

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

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

**DEFENDANT CACI PREMIER TECHNOLOGY, INC.’S RESPONSE IN
OPPOSITION TO PLAINTIFFS’ “MOTION *IN LIMINE* TO EXCLUDE
IRRELEVANT AND PREJUDICIAL EVIDENCE AND QUESTIONING”**

I. INTRODUCTION

Plaintiffs’ motion seeks an “admonition” precluding CACI “from arguing, questioning, and presenting evidence *related to the disparaging of Plaintiffs*, including by trying to establish that they were associated with terrorism, had anti-American sentiment, that their houses were bombed, or that they had a certain amount of cash on them upon the time of their arrest.” Dkt. #1680-1 at 4, 5. What a world we would live in if parties could insist that their litigation opponents not disparage them. Indeed, Plaintiffs’ entire case is built on “disparaging” CACI. But Plaintiffs’ motion badly misses the point. CACI is entitled to present evidence showing that Plaintiffs are biased, have credibility issues, lack evidence of causation, or seek inflated damages, *even if* that evidence reflects negatively on them.

Plaintiffs took the Court’s rulings in connection with the first trial and ran with them. Having secured a ruling that CACI would not present true facts concerning their apprehension or anti-Coalition activity, they whitewashed their clients at trial by misleadingly referring to them as mere “farmers,” “school teachers,” and “taxi drivers,” family men randomly “swept up” in

U.S. Army dragnets that had nothing to do with their personal circumstances. Plaintiffs' current motion, styled as a "Motion *in Limine* to Exclude Irrelevant and Prejudicial Evidence and Questioning," doubles down on the relief Plaintiffs obtained, and wielded unfairly in connection with the first trial. They now want to exclude evidence such as alternative sources of trauma in Al Shimari's life, such as the bombing of his house, and the fact that Al Zuba'e filed a claim with the U.S. government alleging that he was carrying \$20,000 in cash that was seized by U.S. forces during his apprehension.

CACI has pending before the Court a motion *in limine* in which it seeks to present at trial evidence relating to the circumstances of Plaintiffs' apprehension by U.S. forces and their demonstrated hostility to Coalition forces and/or the United States. *See* Dkt. #1681. Such evidence bears on Plaintiffs' bias and credibility, and CACI's motion should be granted. But Plaintiffs' motion goes even farther and treats painting the Plaintiffs as choirboys as the number one goal of the trial, no matter how relevant evidence to the contrary is to credibility, bias, causation, and damages. And to be clear, CACI does not seek to present evidence concerning Plaintiffs' backgrounds to cast them as bad persons who deserved detainee abuse, or as unworthy of relief in a U.S. court. Conversely, evidence probative of Plaintiffs' bias and motive to fabricate should not be excluded just because it also might cast the Plaintiffs in a less than glowing light. Evidence such as alternative sources of Al Shimari's claimed emotional injuries and the details of Al Zuba'e's prior claims against the United States are relevant, do not unfairly prejudice Plaintiffs, and should not be excluded from evidence at trial. At some point, Plaintiffs' desire to cultivate their images before the jury must give way to CACI's right to present a defense.

II. BACKGROUND

CACI recounted the history of the Court's prescribed limits on evidence regarding Plaintiffs' character in its pending Motion *in Limine* regarding the relevance of Plaintiffs' apprehension. Dkt. #1685 at 1-4 (citing Dkt. #1460 at 6-8 (12/15/2023 Hearing Tr.) (The Court: "So it goes both ways. But that's the core issue in this case. And, again, the plaintiffs will be held to the same kind of restriction.")). In that motion, CACI also detailed Plaintiffs' use of the Court's ruling offensively, providing the jury with a sanitized and incomplete picture of Plaintiffs' backgrounds without allowing the jury to see contrary evidence that is highly probative of their bias and motivation to be untruthful. *Id.*

Plaintiffs now request that the Court constrain CACI's ability to cross-examine Plaintiffs regarding their own statements, which were offered in direct support of their claims for relief. Plaintiffs' request comes inside the Trojan Horse of prohibiting "evidence, questioning, or comment by counsel meant to justify the detention and/or torture of Plaintiffs." Dkt. #1680-1 at 1-2. Plaintiffs' motion chases a ghost. Although stated time and again, it bears repeating that CACI has no "intent to argue that because the plaintiffs are bad people that they deserve to be treated unlawfully. We were never going to argue that." Dkt. #1460 at 5 (12/15/2023 Hearing Tr.). True to its word, in its closing argument during the first trial, CACI offered a full-throated disclaimer that *nothing* could justify the documented abuses at Abu Ghraib:

