

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

SUHAIL NAJIM)	
ABDULLAH AL SHIMARI <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	Case No. 1:08-cv-827 (LMB/JFA)
v.)	
)	
CACI PREMIER TECHNOLOGY, INC.,)	
)	
Defendant.)	
)	

**PLAINTIFFS’ OPPOSITION TO DEFENDANT CACI PREMIER TECHNOLOGY,
INC’S MOTION *IN LIMINE* TO EXCLUDE EVIDENCE REGARDING
TRAINING AND EXPERIENCE OF CACI EMPLOYEES**

Defendant CACI Premier Technology, Inc. (“CACI”) asks this Court to reconsider yet another of its rulings, this time regarding the training and experience of CACI personnel prior to their deployment to Abu Ghraib. CACI argues that routine evidence of its hiring and training practices is irrelevant, unfairly prejudicial, or rendered “brutally unfair” by the government’s assertion of state secrets. Yet, this evidence is plainly relevant to show CACI’s *respondeat superior* liability and the foreseeability of Plaintiffs’ harms, and CACI grossly exaggerates the prejudice it suffered as a result of the government’s invocation of the state secrets privilege. As this Court has *repeatedly* stressed, the reality is that both parties were impacted by the Court’s state secrets rulings, and CACI was not prevented from presenting evidence on this topic at trial, as it extensively did.

BACKGROUND

Although the Court is very familiar with the background on the government's invocation of state secrets privilege, Plaintiffs must correct CACI's self-serving, revisionist, and inaccurate history.¹ In 2018, the parties conducted depositions of various Army and CACI interrogators. Prior to such depositions, in accordance with the government's assertion of state secrets, the Court entered a protective order preventing disclosure of, or information that may lead to, the identity of the interrogators to be deposed. *See* ECF No. 821 (supplemental protective order). Both parties were prevented from, among other things, making any "attempt to link the pseudonyms assigned to pseudonymous deponents or to other intelligence interrogators to the person's true name, likeness, or identity." *Id.* at 3. This meant that *both parties* were prevented from asking the pseudonymous interrogators any questions relating to their background and deployment to Abu Ghraib that might have revealed their true identity. Such information included questions about the interrogators' military experience, discipline, training, and education. *See* ECF No. 1678 ("CACI Br.") at 3-4 (listing questions over which the government objected on state secrets grounds in depositions of CACI Interrogators A and G). The answers to those questions are unknown. Yet CACI's claims of prejudice are based on its rank speculation that such answers would have supported its claims.

CACI later relied on the testimony of these pseudonymous interrogators in support of its motion for summary judgment. CACI argued, both in summary judgment and later at trial, that pseudonymous CACI interrogators who formally documented their interrogations stated that no mistreatment of Plaintiffs had occurred. *See* ECF No. 1035 at 21-26. In the same

¹ Plaintiffs also address the topic of state secrets in their motion *in limine* to preclude defense counsel comments and arguments regarding the government's invocation of its state secrets privilege. *See* ECF No. 1693.

breath that CACI stated that this and other evidence adduced was sufficient to warrant summary judgment, it argued that the government's state secrets assertion made it impossible for CACI to access evidence sufficient to put on a defense, independently warranting dismissal of the case. *See* ECF No. 1042 at 20-25. The Court denied CACI's motions, acknowledging the "broad concepts of both conspiracy liability and aiding and abetting liability" and the fact that *both parties* "have problems" with respect to the government's state secrets objections. *See* ECF No. 1145 (Feb. 27, 2019 Hearing Tr.) at 16:25-17:1; 33:10. In that same hearing, the Court addressed evidence of CACI employee hiring and training, stating that such evidence was "directly relevant to this case." *See id.* at 27:2-7; 29:1-7.

Undeterred by the Court's ruling, CACI filed a motion *in limine* in 2019 seeking to exclude, among other things, evidence of CACI employee hiring and training, arguing that such evidence is irrelevant. *See* ECF Nos. 1209 at 19, 1235 at 23-24. But the Court allowed Plaintiffs, and in turn CACI, to present evidence on this subject during the trial in April 2024. CACI presented live and deposition testimony to establish that its personnel were trained and experienced for interrogation operations involving wartime detainees. *See, e.g.*, ECF 1625 (Apr. 18, 2024 Trial Tr.) (Billings) at 25:6-19; 38:24-39:8; *id.* (Mudd) at 104:17-105:4; 106:11-22; ECF No. 1634 (Apr. 19, 2024 Trial Tr.) (Porvaznik) 10:21-11:14.

No doubt concerned that CACI's evidence regarding their interrogators' qualifications was weaker on the merits than Plaintiffs' evidence showing the opposite, CACI seeks to wipe away this plainly relevant dispute nearly in its entirety.

