acts of abuse. The only civilian interrogators
3 at Abu Ghraib in the hard site Tier 1A were CACI employees.

4 THE COURT: Now, is that something -- is that a fact
5 that you-all have agreed to? I thought the last time, there
6 was discussion of other contractors being on the scene.

7 MR. LOBUE: There were translators to be sure. There
8 were other cases brought against, against the translation
9 company. Those are no longer pending.

10 But my point simply, Your Honor, is I don't want the
11 sense to be left on the record that we have no evidence
12 connecting CACI interrogators on the site to these plaintiffs.
13 We have testimony from the MPs who were ultimately
14 court-martialled that they took their orders from CACI -- the
15 CACI interrogators how to treat the detainees. They were
16 trained by the CACI interrogators how to inflict these forms of
17 abuse on the detainees. And we have testimony from our own
18 witnesses that those same MPs practiced the same forms of abuse
19 on them.

20 So there -- and remember, this is a conspiracy and
21 aiding and abetting case. We are not contending that the CACI
22 interrogators laid a hand on the plaintiffs. That's not the
23 way it worked, as the investigations have all made quite clear.

24 There was a command vacuum. The CACI interrogators
25 assumed de facto positions of control, and they dictated to the

1 MPs how to treat the detainees, and they praised the MPs when
2 they committed the acts that they were instructed to do.

3 So if you compare this case, for example, to the
4 *Al-Quraishi* decision, which is cited in our briefs, in the
5 context of conspiracy and aiding and abetting, Judge Messitte
6 in that case said this is not merely a plausible, indeed,
7 almost conclusive inference that they were acting in concert in
8 the confines of, of the hard site Tier 1A.

9 So I think the -- I think what Mr. O'Connor is
10 getting at is he has a pending motion to get discovery from the
11 government as to specifically which interrogators were assigned
12 to which detainees, and we've taken no position on that because
13 our case does not turn on placing a particular CACI
14 interrogator on a particular detainee. We think they set the
15 example. They set the tone. They instructed. They praised.
16 And if you look at *Al-Quraishi*, that should be enough.

17 I'd just like to bring to the Court's attention the
18 recent decision that didn't quite make it into our briefs in
19 the case of the *Salim* case. This is the case of the CIA
20 psychologists, *Salim v. Mitchell*.

21 THE COURT: That was just settled. That was a
22 settlement.

23 MR. LOBUE: That was settled days after this decision
24 issued denying summary judgment to the defendants, and that was
25 the case where the defendants are sitting in their medical

1 offices in the United States while the tactics that they
2 devised and instructed are being carried out on the other side
3 of the world, and the judge said that's enough for an aiding
4 and abetting case.

5 So there is a, there is a real similarity in that
6 respect to our case, where we're not saying they were in the
7 cell committing the acts of abuse, but they trained, they
8 instructed, they praised, they ordered indeed.

9 So I'm -- that's a roundabout way of saying we have
10 some evidence. I know the defendants have a motion for
11 discovery that they may wish to proceed with at some point, but
12 I think there's enough before the Court to say a reasonable
13 jury could find that these -- the constellation of acts that
14 we've alleged -- and the Fourth Circuit said look for a
15 constellation of acts, and if a reasonable jury properly
16 instructed could say yes, that rises to the level of CIDT or
17 torture, the Court has jurisdiction, and we go from here.

18 THE COURT: Well, we're not arguing summary judgment
19 today. What's pending before the Court is a motion to dismiss,
20 and you've really to some degree made summary judgment types of
21 arguments, but I understand.

22 Let me hear from Mr. O'Connor.

23 MR. O'CONNOR: Your Honor, a couple things in
24 response to Mr. LoBue's comments and the Court's questions
25 during that: Mr. LoBue said that we have the, the three

1 plaintiffs' detainee files. It's true to a point. They're
2 heavily, heavily redacted.

3 He mentioned that Al Shimari's detainee file, and he
4 said, you know, it shows the lead interrogator was a, was a
5 CACI employee. What the detainee file shows -- his detainee
6 file is probably 150 pages. Probably 100 of those are
7 redacted. There is a heavily redacted detainee report that
8 contains almost no useful information.

9 There's a little line item that says CACI as an
10 interrogator, but when Mr. LoBue says we know that was a CACI
11 interrogator, we don't know who. We don't have any idea who.
12 So --

13 THE COURT: Do you really need to know who? As long
14 as you know that they were, in fact, a CACI person, what
15 difference does it make?

16 MR. O'CONNOR: Your Honor, how do we ask the -- how
17 do we ask anyone whether what they say happened during an
18 interrogation happened? We have to know who that is in order
19 to ask them, "Mr. Al Shimari says you did X, Y, and Z. Did you
20 do X, Y, and Z?"

21 THE COURT: Wait, wait, wait. Remember the
22 plaintiffs' argument. They're not saying that the CACI person
23 did it. They're saying that the CACI people were directing the
24 military to do it.

25 MR. O'CONNOR: "Mr. Interrogator, did you tell anyone

1 to do X, Y, and Z to Mr. Al Shimari?"

2 "No, I do not."

3 I have to know who, who the people are in the room in
4 order to have any opportunity to defend my client, which my
5 client is entitled to defend itself and defend itself on the
6 merits of knowing what happened actually and not take just the
7 plaintiffs' word for it.