We believe that Abu Ghraib was a terrible stain on this country. There's no excuse for assault, depriving someone of needed medical treatment or a bathroom, denying them food or water, stacking them naked in a pyramid, sexual humiliation. There's no excuse for any of that. Those were terrible things that happened in Iraq. It was un-American, and about a dozen MPs got court-martialed for doing those things, and rightfully so. They went to jail, and some of them for a long time, and rightfully so.

You can believe all that was terrible and wrong because we agree it was terrible and wrong. You can also sympathize with the

plaintiffs. You can sympathize with anyone who was held in the hard site. The hard site, by all accounts, was a terrible place to be. And you can have all those feelings and also come to the conclusion you sued the wrong defendant. CACI is not the entity that was responsible for the plight of those people in the hard site; it's the Army, and it's the individual criminals who actually abused these plaintiffs, if they were abused, and they probably were. That's -- you can have all these feelings and still look at the evidence and say where is the connection between the abuse these plaintiffs allege and CACI personnel?

Dkt. #1626 at 41-42 (4/22/2024 Trial Tr.). CACI's position has not changed.

At trial, Plaintiffs have offered only their own testimony in support of their alleged injuries, asking the jury to find them credible and take their word not only that they were abused at Abu Ghraib, but also that those alleged abuses came at the hand of CACI personnel. None of that is corroborated, and CACI must be able to demonstrate why Plaintiffs might be motivated to lie or shape their testimony to point the finger at CACI.

Plaintiffs now offer two examples of the type of questioning they seek to preclude at a second trial: the bombing of Plaintiff Al Shimari's house and Plaintiff Al Zuba'e's claim against the government for \$20,000 in cash he claims was wrongfully confiscated when he was apprehended. In neither of those examples did CACI attempt to "disparage" Plaintiffs or seek to justify their alleged mistreatment.

Plaintiff Al Shimari testified that his alleged mistreatment caused a variety of mental and emotional ailments, including:

- "[H]allucinat[i]ons sometimes to the point where [the] relationship with [his] family is deteriorating." Dkt. #1624 at 26:8-10 (4/17/2024 AM Trial Tr.).
- Memory loss and difficulty concentrating. Dkt. #1624 at 26:23-27:12 (4/17/2024 AM Trial Tr.).
- Shame and humiliation that interferes with his relationships with family members. Dkt. #1624 at 27:13-28:3 (4/17/2024 AM Trial Tr.).

- Nightmares and difficulty sleeping. Dkt. #1624 at 27:25-28:6 (4/17/2024 AM Trial Tr.).

Al Shimari attributed all of these ailments to his alleged mistreatment at Abu Ghraib, and denied that there could be any other source of his trauma. But Plaintiff Al Shimari has admittedly experienced a number of traumatic events unrelated to his alleged treatment at Abu Ghraib that provide alternative sources of his alleged mental suffering, including:

- His service in the Iraqi Army, where he was gravely injured in combat and watched his friends die. Dkt. #1624 at 31:5-32:24 (4/17/2024 AM Trial Tr.).
- The arrest and detention of his family members. Dkt. #1624 at 35:10-12 (4/17/2024 AM Trial Tr.).
- His own arrest and transport to other military bases where he was interrogated and separated from his family for five years. Dkt. #1624 at 33:20-43:18 (4/17/2024 AM Trial Tr.).

None of this is particularly disparaging to Al Shimari, but it clearly bears on Al Shimari's contention that his treatment at Abu Ghraib prison is the only source of trauma in his life.

