

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

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SUHAIL NAJIM ABDULLAH AL : Civil Action No.:  
SHIMARI, et al., : 1:08-cv-827  
Plaintiffs, :  
versus : Thursday, November 7, 2024  
: Alexandria, Virginia  
CACI PREMIER TECHNOLOGY, : Day 6  
INC., : Pages 1-146  
Defendant. :  
-----x

The above-entitled jury trial was heard before the  
Honorable Leonie M. Brinkema, United States District Judge.  
This proceeding commenced at 9:34 a.m.

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COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

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P R O C E E D I N G S

THE DEPUTY CLERK: Civil Action Number  
1:08-cv-827, Al Shimari et al. versus CACI Premier  
Technology, Inc.

Will counsel please note their appearance for the  
record, first for the plaintiffs.

MR. FARIDI: Good morning, Your Honor.  
Muhammad Faridi on behalf of the plaintiffs, joined by my  
colleagues Alex Mahler-Haug, Andrew Haddad and  
Charles Molster.

THE COURT: Good morning.

MR. O'CONNOR: Good morning, Your Honor.  
John O'Connor for CACI, joined by my co-counsels  
Linda Bailey, Nina Ginsberg and Joseph McClure.

THE COURT: All right. The jury is all here, and  
we'll bring them in.

THE COURT SECURITY OFFICER: Yes, Judge.

THE COURT: And we're in the midst of Colonel  
Pappas's deposition.

THE COURT SECURITY OFFICER: Rise for the jury.

(Jury present at 9:35 a.m.)

THE COURT: Good morning, ladies and gentlemen.  
Thank you again for being here on time. As I say, it's a  
real good sign that you're a wonderful and conscientious  
jury. We're moving things along. I'm quite sure that

1 you're going to get -- I mean I'm positive you're going to  
2 get the case to start deliberating on today. All right.

3 So we're wrapping up the defendant's case this  
4 morning, and I believe we'll have a brief rebuttal case from  
5 the plaintiffs, and we'll see then. There may be some  
6 longer breaks today because there are various housekeeping  
7 matters that we have to set up before we can give the case  
8 to you. All right.

9 All right. Mr. O'Connor.

10 MR. O'CONNOR: Good morning, Your Honor. CACI  
11 continues the videotaped deposition of Colonel Thomas  
12 Pappas.

13 THE COURT: Very good.

14 (Video deposition played of Thomas Pappas.)

15 MR. O'CONNOR: Cross-examination is coming next,  
16 Your Honor.

17 THE COURT: All right.

18 (Video deposition played of Thomas Pappas.)

19 MR. O'CONNOR: And, Your Honor, we have a brief  
20 redirect.

21 THE COURT: All right.

22 (Video deposition played of Thomas Pappas.)

23 MR. O'CONNOR: Your Honor, CACI presents the video  
24 deposition testimony of Major Carolyn Holmes, formerly known  
25 as Captain Carolyn Wood. I have clips for the Court and for

1 opposing counsel. The run time is 19 minutes and 4 seconds.

2 THE COURT: All right.

3 (Video deposition played of Carolyn Holmes.)

4 MR. O'CONNOR: Your Honor, CACI rests.

5 THE COURT: All right. Now there's a rebuttal  
6 case; correct?

7 MR. HADDAD: Yes, Your Honor. We have a short  
8 rebuttal case, about 15 minutes.

9 MR. O'CONNOR: Your Honor, may we approach on some  
10 of the rebuttal issues?

11 (Bench conference.)

12 MR. HADDAD: One thing I just wanted to clarify  
13 before John starts is we're going to start by offering in  
14 two exhibits. Those are --

15 THE COURT: Wait. Wait. Wait.

16 MR. HADDAD: So before we read in any witnesses,  
17 we're going to offer two exhibits, which are one-page  
18 excerpts from the Fay report that were not previously  
19 admitted that go directly to CACI's borrowed servant  
20 defense. We disclosed those to CACI several days ago. So  
21 we're going to start by just offering those and quickly  
22 reading them into the record. I have copies here for Your  
23 Honor and John. And then after that we will --

24 THE COURT: Let me see.

25 MR. HADDAD: So this is 23A. This is the first

1 one.

2 THE COURT: The entire thing you're reading in?

3 MR. HADDAD: I'm only going to read in part of it,  
4 but we're offering the whole thing. I'm only going to read  
5 in about four sentences. It starts with -- near the bottom  
6 of the first page it says: Another indication of the  
7 apparent inadequacy of on-site contract management. It's  
8 right after 10U. I'm going to read about half of that  
9 paragraph.

10 THE COURT: Hang on a second.

11 What was the second one?

12 MR. HADDAD: The second one is right here, Your  
13 Honor. I'm only going to read in one sentence from this.  
14 It's the sentence that begins interrogators with their  
15 section leaders' knowledge.

16 MR. O'CONNOR: Interrogators with their section  
17 leaders' knowledge?

18 MR. HADDAD: Yes. It's the last unredacted  
19 sentence. That's all I'm going to read.

20 THE COURT: All right. Is there going to be any  
21 objection to these?

22 MR. O'CONNOR: We do object, Your Honor. The  
23 Court went through and painstakingly approved -- and  
24 approved or disapproved which parts of the investigation  
25 were coming in, and we've been operating on that ruling

1 since April or March.

2 MR. HADDAD: Your Honor, it's only in CACI's case  
3 that they can offer their affirmative defense of borrowed  
4 servant. We're entitled to rebut that defense in our  
5 rebuttal case, and this goes to that defense.

6 THE COURT: I'm going to permit this.

7 May I hold on to these?

8 MR. HADDAD: Yes.

9 And after that we're doing four witnesses. We've  
10 cut the list from what we sent you last night. Just the  
11 first four. It's about 14 minutes in total. The first one  
12 is a read-in; the next three are videos.

13 THE COURT: Okay.

14 MR. O'CONNOR: Four? I think that's five.

15 THE COURT: No. They got rid of the last one,  
16 Interrogator E.

17 MR. HADDAD: We cut Interrogator E. I told Linda  
18 this morning. I thought she told you. I'm sorry.

19 MR. O'CONNOR: Right. I thought you had A, B,  
20 Mudd, Holmes, Morse.

21 MR. HADDAD: That's it.

22 MR. O'CONNOR: Oh, Morse is out?

23 MR. HADDAD: We cut Morse, yeah.

24 MR. O'CONNOR: Okay.

25 THE COURT: Do you want that for surrebuttal?



1 MR. O'CONNOR: No. No, Your Honor. I just want  
2 to make sure I understood.

3 A and B, Your Honor, they're allegations of  
4 isolated instances of misconduct by CACI personnel. These  
5 issues -- these incidents have not come up. So we certainly  
6 have not denied or put a case on relating to them or  
7 anything. That's not rebutting anything. One of them is A  
8 testifies that he saw an analyst flick cigarette ashes at a  
9 detainee and that he reported it. That doesn't rebut  
10 anything in our case.

11 And then B testifies that he saw A put a lit  
12 cigarette sort of underneath a bag for a few -- a hood for a  
13 few seconds so smoke went into the hood. But, again, we've  
14 not denied those. Those are not issues that have come up.  
15 I'm not sure why that's rebuttal. I mean, these should have  
16 been cross-designations and not rebuttal.

17 MR. HADDAD: Your Honor, the Interrogator A  
18 testimony rebuts the borrowed servant defense. John said  
19 that he reported it. He reported it to Dan Porvaznik. He  
20 said this happened to Dan Porvaznik. Dan Porvaznik  
21 testified I never had reports of abuse. This rebuts  
22 evidence they put on in their case.

23 THE COURT: All right. I'm going to let -- it's  
24 short. I'm going to allow it in.

25 MR. O'CONNOR: And then on Chuck Mudd, Your Honor,

1 they want to -- most of Mudd we don't think is that useful,  
2 but it's not objectionable. But they want to put in his  
3 opinion on -- Your Honor has seen the Dan Johnson  
4 photograph, the only photograph that -- with the squatting  
5 detainee. They want to put in his view of whether that was  
6 permissible. We've not taken any position. All we've said  
7 is that's the only picture.

8 And then they also want to put in language about  
9 whether site managers have the ability to influence CACI  
10 employees. And his answer is, he says probably yeah. He  
11 says he would assume he or she can. I don't know of any  
12 case where they did. Probably so. I mean, he's --

13 MR. HADDAD: Just to finish, he says but common  
14 sense tells me yeah.

15 MR. O'CONNOR: That, yeah, probably so. And  
16 then --

17 MR. HADDAD: Yeah. He says yeah.

18 MR. O'CONNOR: And then there's -- they want to  
19 just have him talk about the code of conduct. We haven't  
20 put a case on the code of conduct.

21 MR. HADDAD: Your Honor, the --

22 THE COURT: I don't need to hear the argument. I  
23 think because of the borrowed servant issue, this goes in.  
24 I'm allowing that in.

25 MR. HADDAD: Okay. Thank you, Your Honor.

1 MR. O'CONNOR: And Holmes, we don't think it's  
2 very worthwhile. It's mostly her saying she doesn't know,  
3 but it's not prejudicial, so I'm not going to use any  
4 capital on that.

5 THE COURT: Okay.

6 MR. HADDAD: And then there's two additional facts  
7 that we want to read in the record. It's facts that Your  
8 Honor read into the record at the April trial about the  
9 coalition provisional authority --

10 THE COURT: That's in the jury instructions.

11 MR. HADDAD: That's in the jury instructions.

12 THE COURT: They don't have to hear it twice.

13 MR. HADDAD: Okay. Fine with us, Your Honor.

14 THE COURT: Speaking of jury instructions, I'm  
15 still tailoring a few. We haven't had your argument yet.  
16 Your argument to me, right, you moved --

17 MR. O'CONNOR: For -- we'll do that when they rest  
18 their rebuttal case, Your Honor.

19 THE COURT: What we're going to do, just so you  
20 know how the morning is going to work, once we get the  
21 evidence in, I'm going to give the jury a fairly long break  
22 because I'll hear your argument, and then I'm going to go  
23 back to chambers and finish up the instructions. I'm still  
24 tailoring them a little bit.

25 I just want to make sure that I've got this

1 straight, neither side proposed any changes to the verdict  
2 form; is that correct? You didn't submit a new one, and you  
3 just submitted the old one.

4 MR. O'CONNOR: We don't propose any changes.

5 MR. HADDAD: I think that's right. I was not the  
6 person who did it.

7 THE COURT: I want to make sure you're sure of  
8 that.

9 MR. HADDAD: Okay.

10 THE COURT: Okay. That's fine.

11 MR. HADDAD: I'll just quickly let my co-counsel  
12 know about that.

13 THE COURT: Okay.

14 (Open court.)

15 MR. HADDAD: Your Honor, plaintiffs, as part of  
16 their rebuttal case, offer into evidence Plaintiffs'  
17 Exhibits 23A and 23B. Your Honor has a copy already, and so  
18 does opposing counsel.

19 I'm going to start by reading 23A into the record.

20 THE COURT: And I'm granting both of those.  
21 They're both in.

22 (Plaintiffs' Exhibit Numbers 23A and 23B admitted into  
23 evidence.)

24 MR. HADDAD: So starting near the bottom of the  
25 page.

1 Another --

2 THE COURT: Wait. I'm sorry. Give some context.  
3 These are excerpts from the Fay report?

4 MR. HADDAD: Yes. So these are excerpts of the  
5 Fay report that have previously not been admitted into  
6 evidence or read to the jury. This is page 51 of the Fay  
7 report.

8 It reads: Another indication of the apparent  
9 inadequacy of on-site contract management and lack of  
10 contract training is the apparent lack of understanding of  
11 the appropriate relationship between contractor personnel,  
12 government civilian employees and military personnel.  
13 Several people indicated in their statements that contractor  
14 personnel were supervising government personnel or vice  
15 versa.

16 Sergeant Adams indicated that CACI employees were  
17 in positions of authority and appeared to be supervising  
18 government personnel. She indicated a CACI employee named  
19 first name was listed as being in charge of screening.  
20 Civilian 8 (CACI) was in charge of B section with military  
21 personnel listed as subordinates on the organization chart.  
22 Soldier 14 also indicated that Civilian 8 was a supervisor  
23 for a time. Captain Wood stated that CACI supervised  
24 military personnel in her statement but offered no  
25 specifics.

1           Finally, a government organization chart showed a  
2 Civilian 2 (CACI) as the head of the DAB. Civilian 2 is a  
3 CACI employee.

4           Next I'm going to read from Plaintiffs'  
5 Exhibit 23B, which is another excerpt from the Fay report.  
6 And this is page 63 of the Fay report.

7           Interrogators, with their section leaders'  
8 knowledge, routinely utilized approaches/techniques without  
9 obtaining the required authority, indicating confusion at a  
10 minimum of two levels of supervision.

11           Your Honor, one very quick housekeeping matter as  
12 well. Plaintiffs' Exhibit 206, pages 1 through 22, was  
13 admitted at General Fay's deposition, but it wasn't formally  
14 moved into the record. We move it into the record at this  
15 time. I understand that CACI has no objection.

16           MR. O'CONNOR: That's right, Your Honor.

17           THE COURT: Plaintiffs' 206, pages 1 through ...

18           MR. HADDAD: 22.

19           THE COURT: One through 22 is in. All right.  
20 (Plaintiffs' Exhibit Number 206, pages 1 through 22 admitted  
21                           into evidence.)

22           MR. HADDAD: Your Honor, plaintiffs call  
23 Charles Mudd, via read-in.

24           THE COURT: All right. We need to get Evan in  
25 here. Do we have the transcripts?

1 MR. HADDAD: I think so, yes.

2 THE COURT: Okay.

3 The testimony of Charles Mudd was read in as  
4 follows:

5 Q Would you please state your name for the record?

6 A Charles Leslie Mudd.

7 Q Within the CACI structure, who was responsible for the  
8 day-to-day management of the contract compliance?

9 A I assume I would be as division chief. That's an  
10 assumption.

11 Q And when you say it's an assumption, that's the  
12 assumption you were working under at the time?

13 A Uh-huh. Yes.

14 Q And did you review the cost reports and invoices before  
15 they were sent to the government?

16 A Oh, yes.

17 Q And were you the one who made the decision of whether  
18 or not to include a particular charge to the government?

19 A I would get involved in that discussion, yes, if  
20 something was questionable.

21 Q Did you have the final authority -- approval authority  
22 on what got sent?

23 A No. CACI corporate was the final approving authority.

24 Q Was that your -- just in practical terms, is that your  
25 boss that had the final approval authority?

1 A No. It was a cost accountant who would prepare the  
2 invoices. We would review the invoices, they'd go back to  
3 the cost accountant, so I'm assuming their bosses got  
4 involved to make sure everything was accurate.

5 Q And so that was a finance function within corporate?

6 A Yes.

7 Q The questions of what interrogators could and could not  
8 do, if a CACI employee had a question about whether or not  
9 some direction that they had been given to them was  
10 permissible, what were they supposed to do?

11 A If the CACI employee is told some type of interrogation  
12 techniques that he or is she is uncomfortable with, feels is  
13 not supposed to be done, they can either take it to the  
14 military supervisor there at the site, or they can take it  
15 to our site lead, who would then take it to the military  
16 supervisor. It depends upon the relationship between the  
17 interrogator or the screener or the analyst with the  
18 military versus who do they take it to.

19 Q And when you say "depends on the relationship" who they  
20 felt most comfortable with, whether it was a military person  
21 or a CACI person?

22 A More if they're comfortable with the military.  
23 Obviously if the sergeant in charge of the operation or the  
24 captain in charge tell them to do something they don't agree  
25 with, then they'd take it to our CACI site lead.



1           If it was a young sergeant who just happens to be  
2 on that team telling them to do something, they could very  
3 well take it to the warrant officer. So it depends on who  
4 they felt uncomfortable with and who was giving them  
5 direction where they took it to.

6 Q     Do you remember forming your own view as to whether or  
7 not what you observed in the photograph of that CACI  
8 employee was permissible?

9 A     I'm not an interrogator. I'm not an intel type. So I  
10 can't say what Rules of Engagement were right and what is  
11 wrong. Having an Iraqi prisoner squat on a chair personally  
12 didn't seem too bad to me because that's where they sit all  
13 the time; however, it doesn't mean it was right or wrong. I  
14 mean, I just don't know. The government had a problem with  
15 it because they showed us the picture.

16 Q     Mr. Mudd, if a CACI employee was asked to beat up a  
17 prisoner, could he refuse to do that?

18 A     Yes. He would have to go to a site lead and the  
19 government and say, hey, someone has asked me to do this,  
20 and I think it's not correct.

21 Q     And did you expect your employees to do that if they  
22 were asked to beat up a prisoner?

23 A     If they were told to do something which is illegal,  
24 yes, I expect them to come to the leadership.

25 Q     Did those -- did the site managers have the ability to

1 influence the CACI employees that were in their site in the  
2 way they performed their duties?

3 A Obvious answer is probably, yeah. I mean, they were  
4 there. They did not impact our paycheck, per se, but if you  
5 got a site lead and you got ten CACI employees and one guy  
6 is in charge, you assume he or she can influence the people  
7 on that team. I don't know of any case where they did, but  
8 common sense tells me, yeah, probably so.

9 Q The code of conduct that we have before us, Number 4,  
10 reads: If you have a complaint, take it to your CACI  
11 leadership. Do not take it to the government leadership.  
12 Do not complain about CACI issues in front of government  
13 personnel.

14 A Yes.

15 Q And you drafted that; right?

16 A Yes.

17 Q Were the -- were CACI -- if a CACI employee had  
18 difficulty with the military person that they were working  
19 most directly with, was that something they were supposed to  
20 come and complain to CACI about first?

21 A Yes.

22 Q And why was that?

23 A So our site leader could get involved and fix the  
24 problem, talk to the government. Instead of one of our  
25 analysts, whatever, going to a lieutenant colonel and

1 complaining about a sergeant, it's better for our site lead  
2 to go to the lieutenant colonel and say, hey, we seem to  
3 have a problem down there at that one team.

4 Q So you didn't want -- you didn't want the rank and file  
5 of CACI employees to be able to just willy-nilly go up the  
6 military chain of command?

7 A No.

8 Q Were the CACI employees briefed on that issue that they  
9 were supposed to be coming to CACI management, not to  
10 military management with work difficulties?

