

Faridi Declaration Ex. 1

1 UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF VIRGINIA
3 Alexandria Division

4 SUHAIL NAJIM ABDULLAH : Civil Case
5 AL SHIMARI, et al., : No. 1:08-CV-827
6 :
7 Plaintiffs :
8 :
9 v. :
10 :
11 CACI PREMIER TECHNOLOGY, :
12 INC., : April 17, 2024
13 : P.M. SESSION
14 Defendant : 2:00 p.m.
15 :

16 TRANSCRIPT OF JURY TRIAL PROCEEDINGS
17 DAY 3 - P.M. SESSION
18 BEFORE THE HONORABLE LEONIE M. BRINKEMA
19 UNITED STATES DISTRICT JUDGE

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COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

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C O N T E N T S

WITNESS: DIRECT CROSS REDIRECT RECROSS

BY VIDEOTAPE DEPOSITION PLAYED IN COURT:

GEORGE FAY 4
ARNOLD MORSE 7
STEVEN STEFANOWICZ 18

E X H I B I T S

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P R O C E E D I N G S

THE COURT: Bring the jury in.

MR. FARIDI: Your Honor, just one housekeeping issue before the jury comes in.

THE COURT: Yeah.

MR. FARIDI: Right after this particular deposition, we're going to be playing the deposition testimony of Arnold Morse, and in connection with that testimony we're going to be reading to the jury CACI's responses to our requests for admissions.

I assume Your Honor will at some point instruct the jury as to what a request for admission is. I would contend, Your Honor, that that's probably the most opportune time.

THE COURT: Right. That's fine.

MR. FARIDI: And then also, Mr. Morse was CACI's Rule 30(b)(6) designee, and I'm not sure about Your Honor's preference as to what instruction you give to the jury as to testimony provided by a Rule 30(b)(6) witness.

THE COURT: It binds the corporate entity. So that's easy. Yeah.

MR. FARIDI: Okay.

(Jury in at 2:04 p.m.)

THE COURT: Everybody is back. We're continuing now with the deposition of -- the Fay deposition.

(Excerpt of videotaped deposition of GEORGE FAY played

1 in open court.)

2 (Excerpt ended.)

3 THE COURT: Are we ready for the next witness?

4 MR. FARIDI: Your Honor, I think it's just a 3-minute
5 redirect of Major General Fay.

6 THE COURT: All right.

7 (Excerpt of videotaped redirect examination of
8 GEORGE FAY played in open court.)

9 (Excerpt ended.)

10 MR. FARIDI: Your Honor, at this time plaintiffs would
11 like to read to the jury CACI's responses to plaintiffs' request
12 to admissions.

13 THE COURT: Ladies and gentlemen, another technique
14 that's used in pretrial discovery is lawyers for each side can
15 send a list of questions to the other side. These are called
16 requests for admissions. In other words, we're asking you to
17 admit whether a certain fact is true or not true. And those
18 answers are provided by the other side and are binding on the
19 other side. All right?

20 MR. FARIDI: These requests for admissions were sent by
21 plaintiffs, and they were acknowledged -- the defendants
22 CACI Premier Technology, Inc. and CACI International, Inc.,
23 collectively CACI, responded to them February 7, 2013.

24 Request for Admission No. 23: "Civilian 5 in the
25 report entitled "AR 5-6, Investigation of the Abu Ghraib

1 Detention Facility and 205th Military Intelligence Brigade by
2 Major General George R. Fay, the Fay report, is Tim Dugan."

3 Response: "CACI incorporates its general objections.
4 Subject to and without waiving the foregoing objections, CACI
5 believes this request to be accurate, and therefore admits it."

6 Request for Admission Number No. 24: "Civilian 11 in
7 the Fay report is Daniel Johnson."

8 Response: "CACI incorporates its general objections.
9 Subject to and without waiving the foregoing objections, CACI
10 believes this request to be accurate, and therefore admits it."

11 Request for Admission No. 25: "Civilian 21 in the Fay
12 report is Steve Stefanowicz."

13 Response: "CACI incorporates its general objections.
14 Subject to and without waiving the foregoing objections, CACI
15 believes this request to be accurate, and therefore admits it."