At his deposition, Plaintiff Al Shimari also testified that, while in detention, he learned that “the U.S. military had bombed [his] house and [his family] became homeless[.]” Ex. 1 at 95 (DX47). CACI was prohibited from eliciting that testimony at trial. Dkt. #1624 at 60:14-20 (4/17/2024 AM Trial Tr.). CACI sought to place the bombing of Al Shimari's home and the displacement of his family—traumatic experiences to say the least—in the context of his claims that his anguish was solely due to his alleged treatment at Abu Ghraib. Indeed, CACI's question regarding the bombing of Al Shimari's house started with Al Shimari's denial that any of the other traumatic events had any effect on his life. Dkt. #1624 at 30:24-31:4 (Q. “Do you agree that the mistreatment that you suffered while you were detained for almost five years at Abu Ghraib was not the first time that you experienced traumatic events that had a significant effect on your life?” A. “No. I was interrogated more than one time.”).

Al Zuba'e's claim for \$20,000 in cash both demonstrates that he knows how to make a claim against the United States and raises the probability that he, in fact, exaggerated the amount of his claim. In records contemporaneous with his release from detention, Plaintiff Al Zuba'e asserted to the U.S. Army Foreign Claims Commission a claim for damages against the United States. Ex. 2 at 19-23 (DX30). Al Zuba'e claimed that \$20,000 in cash and the vehicle he was driving were confiscated at the time of his apprehension. *Id.* That claim was included in Al Zuba'e's detainee file, an exhibit that was scrutinized by both parties for information purportedly subject to the Court's motion *in limine* rulings regarding Plaintiffs' backgrounds. *See generally*, Ex. 3. Over the course of five weeks, the parties negotiated redactions to Al Zuba'e's detainee file to remove all manner of information the Plaintiffs asserted was prejudicial to their clients. *Id.* Despite the parties redacting other information on the same page that mentioned Al Zuba'e's confiscated cash, Plaintiffs never requested that information be redacted. *See* Ex. 2 at 23 (DX30); Dkt. #1623 at 40:17-21 (admitting DX30 "which the parties have agreed is admissible").

During trial, at the Court's direction,¹ CACI asked Al Zuba'e whether he recalled "making a claim for \$20,000 that [he] said was taken from [him] when [he] was captured." Dkt. #1623 at 69 (4/16/2024 AM Trial Tr.). Al Zuba'e testified that he indeed had \$20,000 with him at the time of his arrest, but could not remember making the claim against the United States. *Id.* CACI did not use this evidence to "disparage" Al Zuba'e or justify his alleged mistreatment, but rather as evidence that he knew how to pursue a claim against the United States, yet chose not to:

Why didn't they sue the people who actually abused them? Why is Ivan Frederick not a defendant? Why is Charles Graner? Why is

¹ Dkt. #1623 at 69:6-9 (4/16/2024 AM Trial Tr.) (THE COURT: . . . "Just ask him, do you recall \$20,000 being taken from him. All right. Get specific.").

the United States not a defendant here? Or why didn't they file an administrative claim? You saw Secretary Rumsfeld's memo. If there's claims of detainee abuse, we will consider them and pay them if appropriate. We know that Al-Zuba'e knew how to file a claim. He filed a claim for \$20,000 that he said he was carrying in cash in his cab when he was detained. So they could have done that, but there's no publicity kick in suing the United States. And that's why, you know, they're going after a contractor to try to make a political and public point, but there's no evidence tying CACI to these plaintiffs.

Dkt. #1626 at 45 (4/22/2024 Trial Tr.). CACI also suggested that the jury might view with some skepticism Al Zuba'e's claim that the United States confiscated \$20,000 from him and, therefore, owed him that amount. *Id.* at 51:17-20.

Plaintiffs argue that “there was no valid reason in questioning [Al Shimari] whether his house was blown up by Coalition forces . . . or emphasizing during closing and questioning of [Al Zuba'e] that he was carrying \$20,000 U.S. dollars at the time of his arrest[.]” Dkt. #1680-1 at 5. But as the full context of these lines of inquiry demonstrates, not only are there valid, probative purposes for those questions, but also CACI never sought to unfairly “disparage” Plaintiffs at trial.