11 A This checklist and different versions of this  
12 checklist, CACI code of conduct, was briefed to the  
13 employees in-country. They got there, the country manager,  
14 or whoever was giving that brief for the incoming personnel,  
15 would go down point by point and explain each one, and so it  
16 took a while to go over this sheet. And then at the end,  
17 they signed it, said yes, they got it, and we kept the back  
18 sheet on file. We didn't keep the first two or three pages,  
19 but this thing got modified as we went along as new problems  
20 surfaced.

21 MR. HADDAD: No further questions for  
22 Charles Mudd.

23 THE COURT: All right. And that's the last  
24 read-in; correct?

25 MR. HADDAD: Yes.

1 THE COURT: Thank you, Evan.

2 MR. HADDAD: Your Honor, next plaintiffs call  
3 Carolyn Holmes as a rebuttal witness via video. I have a  
4 clip report for the Court.

5 (Video deposition played of Carolyn Holmes.)

6 (Video played.)

7 MR. HADDAD: One moment Your Honor. Technical  
8 difficulties.

9 (Video deposition played of Carolyn Holmes.)

10 MR. HADDAD: Your Honor, plaintiffs call CACI  
11 Interrogator A. This is a six-minute video. And I have  
12 clip reports for Your Honor.

13 THE COURT: This is another one of the  
14 pseudonymous --

15 MR. HADDAD: Yes.

16 THE COURT: All right.

17 (Audio recording played - Interrogator A)

18 MR. HADDAD: Your Honor, plaintiffs call as their  
19 final rebuttal case Army Interrogator B, which is one of the  
20 pseudonymous interrogators who testified in CACI's case. I  
21 have clip reports for the Court.

22 THE COURT: All right.

23 (Audio recording played - Interrogator B)

24 THE COURT: Okay.

25 MR. FARIDI: Your Honor, at this time plaintiffs

1 rest their rebuttal case.

2 THE COURT: All right. That's fine. That means  
3 all the evidence is now in; correct?

4 All right. So, ladies and gentlemen, I don't want  
5 you to just be sitting listening to the white noise, and we  
6 have a fair number of logistical issues we have to work on,  
7 including making sure all the exhibits are ready to go, so  
8 I'm going to give you an extended break, and I'm actually  
9 going to give you 45 minutes. So you're free to go down to  
10 the second floor, there's a little cafeteria there, you can  
11 get some sodas or snacks if you would like. I'll just ask  
12 you to be back here promptly at noon. I think by then we  
13 should have the case ready for you.

14 So the next things you're going to have -- and,  
15 again, I don't want you to start making up your minds --  
16 we're going to have the closing arguments of counsel, and  
17 then most likely we'll be taking the lunch break sometime in  
18 that time frame.

19 You may want to get something to eat because I may  
20 have the lunch break start a little bit later. And then  
21 I'll be giving you, after lunch, if things stay on schedule,  
22 the closing -- the final jury instructions, and then we'll  
23 be sending the case to you all for deliberation later this  
24 afternoon. All right. That's the plan right now. Things  
25 can shift, but I'm going to try not to waste your time. So

1 please be back here by noon. You should leave your  
2 notebooks on your chairs or in the jury room. All right.

3 THE COURT SECURITY OFFICER: Rise for the jury.

4 (Jury not present at 11:06 a.m.)

5 THE COURT: All right. First thing I wanted to  
6 ask you is does anyone remember how much time I gave you  
7 last time for closing?

8 MR. O'CONNOR: 45 minutes, Your Honor. They had  
9 to split theirs.

10 THE COURT: Their side. All right. That's about  
11 what I was going to do today as well. That's why I said we  
12 might have lunch start at 1:30 if I can stay on schedule.  
13 All right.

14 All right. Mr. O'Connor, you had a question -- or  
15 you had an argument you wanted to make?

16 MR. O'CONNOR: Yes, Your Honor. We renew our  
17 motion for judgment under Rule 50 that we brought at the  
18 close of plaintiffs' case. We have a total of nine grounds  
19 asserted. We filed our brief last Friday. I'd like to talk  
20 about at least a few of them.

21 I want to start with aiding and abetting. When we  
22 had our trial in April and the jury hung, the Court  
23 expressed some doubt about whether aiding and abetting  
24 should be in part of this trial, and I think the evidence  
25 that's come in in this trial has justified the Court's

1 concerns about that, the aiding and abetting claims.

2           Aiding and abetting, as Your Honor noted with the  
3 last trial, and presumably will be the same or a similar  
4 instruction in this trial, requires direct involvement by a  
5 CACI employee in facilitating, assisting the mistreatment of  
6 one of these plaintiffs. This is not conspiracy where you  
7 can be pretty far removed at times and still have some  
8 liability if the scope of the conspiracy is brought. There  
9 has to be direct connection between assistance provided by a  
10 CACI employee and these plaintiffs.

11           That also has to be for the purpose of committing  
12 the unlawful act. You know, if the purpose is to get  
13 intelligence, that's not aiding and abetting. The purpose  
14 has to be I want to torture this person or I want to commit  
15 CIDT on this person.

16           We don't even have -- we don't have a single CACI  
17 employee identified as providing any practical assistance to  
18 the plaintiffs in this case, and we certainly don't have any  
19 evidence from which someone could rationally conclude that  
20 any such assistance would have been with the purpose of  
21 facilitating the conduct that's outlawed by -- that the  
22 Court found subject to the Alien Tort Statute.

23           THE COURT: All right. Have a seat.

24           Let me hear the plaintiffs' response.

25           MR. FARIDI: Your Honor, under your instructions

1 from the last trial, we're required to prove that CACI  
2 provided practical assistance, and I think we have  
3 demonstrated that. There's been significant testimony that  
4 CACI interrogators were directing military police members to  
5 soften up the detainees to get them ready for  
6 interrogations.

7 THE COURT: Yeah. But you know the last time --  
8 I'm going to grant this motion. I should have -- I thought,  
9 as you know, because we struggled with it last time, there  
10 is simply insufficient evidence to show that this conduct  
11 was directly -- directed at the three plaintiffs. And I  
12 think that's what aiding and abetting requires.

13 The conspiracy claim is different. You've got  
14 enough to go to the jury on conspiracy. But I am going to  
15 take the aiding and abetting. I'm satisfied that there is  
16 insufficient evidence to show that direct connection that  
17 has to be there. So that part of your motion is granted.  
18 All right.

19 You may see where I'm going from there,  
20 Mr. O'Connor.

21 MR. O'CONNOR: I have a good idea, Your Honor.

22 I assume the Court may not want further argument  
23 on conspiracy.

24 THE COURT: No. No. It's there.

25 MR. O'CONNOR: Borrowed servant?



1           THE COURT: I'm letting the borrowed servant  
2 instruction go through. What I'm trying to do is move this  
3 a bit because I'm still tinkering with a few of the  
4 instructions, and with the aiding and abetting coming out,  
5 obviously the instructions are going to be different, and I  
6 want to give you all enough time to look at the revisions.

7           There's enough evidence -- it's a fact-bound  
8 issue, and this case is in a different posture than the  
9 previous one. I'm not going to tell you the differences  
10 that I see because you need to do your own closing  
11 arguments, but I think there's a significant difference in  
12 how the evidence came in this time than it did last time.

13           The borrowed servant instruction will go to the  
14 jury. I will be adding, however, a sentence or two that  
15 makes it clear that an employee can have two masters at the  
16 same time. All right. Because the restatement clearly says  
17 that. It's a fact-bound evaluation that the jury has to  
18 make in looking at all the facts and circumstances.

19           Anyway, you'll see the instruction, and I'm sure  
20 there will be some discussion about it.

21           MR. O'CONNOR: We'll object to that when it comes,  
22 but that's not this current business.

23           And, Your Honor, we also asserted a number of  
24 legal defenses that I assume the Court probably does not  
25 want argument on. We do think that there's not been

1 evidence of domestic conduct that gets it done here --

2 THE COURT: Look --

3 MR. O'CONNOR: -- it's ordinary corporate  
4 business.

5 THE COURT: -- I recognize that this is an area of  
6 greatly unsettled law. I'm comfortable with the pretrial  
7 decisions that I've made. I think the evidence in this case  
8 does strongly show much more impact on the United States and  
9 involvement from the home base here in Northern Virginia  
10 than any of the cases the Supreme Court has yet addressed on  
11 this issue. But it is definitely an open question, and I  
12 would not be surprised down the road, depending upon what  
13 happens, should the plaintiffs achieve a victory in this  
14 case. The appellate process will be quite interesting.  
15 It's a legitimate legal issue, but I'm comfortable on the  
16 evidence that I've seen that that argument does not prevail,  
17 at least at this level.

18 MR. O'CONNOR: And, Your Honor, the Court has  
19 issued pretrial rulings on what I think are pretty clearly  
20 straight questions of law regarding the Court's power to  
21 imply a cause of action preemption, state secrets,  
22 derivative sovereign immunity and political question. I'm  
23 happy to argue each and every one of those.

24 THE COURT: And you've done it well, and you've  
25 made your record, Mr. O'Connor. As I said, there's some

1 other very interesting issues in this case. The state  
2 secrets decisions are definitely vulnerable. Although both  
3 sides were impacted by that. And I'm still going to give  
4 the same instructions. Most of the instructions are the  
5 same. I'm going to give you the changed instructions.

6 No one at -- I mean, there really were not much  
7 requests for additional new instructions. Most of the  
8 instructions -- I mean, the preponderance of the evidence  
9 instruction is the same, we're still using clear and  
10 convincing evidence for punitive damages. You know, all of  
11 that we hashed out last time, and I didn't see much --  
12 anything new from you all.

13 MR. O'CONNOR: I think that's largely right, Your  
14 Honor.

15 THE COURT: Okay. All right. So for the record  
16 then, I've denied all of the defendant's motions except for  
17 the motion for judgment as a matter of law on the aiding and  
18 abetting count. All right.

19 So I hope to be able to bring you out the proposed  
20 instructions in about 15 minutes or so so you'll have time  
21 to look at them and discuss them with me before we get the  
22 final set written up for the jury. All right.

23 Now, the other thing is, have you all got the  
24 index of admitted exhibits, including the ones we may have  
25 added today?

1 MR. FARIDI: Yes, we have. And we also have just  
2 one clarification on one of the exhibit numbers that we want  
3 to make, and we've discussed the issue with CACI's counsel,  
4 and we're in agreement.

5 THE COURT: Which is?

6 MR. FARIDI: I'll let my colleague,  
7 Ms. Mahler-Haug, deal with that.

8 MS. MAHLER-HAUG: Very briefly. With respect to  
9 Plaintiffs' Exhibit 161, both sides agree that  
10 Photograph M163 was also admitted with the other specific  
11 photographs, and so we just wanted to quickly clarify the  
12 record that that is admitted into evidence and will be so  
13 reflected on our --

14 THE COURT: N, as in Nancy, 163?

15 MS. MAHLER-HAUG: M, as in Mary.

16 THE COURT: M, as in Mary, 163.

17 MS. MAHLER-HAUG: Right. So it's photos M153,  
18 M162 --

19 THE COURT: I'm sorry. Wait a minute. M153? All  
20 right. M153. Go ahead.

21 MS. MAHLER-HAUG: 162.

22 THE COURT: Go ahead.

23 MS. MAHLER-HAUG: 163 and 165.

24 THE COURT: So Plaintiffs' Exhibit 161 --

25 MS. MAHLER-HAUG: Correct.

1 THE COURT: -- consists of only four photographs?

2 MS. MAHLER-HAUG: Correct.

3 THE COURT: All right. 153, 162, 163 and 165?

4 MS. MAHLER-HAUG: That's right, Your Honor.

5 THE COURT: All right. We have to make sure that  
6 the book reflects that. All right.

7 (Plaintiffs' Exhibit Number **161 Photographs 153, 162, 163**  
8 **and 165 admitted into evidence.**)

9 THE COURT: I believe it's this case that one of  
10 the questions that we got from the jury was a question about  
11 whether the title of the exhibits in the index was evidence.

12 MR. O'CONNOR: That's right, Your Honor. I think  
13 we've worked all those out. We had some proposed changes to  
14 theirs. I think ours were fairly not -- I don't think we  
15 had any objections to ours; they were pretty vanilla.

16 THE COURT: All right. I'm going to add an  
17 instruction. I'm trying to pre think what they had  
18 questions about last time so we can have it in this.

19 I'm going to also put somewhere in the  
20 instructions that I've asked the attorneys to provide for  
21 you a list of the exhibits that were entered into evidence.  
22 They gave a brief title of the exhibits so it will help you  
23 to find it, but the title is not evidence in this case. All  
24 right.

25 MR. O'CONNOR: That's great, Your Honor. And we

1 have -- we brought hard copies, but we have to make one  
2 change because an exhibit was not admitted. So we'll make  
3 that during this break, and then we'll have hard copies of  
4 the index of our exhibits, our admitted exhibits.

5 THE COURT: All right. I'm sorry. Did you say  
6 there was an exhibit that has not yet been admitted?

7 MR. O'CONNOR: On the hard copy that we brought  
8 over, there is an exhibit listed that was not admitted. So  
9 we just need to delete that from our chart, and so our  
10 paralegal will do that during this break and then bring back  
11 hard copies.

12 THE COURT: That's fine. All right.

13 So is there anything else we need to address?

14 MS. MAHLER-HAUG: No. Just to add that, like  
15 defendant, plaintiffs have hard copies of our exhibit list,  
16 and we also need to make one change to reflect the admitted  
17 evidence, but we'll have that ready as well. It's good to  
18 go otherwise.

19 THE COURT: All right. The only other thing is on  
20 the verdict form now, I've taken the old verdict form, and  
21 I've removed the aiding and abetting cause of action. So  
22 it's just going to be the conspiracy. All right. And,  
23 again, we have a separate set of questions for -- as to each  
24 plaintiff just the way we did last time. All right. So  
25 that we probably can bring out to you now so we have a

1 verdict form, so if there's anything that we've missed, you  
2 can get that right away.

3 All right. Anything further then?

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

5 MR. O'CONNOR: No, Your Honor. Thank you.

6 THE COURT: All right. We'll recess court until I  
7 get back.

8 (A brief recess was taken.)

9 THE COURT: All right. I'm going to give you each  
10 a copy. There are only four instructions that I think need  
11 to be changed. We're adding the one -- brand-new one that I  
12 mentioned to you, and it simply reads -- we'll probably put  
13 this one right after where I go through the different types  
14 of evidence.

15 You will have a list of all exhibits that were  
16 admitted into evidence during the trial. The titles of the  
17 exhibits are not evidence and are only intended to help you  
18 locate the documents you're looking for. Okay.

19 The reason it took so much time in there is I  
20 realized as I was thinking this through -- so, Mr. O'Connor,  
21 you need to respond to this.

22 My Jury Instruction 26 is the corporate  
23 responsibility for employee conduct instruction. In going  
24 through the plaintiffs' objections, they are correct that  
25 under Virginia law, if it is established that somebody is an

1 employee of a corporation, then whether they're acting  
2 within the scope of their employment, the burden would be on  
3 the defendant to say that they're not within the scope. But  
4 you're not making that argument in this case. You never  
5 have. The argument has always been the borrowed servant  
6 argument.

7 Now, if you were making an argument that there are  
8 not -- that the employees are not acting within the scope of  
9 their employment, then I'm going to go ahead and probably  
10 give what we now have marked as Instruction 26, which  
11 incorporated the example. Remember, because it did confuse  
12 the jury what was within the scope of employment.

13 Because there's no question, these people are  
14 working under employee -- a contract that you all have. So  
15 the real issue, it seems to me from listening to how your  
16 defense has always been in this case, is that, yeah, they're  
17 working on a CACI contract, but they're under the control of  
18 the government, and all the misconduct occurred at the  
19 government's control.

20 So I just want you to think about that. I don't  
21 have a problem giving the corporate responsibility  
22 instruction, but as a result of that, I've changed the --  
23 overview of the case, Number 19. Because originally in the  
24 last case, we did, in fact, have it wrong, that is that  
25 there were three elements that the plaintiffs have to prove,



1 the third element being that the conduct occurred within the  
2 scope of their employment.

3 And so if you look at revised Instruction 19, that  
4 third element has been removed. So the plaintiffs would  
5 have to prove, first that they were subjected to torture or  
6 CIDT; and then secondly, that CACI's employees were  
7 responsible by being members of the conspiracy. Okay.

8 It's a matter of -- it's your defense, so you need  
9 to tell me what you want there. But it occurred to me --  
10 I'm trying to make these instructions because I think the  
11 evidence is so complicated that the cleaner and simpler the  
12 instructions, the easier it's going to be for the jury, and  
13 I don't really think this issue of respondeat superior is an  
14 issue in the case.

15 You can think -- I'm not going to require you to  
16 stand up in a second and give me an answer on that, but, I  
17 mean, that's why the instruction's changed.

18 Okay. So there are two issues. One is if you  
19 want that issue left in the case, then take a careful look  
20 at Instruction 26. Okay. Because that would address it, I  
21 think.

22 And then the other issue is going to be the  
23 borrowed servant. And I have made that -- because the last  
24 time it was not part of -- I've made it a standalone  
25 instruction. So in going over the overview of the case

1 after indicating what the plaintiffs have to prove, I said  
2 in the last paragraph: Even if a plaintiff proves all of  
3 these two facts by a preponderance of the evidence, CACI  
4 maintains that it is not liable for any misconduct of its  
5 interrogators under the borrowed servant doctrine.  
6 Defendant has the burden of proving this defense by a  
7 preponderance of the evidence. I'll explain this doctrine  
8 in the next instruction. And then the next instruction is a  
9 very simple -- it's as simple as it can be, but I think it  
10 still correctly captures the essence of Alvarez borrowed  
11 servant doctrine.

12 I looked carefully at the plaintiffs'. I think  
13 the plaintiffs' is too complicated and is not actually  
14 100 percent accurate.

15 The issue is, in all the cases I've looked at,  
16 including the restatement, the ultimate issue is who has the  
17 control over the work at the time that the misconduct  
18 occurs. That's the core issue for the borrowed servant  
19 doctrine.

20 So, anyway, those are the only instructions that I  
21 changed. Otherwise, you've got the whole charge because  
22 it's the same charge we did last time. So I'm still giving  
23 a punitive damages instruction. It's still clear and  
24 convincing evidence of standard. I know there was a fight  
25 about that last time, but I'm still comfortable with that.