ARGUMENT

I. Evidence of CACI Employee Training and Experience Is Relevant to the Claims in this Case

Evidence of CACI’s hiring and training practices with respect to its interrogators is unquestionably relevant because this evidence: (1) goes directly to establishing CACI’s liability under a theory of *respondeat superior*, which CACI concedes is a relevant issue in this case; and (2) establishes that the type of harm suffered by Plaintiffs, torture and cruel, inhuman, and degrading treatment (“CIDT”), was a foreseeable result of CACI’s practices, relevant to Plaintiffs’ entitlement to punitive damages. CACI’s argument that only the experience and training of CACI Interrogators A and G could be relevant turns entirely on its repeated—and repeatedly rejected—assertion that conspiracy and aiding-and-abetting liability requires a showing that Plaintiffs’ abuse was directly linked to particular CACI interrogators. That argument is simply incorrect.

A. The Evidence is Relevant in Establishing *Respondeat Superior* Liability

This Court has ruled that “an employer may be held liable in tort for an employee’s tortious acts committed while doing his employer’s business if acting within the scope of the employment when the tortious acts were committed.” *Al Shimari v. CACI Premier Tech., Inc.*, 657 F. Supp. 2d 700, 729 (E.D. Va. 2009) (citing *Plummer v. Ctr. Psychiatrists, Ltd.*, 252 Va. 233 (1996)). This is true “even for an employee’s unauthorized use of force if ‘such use was foreseeable in view of the employee’s duties.’” *Id.* (quoting *Martin v. Cavalier Hotel Corp.*, 48 F.3d 1343, 1351 (4th Cir. 1995)). Accordingly, one of the key factual determinations that a jury must make in the upcoming trial is whether CACI interrogators’ participation in the conspiracy and aiding and abetting of the torture and CIDT of Plaintiffs was foreseeable given

their duties as interrogators. As this Court has already ruled, evidence of CACI interrogators' experience and training (or lack thereof) is directly relevant to answering that question.

CACI concedes that evidence is relevant if such evidence goes to the question of "whether *respondeat superior* principles render CACI liable for" the torture and CIDT of Plaintiffs. CACI Br. at 1. Evidence of CACI employees' insufficient qualifications to work as interrogators, and CACI's willingness to hire and promote them without proper experience and training, tends to show that CACI knew or should have known that its employees would engage in the mistreatment of Plaintiffs in the course of and within the scope of their work for CACI. This is especially true in light of the fact that CACI was obligated to provide "resident experts" in interrogation to fulfill their contractual obligations to the U.S. military. *See* ECF No. 1650-1 (PTX-83) at 7. The Court has already accepted this logic, and CACI offers nothing to merit reconsideration.

Indeed, CACI fails to acknowledge that this Court has, on other occasions, already found that such evidence is relevant, such as in denying CACI's 2018 motion to dismiss. *See Al Shimari v. CACI Premier Tech., Inc.*, 300 F. Supp. 3d 758, 785 (E.D. Va. 2018) ("[B]ecause the alleged conspiracies were directly related to the interrogators' employment, CACI had an ability ... *to appropriately screen and train* interrogators before sending them to Abu Ghraib ... to head off the entry into these conspiracies," rendering "*respondeat superior* liability appropriate." (emphasis added). Later, in denying CACI's motion for summary judgment and motion to dismiss on state secrets grounds, the Court further ruled on the relevance of this evidence:

THE COURT: What about the background and training for these people? Certainly whether or not a CACI interrogator was

properly trained in the, in the principles of the Geneva Convention and in proper interrogation techniques *is a very relevant issue* and can't possibly reveal the identity of a person.

[...]

In particular, what, what training, if any, they got in the proper ways to interrogate someone, the Geneva Convention, that sort of thing. It's *directly relevant to this case*, and I would think that that can't possibly be a state secret. We're not talking about specific techniques for interrogation but just the general rules of what you should not be doing, let's say.

See, e.g., ECF No. 1145 (Feb. 27, 2019 Hearing Tr.) at 27:2-7; 29:1-7 (emphasis added). CACI has nothing to say to undermine this Court's repeated rulings.

Additionally, under this Court's settled interpretation of conspiracy and aiding-and-abetting liability, the relevance of this evidence is not limited to the experience of interrogators "*who actually interrogated Plaintiffs.*" CACI Br. at 2 (emphasis in original). The Court has repeatedly rejected CACI's improper attempt to collapse conspiracy and aiding-and-abetting liability into a required showing of direct liability and has specifically concluded that even absent a direct connection between CACI interrogators and Plaintiffs, the insufficient experience of CACI interrogators is relevant to the claims in this case. The Court specifically relied on evidence of insufficient qualifications and training of Stefanowicz, Dugan, and Johnson, in denying CACI's motion for summary judgment.

THE COURT:

[...]

You've got the testimony of CACI former employee Nelson, who expressed serious concerns about Dugan and Johnson.

[...]

You've got evidence in the record that CACI promoted Stefanowicz, that they fought the firing of Johnson, that they made no effort to contact Nelson.

I mean, there's enough evidence in my view to show -- to let this case go forward. In other words, there are material issues of fact that are in dispute, and given the broad concepts of both conspiracy liability and aiding and abetting liability, there's enough to go forward.

ECF No. 1145 (Feb. 27, 2019 Hearing Tr.) at 16:9-10; 16:19-17:1. At trial, by necessity, this evidence is essential and directly relevant to establishing CACI's liability.