16 Your Honor, at this point plaintiffs called by video
17 designation Arnold Morse, who was the Rule 30(b)(6) corporate
18 representative of CACI.

19 THE COURT: Now, another thing I want the jury to know.
20 Under the Federal Rules, when we have a corporate party, if
21 questions are going to be asked about that corporation, the
22 corporation is given notice by a subpoena indicating what
23 specific areas they're going to be asking questions about.

24 And they can designate a person to be what is called a
25 30(b)(6) designee. That person speaks for the corporation, and

1 what he or she states binds the corporation because that's
2 basically like the corporation itself speaking. Okay?

3 MR. FARIDI: The total run time of this video is
4 approximately 30 minutes. And we're also moving to admit
5 Plaintiff's Exhibit 83, 84, and 104 at this point.

6 THE COURT: Are there any objections to those three
7 exhibits?

8 MR. O'CONNOR: I'm looking at them now, Your Honor.
9 We have no objection to any of those three exhibits,
10 Your Honor.

11 THE COURT: All right. All three are in.

12 (PLAINTIFF EXHIBIT Numbers 83, 84, 104 were admitted
13 into evidence.)

14 (Excerpt of videotaped deposition of ARNOLD MORSE was
15 played in open court.)

16 THE COURT: This is incredibly cumulative; again, one
17 of the dangers in a case like this, where, you know, some of the
18 testimony has to be taken ahead of time. But you-all have been
19 told to edit -- can you move this along to get to something
20 that's new? This -- we've heard all of this.

21 MS. MAHLER-HAUG: Your Honor, this is the last passage
22 where the text will be repeated. There will be a few more
23 passages that go up on the screen, but the witness is just going
24 to be asked his understanding of the findings or his
25 understanding of what CACI knows about the findings.

1 THE COURT: You better move this along.

2 (Continued videotaped deposition of ARNOLD MORSE played
3 in open court.)

4 (End of excerpt.)

5 THE COURT: All right. This is the right time to take
6 our afternoon break. It's 20 after, so I'll give the jury until
7 20 of.

8 All right. We're in recess.

9 (Recess taken at 4:18 p.m.)

10 (Jury out at 4:18 p.m.)

11 THE COURT: All right. My understanding is the
12 plaintiff is about to rest. Is that correct?

13 MR. FARIDI: Your Honor, before we rest, we have just
14 two issues which I hope -- we don't think will take up more than
15 two minutes.

16 THE COURT: All right.

17 MR. FARIDI: They will be addressed by my colleagues.

18 THE COURT: Yes, ma'am.

19 MS. ROBINSON: Your Honor, Bonita Robinson for
20 plaintiffs.

21 There's one more exhibit that relates to the deposition
22 designations we just watched that plaintiffs seek to admit.
23 It's Plaintiffs' Exhibit 100A in your binder. And the
24 designations played discussed this exhibit, but did not show it
25 or quote it.

1 THE COURT: Well, here's the real problem I have. Your
2 exhibit numbers in the book don't match the ones you've moved
3 in. I'm very concerned, because our jurors are taking notes and
4 we're going to get a question about, you know, this witness
5 talked about Exhibit Such and Such, and they can't find it.

6 MS. ROBINSON: We can create a cross reference, if that
7 would be helpful.

8 THE COURT: It would be extremely helpful. It should
9 have been done, frankly, before the deposition was played.

10 Is there any objection to 100A?

11 MS. GINSBERG: This says 100.

12 MS. ROBINSON: It's the first page of PTX 100.

13 THE COURT: It's the May 13th, 2004 headquarters
14 memorandum. Any objection?

15 MS. GINSBERG: Yes, Your Honor. This is one of the
16 ones that we argued about, or included in our list that should
17 be excluded. It's a memorandum from Major Daniels to
18 Scott Northrop, who was the in-country manager, dated 13th of
19 May 2004.

20 THE COURT: I'm going to overrule the objection. I
21 think it's relevant. Okay. It's in.

22 (PLAINTIFFS' Exhibit 100A was admitted into evidence.)