1           So I'll give you a few minutes. You've got the  
2 copies of the changed instructions. And what we'll do is,  
3 you know, if there are any other changes, read them over  
4 carefully. We'll come back -- so maybe 10 -- it's not a lot  
5 to read.

6           MR. O'CONNOR: We don't need more than 10 minutes,  
7 Your Honor.

8           THE COURT: All right. Let me -- is the plaintiff  
9 ready to respond already?

10          MR. AZMY: We can defer until we all come back.

11          THE COURT: Maybe 10 minutes, so my staff knows  
12 how much longer to stay around here, by 1:00?

13          MR. AZMY: That's more than enough time.

14          THE COURT: And if you're sooner, just let Kim  
15 know that you're ready for me to come back in.

16          MR. O'CONNOR: On the scope of employment, I  
17 probably need two minutes, Your Honor, to confer to be able  
18 to give you an answer.

19          THE COURT: All right. And if for some reason we  
20 get a question from the jury that's somewhat like that,  
21 that's the instruction I'm going to give them, so take a  
22 look at 26. Okay. That would be the one. All right.

23          MR. O'CONNOR: Understood.

24          THE COURT: All right. We'll recess court.

25                   (A brief recess was taken.)

1 THE COURT: All right. For the plaintiffs.

2 MR. AZMY: Thank you, Your Honor. So --

3 THE COURT: Let me ask you this, first of all, on  
4 Instruction 19, that's the overview of the case, is there  
5 any objection to that instruction?

6 MR. AZMY: No.

7 THE COURT: Okay. So -- and I think for CACI, is  
8 there any objection to 19?

9 MR. O'CONNOR: No, Your Honor.

10 THE COURT: Okay. All right. That one's all  
11 right then.

12 Now, borrowed servant.

13 MR. AZMY: Your Honor, yeah. I think we have  
14 concerns similar to the concerns we had last time, because  
15 although the instruction mentions that there could be more  
16 than one employer --

17 THE COURT: Right.

18 MR. AZMY: -- we haven't told them what follows  
19 from that, which is that the defense is not available if  
20 they find that there's shared control. Because it does risk  
21 leaving the jury to think that there's a binary, when in the  
22 next sentence you say that you can have more than one  
23 employer at the time the wrongful act is committed, that's  
24 in the first paragraph.

25 THE COURT: Right.

1 MR. AZMY: And then in determining the liability  
2 of a company for acts performed by one of its employees who  
3 has also worked for another company, you must consider  
4 who -- and I think the jury might read that as one or the  
5 other controlled the work. And -- but I think the idea of  
6 having two masters is that both would have controlled the  
7 work.

8 So we would request an additional line that  
9 suggests that if there's shared control, the defense is not  
10 available.

11 THE COURT: All right.

12 MR. AZMY: And then I have something on 26  
13 briefly, Your Honor.

14 THE COURT: All right. What's -- let me hear your  
15 26 issue.

16 MR. AZMY: So the 26 issue, I know Your Honor was  
17 thinking about sort of eliminating the scope of employment,  
18 which is fine with us. We just think what should remain is  
19 in the first paragraph, the theory of corporate  
20 responsibility, the defendant is a corporation to the end of  
21 the second sentence. And then the rest -- we have no  
22 objection to striking, which looks a little bit like your  
23 supplemental instruction on scope of employment.

24 THE COURT: Yeah. Because I'm presuming that it's  
25 a somewhat confusing instruction in the context of this

1 case.

2 MR. AZMY: Understood. Yeah.

3 THE COURT: The difficulty here is there's no  
4 question. They're working for CACI, they're performing  
5 CACI's contract.

6 MR. AZMY: Yes.

7 THE COURT: The real question for this specific  
8 case, though, is where there is the tort committed on a  
9 different location for a borrowing employer. You know, it's  
10 impossible. I mean, they're always going to be working for  
11 CACI. Always.

12 MR. AZMY: Right. Yes.

13 THE COURT: So I think -- again, I'm trying to  
14 assume that this jury could have the same confusion that the  
15 other one did. But CACI may not want the instruction at  
16 all, which moots the issue.

17 So let me hear Mr. O'Connor.

18 MR. AZMY: Just to be clear, Your Honor, we don't  
19 disagree as long as there's an explanation how a corporation  
20 can be held liable, which is in the first three sentences of  
21 Instruction 26.

22 THE COURT: I'm not sure I understood that.

23 MR. AZMY: So defendant is a corporation --

24 THE COURT: Right.

25 MR. AZMY: -- under the law. A corporation is

1 considered to be a person.

2 THE COURT: Right.

3 MR. AZMY: When the corporation's named as a  
4 defendant in a lawsuit, it can act --

5 THE COURT: All that stays in.

6 MR. AZMY: Okay. I'm just making sure. Thank  
7 you.

8 THE COURT: 26 is the entire instruction I would  
9 give. If I'm going to give any kind of a corporate  
10 responsibility instruction, all right, this is the one I'm  
11 going to give.

12 MR. AZMY: I understand. I thought potentially  
13 you were thinking about maybe striking what was the  
14 supplemental instruction around the scope of employment.

15 THE COURT: No.

16 MR. AZMY: Okay. I understand, Your Honor.

17 THE COURT: Mr. O'Connor.

18 MR. AZMY: Then just one small part about this  
19 instruction about the hypothetical. This occurred to us  
20 last time, I think the -- well, having an example -- an  
21 illustrative example of course can be helpful. I think the  
22 use of the pornographic photos might be a little bit  
23 unfortunate given the facts of this case. We certainly  
24 don't -- and I know we're --

25 THE COURT: I could say, you know, cocaine.

1 MR. AZMY: Yes. I think -- we just don't want the  
2 jury thinking is the Judge telling us that pornographic  
3 images are always outside the scope of employment.

4 THE COURT: All right. Let me see this. May be  
5 moot. Is it moot or not?

6 MR. O'CONNOR: I think it is moot, Your Honor. We  
7 note that the Court's proposed instruction differs from last  
8 trial in that the Court last trial placed the burden on  
9 plaintiffs and then this one places it on us. We object to  
10 that, but to the extent the Court's adhering to that, then  
11 we're not going to request a scope of employment  
12 instruction.

13 THE COURT: Well, I think it would confuse things  
14 given what your main defense is --

15 MR. O'CONNOR: I understand that.

16 THE COURT: -- under the borrowed servant.

17 So no scope of employment's going in. If the jury  
18 comes up with some kind of a weird question about it, all  
19 right, then the instruction I'm going to give them is 26,  
20 and I'm going to change graphic pornography -- pornographic  
21 photos to cocaine. All right. I mean --

22 MR. O'CONNOR: If it comes up.

23 THE COURT: Just as an example of something that's  
24 outside the scope.

25 MR. O'CONNOR: Understood, Your Honor. The



1 context of what's being sold doesn't really matter for us  
2 there.

3 THE COURT: All right. So then just for recap,  
4 the entire package that was given -- we're going to rerun  
5 them so they're clean and you can have them.

6 I've decided to save a piece of paper. At the end  
7 of Instruction 3, which is the one that just gives the  
8 different categories of evidence, I'm going to put the  
9 instruction that I mentioned to you about the index. It  
10 makes sense to go there. I try to put the instructions sort  
11 of logically together, and that's basically an  
12 evidence-related instruction. Okay.

13 So we will reprint these for you so you have them  
14 fresh on your desks, but you know what they are now. And  
15 you've got a half an hour to get ready for your closing  
16 arguments. All right.

17 The nice thing now about the schedule is that we  
18 won't have a break between closing arguments, which we would  
19 have had otherwise. So when we get back at 1:30, you'll go  
20 first with your closing. I assume you want 30 and 15 in  
21 terms of your time?

22 MR. FARIDI: I think we'll do 33 -- I'm sorry, we  
23 have 45 minutes; right?

24 THE COURT: 45 total.

25 MR. FARIDI: So we will do 35 and 10.

1 THE COURT: 35 and 10. All right. And we'll give  
2 you a timer again towards the three-minute and the  
3 one-minute. All right.

4 MR. FARIDI: Yes.

5 MR. O'CONNOR: I'll take 45 and zero, Your Honor.

6 THE COURT: Okay. And you don't need all the  
7 time, by the way. All right.

8 Anything further before we break?

9 MR. AZMY: Yes, Your Honor. Simply that if you --  
10 just to preserve our objection in the event that you don't  
11 adopt our proposed dual servant instruction.

12 THE COURT: I read your brief. I don't totally  
13 agree with it. I've looked at the cases. I think the  
14 instruction is sufficient. I'm trying to keep it as simple  
15 and clean as possible. I'm not going to change it. And,  
16 you know, we'll see whether the jury has questions that  
17 might require some further elucidation.

18 MR. AZMY: Okay. And just to underscore, our  
19 concern is them not knowing what happens if they are working  
20 for both, like what follows legally.

21 THE COURT: Okay. All right. They will always be  
22 working for both; the issue is who's controlling it at the  
23 time the tort is committed. That's the essence of the  
24 borrowed servant.

25 MR. AZMY: Yes. Our understanding is that if

1 you're subject to control --

2 THE COURT: Listen, you should argue -- I mean you  
3 can argue that to the jury; it's not improper for you to  
4 make that argument. Okay.

5 MR. AZMY: Okay. Thank you, Your Honor.

6 THE COURT: All right. Anything further? If not,  
7 we'll see you back here at 1:30.

8 (Court recessed for lunch at 12:59 p.m.)

9 AFTERNOON SESSION 1:35 p.m.

10 THE COURT: All right. Before we bring the jury  
11 in, just to make sure, I understand that -- is it correct is  
12 that both sides are asking that the judicial notice be taken  
13 out of the instructions?

14 MR. FARIDI: No. The only reason we didn't read  
15 that in the rebuttal part of the case is because, Your  
16 Honor, our understanding was that you were going to put that  
17 judicial notice in the instruction.

18 THE COURT: It's in the instructions.

19 MR. FARIDI: Yes. We agree it should be there.

20 MR. O'CONNOR: They never asked for judicial  
21 notice. And, in fact, in an attempt to keep out one of our  
22 exhibits, they told the Court in a pleading they were not  
23 requesting that judicial notice in this trial. We didn't  
24 know that that was going to be in the instructions until we  
25 saw them a minute ago.

1 THE COURT: Yeah, but I've asked you several  
2 times. I think I started asking you last night are there  
3 any objections to the instructions. I mean, these are the  
4 instructions that I gave last time.

5 What is the prejudice to this going in?

6 MR. O'CONNOR: Well, one --

7 THE COURT: Because you brought in the evidence.  
8 I mean, I would think, if anything, I thought the objection  
9 was going to be from the plaintiffs because you put in the  
10 Rumsfeld memo over plaintiffs' objection, and it's your case  
11 that has the Foreign Claims Act stuff in it.

12 So why are you objecting?

13 MR. O'CONNOR: The first part of that talks about  
14 coalition Provisional Order 17 and plaintiffs swore off  
15 requesting it at -- you know, judicial notice of that and  
16 then didn't request it during the trial of this case.

17 THE COURT: If it doesn't hurt you, why are you  
18 arguing it? It seems to me, if anything, it strengthens  
19 your case and maybe hurts the plaintiffs a little bit.

20 I'm going to leave it in because -- I'm leaving it  
21 in.

22 MR. O'CONNOR: Your Honor, we don't have a copy of  
23 the instructions now. We handed it to Ms. Reno. We don't  
24 have a copy.

25 THE COURT: You do now.

1 MR. O'CONNOR: No, we don't. We handed it to  
2 Ms. Reno to show --

3 MS. RENO: It's right here. Sorry about that.

4 MR. O'CONNOR: That's okay. Thank you.

5 THE COURT: All right. Everybody ready now? And  
6 the demonstratives, if you're using them, you're ready with  
7 the demonstratives? Let's bring them in.

8 THE DEPUTY CLERK: Yes, Judge.

9 Rise for the jury.

10 (Jury present at 1:38 p.m.)

11 THE COURT: All right. Ladies and gentlemen, so  
12 we've reached the final stages of the trial. I've given  
13 each side a total of 45 minutes to argue the case. The  
14 plaintiffs, because the plaintiffs have the burden of going  
15 forward first, they'll make the first opening closing  
16 argument. They will take a half an hour for that. And then  
17 the defendant will be able to making its closing argument,  
18 and that will be a 45-minute argument, and the plaintiff --  
19 it was 30 and 15; right? Or was it 35 and 10?

20 MR. FARIDI: 35 and 10, Your Honor.

21 THE COURT: Then there will be a ten-minute  
22 rebuttal by the plaintiffs.

23 So we should finish that around 3:00. Then I'm  
24 going to give you a short break. And then we'll come right  
25 back in, and I will give you the instructions. It will

1 probably take 20 to 30 minutes to give you the instructions,  
2 and then we'll be letting you go into the jury room to start  
3 your deliberations. So that's the schedule for this  
4 afternoon. All right.

5 All right. Who's going to open for the plaintiff?  
6 Counsel.

7 CLOSING ARGUMENT ON BEHALF OF THE PLAINTIFFS

8 MR. FARIDI: Good afternoon, members of the jury.  
9 It's my honor to be addressing you for the first time  
10 directly in this trial.

11 At the beginning of this case, we told you that  
12 what happened at Abu Ghraib was one of the most shameful  
13 periods in American history. In late 2003/early 2004 the  
14 detainees at Abu Ghraib were tortured and humiliated at the  
15 direction of military intelligence, including CACI.

16 And how do we know that? We know that from the  
17 photographs of the abuse that were taken by those who were  
18 involved in perpetuating the abuse. We know that from the  
19 military's leadership, which investigated the abuse and made  
20 factual findings related to the abuse.

21 We know that from the members of the military  
22 police who were court martialed, and some of them spent time  
23 in jail as a result of perpetuation of the abuse at Abu  
24 Ghraib.

25 And we know that from some of the victims of the

1 abuse, including our clients, Salah, Asa'ad and Suhail.

2           The whole world acknowledges that abuse took place  
3 at Abu Ghraib. Our country's military leadership  
4 acknowledges that abuse took place at Abu Ghraib. Those who  
5 were directly perpetuating the abuse acknowledged that abuse  
6 took place at Abu Ghraib and have owned up to it. They  
7 served time in jail.

8           CACI will tell you that it acknowledges that abuse  
9 took place at Abu Ghraib. But the substance of their  
10 defense, once you look at it carefully, and I'll go into it  
11 with a little bit more detail later, boils down to demeaning  
12 the victims of the abuse, denying the role of CACI  
13 employees, the role that they played in the abuse, and then  
14 deflecting responsibility entirely to the U.S. military.

15           I want to echo Judge Brinkema's words from earlier  
16 in thanking you for the careful attention and diligence that  
17 you have shown throughout this entire trial.

18           Judge Brinkema said at the very early stage of  
19 this case that you will be provided pieces to a puzzle. The  
20 pieces are the facts, and, here, the facts show that there  
21 was a conspiracy to abuse detainees at Abu Ghraib.

22           Who was involved with the conspiracy? CACI and  
23 members of the military police. The brotherhood. Those are  
24 the words of Sergeant Frederick, a member of the military  
25 police who was in the conspiracy with CACI.

1           What was the -- what was the purpose of the  
2 conspiracy? To soften up detainees, to get them ready, to  
3 enable the interrogations.

4           And what were the acts that were in furtherance of  
5 the conspiracy? The members of the military police carried  
6 out the instructions given to them by military intelligence  
7 and inflicted brutality.

8           And what were the results of the conspiracy? The  
9 torture, the cruel, inhuman and degrading treatment that was  
10 inflicted on our clients.

11           When you put these pieces together, there's one  
12 thing that is clear: CACI is responsible for the abuse that  
13 was perpetuated at Abu Ghraib, including on our three  
14 clients.

15           And I want to remind you very briefly of some of  
16 the witnesses that you heard from who connected CACI to the  
17 abuse at Abu Ghraib. The military leadership, the military  
18 police, and the victims of the abuse. You also heard this  
19 morning from CACI Interrogator A and Army Interrogator B,  
20 the testimony of those witnesses still fresh in your mind.  
21 And I want to take you to the testimony that some of the --  
22 that each of the witnesses provided to you over the last  
23 week.

24           Let's begin with the military's leadership, Major  
25 General Antonio Taguba. And you heard from him last week,



1 and he told you he was asked to investigate all aspects of  
2 the abuse at Abu Ghraib. His words. And he described the  
3 torture and the CIDT that was inflicted in many forms at Abu  
4 Ghraib. It's on the screen in front of you. Punching,  
5 slapping, kicking detainees, forcing detainees to remove  
6 their clothing and keeping them naked for several days at a  
7 time, forcing naked male detainees for wearing women's  
8 underwear, and using working military dogs without muzzles  
9 to intimidate and frighten the detainees. Those are exactly  
10 the same types of abuses that our clients suffered at Abu  
11 Ghraib. And remember the words of the General, the abuses  
12 were systemic, and they were illegal.

13 And he also found that the abuse was being  
14 directed by military intelligence. Military intelligence,  
15 which includes CACI. The interrogators actively requested  
16 that MP guards set physical and mental conditions of  
17 favorable interrogation of witnesses.

18 So what does it mean to set the conditions for  
19 interrogation? General Taguba said that's code for abusing  
20 the detainees to get them ready for the interrogations. And  
21 he told you that you don't need a formal agreement, and he  
22 said that you can accomplish this, you can have this  
23 agreement through a wink. Those are the words that he used.

24 And General Taguba also told you who from CACI was  
25 behind a lot of the abuse. Steve Stefanowicz, Big Steve.

1 Big Steve, according to the General, instructed the military  
2 police to facilitate interrogations by setting the  
3 conditions. He clearly knew his instructions equated to  
4 physical abuse, the General's words.

5 And General Taguba also told you how is it that  
6 the military intelligence, which, again, includes CACI, and  
7 the military police were able to work together to inflict  
8 the abuse. Command vacuum. He found that there was no  
9 clear delineation of responsibility between the commands.  
10 Military intelligence on the one hand, and military police  
11 on the other. And there was very little oversight by the  
12 commanders of the military. And that's what allowed the  
13 abuse to take place.

14 And then you also heard from Major General Fay,  
15 George Fay, who was appointed by our country's military to  
16 investigate military intelligence's role in the abuse. And  
17 he found that the abuses were caused by morally corrupt  
18 soldiers and civilians. That's CACI.

