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

SUHAIL NAJIM ABDULLAH AL SHIMARI, *et al.*, Plaintiffs, v. CACI PREMIER TECHNOLOGY, INC., Defendant,	No. 1:08-cv-0827 LMB-JFA

DEFENDANT CACI PREMIER TECHNOLOGY, INC.'S
MOTION *IN LIMINE* TO EXCLUDE THE TAGUBA AND FAY REPORTS

I. INTRODUCTION

By this motion, CACI seeks to exclude excerpts from the Taguba and Fay reports (collectively, the "Reports") from evidence in the retrial of this action. In declaring a mistrial, the Court expressly stated a willingness to revisit its rulings admitting excerpts from the Reports:

> I gave the plaintiffs I think significant evidentiary -- I ruled on some of the evidentiary issues significantly in your favor in letting the Taguba and Fay reports in. That's among the strongest evidence in this case linking CACI people to any misconduct. ***It's in this case; whether it would be in another case, I don't know***.

Dkt. #1630 at 11 (5/2/2024 Trial Tr.) (emphasis added).

In connection with the first trial of this action, the Court originally stated that Plaintiffs would not be permitted to admits excerpts from the Reports as a "history lesson" when the witnesses on whom the Report authors relied could be called at trial and be cross-examined on their first-hand knowledge. Dkt. #1029 at 3-4 (12/10/2018 Hearing Tr.). Nevertheless, as the first trial approached, the Court admitted large swaths of the Reports involving multiple levels of hearsay and often involving the Report authors merely adopting written statements from witnesses

they never met and who themselves were under investigation for criminal conduct. The result was unfairly prejudicial to CACI. The jury received written evidence of MG Taguba's *suspicions* about Steven Stefanowicz, a former CACI employee about whom there was no evidence admitted at trial suggesting that he had any input into Plaintiffs' treatment. Those suspicions were based on written statements Army CID had collected in an earlier investigation from witnesses MG Taguba never met. The jury also received written evidence of MG Fay's findings, also all based on hearsay statements of others, regarding Mr. Stefanowicz along with two other former CACI employees (Tim Dugan and Daniel Johnson) who were not alleged to have had any input into Plaintiffs' treatment.

The trial of this case laid bare the abject unfairness of trying this case through hearsay statements of declarants who were not required to appear at trial and who could not be cross-examined on their statements. The Report excerpts admitted at trial generally involved at least two levels of hearsay. There is the hearsay statement of third-party witnesses being provided orally or in written form to the Report authors. Then there is the second layer of hearsay, the Report authors' findings that are contained in the Report. The hearsay exception for public reports (Fed. R. Evid. 803(8)) takes care of the second layer of hearsay, meaning that the report author's statements can be admitted at trial without the report author personally appearing. But Federal Rule of Evidence 803(8) is not a multilevel hearsay exception. It does not transform hearsay statements made by a declarant to a report author from inadmissible hearsay into admissible evidence simply because a report author lacking personal knowledge of the facts includes the declarant's statements in his or her report. Indeed, because of the multiple layers of hearsay, the Reports' unreliability cannot be cured by any instruction, much less cross-examination.

The Reports also are not relevant. They are not relevant to Plaintiffs' aiding and abetting claims because they make no findings regarding Plaintiffs' treatment, and are not relevant to Plaintiffs' conspiracy claims because, at best, the Reports allege parallel conduct (which is insufficient for a conspiracy as a matter of law). Whatever negligible background relevance the Reports have is far outweighed by their inflammatory content and the risks the jury will associate, without evidence, the conduct of Army personnel and other actors at Abu Ghraib with CACI. For these reasons, the Court should do what it signaled in declaring a mistrial, review the Report excerpts anew and determine whether the "significant evidentiary" rulings made in Plaintiffs' favor remain justifiable. On such an examination, exclusion is the proper result.