23 THE COURT: All right. What's the other matter?

24 MS. MAHLER-HAUG: Your Honor, Alex Mahler-Haug for
25 plaintiffs. We heard Your Honor's recent statement that issues

1 going to subject matter jurisdiction are not going to the jury,
2 and, of course, we agree, and those issues, in our view, have
3 been resolved.

4 Nevertheless, and although we don't think it's
5 necessary, for completeness purposes, we would like to request
6 that Your Honor take judicial notice of several facts that we
7 would submit are not reasonably in dispute concerning the
8 United States' control of Iraq during the events in question.

9 We've put together a brief set of facts that are drawn
10 from, in fact, Your Honor's July 2023 memorandum opinion --

11 THE COURT: I'm not going to take up the jury's time
12 with something like this right now. I'm going to postpone it
13 until after we get the rest of this case in today. We'll take
14 care of it later on today. All right?

15 MS. MAHLER-HAUG: Okay. Thank you, Your Honor.

16 THE COURT: And you should give a copy of that, if you
17 haven't already, to defense counsel so that they're not taken by
18 surprise.

19 MS. MAHLER-HAUG: We have already given a copy to
20 defense counsel, and we're happy to hand up copies to Your Honor
21 now, if that would be okay.

22 THE COURT: You may as well, yes. All right.

23 With that understood, and assuming that the exhibits
24 that were discussed today are in - and, again, we can take care
25 of that after the fact - the plaintiff, I assume, is resting at

1 this point. Is that correct?

2 MR. FARIDI: Yes. Would you like me to announce that
3 in front of the jury, or is this --

4 THE COURT: No, no, no. I want to take care of matters
5 before then, so I don't want the jury being delayed this
6 afternoon.

7 All right. Does the defense have a motion?

8 MR. O'CONNOR: We do, Your Honor.

9 THE COURT: Go ahead, let me hear it. Fast.

10 MR. O'CONNOR: Your Honor, CACI moves for judgment
11 under Rule 50. We don't think that plaintiffs have put on a
12 case sufficient to support a jury verdict on a number of issues.
13 And there's also, as the trial has proceeded, clear, in our
14 view, jurisdictional issues.

15 We don't think they have put on sufficient evidence of
16 domestic conduct. The focus test is the law of the
17 Supreme Court and the Fourth Circuit. The focus of the statute
18 is tortious conduct. There is zero evidence of tortious conduct
19 of any kind in the United States.

20 We also don't think that they have put on evidence that
21 CACI personnel aided and abetted or conspired with anyone with
22 respect to their treatment. The only connection between a CACI
23 employee and one of these plaintiffs that's been admitted in
24 evidence is the fairly innocuous interaction that
25 Mr. Stefanowicz had with plaintiff Al-Ejaili, where the evidence

1 is there was no violation of the IROEs with respect to that
2 interaction.

3 We also believe that there is -- the state secrets
4 privilege has made this case such that it cannot be fairly tried
5 because we were not allowed to put live witnesses on for the
6 jury to see for all the participants in their interrogations.
7 And the plaintiffs necessarily are alleging that the -- that the
8 connection with CACI is that CACI personnel somehow had
9 something to do with how they were treated in their
10 interrogations.

11 We also believe that plaintiffs' claims are preempted
12 because they're inconsistent with federal statutes that create
13 private causes of action that are not set forth -- that are
14 inconsistent with the Court's ability to make a common law cause
15 of action under the ATS. And we don't think a common law cause
16 of action can be brought under the ATS under current law.

17 I have a memorandum that we will file tonight. I can
18 hand it up if the Court wants it.

19 THE COURT: Well, certainly you file it tonight. That
20 will be the proper way. And give a copy now right now. That's
21 fine as well.

22 And I assume plaintiffs' counsel have a copy?

23 MR. O'CONNOR: I can give it to them right now.

24 THE COURT: At this stage of the proceedings, as you
25 all know, the Court draws all inferences in favor of the other

1 side. I think there's more than enough evidence that's been
2 presented at this point to allow this case to go forward.