19 And he also was asked whether he concluded in his  
20 investigation whether the contract interrogators from CACI  
21 were involved in the abuse that he uncovered. He said there  
22 were. He was asked:

23 Question: And so military police and  
24 interrogators were working together inside the hard site to  
25 set the conditions for interrogations?

1                   Answer: Yes.

2                   And he also outlined the different types of abuses  
3 that he saw and found at Abu Ghraib. The same types of  
4 abuses that General Taguba found. Physical abuse, use of  
5 dogs, humiliating and degrading treatment, forced nudity,  
6 simulated sexual positions, improper use of isolation, and  
7 he found also that the abuses were unlawful, and they were  
8 not justified.

9                   And General Fay also told you who from CACI was  
10 behind the abuses. Big Steve. He found in his report that  
11 Big Steve used a dog during an interrogation and that the  
12 dog was unmuzzled. Big Steve pushed, kicked a detainee.  
13 Big Steve told other people that he had, himself, shaven the  
14 hair and beard of a detainee and put that detainee in red  
15 women's underwear, and then he was allegedly bragging about  
16 it because he thought it was funny.

17                  General Fay also talked about the abuse that  
18 another CACI interrogator, DJ, Daniel Johnson, perpetuated  
19 at Abu Ghraib. He found that DJ abused detainees, DJ used  
20 dogs, DJ placed a detainee in unauthorized stress positions.  
21 And then he also made findings with respect to a third CACI  
22 interrogator, Tim Dugan, another CACI interrogator. And he  
23 found that Dugan had grabbed a detainee who was handcuffed  
24 off of a vehicle, dropped him on the ground, and then he  
25 dragged that detainee into the interrogation booth, and then

1 when the detainee tried to get up, Dugan would yank the  
2 detainee very hard to make him fall again. CACI's  
3 interrogator, Tim Dugan.

4 So why is CACI liable for the abuses? Take a look  
5 at what General Fay said. He said that their instructions,  
6 CACI's instructions, created an environment that resulted in  
7 the routine abuse of detainees at Abu Ghraib, including our  
8 clients. That, by itself, makes CACI liable.

9 The military also appointed Lieutenant Anthony R.  
10 Jones. You didn't hear from him, but his report is part of  
11 the record before you. It's included in PTX 23. Okay.

12 And General Jones found in his report that the  
13 failure to effectively screen, certify and integrate  
14 contract interrogators, CACI's interrogators, was one of the  
15 factors that contributed to the abuses occurring at Abu  
16 Ghraib. And he also found that integration of some of the  
17 contractors without training and qualifications, CACI's  
18 contractors, created ineffective interrogation teams and a  
19 potential for non-compliance with doctrine and applicable  
20 laws. That means a violation of the Geneva Conventions.

21 And then lastly, the military appointed Vice  
22 Admiral Church to take a look at the policies governing  
23 interrogations in Iraq, in Afghanistan, and also at  
24 Guantanamo Bay. And like the generals, Vice Admiral Church  
25 also found that the events at Abu Ghraib had become

1 synonymous with the topic of detainee abuse. And then he  
2 also found that the -- none of the abuse that he saw in the  
3 pictures, none of that abuse was authorized by our country's  
4 military.

5           So your job is hard as jurors. But isn't it  
6 remarkable that you have access to the photographs of the  
7 abuse? Isn't it remarkable that you have the benefit of the  
8 findings made by four senior leaders of our country's  
9 military leadership?

10           And how is it then that CACI can claim that its  
11 employees were not involved with the abuse? You heard that  
12 in the opening statement. To believe CACI, you have to find  
13 that the generals were wrong. You have to find that the  
14 generals were wrong in the reports that they made back in  
15 2004, '5 and '6. And you have to find also that they were  
16 not credible when you heard their deposition testimony or  
17 when they testified in front of you at this trial.

18           So aside from the military generals, you also  
19 heard from members of the military police, CACI's  
20 co-conspirators, who were court martialed for carrying out  
21 the abuses at Abu Ghraib and some of whom served time in  
22 jail.

23           And these are the people who worked at the hard  
24 site during the night shift when Big Steve roamed, as he put  
25 it. He was always at the hard site, he was there all the

1 time. These are the people he was interacting with.

2 You heard from Staff Sergeant Ivan Frederick,  
3 okay, and he told you via deposition, he was asked: Did  
4 CACI or did interrogators ask MPs to soften up detainees?

5 Answer: Yes, sir.

6 Question: What did you understand the purpose of  
7 these kinds of treatment to be?

8 To get them to talk.

9 Question: How would you describe the working  
10 relationship between the MPs and the interrogators?

11 Answer: A brotherhood.

12 Okay. And he also pointed out who from CACI was  
13 behind the abuses. He named Big Steve.

14 Question: Did Steve ever tell you to abuse the  
15 detainees?

16 Answer: Steve just basically wanted us to use a  
17 dog on him to treat him like shit.

18 He talked about DJ's role in the abuses, and he  
19 told you via deposition that DJ used -- he used pressure  
20 points at the instruction of DJ on a detainee, and that at  
21 DJ's instruction, he covered a detainee's nose and mouth  
22 during an interrogation.

23 You also heard from Specialist Charles Graner, and  
24 this is what he told you via deposition.

25 Question: Did civilian interrogators give you

1 instructions about how to treat detainees?

2 Answer: Yes.

3 And then he also testified that he recalled  
4 hearing civilian interrogators, CACI's interrogators, give  
5 instructions to other military personnel, and that he even  
6 received encouragements from civilian interrogators when he  
7 followed out the instructions, carried out the instructions  
8 telling him that he was doing a good job.

9 And then you also heard from Specialist Megan  
10 Graner, and she told you via deposition that civilian  
11 interrogators gave her instructions on how to treat  
12 detainees, and she heard instructions from them that she  
13 should remove their clothing and that she should put them in  
14 stress conditions.

15 And then you heard from Sabrina Harman. And you  
16 heard her testimony, the riveting testimony, the unvarnished  
17 testimony, the unrehearsed testimony that she gave you from  
18 the witness box. And you can hear the remorse in her voice,  
19 and you can hear that remorse and you can see that remorse  
20 in the letters that she sent back home to her spouse  
21 21 years ago, those letters are part of the record.

22 And she also described the abuse that she was  
23 observing with a tremendous amount of particularity in the  
24 letters she wrote back home. On the left side of the screen  
25 is a diagram that she drew telling her spouse what she had

1 witnessed. And on the right side, you've got the photograph  
2 that someone took of the abuse, and they line up perfectly.  
3 They match.

4 Q And she told you that she didn't report any of the  
5 abuse because everybody who was there knew. Everybody who  
6 was there knew, including her chain of command. Her words.

7 And then she also talked about CACI's role in the  
8 abuse. She said that she did hear or see Stefanowicz, Big  
9 Steve, give instructions to other MPs. And that -- you see  
10 the picture of the detainee who she talked about in her  
11 letter, she referred to him as Jesus Christ. You know  
12 who -- and then the interrogator for that particular  
13 detainee was a CACI interrogator, and she testified about  
14 that as well.

15 And then came CACI's cross-examination when CACI  
16 tried to establish that all of the abuse that the MPs were  
17 perpetuating, they were doing it on their own without any  
18 involvement or direction from CACI. Ms. Ginsberg was the  
19 one who was asking her these questions. And this is what  
20 she said, she said this was a standard operating procedure  
21 to humiliate the detainees, to keep them awake to get them  
22 ready for their interrogations. That was a standard  
23 operating procedure at Abu Ghraib.

24 And then you heard from the victims of the abuse,  
25 our clients. All three men were at the hard site in



1 December 2003 -- in late 2003/early 2004. And that issue is  
2 undisputed. You heard us read the stipulations of facts  
3 into the record. They established that these individuals  
4 were there at the hard site in Tier 1A. And that's where  
5 Big Steve roamed. Right.

6 And here you see on this slide the abuses that  
7 they perpetuated against Salah. He described for you how  
8 painful and shameful it was for him to be naked in front of  
9 other detainees, and how these grown men were avoiding  
10 making eye contact with each other to avoid exacerbating  
11 each other's shame. And what happened to him at Abu Ghraib  
12 was according to the plan. He got to Abu Ghraib, he was  
13 stripped and humiliated overnight, he was broken, and then  
14 he was interrogated.

15 And take a look at what they did to Asa'ad. All  
16 right. And you heard him try to convey how he cried out for  
17 help, that one night that they threw him in the hole naked,  
18 handcuffed and hooded. And no one came to help him, and  
19 that was by design because they wanted to break him down for  
20 the interrogations.

21 And then you heard from Suhail. Okay. And this  
22 is what they did to him. And he talked about how he was  
23 raped, his genitals were grabbed. And remember the words  
24 that he said, I'm a principal of a school, I'm a man, when  
25 he was talking about the indignity that he had to suffer

1 when he was forced to be naked.

2           And when you heard these three men testify, you  
3 heard their vulnerability and you heard their pain. You saw  
4 their bravery, and then you saw the truth come out in its  
5 most unvarnished and its most raw form. And you saw Salah  
6 and Asa'ad try to keep their struggle -- try to keep their  
7 composure as they tried to regain their dignity and tell you  
8 about the physical pain and the psychological trauma that  
9 they are suffering from and will continue to suffer for the  
10 rest of their lives.

11           I'm going to show you just one picture that is a  
12 powerful example of the abuse that our clients experienced  
13 at Abu Ghraib. And this is a picture of Salah from the  
14 first night that he was there, hooded, naked, tied up with  
15 vomit at his feet. And he told you who abused him. He told  
16 you it was Graner. And you know where Graner got his  
17 instructions from; right?

18           And remember this picture, keep this picture in  
19 mind when CACI questions whether our clients were actually  
20 abused. And remember Sabrina's testimony that if the  
21 pictures didn't exist, no one would believe that this took  
22 place.

23           We also called to the witness stand Dr. Jens  
24 Modvig, one of the foremost experts on torture and CIDT, and  
25 he gave you the framework on how to evaluate whether someone

1 has experienced torture and CIDT, and he talked about the  
2 techniques that are used that can -- to produce severe  
3 physical pain and psychological pain. Each one of these  
4 techniques used against our clients, sometimes in  
5 combination with one another.

6 And CACI's own expert, Dr. Payne-James, told you  
7 that what he saw on our clients' bodies was consistent with  
8 what you heard from them. Right. And he also told you  
9 about the lasting psychological trauma that torture  
10 survivors, like our clients, will endure.

11 So how did CACI, an IT services company, end up in  
12 all of these abuses? Mr. O'Connor loves reminding you that  
13 the military had radar technicians conducting interrogations  
14 at Abu Ghraib before CACI showed up, but that's the reason  
15 the military turned to CACI. They contracted with CACI for  
16 resident experts -- they contracted with CACI for resident  
17 experts, people who are experienced in interrogation so that  
18 the military didn't need to supervise them.

19 And you saw that CACI stood to gain around  
20 \$32 million for interrogation services in Iraq, excluding  
21 the travel and the other costs that are outlined in the  
22 contract. So with all that money that CACI stood to gain,  
23 did CACI hire resident experts?

24 Take a look at what Tom Howard said about some of  
25 the folks they were sending to Abu Ghraib. None of these

1 candidates have the basic qualifications that the customer  
2 requires for the interrogator position.

3           And take a look at what he wrote about Big Steve.  
4 He said he's got a crafty resume, he's a no-go. Dugan, he  
5 said, I'm sorry to give my no-go for this guy. And,  
6 remember, DJ was just 22 years old. And you heard from Dan  
7 Porvaznik, the site lead that CACI had at Abu Ghraib, about  
8 how many years of training and experience that it took him  
9 to become an interrogator. Did any of these people that  
10 CACI sent over -- except for Torin Nelson, did any of these  
11 people that CACI sent over have the training and experience?  
12 Absolutely not.

13           And Mr. Billings, who hired a lot of these people,  
14 he testified before you also. And he claimed that the  
15 military reviewed and approved the resumes of every single  
16 person that CACI hired. But then we showed you evidence  
17 that the folks that CACI was hiring and promoting, that was  
18 being done by CACI without the military's approval. That's  
19 in PTX 128A and PTX 225.

20           And General Fay found that CACI's failures --  
21 CACI's failure to send qualified and trained people to Abu  
22 Ghraib was detrimental to the intelligence operations of our  
23 country. General Fay's finding right in front of you. So  
24 CACI sent these people to Abu Ghraib, these unqualified  
25 people to Abu Ghraib even though CACI knew as early as

1 October 2003 that detainee abuse was rampant at Abu Ghraib.

2 And right in front of you is a letter that a CACI  
3 interrogator, Richard Arant, sent to CACI's leadership in  
4 October of 2003. And he's saying here in this letter that  
5 he's quitting because he can't put up with the abuse that  
6 he's seeing at Abu Ghraib. And he says here, and he tells  
7 Dan Porvaznik, CACI's site lead, about that as well. And  
8 you know what Mr. Porvaznik told the Army as to why  
9 Mr. Arant was leaving? Mr. Porvaznik said that Arant was  
10 leaving because he's got issues with his eyes, he's having  
11 trouble with his eyes.

12 But that's not the only time that CACI employees  
13 told Dan Porvaznik about the abuse that they were seeing on  
14 the ground. And you heard testimony -- actually, you heard  
15 Dan Porvaznik admit on the witness stand during his  
16 cross-examination that he recalled that Mr. Albury, a CACI  
17 employee, had reported to him that another CACI employee,  
18 Billy Krieger, had engaged in detainee abuse.

19 And you heard this morning from CACI Interrogator  
20 A that he had informed Dan Porvaznik about an incident when  
21 he saw a naked detainee with women's underwear on his head.  
22 So did Dan Porvaznik do anything? You know the answer. He  
23 did nothing. In fact, he covered it up. The military asked  
24 Dan Porvaznik whether he had any information about detainee  
25 abuse. This is the questionnaire that Dan Porvaznik filled

1 out. He said he wasn't aware of anything.

2 And you also heard, remember, from Torin Nelson,  
3 the first day of trial. The seasoned CACI interrogator.  
4 The one who left in January 2004. And here's what he told  
5 you that he heard and saw at Abu Ghraib. He said that he  
6 heard Big Steve brag about how he had gotten one of the  
7 detainees to admit that the detainee was Osama Bin Laden in  
8 disguise. How do you think Big Steve got that? You think  
9 there was torture involved? And Big Steve thought it was  
10 funny, and he was joking around about it. Right.

11 And then he told you that DJ was conducting an  
12 interrogation next door to Torin Nelson, and there was so  
13 much commotion in that room, furniture being thrown around,  
14 that Torin had to cancel his own interrogation.

15 And then when Torin went to the detainee files for  
16 another interrogator who DJ was handling, Torin found that  
17 DJ was writing in those detainee files that the detainee's  
18 crying like a baby. Crying in the corner like a little  
19 girl. Detainee is broken into 1,000 pieces like Humpty  
20 Dumpty. These are the people that CACI sent to Abu Ghraib.

21 And he also told you about Tim Dugan. Right. And  
22 he said Dugan was bragging about kicking a table onto a  
23 detainee when he was handcuffed onto an eye bolt on the  
24 floor. And Torin also saw signs of abuse, physical abuse,  
25 on a detainee who had been assigned to Dugan.

1           And you saw CACI's code of conduct, the top ten  
2 business values. The first one is placing integrity and  
3 honesty above all else. Number 8 is being accountable and  
4 taking responsibility for what we do.

5           Did CACI place integrity and honesty above all  
6 else? Are they -- have they held themselves accountable,  
7 and have they taken responsibility? I think you know the  
8 answers to those questions.

9           You got a flavor in CACI's opening statement of  
10 the lens that CACI would go to avoid accountability. Okay.  
11 And remember the three hurdles that Mr. O'Connor put up here  
12 on the screen in front of you, whether plaintiffs were  
13 subjected to torture or CIDT, whether CACI's employees were  
14 involved with the abuse, and is CACI responsible for its  
15 employee's conduct? You know what these three hurdles boil  
16 down to? Demeaning our clients, denying the reality of the  
17 abuse and CACI's involvement in the abuse at Abu Ghraib, and  
18 deflecting responsibility entirely to the U.S. Army.

19           Let's talk about the first hurdle.

20           You saw the regret and remorse from so many of the  
21 witnesses who testified before you about the abuse that they  
22 saw when they investigated the abuse or when they  
23 perpetuated the abuse at Abu Ghraib. That's the military  
24 leadership and the MPs. The only entity that has no  
25 regrets, no remorse for what happened is CACI.

1           You'll recall the testimony of Mark Billings.  
2 When my colleague Bonnie Robinson asked him do you regret  
3 hiring Big Steve? And you know what his answer was? No  
4 regrets. And he smirked when he gave that answer.

5           The second hurdle. Who did CACI call to the  
6 witness stand to defend what happened at Abu Ghraib? Big  
7 Steve. Would you find him to be credible? Ask yourselves.  
8 Certainly the generals didn't. General Taguba found Steve  
9 to be a liar. Big Steve had made a false statement to  
10 General Taguba about his activities during the  
11 investigations and his knowledge of the abuses.

12           General Fay, another military general, found Big  
13 Steve to be a liar. He said that Big Steve lied to him when  
14 he was being questioned about Big Steve's use of dogs during  
15 interrogations.

16           So who do you believe? The generals? Or Big  
17 Steve? Ask yourselves.

18           The reality is, Big Steve's lies that started in  
19 2004, and that were brought to this courtroom courtesy of  
20 CACI. And look at the things that he lied about during his  
21 testimony. He lied about forced nudity. He lied about the  
22 use of dogs. And he lied about making detainees wear  
23 women's underwear and then bragging about it.

24           CACI also put up other witnesses. You'll remember  
25 Dan Porvaznik, and you'll remember the anonymous



1 interrogators and the anonymous interpreters. They claimed  
2 they didn't see any abuse. They heard no evil, they saw no  
3 evil at Abu Ghraib. Did you find any of their testimony to  
4 be rehearsed? Why would -- just ask yourselves, why would  
5 they admit to having been engaged in abuse and exposing  
6 themselves to criminal liability?

7           So how do you reconcile the testimony of these  
8 individuals against the pictures? You can't. How do you  
9 reconcile the testimony against the general's findings? You  
10 can't.