II. BACKGROUND

Both CACI and Plaintiffs have previously filed motions *in limine* regarding the use of the Taguba and Fay Reports at trial. CACI previously sought to exclude both Reports in 2018, and then against in 2019. Dkt. #1002, 1105. The Court initially deferred ruling on CACI's request to exclude the Reports, but cautioned Plaintiffs that they would not be permitted "to just introduce those entire reports as an exhibit" and noted that using the Reports to give a "history lesson" on the abuses of Abu Ghraib would not be appropriate. Dkt. #1029 at 3-4 (12/10/2018 Hearing Tr.). The Court rightly acknowledged that "hearsay is a problem" with the Reports because CACI would not have the opportunity to cross-examine the makers of the out-of-court statements that both Reports relied on, and further suggested that testimony from live witnesses with first-hand knowledge could provide the necessary background without invoking those same hearsay concerns. Dkt. #1029 at 4; *id*. at 22 ("it's all hearsay").

When the Court revisited the issue in 2023, the Court again acknowledged the hearsay issues, but determined, without detailed analysis, that the Reports were official government documents which provided "indicia of reliability" such that certain portions could be admitted.

Dkt. #1460 at 22 (12/15/2023 Hearing Tr.). The Court determined it would allow Plaintiffs to introduce large portions of the Reports and instruct the jury to mitigate the hearsay concerns identified by the Court. Dkt. #1460 at 22. The admitted excerpts included MG Taguba's suspicions that Steve Stefanowicz engaged in acts of detainee abuse not relating to these Plaintiffs, and MG Fay's findings that three former CACI employees (Dugan, Johnson, and Stefanowicz) engaged in discrete acts of misconduct not involving these Plaintiffs.

However, trial revealed that there is no way to cure either the prejudice to CACI or the hearsay concerns endemic to both Reports, and Plaintiffs were able to prey on the prejudicial aspects while offering very little from the Reports of probative value. As a result, the jury was left confused as to how they should interpret the Reports, both with respect to the Plaintiffs and to the Army's command and control of CACI personnel. *E.g.* Dkt. #1617-7 at 20 (Jury Note #20 – "In regards to Fay/Jones report[s] . . . who is responsible for interrogation operations if there was no chain of command or direction?"). The jurors' confusion was no surprise to CACI because, using the Reports, Plaintiffs tarred CACI with all the abuses that occurred at Abu Ghraib—whether or not those abuses involved these Plaintiffs or any CACI employees—and blurred the Reports' findings as they pertained to CACI, Army personnel, and other civilian personnel.

For example, in their opening statement, Plaintiffs' counsel argued to the jury that the Taguba and Fay Reports "documented abuses of the kind our clients suffered[.]" Dkt. #1631 at 13-14 (4/15/2024 PM Trial Tr.). Parallel conduct has no relevance to Plaintiffs claims. Plaintiffs' counsel went on to detail for the jury specific acts of physical abuse mentioned in the Taguba and Fay Reports that CACI personnel have *never* been accused of at all, much less been accused of inflicting on these Plaintiffs. Dkt. #1631 at 13 (4/15/2024 PM Trial Tr.) ("Punching, slapping, kicking detainees . . . ."). Plaintiffs' counsel repeated these lines of attack in closing argument,

wielding the Reports to unfairly prejudice CACI and, in the process, confuse jurors as to the Reports' findings with respect to Army and CACI personnel respectively. *See e.g.* Dkt. #1626 at 22-23 (4/22/2024 Trial Tr.) ("Clear abuses occurred at the prison at Abu Ghraib. And who carried out those abuses? Morally-corrupt soldiers and civilians. That's CACI. And [MG Fay] also found that the abuses violated U.S. criminal or international law."). Simply put, Plaintiffs were given a great indulgence in being allowed to develop their acts through admission of hearsay reports, and they abused that indulgence by repeatedly mischaracterizing them. The Reports do not make findings regarding any of the specific instances of abuse on which Plaintiffs base their claims. And of course the Court repeatedly barred CACI from presenting evidence concerning the presence at the Hard Site of other government personnel—such as the CIA and others—in order to meaningfully rebut the false impression that any conduct attributed to persons in civilian clothing was properly laid at CACI's doorstep.