3 The legal issues about whether there's been enough
4 action in the United States to properly give this court
5 jurisdiction, I addressed that issue multiple times in pretrial
6 motions to dismiss. Now that I'm getting the actual evidence in
7 a different capacity, I'm even more satisfied now that there's
8 been enough domestic activity. Again, I haven't heard the
9 defendant's case yet, but I'm satisfied that there's enough to
10 let this case go forward at this point.

11 And so the motion is denied, and we'll start the
12 defense case. All right.

13 We'll bring the jury in.

14 Who is your first witness going to be? I'm going to
15 read in interrogatory response and then read in part.

16 (Jury in at 4:45 p.m.)

17 THE COURT: Ladies and gentlemen, I told you at the
18 beginning that we would move this case as expeditiously as we
19 could, and counsel for both sides have been actually working
20 very hard to rouse this case. And so I can tell you that the
21 plaintiff has rested. That is, the plaintiffs believe they have
22 put on all of their evidence.

23 So we're turning now to the defense case. We are
24 somewhat ahead of schedule. I understand you did ask my court
25 security officer about the schedule that I had set for next

1 week. I've decided I'm going to keep to that schedule. I like
2 to keep my word with jurors, so Monday afternoon we will be
3 ending around 4 o'clock and I'm going to give you the day off on
4 Tuesday.

5 It is possible you may be getting the case for
6 deliberation on Monday. I'm not sure yet if we'll actually get
7 to that point. If that is the case, then you'll come back on
8 Wednesday to be deliberating. But we are well ahead of schedule
9 and I'm going to hopefully keep the case on that pace. All
10 right?

11 We're now going to start. Mr. O'Connor, you're going
12 to read some interrogatory responses into the record?

13 MR. O'CONNOR: Yes, Your Honor. CACI is going to read
14 the United States's response to Interrogatory No. 6, which is
15 Defendant's Exhibit 2 in evidence. We're going to read the
16 interrogatory response with regard to Al-Ejaili at this time.

17 Beginning on Interrogatory 6, the interrogatory
18 question posed to the United States was: "For each interrogator
19 identified in response to Interrogatory No. 1, describe the
20 facts relating to such interrogator's interactions with
21 plaintiffs, including the specific conduct to which such
22 interrogators subjected any plaintiff, and the source of any
23 direction under which the acts took place."

24 And with respect to Mr. Ejaili, the response of the
25 United States is at page 15, and it reads as follows:

1 "Plaintiff Al-Ejaili: Although, as noted in response to
2 Interrogatory 1, Department of Defense has found no formal
3 record of an intelligence interrogation of plaintiff Al-Ejaili,
4 other records in its possession reference military intelligence
5 activity during plaintiff Al-Ejaili's detention at Abu Ghraib,
6 including suggestions that plaintiff Al-Ejaili may have been
7 interrogated by a CACI interrogator and a military
8 interrogator."

9 Next paragraph: "In the military police log for the
10 Abu Ghraib hard site, there is a reference on November 9, 2003,
11 quote: 2015 (8:15 p.m.), new civilian internee number 152735
12 works for Al-Jazeera [sic] say he is a reporter, moved to
13 1A-28," end quote.

14 On the following day, November 10, 2003, after the
15 opening of the log at 1600, 4 o'clock p.m., there's this entry:
16 "Note: Per the chief, not further identified but presumably a
17 military chief warrant officer, number 152735 is to have contact
18 with no one except his team," bracket. There is a parenthetical
19 that includes the first names of two individuals who are not
20 further identified, and the last names of two known Army
21 interrogators, end bracket. "If anyone attempts to speak with
22 this person and gives a problem, notify the chief at," and
23 provides apparent phone number. "Log everyone who tries to or
24 speaks with this person (Military Policeman Graner)," also
25 paren, "See Army 20141202-0003."