11           And then came the deflection from CACI, the third  
12 hurdle that they put up. And you heard CACI claim that even  
13 if the interrogators are -- participated in the abuse, it's  
14 not them who's liable; the responsibility lies with the U.S.  
15 government.

16           What they're basically saying is that the Army was  
17 responsible for everything. And of course there was some  
18 coordination and collaboration with the Army, but that  
19 doesn't relieve CACI of their responsibility that it had to  
20 supervise its own employees.

21           The judge is going to give you an instruction on  
22 CACI's affirmative defense, known as the borrowed servant  
23 doctrine. And this is the defense that CACI has to prove by  
24 a preponderance of the evidence; it's not our -- it's not  
25 something that we have to prove.

1           And the judge is going to instruct you that to  
2 determine the -- the judge is going to -- the judge's  
3 instruction is going to ask you to determine who controlled  
4 the work of the CACI interrogators at the time of the  
5 misconduct. The most important thing that you've got to  
6 keep in your mind is that both CACI and the military can  
7 share control. If you find that CACI shared any control  
8 over its employees, then CACI has not met its burden, and it  
9 is liable.

10           So let me quickly take you through some of the  
11 evidence bearing on CACI's ability to supervise its own  
12 employees.

13           Take a look at the contract, CACI's contract with  
14 the government. The contractor is responsible for providing  
15 supervision for all contractor personnel. Mr. O'Connor is  
16 going to stand up here soon, and he's going to say, well,  
17 no, no, that's just administrative control, not operational  
18 control. The contract doesn't say that. The contract says  
19 that the work of the interrogators will be managed by the  
20 senior CI agent. The senior CI agent is the CACI employee.

21           Take a look at the CACI code of conduct and the  
22 employment agreement that it asks all of its employees to  
23 enter into. Both of these documents say that CACI is  
24 responsible for directing, supervising and controlling its  
25 employees.

1 Take a look at -- go to the next slide.

2 Take a look at the Army Field Manual, and General  
3 Taguba told you about it. Remember, this is Army doctrine  
4 and Army policy. This document says the commanders, the  
5 military, they don't have direct control over contractors or  
6 their employees; only contractors manage, supervise and give  
7 directions to their employees. Only the contractor can  
8 directly supervise its employees; the military chain of  
9 command exercises management control through the contract.

10 And then take a look at Army Regulation 715-9.  
11 This is key. This is the regulation that is referenced in  
12 CACI's contract with the government. This regulation says  
13 that the commercial firms providing the battlefield support  
14 services -- that's CACI -- will perform the necessary  
15 supervisory and management functions on their employees.  
16 Contractor employees are not under the direct supervision of  
17 military personnel in the chain of command.

18 Lastly, let me show you very quickly what General  
19 Fay found as to the reality on the ground. What I showed  
20 you before is what the contract and the policy said; let's  
21 talk about what happened on the ground.

22 And General Fay found that several people  
23 indicated in their statements that contractor, CACI  
24 personnel, was supervising government personnel or vice  
25 versa. Sergeant Adams indicated that CACI employees were in

1 position of authority and appeared to be supervising  
2 government personnel. She indicated a CACI employee  
3 named -- I don't have the name -- was listed as being in  
4 charge of screening. Civilian 8, the CACI employee, was in  
5 charge of B section with military personnel listed as  
6 subordinates on the organization chart. Soldier 14 also  
7 indicated Civilian 8, that's CACI, was a supervisor for a  
8 time. And Captain Wood stated that CACI supervised military  
9 personnel in her statement.

10 So how could it be that CACI was supervising  
11 military personnel but not its own employees? It can't be.

12 And CACI -- let me just say one more thing on this  
13 deflection issue. And you're going to hear about this from  
14 Mr. O'Connor very soon. You're going to hear him talk about  
15 some complicated Federal Acquisition Regulations about  
16 inherently governmental functions that prohibit contractors  
17 from supervising their own employees.

18 But keep in mind that unlike Army Regulation  
19 715-9, the one that I showed you before, the one that's  
20 referenced in CACI's contract, the Federal Acquisition  
21 Regulations are going to talk about, they're not referenced  
22 in CACI's contracts.

23 And keep in mind that Admiral Church also debunked  
24 their argument as we demonstrated through the  
25 cross-examination of Mark Billings.

1           And, by the way, on Mark Billings, he's a  
2 self-proclaimed expert on Federal Acquisition Regulations  
3 and defense contracting, and you heard him admit during  
4 cross-examination that the argument that they're making  
5 about the Federal Acquisition Regulations was never  
6 something that he ever mentioned in the last 20 years in the  
7 declarations and testimonies that he has been submitting in  
8 court on behalf of CACI.

9           You know what this argument looks like? A  
10 lawyer-invented argument to avoid accountability and to  
11 deflect responsibility.

12           And so once you set aside the demeaning --

13           Your Honor, I'll take a couple minutes over, and  
14 you can take it from my rebuttal time.

15           THE COURT: All right.

16           MR. FARIDI: Once you set aside the demeaning  
17 denials and deflection, your job as jurors gets a lot  
18 simpler. Okay. And the question you have to ask yourself  
19 is, did military intelligence -- and that includes CACI --  
20 did they conspire with the military police to abuse the  
21 detainees?

22           And the judge, Judge Brinkema, is going to  
23 instruct you on the law on conspiracy. And one of the  
24 things that she's going to tell you, if you take a look at  
25 her instruction carefully, once a conspiracy is formed, each

1 member of the conspiracy is liable for the actions of the  
2 other co-conspirators performed during the course and in  
3 furtherance of the conspiracy.

4           So let me give you an example to illustrate this  
5 point. My colleague, Bonnie Robinson, and I, we agree to  
6 sell illegal drugs. Okay. I instruct Bonnie to sell the  
7 drugs. Bonnie goes out there, and she sells the drugs. I  
8 am liable, even if I did not personally sell the drugs or I  
9 don't even need to know who she is selling the drugs to in  
10 order for me to be liable under the Judge's instruction.

11           So in the context of this case, what does that  
12 mean? Even though there is evidence that you've seen  
13 linking civilian interrogators, right, physically abusing  
14 our clients, instructing military police to abuse our  
15 clients, under the law, it is enough that CACI and the MPs  
16 agree to inflict brutality on the detainees, and our clients  
17 were abused as a result of that.

18           The last thing I'm going to talk about very  
19 briefly is what you should do after you see the puzzle  
20 pieces come together. You have to hold CACI accountable.  
21 Just as co-conspirators were held accountable in the court  
22 martials.

23           So how does a jury -- how does this jury measure  
24 the harm that CACI's actions have caused our clients and in  
25 our legal system? The only mechanism that this jury has to

1 recompense our clients is a monetary award. That's the  
2 measure of justice that you can provide to Salah, to Suhail  
3 and to Asa'ad.

4 The damages award is for you to determine, but we  
5 submit that under these circumstances, an award of  
6 \$3 million for each plaintiff is sufficient.

7 You'll also have to determine the issue of  
8 punitive damages, whether or not to punish CACI for the harm  
9 that it has caused. In our view, the appropriate measure of  
10 punitive damages is \$32 million, which is the amount that  
11 CACI stood to gain from the contracts that it had for  
12 interrogation services, not including the cost and the  
13 expenses.

14 And remember what you heard from CACI's corporate  
15 representative. The Iraq contracts were just a small piece  
16 of business for them, but the effects of the misconduct that  
17 CACI has engaged in has been having life-changing and  
18 devastating impact on our clients.

19 The law authorizes you, the members of this jury,  
20 to send a message that the cruelty and the dehumanization of  
21 human beings that took place at Abu Ghraib will not be  
22 tolerated in our country. Thank you.

23 THE COURT: All right. Mr. O'Connor.

24 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

25 MR. O'CONNOR: Good afternoon.

1           During the last week, Judge Brinkema has said it,  
2 and she's right; Mr. Faridi said it, and he's right. You've  
3 been a very good jury. You've been paying attention, you've  
4 been sitting through God awful pseudonymous depositions  
5 where you're just looking at a screen and listening to  
6 people who don't come in very clearly. No one other than me  
7 is probably sicker of hearing my voice on all those  
8 depositions than you are. But you've been paying attention,  
9 you've been taking notes. That's a good thing. Because I  
10 think when you go and you look at your notes, you're going  
11 to find a lot of what Mr. Faridi said is not backed up by  
12 what actually happened in the trial, is a contortion, a  
13 twisting of the evidence, is not a fair representation of  
14 the evidence.

15           You're going to get some instructions from the  
16 judge after arguments, and one of them is that, you know,  
17 you consider the evidence in a trial as a reasonable and  
18 careful person would deal with any very important question  
19 that must be resolved by examining facts, opinions and  
20 evidence. And that's -- your job is to give a sober, fair,  
21 analytical assessment of the evidence.

22           Why do you think the plaintiffs are putting up  
23 pictures of abuse -- of horrific abuse that are not of their  
24 clients and are not of our clients? It's to provoke an  
25 emotional response as opposed to the reasonable, careful



1 response that you're supposed to engage in.

2           You can, with that careful analysis -- there's a  
3 few things that are fair and that you can conclude. Another  
4 thing I agree with Mr. Faridi on, we're not here defending  
5 the abuses at Abu Ghraib prison. You can believe that the  
6 abuses at Abu Ghraib prison are a stain on this country.  
7 You can believe that because we believe that, and they  
8 believe that, and probably everybody here believes that.  
9 You can believe that it's a humiliation of our country and  
10 that it's inconsistent with our values as Americans. You  
11 can believe all of that. But the analytical part of your  
12 brain can also realize the obvious fact that you can believe  
13 all those things, as we do, as pretty much everyone here  
14 does, and still say these plaintiffs have not made the case  
15 against this defendant, because they haven't.

16           The interesting thing to me about Mr. Faridi's  
17 closing argument is you spent about 20 minutes talking about  
18 testimony and talking about abuses at Abu Ghraib, and you  
19 know who he never mentioned in the first 20 minutes? His  
20 clients. And then he talked about his clients. And you  
21 know who he never mentioned during the time that he was  
22 talking about his clients' claims? My client.

23           Now, why is that? Because there's no connection  
24 between the abuse that his plaintiffs claim and my client.  
25 They've not made any effort to bridge that gap and show how

1 my clients had anything to do with the treatment that these  
2 plaintiffs claim to have suffered.

3           When you come right down to it, this is a case of  
4 injury. We have plaintiffs claiming that they were injured.  
5 And I want you to think about what would you -- what do you  
6 expect in a case where plaintiffs come in and say I want you  
7 to award me money because I've been injured. If somebody  
8 walks out of a bar in Old Town Alexandria and gets  
9 assaulted, what do you expect from that plaintiff? Well,  
10 you'd expect to hear from them, to hear their testimony.  
11 You would expect some consistency in their version of  
12 exactly what happened. You'd expect that they would sue the  
13 entities that actually injured them, that they know injured  
14 them. Is that what happened here?

15           The plaintiffs know. They testified. I recognize  
16 Charles Graner, MP Charles Graner, as somebody who abused  
17 me. Charles Graner, soldier, the United States Army. Did  
18 they sue the Army? Did they sue Charles Graner? Did they  
19 sue the United States government? They didn't sue any of  
20 them.

21           You'd expect the plaintiff probably to have some  
22 interest in knowing actually who injured them. The  
23 plaintiffs claim that they were abused during  
24 interrogations. Have they had any interest in discovering  
25 who the interrogators are that actually mistreated them.

1 No, not at all.

2           You'd also expect in that injury case, you'd  
3 expect witnesses and corroboration. Did you hear from any  
4 witness other than plaintiffs that corroborates what  
5 plaintiffs say happened to them? You heard our expert,  
6 Dr. Payne-James, and what he said is the injuries that they  
7 have on their bodies are consistent with their claims, which  
8 is the lowest form of correlation. What that means is could  
9 be, but there's lots of other possible explanations.

10           He also testified that if nobody told him  
11 anything, there were no allegations made to him and he  
12 examined the plaintiffs, he wouldn't see it as any more --  
13 anything surprising for people in their 50s or their 60s.  
14 People in their 50s and 60s, they have scars, they have  
15 marks, whatever. But you would expect to see some  
16 witnesses, some corroboration. You didn't have a single  
17 witness who has a single memory of these plaintiffs that  
18 testified in this trial.

19           All the interrogations and interpreters, the  
20 pseudonymous ones, the ones that the United States Army says  
21 participated in interrogations of at least two of the  
22 plaintiffs, they strongly deny what the plaintiffs say  
23 happened to them. These plaintiffs are alleging abuse  
24 during interrogations. The interrogators say nothing like,  
25 I don't remember them, but the things they're saying, that

1 didn't happen in any interrogation that I was at.

2           You also didn't have any friends, family or others  
3 corroborating plaintiffs' allegations of psychological  
4 injury. You just heard them self-describe, and that was it.  
5 And that's maybe the most shocking thing here.

6           Medical evidence. If you have a case that  
7 involves a fender-bender where someone says their neck hurts  
8 a little bit, you'd have a doctor come in and get on the  
9 stand for them and give you a diagnosis. You've got no  
10 diagnosis. These plaintiffs, you know from their own  
11 testimony they went to Erbil, Iraq, and they were seen by  
12 plaintiffs' expert doctor and psychiatrist, and they didn't  
13 put him on to have him be subjected to cross-examination  
14 from CACI's witnesses.

15           So they want you -- they want you to award them, I  
16 think a total of \$41 million, without a diagnosis at all.  
17 Without medical diagnosis, without psychological diagnosis,  
18 without any medical evidence at all.

19           And by contrast, what do we give you?  
20 Dr. Payne-James. Played it straight down the middle. Was  
21 he someone who came in to try and trump at our company line?  
22 Absolutely not. He's devoted his life to torture victims,  
23 to refugees, to other people in need. And he told you, I'm  
24 not going to say what they're -- I can't tell looking at  
25 their bodies that what they say happened didn't happen, but

1 I can't tell you it did either. Lots of possible  
2 explanations. But they gave you nothing in that regard.

3 And what do we know? No suit against the United  
4 States, no claims against the United States. No suit  
5 against Charles Graner, Ivan Frederick or any of the other  
6 criminals that plaintiffs claim abused them. But we know  
7 the United States pledged that they would pay bona fide  
8 claims of detainee abuse. This is Secretary Rumsfeld's  
9 memorandum, which I read into the record earlier in the  
10 trial, and he made that clear.

11 But instead what they did is they sued a  
12 contractor who doesn't have access to all the information  
13 about plaintiffs' treatment because it's classified state  
14 secrets. CACI can't know who interrogated them, can't see  
15 interrogation plans, doesn't know what interrogation  
16 approaches were approved, can't see interrogation reports,  
17 doesn't have any of that information. But that's who the  
18 plaintiffs decided to sue.

19 And when you look back -- and we're going to go  
20 through this in a bit. If you look back at the plaintiffs,  
21 look back in 2003, 2004 when Al-Zuba'e and Al-Ejaili are  
22 being released from detention. Read their statements. Do  
23 they have any beef with civilian contractors? They don't.

24 And then five years later, do they go to lawyers  
25 and say I want to sue a civilian contractor? No. Lawyers

1 find them because lawyers want to sue government  
2 contractors. And the plaintiffs say, sure, I'll join that  
3 suit, and then the stories make their way to now we're going  
4 to say things about civilians.

5 The plaintiffs here are really, you know -- and  
6 they're props in a sense. They're a vessel for lawyers to  
7 bring a lawyer-driven case.

8 And what do you know, Mr. Al-Ejaili, the one  
9 plaintiff who came here to testify, he was here on the first  
10 day of trial and testified. Have you seen him? We've got a  
11 dozen lawyers here. But the plaintiff, he came and gave his  
12 testimony, and he's gone.

13 This is a political case where they're trying to  
14 get a civilian contractor when all the allegations that were  
15 made in real time were of abuses by United States soldiers  
16 and the United States Army; not CACI.

17 Okay. For CACI to be liable, you're going to  
18 receive a verdict form at the end of this, and there's three  
19 pages, one for each plaintiff. There's six pages, two for  
20 each plaintiff. And the main question is going to be: Have  
21 the plaintiffs proven that CACI is liable to them. That's  
22 going to be the main question for each of these plaintiffs,  
23 and there's three components to that.

24 First: Have the plaintiffs proven that they were  
25 subjected to torture or CIDT. You're going to have to

1 decide that.

2           Second: Have the plaintiffs proven that CACI  
3 employees conspired with the soldiers who tortured or  
4 committed CIDT on these plaintiffs.

5           And then third, if you find both of those, the  
6 question is: Has CACI shown that the borrowed servant  
7 doctrine applies, and that is that its employees were under  
8 the direction of -- the direction and control of the U.S.  
9 Army as it related to the interrogation mission. You have  
10 to decide all three of those in favor of plaintiffs and  
11 against us in order for CACI to be liable.

12           Okay. Let's start with the hurdles. Hurdle one:  
13 Were the plaintiffs subjected to torture or CIDT at Abu  
14 Ghraib prison? We're going to talk a bit about that. And I  
15 want to take one thing head-on that Mr. Faridi said. He  
16 calls it demeaning. We are not demeaning these plaintiffs.  
17 Not one bit. It's not demeaning to point out  
18 inconsistencies in their statements. It's not demeaning to  
19 point out the lack of connection between what they say  
20 happened and my client. That's not demeaning to ask  
21 questions and to take the evidence where it goes.

22           But what do you know. Were they abused? It's  
23 unknowable at this point. They say they were abused.  
24 That's the only evidence you have that they were abused is  
25 that they say they were abused. Might that be true?

1 Absolutely. We don't have any way to disprove that. We  
2 don't have access to records. But the thing you do know is  
3 if they were abused -- and, again, we're not saying they  
4 weren't, because it's not really knowable. Because we know  
5 that pseudonymous interrogators denied what they -- what the  
6 plaintiffs say happened in interrogations. But if they were  
7 abused, the one thing you do know is it didn't go down the  
8 way they said it did during this trial. And we can show you  
9 that. It was not only denied by the interrogators,  
10 there's -- it's inconsistent with what the plaintiffs said  
11 before they were suing a civilian contractor. There's no  
12 medical evidence. There's no records documenting the abuse.