8 THE COURT: How many people did you have working at
9 just that particular aspect of the prison at the time?

10 MR. O'CONNOR: Your Honor, for interrogators, we
11 had -- the company had a total of about 30 interrogators over
12 an extended period of time, never more than a dozen or 15 on
13 site at any one time.

14 THE COURT: All right, so you know who they are.

15 MR. O'CONNOR: We do know who was there. They cannot
16 tell us who they interrogated. It's classified.

17 THE COURT: They don't have to -- they don't have to
18 tell you, I don't think, who they interrogated. They have to
19 tell you what they told the -- what related to this case they
20 told the military people or the translators. I, I don't think
21 there should be any difficulty in getting discovery if it's
22 properly developed that would not -- and they could clearly
23 avoid having the government get upset about it.

24 Have you really tried to get that information?

25 MR. O'CONNOR: We've asked interrogators whether they

1 can tell us who they interrogated or who they interacted with.

2 THE COURT: Not who. That doesn't seem to be the
3 real issue here.

4 MR. O'CONNOR: Well, it is, Your Honor, because they
5 cannot make a claim against my client if -- based on what a
6 CACI interrogator might have said with respect to a completely
7 different detainee.

8 THE COURT: No, no. If a CACI interrogator says to
9 an MP or says to the people who are doing the interrogation,
10 "Hey, we've got to get this information; you know, these guys
11 are dangerous; I don't care what you do; call out the dogs,"
12 you know, blah, blah, blah, that's going to be certainly enough
13 to get the case to the jury. Whether it's enough to get a
14 verdict is another question. That will get the case to the
15 jury.

16 MR. O'CONNOR: Your Honor, I'm glad Your Honor made
17 that point because it brought up something else I was going to
18 say, where Mr. LoBue talked about what the MPs testified to,
19 and it's in the papers, and we've attached the excerpts from
20 the Frederick and Graner depositions. They said that
21 interrogators, military and civilian, would give us
22 instructions about detainee conditions, but they also testified
23 without equivocation that those instructions were specific to
24 their own interrogator, and that's -- because that's the way
25 the Army did it.

1 If someone was supposed to be on sleep deprivation
2 and that was approved, then the interrogator would go to the MP
3 and say: That guy, we have to manage his sleep. This is --
4 these are the conditions. If someone is supposed to be, you
5 know, getting a reward or a deprivation as part of an
6 interrogation technique, they would come and say: That guy
7 gets, you know, this treatment.

8 And Frederick and Graner were very clear that
9 interrogators did come down and say generally: Here's what you
10 do. They said in every case, the instructions were: This is
11 what you do with my assigned detainee.

12 THE COURT: Well, what I'm going to do at this point,
13 again, there are some other interesting legal issues that I
14 don't need to hear argument on because again, you're very
15 articulate attorneys who have briefed these issues well, that
16 we will get again an opinion out in the not-too-distant future
17 on the other legal issues that have been raised.

18 But I can tell the defense right now that we're not
19 dismissing this complaint. It's going to go forward, and so
20 you have really two options. Option No. 1 is to start working
21 with Judge Anderson in carving out some discovery issues.

22 Option No. 2, and I think I've mentioned this to you
23 before, is to perhaps sit down either with Judge Anderson or a
24 private mediator and see what you can work out. I mean, there
25 is obviously plenty of precedent in these type of cases for

1 matters getting resolved.

2 And again, given the nature of the plaintiffs, and
3 I've urge plaintiffs' counsel to think realistically about
4 this, given where these men are located, the realities of their
5 lives, they're not like people sitting in the U.S. in suburbia,
6 all right, what might appear to be a pittance of a settlement
7 to a U.S. person could be quite different given the realities
8 of life over there.

9 This case will still take some significant time to
10 get fully developed, and at the end of the day, at summary
11 judgment, it may not survive, or if it survives summary
12 judgment, who knows how it will work out at trial.

13 So in other words, both sides are looking at ongoing
14 litigation, and it would be very wise to think about whether
15 there is a way in which to resolve it. If you can't, then
16 we'll see you again down the road.

17 Again, the motion to dismiss is denied. The reasons
18 for that, the full reasons you will get in an opinion down the
19 road. This is not to keep you from starting to finish up the
20 discovery that's needed, and that would be done with Judge
21 Anderson. We're not going to discuss discovery issues with
22 you-all now.

23 MR. O'CONNOR: Your Honor, can I say one sentence
24 about our motion?

25 THE COURT: I want to see you do it in one sentence.

1 Go ahead. This is a challenge.

2 MR. O'CONNOR: Given Mr. LoBue's comments about this
3 is a conspiracy and aiding and abetting case, which includes
4 what they've said in their brief, we do think that Counts 1, 4,
5 and 7 have to be dismissed because there are no direct claims
6 of direct mistreatment.

7 THE COURT: I don't need to hear argument. You've
8 briefed that issue.

9 MR. O'CONNOR: Yes.

10 THE COURT: You did it in one sentence. I think it
11 was compound, but that's okay.

12 MR. O'CONNOR: But it was one sentence.

13 THE COURT: Very good. All right, that concludes the
14 docket for the day. We'll recess court.

15 (Which were all the proceedings
16 had at this time.)

17

18 CERTIFICATE OF THE REPORTER

19 I certify that the foregoing is a correct transcript of
20 the record of proceedings in the above-entitled matter.

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23

/s/

Anneliese J. Thomson

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