1 Next paragraph: "In this same time period, emails were
2 exchanged between intelligence officials at CJTF-7," which is
3 Combined Joint Task Force 7, "and the Abu Ghraib ICE," which is
4 Interrogation Control Element. "The CJTF-7 official forwarded a
5 draft intelligence information report (DIIR) regarding another
6 Al-Jazeera employee who had been detained by the coalition, and
7 remarked that the DIIR was something of interest/possible
8 assistance in dealing with our Al-Jazeera guy. The ICE military
9 official responded, we'll it [sic]. This guy was not to talk to
10 him. He's currently in ISO. The CJTF-7 official replied: Be
11 advised, the subject in the DIIR is not, again, not the same as
12 the guy at Abu Ghraib. The material may still be helpful for
13 background, but please do not confuse the two." There's a
14 redaction and then it says, "See DoD-01173."

15 Third paragraph: "In addition, in 2013, the Department
16 of the Army approved the deposition of Army interrogator
17 James Lee Joseph Beachner. During the April 25, 2013,
18 deposition of Sergeant Beachner, the United States permitted
19 Beachner to affirm that statements he made to military
20 investigators in a June 4, 2004, sworn statement were true.
21 According to Beachner's 2004 statement, Beachner had been
22 assigned to interrogating 'the Al-Jazeera reporter,' and that on
23 one occasion he found that CACI interrogator
24 Steve Stefanowicz was 'questioning him.' According to
25 Beachner's statement, when I found out, I told him to stop

1 because this was my detainee. He stopped. There was nothing
2 violating the IROE," Interrogation Rules of Engagement, in that
3 particular interrogation."

4 The United States is continuing to exercise its due
5 diligence to determine if there is any additional information it
6 can provide. Should it come across additional responsive
7 information, the United States will supplement its responses
8 consistent Rule 26(e) of the Federal Rules of Civil Procedure."

9 THE COURT: All right.

10 MR. O'CONNOR: Your Honor, at this time we're going to
11 play the trial testimony of Steve Stefanowicz via video. There
12 are five exhibits involved in Mr. Stefanowicz's deposition.
13 Defense Exhibit 2 has already been admitted elsewhere in this
14 trial. Also during the testimony, Defense Exhibits 32, 33, 34,
15 and 35 were moved in and --

16 THE COURT: And you're moving them into this trial?

17 MR. O'CONNOR: I'm moving them into this trial right
18 now.

19 THE COURT: So 32, 33, 34, and 35 are in. And these
20 are defense exhibits.

21 (DEFENDANT Exhibits 32 - 35 were admitted into
22 evidence.)

23 MR. O'CONNOR: And I have clips.

24 THE COURT: All right.

25 MR. O'CONNOR: May we proceed, Your Honor?

1 THE COURT: Yes.

2 (Excerpts of videotaped deposition of
3 STEVEN STEFANOWICZ played in open court.)

4 THE COURT: Let's stop it. We have a couple of matters
5 to take up.

6 (Excerpt ended.)

7 THE COURT: We're now into the defense case so we're
8 moving along. We obviously need you to be here nice and on time
9 tomorrow morning at 9:30 so we can continue. Please remember my
10 caution about not conducting any investigation, and certainly
11 don't start making up your mind about any issue. There's still
12 a lot of information to come in the trial. But you've been
13 doing a great job getting here on time and meeting our
14 deadlines, and we appreciate that.

15 Leave your notebooks, get a good night's sleep, and
16 we'll see you tomorrow morning. We'll stay in session.

17 (Jury out at 5:55 p.m.)

18 THE COURT: Rather than taking up time tonight --
19 actually, it's not that many. Has defense counsel had a chance
20 to look at the five facts for which judicial notice is being
21 requested?

22 MR. O'CONNOR: We have, Your Honor.

23 THE COURT: Is there any objection?

24 MR. O'CONNOR: We object on relevance grounds. The
25 Court has already ruled that Iraq is not domestic conduct for

1 purposes of extraterritoriality. The Court decided it didn't
2 matter, but the Court said Iraq is not part of the U.S. for that
3 analysis.

4 THE COURT: That's sort of silly at this point,
5 actually.

6 MR. O'CONNOR: We thought so too.

7 THE COURT: Well, I've already told the jury in the
8 opening description of the case about the U.S. having invaded
9 Iraq. So I don't think we need that.

10 I think Paragraph 3 is relevant to the case based upon
11 some of the arguments that have been made about the coalition
12 authority and provisional authority in Order 17. And I think it
13 should be -- and it's been the law of this case. I mean, I've
14 made that finding before.