13           So let's start with Plaintiff Al-Ejaili. It's not  
14 demeaning to point out that when Mr. Al-Ejaili was released  
15 from Abu Ghraib prison, he was asked by his employer to  
16 write a full, complete report of what happened to him while  
17 he was in U.S. custody. And that was three pages in Arabic,  
18 and I believe it's six pages in the English translation.  
19 And that's Plaintiffs' Exhibit 224, and I urge you to look  
20 at that when you're deliberating today and -- because it  
21 tells you what Mr. Al-Ejaili was saying when he was released  
22 when he wasn't suing a government contractor.

23           There are a grand total of two references to  
24 civilians. He distinguished between soldiers and civilians  
25 in the memorandum. So it wasn't that he was



1 indistinguishing. He made the distinction, but the only two  
2 references to American civilians were at intake where, in  
3 the computer room, an American civilian came up and was told  
4 this is an Al Jazeera reporter, and he said, no, it can't  
5 be, and they said, look at his records, and they said look  
6 at that. Didn't abuse him. Took him to the next room where  
7 he was questioned, where a soldier questioned him in a  
8 non-abusive way, and there was a civilian who sat there and  
9 never said a word.

10 But, again, by Mr. Al-Ejaili's own account, he was  
11 not abused in that -- up in reception when he was in the  
12 first room and then when he was in the -- when he was in the  
13 computer room or when he was in the room where the civilian  
14 never said a word to him. Those were the only references to  
15 civilians in Mr. Al-Ejaili's contemporaneous statement,  
16 putting aside what he testified to now.

17 What's the government say? Well, let's start with  
18 Mr. Al-Ejaili. Mr. Al-Ejaili says he was interrogated once  
19 he got to the hard site 20 times. What's the United States  
20 say? No record to formally document any intelligence  
21 interrogation of Plaintiff Al-Ejaili. None at all.

22 What did you hear from witness after witness?  
23 Interrogations have paper trails. Torin Nelson, who if you  
24 looked up disgruntled former employee in the dictionary,  
25 there would be a picture of Torin Nelson. Every chance he

1 got to try to stick it to CACI, he did on that stand. But  
2 what did he have to admit? I took 30 to 50 interrogations,  
3 and I expect there to be 30 to 50 interrogation plans and 30  
4 to 50 interrogation reports. Because all of that stuff was  
5 required for an interrogation. But for Plaintiff Al-Ejaili,  
6 there's none. The Department of Defense has absolutely  
7 nothing on him. It's not demeaning to point that out.

8 We also know that the logbook entry, which is  
9 Plaintiffs' Exhibit 19, but it's also reproduced in Defense  
10 Exhibit 2, where the United States acknowledges the logbook  
11 said that guy, they realized that Al-Ejaili was a reporter  
12 and said take him over, put him away from everyone else, he  
13 is not to be talked to by anyone except for some soldiers  
14 that are listed in the logbook. So the idea that he was  
15 interrogated 20 times and a bunch of those times by  
16 civilians is just completely refuted by contemporaneous  
17 records and by what Mr. Al-Ejaili said at the time.

18 The one thing -- and this is the only contact  
19 between one of the plaintiffs and any of the CACI employees,  
20 you know, Mr. Stefanowicz, Mr. Johnson, Mr. Dugan, who  
21 plaintiffs have been casting mud at. Mr. Stefanowicz had a  
22 brief encounter. There was nothing violating the IROE in  
23 that particular interrogation. Mr. Stefanowicz testified he  
24 had happened on the hard site when the sergeant got shot.  
25 It was commotion, they had everybody out of their cells, he

1 spoke briefly to a guy which he assumes is the Al Jazeera  
2 reporter. Sergeant Beachner said, hey, that's my guy, don't  
3 ask him questions, and he said, right, oh, and he said  
4 there's enough people here, I don't need to stay for this.  
5 Nobody's refuted that. Mr. Al-Ejaili could have refuted  
6 that; he didn't refute that.

7           Let's turn to Mr. Al-Zuba'e. He says now that he  
8 was repeatedly interrogated and they were civilians every  
9 single time. What did he say back in the day? Well, one  
10 thing he said was that he and a taxi driver in Iraq was  
11 captured by U.S. forces and had 20,000 U.S. dollars in cash  
12 in his cab that was seized by the United States Army.

13           He does say later on the same page, he does allege  
14 that he was tortured. But he also made a statement around  
15 the same time where he documented what his claims of abuse  
16 were, and there's no reference to civilians.

17           There's also -- you remember Mr. Al-Zuba'e told a  
18 very harrowing story of intake up at reception up in the  
19 computer room. He gave a statement. There's no reference  
20 to any abuse in the computer room. It's all after he got to  
21 the hard site, and it's all by soldiers. Not a single  
22 reference to a civilian, not a single reference to the  
23 computer room or anything up at intake. And when he went  
24 and met with Dr. Payne-James this past February, he told him  
25 that he was not mistreated in any way up in the computer

1 room. But now he says he was, and now he says he was abused  
2 there by civilians and then repeatedly interrogated just by  
3 civilians.

4 But what else do we know? The stipulation of  
5 uncontested facts in this case, according to the Army, he  
6 was interrogated by five different soldiers. Not only that,  
7 you heard from four of them. You heard from Army  
8 Interrogator C, E -- B, C, E and F. And they all said, yes,  
9 I interrogated -- I participated in an interrogation of  
10 plaintiff Al-Zuba'e.

11 So unless they all have some sort of group  
12 psychosis and are claiming to be in interrogations that they  
13 weren't, Mr. Al-Zuba'e's testimony that he was interrogated  
14 only by civilians is not only inconsistent with what he said  
15 in 2003, but it's flatly refuted by people who admit they  
16 were at interrogations with Mr. Al-Zuba'e.

17 Mr. Al Shimari. His testimony was read in by the  
18 Court's clerk. You're going to have to -- the pseudonymous  
19 interrogators deny that there was any abuse during his one  
20 interrogation that the Army says happened. You're going to  
21 have to decide who you believe between testimony that was  
22 read in and testimony that you can't even see the speaker.  
23 But there's no reconciling Mr. Al Shimari's testimony and  
24 the testimony of CACI Interrogator A, Army Interrogator B or  
25 Interpreter K.

1 But we do know that Mr. Al Shimari said that he  
2 was interrogated multiple times, I think he talked about  
3 four, when the Army says he was only interrogated once, and  
4 that was by A, B, and we know that Interpreter K was the  
5 interpreter. And we also know that the reported approaches  
6 from this interrogation were authorized by the IROEs.

7 So, you know, we're not here to say plaintiffs  
8 weren't abused. It's not knowable. There's a lot of  
9 inconsistencies. But what we do know is what they testified  
10 to now is not the way it occurred. The testimony about  
11 civilian involvement in their abuse is not supported by  
12 anything that's happened historically from 2003 all the way  
13 to today.

14 But even if you ignore the inconsistencies in the  
15 plaintiffs' recounting of the events, the lack of  
16 corroboration, the interrogator testimony that refutes what  
17 the plaintiffs are saying, the U.S. records that refute what  
18 the plaintiffs are saying, if you ignore all of that and you  
19 conclude that you believe plaintiffs were abused, and abused  
20 in the way they say they were, the question is, have they  
21 tied their claims of abuse to CACI employees? And that's  
22 where they talked 20 minutes about every misdeed they could  
23 find. If a CACI employee spit on the sidewalk, that made it  
24 into evidence here. And then they talk about plaintiffs.  
25 But the discussion of CACI is never about their dealings

1 with plaintiffs, and the discussion about plaintiffs is  
2 never about any of their interactions with CACI.

3           They threw a bonnet at my client for a week now  
4 with no connections developed. They talked about training.  
5 What do you know about training? They show you, oh, Tom  
6 Howard said none of these people are a go. What do they all  
7 have in common, the employees listed in that email? None of  
8 them were sent over as an interrogator. The Army, which was  
9 using radar techs, they went around and said you're an  
10 interrogator today, you're an interrogator today, because we  
11 have 16,000 people, and they need to be interrogated, and we  
12 don't have nearly the number of interrogators that we need.  
13 That was not CACI sending over, as interrogators, people who  
14 weren't school-trained; that was the Army saying we're in a  
15 war, people are dying every day, we're going to do what we  
16 need to do and do the best we can with what we've got. All  
17 right. Never laid a hand on them. There's no allegation of  
18 CACI personnel ever laying a hand on any of the plaintiffs.

19           One of the things that Mr. Faridi said is, we're  
20 saying you should disregard the generals and the admirals  
21 and everything they reported. We're not saying that. We're  
22 not saying that at all. You can accept every allegation by  
23 the generals and the admirals that touches on a specific  
24 CACI employee, and none of them connect those discrete  
25 acts -- now, remember, CACI's got dozens of employees, but

1 they have, you know, a handful that are alleged to have  
2 engaged in discrete acts of misconduct. None of those are  
3 connected in any way to these plaintiffs.

4 But plaintiffs, they're proceeding on a single  
5 theory here, conspiracy. Again, this is not a performance  
6 evaluation, though as we'll get to Admiral Church's report,  
7 CACI actually performed a vital service at Abu Ghraib prison  
8 and elsewhere in Iraq for the United States Army. It's a  
9 conspiracy case. Was there a criminal conspiracy here  
10 between a CACI employee and soldiers that resulted in abuse  
11 of these plaintiffs. What's a conspiracy require? It  
12 requires an agreement.

13 Now, Mr. Faridi was right when he said the  
14 agreement doesn't have to be explicit. You don't have to  
15 have a contract. You can have a wink, but have they proven  
16 that wink that related to abuse of these plaintiffs? They  
17 haven't. There's no evidence of that at all. Because  
18 that's what it's got to be. It's got to be an agreement  
19 that results in injury to these plaintiffs. Parallel  
20 conduct is not enough.

21 What's parallel conduct? If I go out to the  
22 garage after court today and there's two thieves in there  
23 stealing cars, they're not in a conspiracy unless they agree  
24 that they were both going to go in there and steal cars. I  
25 mean, you know, parallel incidents of misconduct, criminal

1 activity, whatever, that's not a conspiracy; there has to be  
2 an agreement. And presence and knowledge are not enough.

3 You know, Mr. Faridi wants you to believe that  
4 everyone who was at Abu Ghraib knew there was abuse going  
5 on. That's belied by what you heard here this week. What  
6 did Mr. Nelson, who would kick us in the pants any chance he  
7 got, what did he say? I was there. I was there November,  
8 December, January. I never saw any detainee abuse.

9 You heard that from multiple witnesses, that they  
10 did not see -- remember the pseudonymous interrogators said  
11 they didn't see any abuse. So it's not true that by being  
12 there you knew what the MPs were doing in the hard site.  
13 But even if it were true, that's not enough, because  
14 knowledge is not a conspiracy. You have to agree with the  
15 people who are doing the abuse, and it's got to be a  
16 conspiracy that's broad enough to get at these plaintiffs.

17 And what evidence do you have of that? Well,  
18 let's start with General Fay. So you find a grand  
19 conspiracy to abuse all detainees that includes all  
20 interrogators and MPs? No. He only found -- and I say  
21 "only," that's probably not right. He found 44 incidents of  
22 abuse. That's 44 too many. He found 16 of those occasions,  
23 and it's 16 times too many that those involved some  
24 involvement of MI personnel, which CACI would be included  
25 within, at least for that statement. So he found 16



1 instances where a detainee was abused, but there was some  
2 connection to military intelligence.

3           You heard plaintiffs are running with sergeant --  
4 I guess Private Frederick and his testimony about a  
5 brotherhood, and they asked about what his relationship with  
6 MI was, and he said we're a brotherhood. Do you remember  
7 what he said when they asked him what was your relationship  
8 with Steve Stefanowicz? He said a working relationship.  
9 What's your relationship with Dan Johnson? Just a working  
10 relationship. They weren't brothers; they were working.  
11 You know, he was guarding, they were interrogating, but  
12 there's no allegation that anybody told Sergeant Frederick,  
13 Sergeant Corporal Graner or anyone else, no one from CACI  
14 told them that they should abuse any of these plaintiffs at  
15 all. But that's General Fay. Individual basis. The abuse  
16 was directed on an individual basis, not a broad conspiracy.  
17 Individual criminality.

18           What's General Church say? Contractor compliance  
19 is generally good. You know, not -- contractors weren't in  
20 on a global conspiracy to abuse any and all detainees. He  
21 also found that while there were some highly-publicized  
22 document of some contractors and abuse at Abu Ghraib, very  
23 few instances of abuse involving contractors. That's Vice  
24 Admiral Church in his report to the Department of Defense.

25           So when you're thinking about a conspiracy, I

1 guess the first question I would pose is, who with CACI  
2 entered the conspiracy that relates to the abuse of these  
3 plaintiffs? I suppose it's the three boogeymen that  
4 plaintiffs have been casting most of their allegations about  
5 in the last week. It'd be Tim Dugan, Dan Johnson, Steve  
6 Stefanowicz. But let's go through them.

7 Dugan. There's no connection between Dugan and  
8 plaintiffs' claims. None at all. They put up the  
9 allegation about Dugan. It was dragging somebody off the  
10 back of a Humvee. Not anything where he instructed anybody  
11 to do anything. So this is not a case of Dugan out there  
12 telling MPs do this, do that. They said he did one bad  
13 thing. That's the only claim that General Fay found  
14 substantiated with respect to Dugan. General Taguba didn't  
15 find anything with respect to Dugan. What's that got to do  
16 with plaintiffs or instructed MPs to abuse these plaintiffs?  
17 Nothing.

18 Johnson. Where's the connection between Johnson  
19 and plaintiffs? He's not alleged to have done anything in  
20 the Taguba report. The Fay report found a few instances of  
21 alleged bad conduct. It all occurred during IP roundup,  
22 which you'll remember is when the sergeant got shot and they  
23 were trying to find the source of the gun that got to the  
24 detainee and didn't find other weapons. And it was all with  
25 an Iraqi cop. Because they were suspecting the Iraqi cops,

1 who were guarding prisoners at the hard site, of smuggling  
2 in that gun.

3 And am I condoning those allegations against  
4 Johnson? No. No. No. No. But what I'm saying is, is  
5 there evidence that Mr. Johnson, being engaged in these  
6 discrete acts with an Iraqi police officer, somehow shows  
7 that he entered into an agreement with somebody that  
8 resulted in mistreatment of these plaintiffs, and there's  
9 not.

10 Stefanowicz. Big Steve. No connection between  
11 him and these plaintiffs other than the one harmless  
12 interaction that he had with Al-Ejaili during IP roundup  
13 that nobody's refuted his account, including Mr. Al-Ejaili,  
14 who was here and testified.

15 What are the allegations about Stefanowicz? Well,  
16 let's start with he's only alleged to have given  
17 instructions regarding detainees assigned to him. Nobody  
18 has suggested that he was giving general instructions  
19 relating to the treatment of all detainees or any detainees  
20 that he was not assigned to. We asked him that in his  
21 testimony, and he said absolutely not. You know, I gave  
22 instructions -- which isn't necessarily bad, of course it  
23 can be bad. But I gave instructions to MPs relating to the  
24 treatment of my assigned detainees, which was about five,  
25 and I didn't interrogate any of these plaintiffs.

1 Unrefuted.

2 But what did General Taguba and Fay and then  
3 Frederick and Graner say about the instructions that  
4 Mr. Stefanowicz gave to MPs? General Taguba on the stand  
5 when I asked him about it, you -- what are the allegations  
6 you found about Stefanowicz? It was nudity and unauthorized  
7 use of dogs. He said, yeah, that's what he found. And then  
8 I asked him, well, were those for people he was assigned to,  
9 and he said they were. When they put up quotes from General  
10 Taguba, they left that one off, but your notes likely  
11 reflect it.

12 General Fay, he was the video deposition. We went  
13 through all of the allegations in the Fay report about  
14 Mr. Stefanowicz. And, again, those were all related to  
15 detainees who were assigned to Mr. Stefanowicz for  
16 interrogations.

17 What did General Fay find? He found improper use  
18 of dogs. He didn't find clothing removal, as I recall it.  
19 He found Mr. Stefanowicz put his foot on someone and kicked  
20 or shoved him into a cell. He found that Mr. Stefanowicz  
21 had bragged about shaving someone and putting red underwear  
22 on his head. I'm not condoning any of that. You can  
23 conclude all that's true, and it doesn't connect  
24 Mr. Stefanowicz to any of these plaintiffs because the  
25 un rebutted evidence is when he gave instructions to MPs

1 relating to detainee treatment, it was just for the specific  
2 detainees that he was assigned to, which is not any of these  
3 plaintiffs.

4 All right. Let's talk about the third hurdle.  
5 This is borrowed servant doctrine, and it's an important  
6 defense here.

7 Plaintiffs' counsel misled you on the test.  
8 You're going to receive instructions from Judge Brinkema as  
9 to what the test is for the borrowed servant doctrine. They  
10 wanted you to conclude that if you find that CACI had any  
11 direction or control over CACI personnel, that there's  
12 shared liability, and so they are liable for the conduct of  
13 the employees, and the U.S. government is also liable for  
14 the conduct of the employees.

15 Read the instruction. That's not what it says.  
16 What it says is what's important is for the acts out of  
17 which liability arose. Whose work was being performed? Who  
18 had the power to direct and control that work? It doesn't  
19 have to be all work. Who had the power to direct and  
20 control the work that is at issue with respect to the  
21 plaintiffs' claims?

22 This is not some technicality. This isn't a  
23 technical defense. You should want this to be the rule.  
24 And the reason is, who do you want to be liable for conduct  
25 by employees? You want the people who can control their

1 activities and who are right there and are supervising them  
2 and are deciding what they can do and are making the rules  
3 and monitoring and reviewing and approving plans and  
4 reviewing and approving reports. That's who you want  
5 responsible for the conduct of an employee, because they're  
6 the ones who can make sure the employee's acting in an  
7 appropriate way. That's why the law is like that, and  
8 that's what you should want. It doesn't do anybody a wit of  
9 good to make the liability flow to someone who has no  
10 practical ability to direct or control the employee, because  
11 they can't make anything better or worse.

12 Could Captain Wood? Sure. Could Colonel Pappas?  
13 Sure. Could the section leaders? Sure. Could Mark  
14 Billings, who's sitting in Chantilly and is not allowed to  
15 know what the intelligence priorities are, not allowed to  
16 know which detainees are being interrogated by what CACI  
17 employee? Is not allowed to see, review, approve or  
18 disapprove interrogation plans? Is not allowed to see  
19 review or see interrogation reports?