Finally, CACI's focus on formal interrogation records is a red herring, which CACI itself admitted during trial. CACI agreed that the formal interrogation records available to the parties which showed interactions between Plaintiffs and CACI Interrogators A and G did not tell the full story. *See* ECF No. 1625 (Apr. 18, 2024 Trial Tr.) at 6:18-8:8 (counsel agreeing that records only reflect formal interrogations and may be incomplete as to all interrogations). The presentation of evidence of CACI employee hiring and training in general, and the representative examples of Stefanowicz, Dugan, and Johnson, are fair presentations of the kinds of interrogators CACI sent to Abu Ghraib and that may have taken part in the conspiracy or aided and abetted in the torture and CIDT of Plaintiffs. Plaintiffs' testimony gave rise to a strong inference that they encountered, and indeed were direct or indirect victims of, the actions of these and other CACI interrogators at the Hard Site. Thus, under the Court's governing rulings regarding the scope of conspiracy and aiding-and-abetting liability, evidence of the inadequate training and supervision of all CACI interrogators is relevant.

B. The Evidence Is Relevant to Establishing Punitive Damages

Evidence of CACI interrogators' lack of experience and training is also relevant to establishing Plaintiffs' claim for punitive damages. Under Virginia law, "punitive damages are appropriate where the defendant engaged in conduct that either approaches actual malice or exhibits extreme recklessness resulting in *clearly foreseeable* and immediate injury." *Baldwin v. American Van Lines, Inc.*, 2024 WL 921396, at *13 (E.D. Va. Mar. 4, 2024) (internal quotation marks and citations omitted) (emphasis added). Foreseeability of injury is a touchstone of this analysis, and evidence is relevant if it tends to show that the kinds of injuries that Plaintiffs suffered were a natural consequence of CACI's hiring and training practices.

If CACI, as the evidence in this case demonstrates, hired and promoted unqualified individuals into screener and interrogator positions, and then failed to train those individuals in the norms governing interrogation of wartime detainees, it is no surprise that those individuals then engaged in conduct that violated international law. Accordingly, this evidence is relevant and necessary to establishing Plaintiffs' entitlement to punitive damages.

II. Evidence of CACI Employee Training and Experience Is Not Unfairly Prejudicial or Precluded by the Court's State Secrets Rulings

CACI's familiar complaint that the government's assertion of the state secrets privilege in this case renders the presentation of certain evidence "brutally unfair" is wildly exaggerated, speculative, and incorrect. First, as this Court has repeatedly affirmed, the assertion of the state secrets privilege has prejudiced both parties in their presentation of evidence: "Well, both sides have problems. That's why, as I said, I think that's why we did not dismiss the case on the state secrets issue. I mean, it's frustrating, but that's how it goes." ECF No. 1145 (Feb. 27, 2019 Hearing Tr.) at 33:10-13; *see also* ECF No. 1617-4 (Jury Instructions) at 13 ("The ability of

both the plaintiffs and the defendant to produce all the exhibits and witness testimony they would have wanted to produce has been limited by the United States invoking the state secrets privilege to ensure that military or other secrets are not revealed.”). CACI’s obsession with what it was and was not able to ask CACI Interrogators A and G with respect to their training and experience (and its speculation as to what their answer would have been) ignores the fact that Plaintiffs were equally barred from asking these kinds of questions, and were equally barred from accessing other kinds of evidence that would have supported Plaintiffs’ claims. Second, CACI has access to, and in the first trial of this action, relied on, evidence of the same type that Plaintiffs presented to bolster CACI’s employees’ training and experience. Accordingly, CACI has not been unfairly prejudiced by Plaintiffs’ use of this evidence.

As Plaintiffs have repeatedly demonstrated, the cases that CACI cites, including *El-Masri v. United States*, 479 F.3d 296 (4th Cir. 2007), are very far afield. *El-Masri* holds that state secrets may warrant dismissal “if the circumstances make clear that privileged information *will be so central to the litigation* that any attempt to proceed will threaten that information’s disclosure.” 479 F.3d at 308 (emphasis added). In this case, the central limitation imposed—on both CACI and Plaintiffs—was that the parties could not discover or reveal the identities of the particular interrogators who interrogated Plaintiffs. There was no prohibition for either party on the presentation of evidence relating to interrogator training and experience.

Indeed, CACI, much like Plaintiffs, presented significant evidence about its general hiring and training practices with respect to its interrogators. *See, e.g.*, ECF 1625 (Apr. 18, 2024 Trial Tr.) (Billings) at 25:6-19; 38:24-39:8; *id.* (Mudd) at 104:17-105:4; 106:11-22; ECF No. 1634 (Apr. 19, 2024 Trial Tr.) (Porvaznik) 10:21-11:14. This evidence covered the broad

range of CACI interrogator hiring and training, both before and after deployment to Abu Ghraib, much in the same manner as the evidence presented by Plaintiffs. Thus, CACI's claims of "brutal unfairness" ring hollow.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that CACI's motion *in limine* to exclude evidence regarding training and experience of CACI employees be denied.

Dated: September 20, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2024, I electronically filed the foregoing, which sends notification to counsel for Defendant.

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