III. ANALYSIS

A. The Taguba and Fay Reports are Inadmissible Hearsay

In seeking admission of Report excerpts, Plaintiffs rely on Rule 803(8), a hearsay exception applying to some statements in government reports. That exception, however, does not apply for two reasons. *First*, in order to admit Report excerpts, Plaintiffs must clear *all* levels of hearsay. Provided they are trustworthy, Rule 803(8) allows admission of statements in a government report *that are within the report author's personal knowledge* without requiring the report author to appear in court. Rule 803(8) does not take hearsay statements made by others to a report author and transform them into admissible evidence just because the author made findings based on those hearsay statements. Here, the Report authors have no relevant first-hand knowledge, and all of the statements on which they rely are hearsay for which no exception applies. *Second*, even if Plaintiffs could clear each level of hearsay, the Reports are not trustworthy, as they are based on

statements from witnesses *and suspects* that the Report authors often never met and who have a clear incentive to exculpate themselves and inculpate others. That is why the default rule in American courts is that witnesses with knowledge must go through the crucible of cross-examination before the finder of fact.

1. Rule 408(8) Does Not Permit Admission of Report Excerpts Based on Hearsay Statements Made to a Report Author or Others

The Court has acknowledged that the Reports are prototypical hearsay. Dkt. #1029 at 4, 22 ("it's all hearsay"); Dkt. #1460 at 22. The trial testimony of MG Taguba and MG Fay confirmed that neither of the investigative teams who authored the Reports were present at Abu Ghraib when abuses occurred, nor did they otherwise have any first-hand knowledge of the findings that comprise their Reports. Dkt. #1632 at 20:21-25, 21:1-4, 25:5-12 (2024/04/16 PM Tr.) (Taguba); Ex. 1 at 24:8-18 (Fay). And the CID investigation statements and witness interviews on which the Reports rely are classic hearsay, often from persons implicated in abuse, rendering the Reports themselves hearsay within hearsay.

In *Jordan v. Binns*, 712 F.3d 1123, 1132 (7th Cir. 2013), the Seventh Circuit rejected the argument that Rule 803(8) "is a multilevel exception that covers all hearsay in a public record and that the report can be excluded only if the party opposing admission sufficiently establishes that the report is untrustworthy." *Id.* Because Rule 805 requires the party to show that each layer of hearsay in the report is subject to a hearsay exception, the court held that it was error to introduce an accident investigation report's findings that were based on statements made to investigators that do not "have an independent basis for admissibility." *Id.* at 1133.

The Sixth Circuit held similarly in *Miller v. Field*, 35 F.3d 1088, 1091 (6th Cir. 1994), rejecting the use of Rule 803(8) to admit into evidence report findings based on hearsay statements from witnesses to an alleged assault. In that case, the Court held that "[t]he 'factual findings' in a

report qualifying for a Rule 803(8)(C) exception to the hearsay rule must, however, be based upon the knowledge or observations of the preparer of the report." *Id.* Thus, the police report contained double hearsay, and Rule 803(8) addressed only the author's out-of-court statements and did not change the inadmissible hearsay character of witness statements made by others to the report author. As the court explained:

> Other information contained in the report submitted for the jury's consideration was not, however, part of any factual finding made through firsthand observation. Rather, the statements of the victim, the alleged assailants, and various witnesses, as well as any statements by the prosecutor regarding reasons for not pursuing criminal charges against certain individuals, contained hearsay information, not facts observed by the preparer of the police report.

Id.; *see also Sanders v. Sky Transp., LLC*, 569 F. Supp. 3d 455, 458-59 (E.D. Tex. 2021) ("Portions of police reports that reflect the officers' first-hand observations based on their investigations and experience are admissible. Information not based on the reporting officer's personal knowledge, however, constitutes hearsay within hearsay and does not fall under the Rule 803(8) hearsay exception." (internal quotations and citations omitted)).