20 The direction and control here is with the United  
21 States Army, and under the borrowed servant doctrine, when  
22 that's the case, that's where liability for the conduct of  
23 the employees should go, and that makes perfect sense.

24 And what evidence do you have on that direction  
25 and control? It's abundant. This is -- you saw this slide

1 in our opening. This is basically a reproduction of the  
2 chain of command as it existed for interrogation matters.

3 When they didn't have CACI, the yellow box, which  
4 is gone, and each section leader, staff sergeant or  
5 sergeant, they had Tiger Teams, and they were the first rung  
6 in the chain of the command, and then it went up to the  
7 NCOIC, and then it went up to Captain Wood, and then it went  
8 up to Colonel Jordan and Colonel Pappas. That's the way it  
9 worked with CACI. Did it change any? No. You just plugged  
10 in a few more teams that reported to the same staff  
11 sergeants or sergeants, went up to the NCOIC, went up to  
12 Captain Wood, went to Colonel Jordan, went to Colonel  
13 Pappas. Everyone agrees that that's the way the chain of  
14 command worked.

15 Colonel Pappas. Were CACI interrogators in all  
16 respects subject to the operational control of the military?  
17 He asked a little to make sure he understands, and  
18 Ms. Bailey asked him, in terms of their interrogation  
19 duties. Yes.

20 Captain Wood.

21 (Video played.)

22 MR. O'CONNOR: I'm going to play one more.

23 (Video played.)

24 MR. O'CONNOR: They tried to create -- well, let's  
25 go to Colonel Brady.

1 I would consider the military as the overseer of  
2 the civilian contractor. When there's a contractor embedded  
3 in a unit, that contractor has clearly worked for the  
4 supervisor of that particular section or unit.

5 What's the U.S.'s position? They talk about the  
6 interrogation of Mr. Al Shimari, the interrogators, which  
7 was a CACI interrogator and an Army interrogator. They're  
8 subject to the direction of the military chain of command,  
9 beginning with their military section leader, an Army  
10 non-commissioned officer, it goes up to the Army  
11 non-commissioned officer in charge, it goes up to the  
12 officer in charge, all the way up to the colonels in the  
13 JIDC.

14 No CACI personnel were in this chain of command.  
15 They mention Mr. Porvaznik, and the United States says he  
16 managed personnel issues, and the ICE OIC relied on him for  
17 information regarding CACI interrogators. But the military  
18 chain of command controlled the interrogation facility, set  
19 the structure for interrogation operations, and was  
20 responsible for how interrogations were to occur during both  
21 the planning and execution phases.

22 They tried to make Mr. Porvaznik into some mini  
23 operational guy, and that's not right. Everyone -- you  
24 don't even have to believe CACI people on that. That's what  
25 you heard from the United States government, from the United



1 States Army, from former soldiers, that Mr. Porvaznik was an  
2 admin guy who handled administrative issues.

3 Oh, if there was a problem, it was good for  
4 Mr. Porvaznik to know about it, but what they're mistaking  
5 is customer service with control. Because, for instance,  
6 CACI Interrogator A, they said, oh, he saw some misconduct,  
7 he told Mr. Porvaznik about it. What else did he do? He  
8 told the Army chain of command about it, because that's  
9 where he needed to report operational things. But does it  
10 make good sense to make sure that the company knows that  
11 there's an issue going on? Sure. Torin Nelson admitted  
12 that.

13 And what do plaintiffs say? They tried to  
14 distract you. They say, oh, let's not look at how it was on  
15 the ground, let's look at what manuals say. But they didn't  
16 even get the law right. I mean, the test is who had the  
17 power to direct and control, and they want it to be who you  
18 think could have, should have, would have, was supposed to  
19 have control. But they got the law wrong. They say, oh,  
20 they want to look at this magical, you know, mysterious FAR,  
21 the Federal Acquisition Regulation, which, by its own terms,  
22 and you can see it at Defense Exhibit 77, says this applies  
23 to all government contracts. And what's it say? It says:  
24 Contractors cannot direct and control intelligence and  
25 counterintelligence operations. Period.

1           They talk about the Army Field Manual. What did  
2 Colonel Pappas say about the Army Field Manual? He had  
3 never even seen it because that didn't guide how he ran  
4 things at Abu Ghraib prison. It was exactly as he said. We  
5 embedded civilians right in with the military, and they did  
6 the exact same things.

7           They talk about the Army regulation. Well,  
8 General Taguba talked about the Army Reg 715-9, I believe it  
9 is. But what about that regulation? There's two references  
10 to contracting has to be consistent with the Federal  
11 Acquisition Regulation. We pointed those out during  
12 Mr. Billings' testimony. And there's a whole page devoted  
13 to inherently governmental functions, which General  
14 Taguba -- he's not a contracting officer, he wasn't familiar  
15 with the concept, but that's where the concept of this  
16 exhibit comes in, Exhibit 77, that the contractors cannot  
17 control intelligence or counterintelligence operations.

18           And you'll notice in the contracts, there aren't  
19 any provisions. There's no billets in there to fill  
20 supervisor positions, you know, directly overseeing because  
21 they are not allowed to be -- there's no section leaders in  
22 the contract.

23           And, in fact, as General -- as Admiral Church put  
24 it, a contract can be written to give the military  
25 supervisors significant direct control. And we showed

1 you -- this is Deliver Order 13: Performed under the  
2 direction and control of the unit's MI chain of command or  
3 Brigade S2.

4 But most importantly, we can all talk about how  
5 everyone remembers things being 20 years ago. How were they  
6 20 years ago? This is Plaintiffs' Exhibit 133. This is  
7 what was being told to people when they came to Abu Ghraib  
8 prison: The JIDC is not a standard military organization  
9 and therefore does not follow a standard structure. Two  
10 chains of command will be in effect, the operational and the  
11 administrative.

12 The interrogation section leader will be the first  
13 person in the operational chain of command proceeding to the  
14 NCOIC and the OIC. It goes on to talk about the  
15 administrative chain of command, which deals with pay  
16 issues, leave issues, things like that.

17 In closing, this is going to be my last chance to  
18 talk to you. I appreciate your time, I appreciate your  
19 attention. The important thing here -- you're going to hear  
20 and you've heard from plaintiffs about is CACI being  
21 accountable? When you've been denied access to all the  
22 information about, you know, interrogation activities, are  
23 you shirking responsibility to say that the people who are  
24 actually in charge of that are the ones who ought to be  
25 responsible for the way that turned out? That's not

1 shirking responsibility; that's reality. Being accountable  
2 isn't taking accountability for things that you're not  
3 really accountable for.

4 Thank you.

5 THE COURT: A little over five minutes left.

6 MR. FARIDI: You said a little over five minutes,  
7 Your Honor?

8 THE COURT: Yes. Just a smidge.

9 MR. FARIDI: Thank you.

10 REBUTTAL CLOSING ARGUMENT ON BEHALF OF THE PLAINTIFFS

11 MR. FARIDI: Look, I'm not going to deal with all  
12 of the dehumanization, the demeaning and the denials. I'm  
13 going to touch on a couple of issues, but I'll focus most of  
14 my time on the deflection. Okay.

15 Mr. O'Connor said that the plaintiffs haven't sued  
16 the U.S. government. That doesn't mean that CACI's not  
17 liable. And you heard from Asa'ad that he actually filled  
18 out a claim under that Rumsfeld memo for compensation  
19 because he was tortured. He never heard anything back.  
20 That's all I need to say about that.

21 Mr. O'Connor said we didn't call a medical expert.  
22 Did we need to call a medical expert to tell you about the  
23 psychological trauma that these people experienced?

24 Remember Dr. Payne-James, he told you that CACI  
25 had its own psychologist actually meet with the plaintiffs.

1 Did you see him testify? They didn't call him to testify.  
2 You should ask yourself why. Why didn't they call their own  
3 psychologist who interviewed our clients to testify about  
4 our clients' mental condition. They know why they didn't  
5 call him.

6 Mr. O'Connor talked about, oh, you've got to go  
7 back and read Mr. Al-Ejaili's letter. We implore you to go  
8 back and read his letter. That letter corroborates -- it's  
9 a contemporaneous record that corroborates the suffering  
10 that he endured at Abu Ghraib at CACI's behest.

11 Mr. O'Connor talked about how there's no paper  
12 trail documenting the abuse. The abuse is not documented in  
13 the interrogation logs. Use your common sense. If you  
14 abused, you tortured someone, are you going to go document  
15 that in the interrogation logs and the interrogation  
16 reports?

17 And then he talked about how we can't link the  
18 CACI employees to our clients. Again, go back to the  
19 Judge's instruction on conspiracy. There is evidence  
20 linking every single one of our clients to a CACI person.  
21 That's in the stipulations. But we're not required to prove  
22 that. It is enough for us that the abuse was standard  
23 operating procedure at Abu Ghraib. That's what their  
24 interrogators ordered the military police to do, and our  
25 clients were abused as a result of that.

1           Okay. Let me just turn now to the deflection.  
2 I've got three minutes left. And I want to take you through  
3 very quickly a few of the documents that Mr. O'Connor  
4 completely ignored in his 45 minutes. Okay.

5           He ignored the contract. Did you hear him talk  
6 about the contract? The contract says CACI is responsible  
7 for supervision of its employees. He ignored Army  
8 Regulation 715-9. This is the only regulation that is  
9 referenced in CACI's contract. Right in front of you is  
10 CACI's contract. That contract references Army Regulation  
11 715-9, and that regulation says that CACI is responsible for  
12 managing and supervising its own employees.

13           General Taguba, he spoke about the issue. He also  
14 ignored completely the code of conduct under the employment  
15 agreements that they have. Both of those documents say that  
16 CACI retains the right to direct, supervise and control  
17 their employees. They're hiding now from their own  
18 documents, because their documents from 2003 and '4 don't  
19 support their defense. You didn't hear him touch these  
20 documents at all. And this is what Dan Porvaznik wrote.  
21 This is how he described his job at Abu Ghraib. He is the  
22 ops site lead. Operations site lead managing all CACI  
23 contractors. We had to pull that out of him during the  
24 cross-examination, but this is what he wrote in 2004.  
25 Completely undermines their defense.

1           Let me play for you one last thing. Okay. This  
2 is the testimony of CACI's corporate representative who, you  
3 remember from the Judge's instruction, binds the company.  
4 This is what he said at his deposition in 2013 before CACI's  
5 lawyers invented this new borrowed servant defense that you  
6 heard from Mr. O'Connor today. Let's play that testimony  
7 and see what he says.

8                               (Video played.)

9           MR. FARIDI: Dan Porvaznik was the operational  
10 supervisor. Today they're telling you, no, he had no  
11 operational control; he only had administrative control.

12           So the last thing I'll say to you, members of the  
13 jury, we told you at the beginning of this trial that  
14 there's nothing that you can do that can remove this stain  
15 that Abu Ghraib left on our country's history, but our  
16 system of justice, it does give you the power. It gives you  
17 the ability to provide our clients with some measure of  
18 justice, and we leave that responsibility to you.

19           Thank you for your time.

20           THE COURT: Thank you, Counsel.

21           So, ladies and gentlemen, I'm going to give you a  
22 short break, 15 minutes. And then when you come back in,  
23 I'll be giving you the jury instructions.

24           People may not leave the courtroom while the  
25 instructions are being given, so during the break, those who

1 do not want to sit through the instructions must leave, and  
2 we'll keep the courtroom closed at that point. All right.  
3 We'll recess court for 15 minutes.

4 (Jury not present at 3:10 p.m.)

5 THE COURT: All right. We'll bring the jury in.

6 THE COURT SECURITY OFFICER: Yes, Judge.

7 Rise for the jury.

8 (Jury present at 3:28 p.m.)

9 JURY INSTRUCTIONS

10 THE COURT: All right. Folks, this is the last  
11 phase before we give the case to you for deliberation. It's  
12 the final jury instructions. I'm going to give them to you  
13 orally, so I hope you'll pay careful attention in court.  
14 But we will give you -- I'm going to give you four copies of  
15 the written -- of the instructions. I'm not going to give  
16 each of you a copy because I want to save a few trees, and  
17 that way it forces you to work together a little bit. But,  
18 frankly, if you need more copies, we'll get them to you.

19 Now that you have heard all of the evidence that  
20 is to be received in this trial and each of the arguments of  
21 counsel, it becomes my duty to give you the final  
22 instructions of the Court as to the law that is applicable  
23 to this case. You should use these instructions to guide  
24 you in your decisions.

25 All of the instructions of law given to you by the



1 Court, that is those given to you at the beginning of the  
2 trial, those given to you during the trial, and these final  
3 instructions, must guide and govern your deliberations.

4 It is your duty as jurors to follow the law as  
5 stated in all of the instructions of the Court and to apply  
6 these rules of law to the facts as you find them to be from  
7 the evidence received during the trial.

8 Counsel have quite properly referred to some of  
9 the applicable rules of law in their closing arguments to  
10 you. If, however, any difference appears to you between the  
11 law as stated by counsel and that as stated by the Court in  
12 these instructions, you of course are to be governed by the  
13 instructions given to you by the Court. You are not to  
14 single out any one instruction alone as stating the law, but  
15 must consider the instructions as a whole in reaching your  
16 decisions.

17 Neither are you to be concerned about the wisdom  
18 of any rule of law stated by the Court. Regardless of any  
19 opinion you may have as to what the law ought to be, it  
20 would be a violation of your sworn duty to base any part of  
21 your verdict upon any other view or opinion of the law than  
22 that given in these instructions, just as it would be a  
23 violation of your sworn duty as judges of the facts to base  
24 your verdict upon anything but the evidence received in the  
25 case.

1           Now, you were chosen as jurors for this trial in  
2 order to evaluate all of the evidence received and to decide  
3 each of the factual questions presented by the allegations  
4 in plaintiffs' complaint and the defendant's denial of those  
5 allegations in its answer.

6           In resolving the issues presented to you for  
7 decision in this trial, you must not be persuaded by bias,  
8 prejudice, or sympathy for or against any of the parties to  
9 this case or by any public opinion. Justice through trial  
10 by jury depends upon the willingness of each individual  
11 juror to seek the truth from the same evidence presented to  
12 all the jurors here in the courtroom and to arrive at a  
13 verdict by applying the same rules of law as are now being  
14 given to each of you in these instructions.

15           During the trial I permitted you to take notes.  
16 Many courts do not permit note-taking by jurors, and so a  
17 word of caution is in order. There's always a tendency to  
18 place undue importance on matters which one has written  
19 down. Some testimony, which is considered unimportant at  
20 the time presented, and thus not written down, may take on  
21 greater importance later in the trial in light of all the  
22 evidence presented.

23           Therefore, you are instructed that your notes are  
24 only a tool to aid in your own individual memory, and you  
25 should not compare your notes with other jurors in

1 determining the content of any testimony or in evaluating  
2 the importance of any evidence. Your notes are not evidence  
3 and are by no means a complete outline of the proceedings or  
4 a list of the highlights of the trial. Above all, your  
5 memory should be your greatest asset when it comes time to  
6 deliberate and render a decision in this case.

7           Moreover, you are co-equal judges of the facts,  
8 and each juror's memory of and opinion about the evidence is  
9 worthy of consideration by all the other jurors. That a  
10 juror may have taken extensive notes does not mean that his  
11 or her memory or opinion is worthy of more consideration  
12 than the memory or opinion of a juror who took few or no  
13 notes.

14           All parties are equal before the law and are  
15 entitled to be treated as equals. In this case, the  
16 plaintiffs are citizens of another country. Citizens of  
17 another country are entitled to the same fair and  
18 conscientious consideration by you as any other party. In  
19 this case, the defendant is a corporation. Corporations are  
20 entitled to the same fair and conscientious consideration by  
21 you as any party.

22           A juror should consider the evidence in a trial  
23 just as a reasonable and careful person would deal with any  
24 very important question that must be resolved by examining  
25 facts, opinions and evidence. You are expected to use your

1 good sense in considering and evaluating the evidence in the  
2 case. Use the evidence only for those purposes for which it  
3 has been received, and give the evidence a reasonable and  
4 fair construction in the light of your common knowledge of  
5 the natural tendencies and inclinations of human beings.  
6 Keep constantly in mind that it would be a violation of your  
7 sworn duty to base a verdict upon anything other than the  
8 evidence received in the case and the instructions of the  
9 Court.

10 Now, the evidence in this case consists of the  
11 sworn testimony of the witnesses, regardless of who may have  
12 called them; all exhibits received in evidence, regardless  
13 of who may have produced them; all facts which have been  
14 agreed or stipulated; and all facts and events which may  
15 have been judicially noticed.

16 When the attorneys on both sides stipulate or  
17 agree as to the existence of a fact, you may accept the  
18 stipulation as evidence and regard that fact as proved;  
19 however, you are not required to do so because you are the  
20 sole judges of the facts. The stipulations are reflected in  
21 Plaintiffs' Exhibit -- and I believe it's 226; is that  
22 correct, Counsel?

23 MR. O'CONNOR: That's right, Your Honor.

24 THE COURT: Yeah. All right.

25 The Court has taken judicial notice of certain

1 facts or events. When the Court declares that it has taken  
2 judicial notice of some fact or event, you may accept the  
3 Court's declaration as evidence and regard as proved the  
4 fact or event which has been judicially noticed. You are  
5 not required to do so, however, since, again, you are the  
6 sole judges of the facts. The facts for which I have taken  
7 judicial notice are the following:

8           One: The coalition provisional authority  
9 displaced Iraqi law and governmental institutions, and  
10 pursuant to Coalition Provisional Authority Order 17,  
11 immunized coalition personnel and contractors from Iraqi  
12 laws and Iraqi legal process. Instead, subjecting all could  
13 coalition personnel to the exclusive jurisdiction of their  
14 parent states.

15           Two: Coalition Provisional Authority Order 17  
16 further provided that third-party claims for personal injury  
17 could not be brought in Iraqi courts, but would be  
18 "submitted and dealt with by the parent state whose  
19 coalition personnel, property, activities or other assets,  
20 are alleged to have caused the claimed damage in a manner  
21 consistent with the national laws of the parent state."

22           Three: The United States Army has claims  
23 responsibility in Iraq with respect to the personal injury,  
24 abuse and mistreatment of Iraqi detainees, particularly at  
25 Abu Ghraib prison.