III. ANALYSIS

A. CACI's Questions are Probative of Plaintiffs' Damages and Credibility

Plaintiffs assert that there was no valid reasoning to question Al Shimari regarding the bombing of his house, or to question Al Zuba'e regarding the exorbitant sum of cash he claimed to have been carrying at the time of his arrest. Dkt. #1680-1. The relevance and probative value of those questions is apparent; Plaintiffs' motion seeks to exclude highly probative testimony that Plaintiffs view as detrimental to their credibility. But “damage to a [party's] case is not a basis for excluding probative evidence. And for good reason. Evidence that is highly probative invariably will be prejudicial[.]” *United States v. Grimmond*, 137 F.3d 823, 833 (4th Cir. 1998);

see also United States v. Queen, 132 F.3d 991, 998 (4th Cir. 1997) (noting that while evidence “was prejudicial, it was only prejudicial because it was so highly probative”); 2 *Weinstein’s Federal Evidence*, § 404.21[3][b] (2d ed.) (noting that prejudice “under Rule 403 does not mean the damage to a [party’s] case that results from the legitimate probative force of the evidence”).

Plaintiffs argued to the jury that Al Shimari and the other Plaintiffs experienced “psychological trauma” that “will continue to haunt them for the rest of their lives.” Dkt. #1626 at 28 (4/22/2024 Trial Tr.). Plaintiffs asserted there was no need to quantify that trauma with medical testimony, leaving their testimony as the only evidence of injury and causation. *Id.* at 67 (“Do we really need to call a doctor, a physician, a psychiatrist to tell this jury what the impact of the trauma has been for these men?”). Plaintiffs’ own medical expert, Dr. Xenakis, determined that Al Shimari “feels very despondent and resigned about the problems of his life” and suffers from “[s]evere situational and interpersonal stress, following detention for five years, harsh conditions, and political and socioeconomic instability.” Ex. 4 at 7, 10. Dr. Xenakis concluded that Al Shimari suffers from Post-traumatic Stress Disorder and Major Depressive Disorder, conditions which Dr. Xenakis attributes solely to Al Shimari’s arrest and detention at Abu Ghraib. *Id.* at 8, 9.

Aside from his detention and alleged mistreatment at Abu Ghraib, there are other obvious contributing causes of Al Shimari’s alleged psychological conditions. Al Shimari experienced combat as an Iraqi soldier, witnessed his friends and subordinates die, and was nearly killed himself when a bomb exploded nearby causing a piece of shrapnel to enter his abdomen. Dkt. #1624 at 31:5-32:24 (4/17/2024 AM Trial Tr.). While detained, Al Shimari’s home was destroyed and his family was left homeless in the middle of a war. Ex. 1 at 95 (DX47). Al Shimari was detained by the U.S. military for five years at multiple locations, unable to support

his family and understandably concerned about their well-being. Any one of these events could be a contributing or intervening cause of Al Shimari's alleged trauma. *Spencer v. Gen. Elec. Co.*, 688 F. Supp. 1072, 1074 n.5 (E.D. Va. 1988) ("PTSD, by definition, may be caused by a variety of traumatic events outside the range of common experiences, such as military combat, bombing, torture, airplane crashes, or rape.") (citing American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders 236–37 (3d ed. 1980)).

Al Zuba'e, for his part, previously alleged that soldiers, rather than civilians, abused him. *See, e.g.*, Ex. 5 (alleging abuses by "an American soldier" and a "white soldier wearing glasses") (PTX 20). At trial, Al Zuba'e changed his tune and testified that he did not know whether his alleged abusers were civilian or military. *See, e.g.*, Dkt. #1623 at 52:23-53:4, 56:5-22 (4/16/2024 AM Trial Tr.). Regardless, Al Zuba'e claimed not to know how to make a claim against the United States for the abuses he alleged were committed by soldiers. *Id.* at 67:22-68:3. His claim against the U.S. Army Foreign Claims Commission for return of the \$20,000² in cash he was carrying at the time of his apprehension clearly demonstrates otherwise. Ex. 2 at 19-23 (DX30)]. At the Court's urging, CACI asked Al Zuba'e about that claim. Dkt. #1623 at 69:6-70:18 (4/16/2024 AM Trial Tr.) (THE COURT: ". . . Just ask him, do you recall \$20,000 being taken from him. All right. Get specific."). When confronted with that prior claim, Al Zuba'e claimed to have remembered the cash but could not remember making the claim against the United States. *Id.* CACI demonstrated that the United States acknowledged financial claims