The Fourth Circuit reached the same conclusion in applying the common-law rule for introduction of government reports on which Rule 803(8) is based. *Gilbert v. Gulf Oil Co.*, 175 F.2d 705, 710 (4th Cir. 1949) ("expressions of opinion and conclusions on causes and effects based upon factual findings are not always admissible as public records, especially when it is shown either that the conclusion or opinion which the statement purports to convey would not be admissible in evidence if tendered by the direct testimony of the maker" (internal quotations omitted)).

Consistent with *Jordan*, *Miller*, *Sanders*, and *Gilbert*, a multitude of courts has held that "[e]vidence reported in a government document is only admissible [under Rule 803(8)] to the extent that the maker of the document could testify to that evidence were he or she present in

court." *Miller v. Caterpillar Tractor Co.*, 697 F.2d 141, 144 (6th Cir. 1983); *Stolarczyk v. Senator Int'l Freight Forwarding, LLC*, 376 F. Supp. 2d 834, 839 (N.D. Ill. 2005) (quoting *Budden v. United States*, 748 F. Supp. 1374, 1377-78 (D. Neb. 1990)); *In re Air Crash Disaster at Stapleton Int'l Airport, Denver Colo.*, 720 F. Supp. 1493, 1497 (D. Colo. 1989) (same); *see also Lewis v. Velez*, 149 F.R.D. 474, 487 (S.D.N.Y. 1993) (excluding majority of government report regarding prison incident because it was "comprised largely of hearsay statements from correction officers involved in the . . . incident"); *In re Air Crash Disaster at Sioux City, Iowa*, 780 F. Supp. 1207, 1212 (N.D. Ill. 1991) ("Where an opponent to the admission of an NTSB accident report may demonstrate that an NTSB investigator has relied on hearsay, a court may edit out the resulting portion of the accident report."); *Marshall v. Precision Pipeline LLC*, No. 13-cv-443, 2015 WL 224689, at *12 (W.D. Wisc. Jan. 15, 2015) (excluding notes in investigative report that "parrot the statements of third parties"); *McWilliams v. Ruskin Co.*, No. 04-1018, 2006 WL 2795619, at *7 (D. Kan. Sept. 27, 2006) (excluding findings from government report based on statements made to the investigator because "Rule 805 mandates that each layer of hearsay be cured before admission as evidence").

If there were no Taguba or Fay reports, MG Taguba and MG Fay could appear at a trial and testify as to their first-hand knowledge, but they could not testify as to what other declarants told them about detainee abuses or what they read in a witness statement. Rule 803(8) maintains that dynamic. The fact that MG Taguba's or MG Fay's first-hand knowledge is set forth in a written report, standing alone, is no barrier to admitting the Reports' recitation of the authors' first-hand knowledge. But Rule 803(8) does not permit admission of Report contents taken from the out-of-court hearsay statements of others.

The Court has previously suggested that it might be able to address the "hearsay issues" pervading the admission of the Reports "by instructing the jury at the time those issues come up as to what hearsay is and how they should approach the information." Dkt. #1460 at 22. However, there is no curative instruction for hearsay. If a statement is hearsay not subject to a hearsay exception, it is simply inadmissible, as no curative instruction is "sufficient to dispel" prejudice "flowing from the admission of hearsay." *United States v. $150,000 in Currency*, 686 F. Supp. 133, 134 (E.D. Va. 1988) ("Nor would a curative instruction be sufficient to dispel any prejudice to claimants flowing from the admission of hearsay. To conclude otherwise would be to create a new rule that hearsay is admissible if accompanied by a curative instruction. No such rule exists."); *see also United States v. Tedder*, 801 F.2d 1437, 1444 (4th Cir. 1986) ("[A] curative instruction is not adequate where the inadmissible evidence is likely to impress a jury to the extent that an instruction from the court will not dissipate its prejudicial effect."). Thus, Rule 803(8) cannot spare Plaintiffs the inconvenience of presenting live witnesses with first-hand knowledge of events occurring at Abu Ghraib prison, a process that allows for a meaningful cross-examination of the declarant.