15 So unless there is some factual argument that this is
16 not an accurate statement of the legal status, I'm going to give
17 number three to the jury as a --

18 MR. O'CONNOR: We don't have a factual dispute on that.

19 THE COURT: Okay. Paragraph 4, yes, since that issue
20 has been brought about why they didn't sue, I will also do
21 number 4. And if -- and I'm not going to bother with 5.
22 There's no question about fact.

23 3 and 4 are relevant, will help the jury in
24 understanding some of the background about this case, and
25 there's no factual dispute, so it would be appropriate for the

1 Court to take judicial notice. But 1, 2, and 5 are obvious.
2 There's no need to do that.

3 MS. MAHLER-HAUG: Thank you, Your Honor.

4 THE COURT: I will have -- just so we don't have any
5 dispute about the exhibits that are in, I'll ask my staff to
6 read those in at this point.

7 COURTROOM CLERK: PTX 195, PTX 206-G, DX 29, pages 202,
8 3, 39, 48, and 49. PTX 115, PTX 23, PTX 27, PTX 75, PTX 76,
9 PTX 161-A, PTX 180-A, PTX 196, PTX 197, PTX 198, PTX 199,
10 PTX 200, PTX 201, PTX 206, pages 1 through 22. PTX 83, PTX 84,
11 PTX 104, PTX 100-A, DX 32, DX 33, DX 34, and DX 35.

12 MR. FARIDI: Your Honor, this looks complete to us. We
13 will QC it tonight, and if there's any issues, we will so inform
14 the Court.

15 THE COURT: All right.

16 MR. O'CONNOR: We also think it's good, Your Honor.

17 THE COURT: Again, the protocol we're following is if
18 overnight there's a discrepancy that's discovered, you'll e-mail
19 staff and we'll get it resolved on the record tomorrow.

20 MR. FARIDI: There's one issue. We think PTX 32 is in.
21 We're not sure if that was allowed in. I think it came in
22 yesterday and we added it to the list this morning.

23 THE COURT: All right. Yes. All right. That's fine.
24 I don't have court tomorrow morning. I do have court Friday
25 morning, so tomorrow night you will have to clean up.

1 Anything further? If not -- Mr. O'Connor, are you
2 planning to follow the list you gave us previously? Is Beachner
3 by deposition or in person?

4 MR. O'CONNOR: We're going to drop Beachner,
5 Your Honor.

6 THE COURT: Are you still doing Interrogator CACI A and
7 then Army B, C, E, F, and G?

8 MR. O'CONNOR: I think it's likely those will all be
9 done tomorrow. That's not necessarily the order.

10 THE COURT: All right. But, again, use some
11 discretion. If it's highly cumulative, this jury I think is
12 paying really close attention. Every one of them is taking
13 significant notes. And I will just tell you from my past
14 experience of juries, is they don't like it when they -- I
15 constantly get that report back from jurors: Why did the
16 lawyers repeat so much? So be careful about that.

17 MR. O'CONNOR: And, Your Honor, with the pseudonymous
18 interrogators, there is some unavoidable repetition because if
19 there's three participants in an interrogation, I need them all
20 to corroborate each other that none of the alleged things
21 happened.

22 THE COURT: Well, just think about it carefully. Are
23 these going to be played or are we reading them in?

24 MR. O'CONNOR: The pseudonymous interrogators are all
25 going to be played recorded, and the current transcript will

1 play on the screen and nothing else, because they're
2 pseudonymous.

3 THE COURT: So we're just going to hear them and we're
4 just going to see the text?

5 MR. O'CONNOR: That's right.

6 THE COURT: All right. Very good. Is there anything
7 further we need to address tonight?

8 MR. FARIDI: Nothing from us, Your Honor.

9 THE COURT: All right. Court is recessed until 9:30
10 tomorrow.

11 (Off the record at 6:03 p.m.)

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CERTIFICATE OF OFFICIAL COURT REPORTER

17

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

21

22

23

24 //Rebecca Stonestreet//

4/25/24

25

SIGNATURE OF COURT REPORTER

DATE

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