² There is no evidentiary basis for Plaintiffs to suggest that Al Zuba'e was referring to denominations of Iraqi Dinar rather than U.S. Dollars. *See* Dkt. #1680-1 at 3 n.1. Plaintiffs' request to "carve[] out" Al Zuba'e prior statement from their waiver of authenticity and hearsay objections is a nonstarter, as Plaintiffs lack any evidentiary support for their bald contention. If Al Zuba'e wants to make that argument at the retrial, it is a credibility question the jury is well equipped to address, and he can explain why he didn't offer this excuse when testifying previously.

responsibility for legitimate claims of abuse. Ex. 6 (DX 37). Al Zuba'e admits that the United States never paid him for such a claim. Dkt. #1623 at 70:9-18 (4/16/2024 AM Trial Tr.). Moreover, Plaintiffs previously agreed to the admissibility of Al Zuba'e's claim for the return of that cash. Ex. 3; Dkt. #1623 at 40:17-21 (admitting DX30 "which the parties have agreed is admissible.").

Questions regarding the destruction of Al Shimari's home and Al Zuba'e's confiscated cash elicit highly probative evidence that undercuts the merits of Plaintiffs' claims as well as their credibility. Plaintiffs cannot preclude that evidence simply because it is detrimental to their case.

B. CACI Has a Due Process Right to Cross-Examine Plaintiffs

Plaintiffs' motion *in limine* rails against CACI, decrying CACI's purported "incessant smear campaign" against Plaintiffs and claiming CACI "snuck in a few questions designed to paint [Plaintiffs] as 'terrorists.'" Dkt. #1680-1 at 1. After all that rhetoric, Plaintiffs offer only two examples of CACI's purported malfeasance and, as described above, both are probative and neither is unfairly prejudicial. Plaintiffs seek not only to exclude those two completely proper lines of questioning (one of which was directly prompted by the Court), but also ambiguously ask the Court to preclude CACI from questioning Plaintiffs to elicit evidence "related to the disparaging of Plaintiffs." Dkt. #1680-1 at 5. The problem, of course, is that Plaintiffs define evidence that might disparage Plaintiffs as any evidence that might damage their case or call their already-dubious credibility into further question. But that's not how trials work. Plaintiffs' request is nothing but an attempt to improperly limit the scope of CACI's cross-examination of Plaintiffs.

CACI has a constitutional, due process right to cross-examine the Plaintiffs regarding their alleged mistreatment and injuries on which they base their claims for damages, as well as

their credibility or lack thereof. *See Goldberg v. Kelly*, 397 U.S. 254, 269 (1970) (“In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses.”); *Davis v. Alaska*, 415 U.S. 308, 316-17 (1974) (“We have recognized that the exposure of a witness’ motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination.”). To the extent Plaintiffs state, as they did in the first trial, that their trauma is caused solely by the mistreatment that they allege, or that Plaintiffs pursued claims against CACI because no alternative relief was available, CACI has a constitutionally-guaranteed right to cross-examine Plaintiffs and expose those assertions as untrue. *McNeill v. Butz*, 480 F.2d 314, 322 (4th Cir. 1973) (“[N]o safeguard for testing the value of human statements is comparable to that furnished by cross-examination” and “no statement (unless by special exception) should be used as testimony until it has been probed and sublimated by that test”); *5 Wigmore on Evidence* (3d ed. 1940) § 1367 (heralding cross-examination as the “greatest legal engine ever invented for the discovery of truth”).

Plaintiffs’ gambit in filing this motion is obvious. The Court has made quite clear that it views with the strongest contempt any possibility that someone might believe torture or cruel treatment can be justified by the bad acts of the alleged victim. Plaintiffs have sought throughout this litigation to weaponize the Court’s concerns against CACI and, by doing so, have successfully removed from the case valid lines of questioning that would be damaging to Plaintiffs’ claims and credibility. Based on the thinnest of reeds, Plaintiffs once again smear CACI’s motives in the hopes of playing on the Court’s fears that CACI will argue or the jury will latch onto an illegitimate basis for denying Plaintiffs’ claims. That did not happen at the first

trial and will not happen at the upcoming trial. The Court should not fall for Plaintiffs' ploy and further heighten the advantages Plaintiffs have already obtained via this cynical strategy.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs' Motion *in Limine*, Dkt. #1680, should be denied.

Respectfully submitted,

/s/ John F. O'Connor

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CERTIFICATE OF SERVICE

I hereby certify that on the 20th 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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