2. The Taguba and Fay Reports Lack Indicia of Trustworthiness

As noted above, many courts reject admission of report findings based on the hearsay statements of others on the grounds that Rule 803(8) is not a multilevel hearsay exception. Still other courts reach the same result on the grounds that report findings based on the hearsay statements of others, particularly when based on hearsay statements of persons under investigation, are inherently untrustworthy. *See Gross v. King David Bistro, Inc.*, 84 F. Supp. 2d 675, 678 (D. Md. 2000) (report inadmissible under Rule 803(8) as untrustworthy when based primarily on hearsay statements from participants in the activities investigated); *see also Miller v. Caterpillar Tractor Co.*, 697 F.2d 141, 144 (6th Cir. 1983) (government report inadmissible as untrustworthy

where report author lacked first-hand knowledge of the events reported on, "the author anchored the report upon information received from various other persons," and "the sources of information were suspect as to hearsay"); 30B Wright & Miller, Federal Practice & Procedure § 6886, at 394-95 (2017) (exclusion of reports as untrustworthy "can easily be the case when portions of a report merely relate hearsay statements made to the investigator by others"). The same is true here. MG Taguba did not have one person he interviewed provide him with evidence of detainee abuse. All of the statements he relied on regarding detainee abuse were made in a prior CID investigation and simply handed over to MG Taguba's team. MG Taguba had no basis for evaluating the credibility of witnesses he never saw and who themselves were under investigation. Similarly, MG Fay relied on written statements and interview statements of persons under investigation.

B. The Taguba and Fay Reports Should be Excluded Under Fed. R. Evid. 402 and 403

Even if the Reports were not hearsay and untrustworthy, they are irrelevant and unfairly prejudicial to CACI. Federal Rule of Evidence 401 defines "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Irrelevant evidence is inadmissible. Fed. R. Evid. 402. Relevant evidence is admissible unless "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by consideration of undue delay, waste of time, or needless presentation of cumulative evidence." Fed. R. Evid. 403.

Even if the Reports could clear the hurdles imposed by Rule 803(8), which they cannot, satisfying Rule 803(8) does not provide an exemption from the evidentiary rules regarding relevance. *Beech Aircraft Corp. v. Rainey*, 488 U.S. 153, 167-68 (1988) ("[S]afeguards built into other portions of the Federal Rules, such as those dealing with relevance and prejudice, provide

the court with additional means of scrutinizing and, where appropriate, excluding evaluative reports or portions of them."); *Distaff, Inc. v. Springfield Contracting Corp.*, 984 F.2d 108, 111 (4th Cir. 1993) (evidentiary rules regarding relevance may render government reports inadmissible). The Reports make no findings related to the treatment of *these* Plaintiffs or suggest anything beyond parallel conduct which is insufficient as a matter of law to support Plaintiffs' claims. Neither report alleges a conspiracy of the type claimed by Plaintiffs here. They discuss leadership failures and individual misconduct by individual soldiers and civilians. Moreover, the Taguba and Fay Reports are extraordinarily prejudicial to CACI given the limits on evidence CACI may present to refute findings in the Reports, or distance itself from the conduct of Army and other civilian personnel.

1. The Taguba and Fay Reports Are Not Relevant to Either of Plaintiffs' Claims

The Taguba Report makes merely passing references to Steve Stefanowicz, stating MG Taguba's unsubstantiated suspicion (based on hearsay) that Mr. Stefanowicz allowed Military Police personnel to set conditions for detainees. Ex. 2, PTX137.48. MG Taguba forthrightly admitted as much at trial, that he had been allowed to interview only four persons working in military intelligence, had been denied access to any military intelligence records, and that his intention was to pass along suspicions that "might be credible" regarding military intelligence so that they could be properly investigated. Dkt. #1632 at 26:9-23, 27:20-21, 27:12-19 (2024/04/16 PM Tr.). Even if there were no hearsay problems, a witness's *suspicions* are not relevant evidence.

Moreover, as the undisputed evidence at trial revealed, Mr. Stefanowicz was not assigned to interrogate these Plaintiffs, and interrogators only set conditions for detainees assigned to them. Ex. 3, DX02. MG Taguba admitted that, with respect to Mr. Stefanowicz, his unsubstantiated suspicions of abuse were limited to detainees assigned to Mr. Stefanowicz:

Q. The information you developed about use of dogs and forced nudity with respect to Mr. Stefanowicz were for detainees he was assigned to interrogate?

A. I wouldn't say that. We just took credible evidence from the soldier, the MP soldiers that we interviewed.

Q. Right. That he had engaged in that conduct or encouraged that conduct for people who he was appointed -- or he was assigned to interrogate. Right?

A. Based on the comment that he was instructing the MPs by name, so we took that as credible evidence.

Q. For detainees that he was assigned to interrogate?

A. Correct.

Dkt. #1632 at 28-29 (2024/04/16 PM Tr.). In fact, MG Taguba admitted that his investigation uncovered no "physical evidence" of Mr. Stefanowicz's connection to abuses by any of the other military or civilian interrogators beyond his presence at the hard site. Dkt. #1632 at 13 (2024/04/16 PM Tr.) (Q. "And how would you describe Mr. Stefanowicz's involvement with detainee abuse relative to the other interrogators?" A. "We didn't have physical evidence about him conducting that in person."). Despite pointed questions from Plaintiffs' counsel regarding Mr. Stefanowicz's role in providing instructions to MPs, MG Taguba was unable to relate to Mr. Stefanowicz any of the other abuses described by junior soldiers. *E.g.* Dkt. #1632 at 13-16 (2024/04/16 PM Tr.) (generally describing the MPs use of dogs and forced nudity without establishing any connection to instructions given by Mr. Stefanowicz, and recounting Mr. Stefanowicz denials of any unauthorized use of dogs). Other than Mr. Stefanowicz, MG Taguba's report **makes no findings about any other CACI employee** much less about CACI as a corporate entity. *See* Dkt. #1632 at 30-31 (2024/04/16 Tr.).

The Taguba Report's descriptions of Mr. Stefanowicz's conduct or instructions with respect to *other* detainees does not support either of Plaintiffs' claims. Aiding and abetting liability

requires that a defendant "provided substantial assistance with the purpose of facilitating the alleged violation." *Aziz v. Alcolac, Inc.*, 658 F.3d 388, 401 (4th Cir. 2001). Even assuming that MG Taguba's suspicions could be substantiated, Mr. Stefanowicz's "setting conditions" for his detainees, which are not Plaintiffs, does not support any permissible inference that Mr. Stefanowicz, aided or abetted other persons in the mistreatment of Plaintiffs. And as for Plaintiffs' conspiracy claim, parallel conduct without more "does not suggest conspiracy . . .." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556-57 (2007); *Thomas v. Salvation Army S. Territory*, 841 F.3d 632, 637 (4th Cir. 2016); *A Soc'y Without a Name v. Virginia*, 655 F.3d 342, 346 (4th Cir. 2011); *Loren Data Corp. v. GXS, Inc.*, 501 F. App'x 275, 278 (4th Cir. 2012). MG Taguba's unsubstantiated suspicions about Mr. Stefanowicz's treatment of *other detainees* that are not these Plaintiffs does not create a permissible inference that Mr. Stefanowicz had any role in the treatment of Plaintiffs. Thus the Taguba Report and its findings with respect to Steve Stefanowicz are not relevant to establishing that Mr. Stefanowicz, much less that CACI from its corporate headquarters in Virginia, participated in a conspiracy or aided and abetted others to abuse these Plaintiffs.

The Fay Report is irrelevant under FRE 401 for many of the same reasons. The Fay Report's findings regarding CACI are limited to isolated incidents by specific CACI personnel whom the Court has observed "are the three and the only three CACI people who've been identified as having possibly been complicit" in the inchoate claims Plaintiffs' have alleged. Dkt. #1625 at 6-7 (2024/04/18 Tr.). The Fay Report makes no findings with respect to these Plaintiffs or their alleged treatment and thus cannot support any inference that CACI or its personnel aided and abetted others in Plaintiffs' alleged abuse. Moreover, the Fay Report explicitly concludes that the abuses at Abu Ghraib were "carried out by a small group of morally corrupt and unsupervised Soldiers and civilians" and could "not be directly tied to a systematic US approach to torture or

approved treatment of detainees"—an explicit rejection of Plaintiffs' conspiracy claims. Ex. 4, PTX023.43-44.

2. The Unfair Prejudice from Admission of the Taguba and Fay Reports Substantially Outweighs the Reports' Probative Value

Introducing the Reports as evidence of the wrongful conduct toward *other* detainees at Abu Ghraib in order to allow the jury to infer similar wrongful conduct occurred to Plaintiffs is severely prejudicial to CACI. That prejudice is magnified when Plaintiffs use the Reports to suggest that CACI personnel engaged in the same types of abuses described in the Reports as being committed by Army personnel. Because of the Court's rulings upholding the state secrets privilege, CACI has no opportunity to cure that prejudice by presenting live testimony from the CACI and Army interrogators who actually came into contact with these Plaintiffs. As the Court observed, due to the required pseudonymity of those witnesses, and limits to the subjects on which they may testify, testimony from those witnesses lacks the depth and dimension to adequately place the Reports in their proper context.

By way of example, CACI Interrogator A and CACI Interrogator G—the only CACI interrogators the government has identified as having interrogated these Plaintiffs—were unable to answer whether they were identified in the Taguba or Fay Reports. *E.g.* Dkt. #1598-3 at 7. Thus through the reports, Plaintiffs are able to present the findings of Generals Taguba and Fay without CACI having any opportunity to either (1) have the employees who interacted with Plaintiffs testify that they are not implicated in the Reports, or (2) if they are named in the Reports, give their version of the facts and/or deny the truth of the allegations in the Reports.

In arguing to the jury, Plaintiffs' counsel also cited the Reports repeatedly as having found "violat[ions] of U.S. criminal or international law" which counsel vaguely attributed to CACI personnel. Dkt. #1626 at 22-23 (4/22/2024 Trial Tr.). That is prejudice to CACI of the highest

order. *See Simpkins v. United States*, 78 F.2d 594, 597 (4th Cir. 1935) ("It is a fundamental rule of criminal evidence frequently applied in both state and federal courts that proof of offenses other than those charged in the indictment is generally inadmissible and constitutes prejudicial error even though the separate offenses may be of a similar nature.").

Moreover, admission of excerpts from the Taguba and Fay reports paints an inaccurate picture of government reports on detainee abuse. Vice Admiral Church's investigation for the Department of Defense found that civilian contract interrogators "made a significant contribution to U.S. intelligence efforts." Ex. 4 at 17. Civilian interrogators tended to be older and have more experience than their Army counterparts, and were involved in "very few incidents of abuse." *Id.* Fairness dictates that admission of MG Taguba's "suspicions" and MG Fay's findings be accompanied by admission of other government reports reaching contrary conclusions. This would create collateral litigation over which investigation reports are better than the others, when none of these reports are based on the report authors' first-hand knowledge.

IV. CONCLUSION

Accordingly, for the foregoing reasons, CACI respectfully requests that the Court grant CACI's motion and hold that the Taguba and Fay Reports are inadmissible.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of September, 2024, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following counsel:

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