1           Accordingly, the Department of Defense established  
2 a formal claims process on September 15, 2004 pursuant to  
3 the Foreign Claims Act Title 10 of the United States Code,  
4 Section 2734, through which the United States committed to  
5 investigate claims and provide a recommendation regarding an  
6 appropriate amount of compensation, if any.

7           If a cognizable claim is not payable under the  
8 Foreign Claims Act or other claimed statutes, the Secretary  
9 of the Army will identify alternative authorities under  
10 which compensation could be provided, and, in appropriate  
11 cases, take such action.

12           The Court took judicial notice of these three  
13 facts because the issue of claim recovery through the  
14 Foreign Claims Act was raised during the trial. Nothing in  
15 the Foreign Claims Act, however, prevents a plaintiff from  
16 bringing a civil action in a domestic court under the Alien  
17 Tort Statute. Which is the statute at issue in this case,  
18 and I'll explain more about that statute to you in a few  
19 minutes.

20           Now, any proposed testimony or proposed exhibit to  
21 which an objection was sustained by the Court and any  
22 testimony or exhibit ordered stricken by the Court must be  
23 entirely disregarded by the jury. Anything you may have  
24 seen or heard outside the courtroom is not evidence and must  
25 be entirely disregarded.

1           Questions asked by a lawyer for either party are  
2 not evidence. And you've heard me say that many times  
3 during the trial. If a lawyer asks a question of a witness  
4 which contains a statement of fact, you may not consider the  
5 lawyer's statement as any evidence of that fact. Only a  
6 witness's answer to a question may be considered as  
7 evidence.

8           And objections, statements and arguments of  
9 counsel also are not evidence in the case unless made as an  
10 admission or stipulation of fact.

11           You are to base your verdict only on the evidence  
12 received in the case; however, in your consideration of the  
13 evidence received, you are not limited to the bald  
14 statements of the witnesses or to the bald assertions in the  
15 exhibits.

16           In other words, you're not limited solely to what  
17 you see and hear as the witnesses testify or as the exhibits  
18 are admitted. Instead, you are permitted to draw from the  
19 facts which you find have been proved such reasonable  
20 inferences as you feel are justified in the light of your  
21 experience and common sense. Inferences are simply  
22 deductions or conclusions which reason and common sense lead  
23 the jury to draw from the evidence received in the case.

24           You will have a list of all the exhibits that were  
25 admitted into evidence during the trial. And actually I

1 think it's two lists; right? A list from the plaintiffs'  
2 side, and a list of the defendant's side?

3 MR. O'CONNOR: That's right, Your Honor.

4 THE COURT: All right. And so they will have the  
5 exhibit number and a very brief description of the exhibit,  
6 like photographs or the CACI contract, something like that.

7 The titles of the exhibits are not evidence and  
8 are only intended to help you locate the documents you are  
9 looking for.

10 Now, testimony or an exhibit can be admitted into  
11 evidence during a trial only if they meet certain criteria  
12 or standards. It is the sworn duty of the attorney on  
13 either side of the case to object when the other side offers  
14 testimony or an exhibit which that attorney believes is not  
15 properly admissible under the rules of law. Only by raising  
16 an objection can a lawyer request and then obtain a ruling  
17 from the Court on the admissibility of the evidence being  
18 offered by the other side.

19 You should not be influenced against an attorney  
20 or the attorney's client because the attorney has made an  
21 objection. Moreover, do not attempt to interpret my rulings  
22 on objections as somehow indicating how I think you should  
23 decide this case. I simply am making a ruling on a legal  
24 question regarding that particular piece of testimony or  
25 exhibit.



1           It is the duty of the Court to admonish an  
2 attorney who, out of zeal for his or her cause, does  
3 something which I feel is not in keeping with the rules of  
4 evidence or procedure. You are to draw absolutely no  
5 inference against the side to whom an admonition of the  
6 Court may have been addressed during the trial.

7           And during the course of the trial, I occasionally  
8 asked questions of a witness. Do not assume that I hold any  
9 opinion on the matters to which my question may relate. The  
10 Court may ask a question simply to clarify a matter; not to  
11 help one side of the case or to hurt the other side.

12           Now, there are two types of evidence which are  
13 generally presented during a trial, and they're called  
14 direct evidence and circumstantial evidence.

15           Direct evidence is the testimony of a person, such  
16 as an eyewitness, who asserts or claims to have actual  
17 knowledge of a fact. Circumstantial evidence is proof of a  
18 chain of facts and circumstances indicating the existence of  
19 a fact.

20           I'll give you an example of circumstantial  
21 evidence. You leave your house at noon on a cold February  
22 day. At that time your front yard is bare. It starts to  
23 snow, and you return at 5 p.m., and you see a footprint in  
24 the snow that now covers your front yard. From the facts  
25 that you left your home at noon, returned at 5 p.m., you see

1 the footprint, and you know from common experience that  
2 human beings are normally associated with a footprint, you  
3 can infer that there was a person in your yard sometime  
4 between noon and 5 p.m. that day.

5 If you actually had seen a person, you would have  
6 direct evidence of that fact. When you didn't see the  
7 person, those other facts I gave you, that's an example of  
8 circumstantial evidence.

9 Now, the law makes no distinction between the  
10 weight or value to be given to either direct or  
11 circumstantial evidence, nor is a greater degree of  
12 certainty required of circumstantial evidence than of direct  
13 evidence. You should weigh all the evidence in the case in  
14 making your decisions.

15 Your decisions as to the facts of this case should  
16 not be determined by the number of witnesses testifying for  
17 or against a party or by the number of exhibits introduced  
18 by one side or the other.

19 You should consider all of the facts and  
20 circumstances in evidence to determine which of the  
21 witnesses you choose to believe or not believe and which of  
22 the exhibits have more or less value.

23 You may find that the testimony of a smaller  
24 number of witnesses on one side is more credible than the  
25 testimony of a greater number of witnesses on the other

1 side, or that one or two exhibits may have more significance  
2 in your evaluation of the case as against numerous exhibits  
3 that you find have less significance. To sum up this  
4 instruction, always consider the quality of the evidence,  
5 not the quantity of the evidence.

6 Now, you, as jurors, are the sole and exclusive  
7 judges of the credibility of each of the witnesses called to  
8 testify, and only you determine the importance, which we  
9 sometimes call the weight, if any, that the testimony  
10 deserves. After making your assessment concerning the  
11 credibility of a witness, you may decide to believe all of  
12 that witness's testimony, only a portion of the testimony,  
13 or none of it at all.

14 In making your assessment of that witness, you  
15 should carefully scrutinize all of the testimony given by  
16 that witness, the circumstances under which each witness has  
17 testified, and all of the other evidence which tends to show  
18 whether a witness, in your opinion, is worthy of belief.

19 Consider each witness's intelligence, motive to  
20 falsify, state of mind and appearance and manner while on  
21 the witness stand.

22 Consider the witness's ability to observe the  
23 matters as to which he or she has testified, and consider  
24 whether the witness impresses you as having an accurate  
25 memory or recollection of these matters.

1           Also consider any relation a witness may bear to  
2 either side of the case, the manner in which each witness  
3 might be affected by your verdict, and the extent to which,  
4 if at all, each witness is either supported or contradicted  
5 by other evidence in the case.

6           Inconsistencies or discrepancies in the testimony  
7 of a witness or between the testimony of different witnesses  
8 may or may not cause you to disbelieve or discredit such  
9 testimony. Two or more persons witnessing an incident or a  
10 transaction may simply see or hear it differently. Innocent  
11 misrecollection, like failure of recollection, is not an  
12 uncommon human experience.

13           In weighing the effect of a discrepancy, however,  
14 always consider whether it relates to a matter of importance  
15 or to an insignificant detail, and consider whether the  
16 discrepancy resulted from innocent error or from intentional  
17 falsehood.

18           Now, the ability of both the plaintiffs and the  
19 defendant to produce all the exhibits and witness testimony  
20 they would have wanted to produce has been limited by the  
21 United States having invoked the state secret privilege to  
22 ensure that military or other secrets are not revealed.

23           As a result, certain exhibits have been redacted,  
24 and certain witnesses were unable to testify in this case as  
25 to matters to which the government invoked the state secrets

1 privilege.

2           As I instructed you at the outset of the trial,  
3 for interrogation personnel whose identities were withheld  
4 by the government, do not base any of your credibility,  
5 determinations on the format in which their testimony was  
6 admitted into evidence. The parties in this case bear no  
7 responsibility for that decision, and the lack of identity  
8 and background information should not adversely influence  
9 your judgment of these witnesses' credibility.

10           In this case, we've heard the testimony of some  
11 witnesses by deposition, as well as one of the plaintiffs.  
12 When a person is unavailable to testify in trial, the  
13 deposition of that person may be used at trial. A  
14 deposition is simply a pretrial procedure in which the  
15 attorneys for both sides may question a witness or an  
16 adverse party under oath before a court stenographer. Each  
17 side is entitled to take depositions, and each side is  
18 entitled to ask questions at each deposition.

19           You may consider the testimony of a witness given  
20 at a deposition according to the same standards you would  
21 use to evaluate the testimony of a witness given at trial.  
22 These instructions apply to witnesses who testify -- also  
23 apply to witnesses who testify pseudonymously, that is the  
24 various interrogators who, you know, you could only hear  
25 their voices and we had a black screen and we didn't get

1 their names.

2 In those cases where depositions were read to you,  
3 do not place any significance on the behavior or tone of  
4 voice of any person reading the questions and answers.  
5 Otherwise, you should treat the deposition testimony the  
6 same way as any other testimony presented in court.

7 Evidence has been presented to you in the form of  
8 admissions to the truth of certain facts. These admissions  
9 were given in writing before the trial in response to  
10 requests that were submitted under established court  
11 procedures. You must treat these facts as having been  
12 proved.

13 And do we have an exhibit number for the  
14 admissions? Anybody remember offhand what it is? I thought  
15 you would have that one memorized.

16 MR. FARIDI: Your Honor, it's PTX 171.

17 THE COURT: Plaintiffs' Exhibit 171 in case you  
18 all wanted to take a look at that.

19 Now, a witness may be discredited or impeached by  
20 contradictory evidence or by evidence that at some other  
21 time the witness has said or done something or has failed to  
22 say or do something that is inconsistent with the witness's  
23 present testimony.

24 If you believe any witness has been impeached and  
25 thus discredited, you may give the testimony of that witness

1 such credibility, if any, you think it deserves.

2           If a witness is shown knowingly to have testified  
3 falsely about any material matter, you have a right to  
4 distrust such witness's other testimony, and you may reject  
5 all the testimony of that witness or give it such  
6 credibility as you think it deserves. An act or omission is  
7 knowingly done if the act is done voluntarily and  
8 intentionally and not because of a mistake or accident or  
9 other innocent reason.

10           If you believe from the evidence that a party  
11 previously made a statement inconsistent with his testimony  
12 at this trial, you may consider that previous statement as  
13 evidence that what the party previously said was true.

14           The rules of evidence ordinarily do not permit  
15 witnesses to testify as to their own opinions or their own  
16 conclusions about important questions in a trial. An  
17 exception to this rule exists as to those witnesses who are  
18 described as expert witnesses.

19           An expert witness is someone who, by education or  
20 by experience, may have become knowledgeable in some  
21 technical, scientific or very specialized area. If such  
22 knowledge or experience may be of assistance to you in  
23 understanding some of the evidence or in determining a fact,  
24 an expert witness in that area may state an opinion as to a  
25 matter in which he or she claims to be an expert. You

1 should consider each expert opinion received in evidence in  
2 this case and give it such weight, if any, as you think it  
3 deserves. You should consider the testimony of expert  
4 witnesses just as you consider other evidence in this case.

5 If you should decide that the opinion of an expert  
6 witness is not based upon sufficient education or  
7 experience, or if you should conclude that the reasons given  
8 in support of the opinion are not sound, or if you conclude  
9 that the opinion is outweighed by other evidence, you may  
10 disregard the opinion in part or in its entirety. As I've  
11 said to you several times before, you are the sole judges of  
12 the facts of the case.

13 And if any reference by the Court or by counsel to  
14 matters of testimony or exhibits does not coincide with your  
15 own memory of that evidence, it is your memory which should  
16 control during your deliberations and not the statements of  
17 the Court or of counsel.

18 There are three plaintiffs in this case, and each  
19 plaintiff has separate individual rights. You should decide  
20 the case as to each plaintiff and the defendant separately.  
21 Unless otherwise stated, the instruction will apply to all  
22 of the parties.

23 Now, in this lawsuit, the plaintiffs claim that  
24 they were the victims of torture and cruel, inhuman or  
25 degrading treatment while housed in the hard site at Abu



1 Ghraib. They are suing under the Alien Tort Statute, which  
2 is a United States law which gives people the right to sue  
3 and their cases to be decided in an American court for  
4 certain violations of international law. International law  
5 prohibits torture and cruel, inhuman or degrading treatment.

6 There are no exceptions to these prohibitions.  
7 Neither war, nor national security, nor any other  
8 exceptional circumstance can ever justify torture or cruel,  
9 inhuman or degrading treatment. All persons have the right  
10 to be free from these violations.

11 A person who is injured by any of these  
12 international law violations may sue in a United States  
13 court under the Alien Tort Statute. This is true even if  
14 the international law violations occur in another country,  
15 such as Iraq.

16 Now I'm going to give you an overview of the case.

17 Each plaintiff, that is Suhail Najam Abdullah Al  
18 Shimari, Mr. Salah Hasan Nusaif Al-Ejaili, and Asa'ad Hamza  
19 Hanfoosh Al-Zuba'e alleges that in violation of the Alien  
20 Tort Statute, he was the victim of torture and cruel,  
21 inhuman and degrading treatment while he was detained at the  
22 Abu Ghraib hard site.

23 Plaintiffs do not allege that any CACI personnel,  
24 including Steve Stefanowicz, Daniel Johnson and Timothy  
25 Dugan, directly mistreated them. Instead, they claim that

1 these CACI interrogators conspired with Army military  
2 personnel to torture or inflict cruel, inhuman or degrading  
3 treatment on detainees in the hard site, which resulted in  
4 the plaintiffs being tortured or subjected to cruel, inhuman  
5 or degrading treatment.

6 Each plaintiff seeks monetary damages from CACI  
7 Premier Technology, Inc. to compensate for the injuries  
8 sustained from being subjected to torture or cruel, inhuman  
9 and degrading treatment, as well as to punish CACI for the  
10 conduct of its employees.

11 For any plaintiff to prevail on his claim that his  
12 right to be free from torture or cruel, inhuman and  
13 degrading treatment under the Alien Tort Statute to prove  
14 that that has been violated by the defendant, the plaintiff  
15 must prove two facts by a preponderance of the evidence. If  
16 a plaintiff fails to prove both facts by a preponderance of  
17 the evidence, he is not entitled to any judgment.

18 The two facts that must be proved are that,  
19 Number 1, the plaintiff was either tortured or subjected to  
20 cruel, inhuman or degrading treatment. The plaintiff does  
21 not have to prove that he was both -- that he was both  
22 tortured and subjected to cruel, inhuman or degrading  
23 treatment. Proof by a preponderance of the evidence as to  
24 either type of wrongful treatment satisfies this element.

25 And two, the second element, is that CACI's

1 employees were responsible for the plaintiff being tortured  
2 or subjected to cruel, inhuman or degrading treatment by  
3 conspiring with Army military personnel to have the hard  
4 site detainees tortured or to inflict cruel, inhuman or  
5 degrading treatment on them.

6           If a plaintiff has proved these two facts, then he  
7 must also prove, again by the preponderance of the evidence,  
8 his compensatory damages. And to be awarded any punitive  
9 damages, he must prove entitlement to them by a higher  
10 standard of proof, which is called clear and convincing  
11 evidence. And I'll give you definitions of those in a  
12 second.

13           Because each plaintiff's case must be evaluated  
14 individually, that one plaintiff may prevail against the  
15 defendant does not mean that any other plaintiff  
16 automatically prevails. Likewise, should defendant be found  
17 not liable as to one plaintiff does not mean that the  
18 defendant is automatically not liable to any other  
19 plaintiff.

20           Even if a plaintiff proves all of these -- these  
21 two facts by a preponderance of the evidence, CACI maintains  
22 that it is not liable for any misconduct of its  
23 interrogators under the borrowed servant doctrine.  
24 Defendant has the burden of proving this defense by a  
25 preponderance of the evidence. And I'll explain that

1 defense to you.

2 A person can be in the general employ of one  
3 company while, at the same time, being the employee of  
4 another company. In other words, an employee who commits a  
5 wrongful act may have more than one employer at the time the  
6 wrongful act is committed.

7 In determining the liability of a company for acts  
8 performed by one of its employees who was also working for  
9 another company, you must consider who controlled the work  
10 of the employee when the alleged misconduct occurred.

11 In this case, CACI employees were performing work  
12 on a government contract with the United States military at  
13 Abu Ghraib. Therefore, the issue you must determine is  
14 under whose direction and control were the employees when  
15 they engaged in the alleged misconduct. In other words,  
16 when an employee has been lent by one employer to perform  
17 the services of another employer, you have to consider who  
18 was controlling the employee's work at the time of the  
19 alleged misconduct. In making this decision, you should  
20 consider all the facts in evidence.

21 CACI, that is the defendant, has the burden to  
22 prove the borrowed servant defense by a preponderance of the  
23 evidence. If it fails to do so, then it can be held liable  
24 for the conduct of its interrogators.

25 Now, to prove a claim by a preponderance of the

1 evidence means to prove that something is more likely true  
2 than not true. In other words, a preponderance of the  
3 evidence means such evidence as, when considered and  
4 compared with the evidence opposed to it, has more  
5 convincing force and produces in your minds belief that what  
6 is sought to be proved is more likely true than not true.

7 A preponderance of the evidence means the greater  
8 weight of the evidence. It refers to the quality and  
9 persuasiveness of the evidence, not to the number of  
10 witnesses or documents. This standard does not require  
11 proof to an absolute certainty.

12 If you find the credible evidence on a given issue  
13 is evenly divided between the parties, that it is equally  
14 probable that one side is right, as it is that the other  
15 side is right, then you must decide the issue against the  
16 party who has the burden of proof. This is because the  
17 party bearing the burden must prove more than simply  
18 equality of evidence; it must prove the element at issue by  
19 a preponderance of the evidence.

20 On the other hand, the party with this burden of  
21 proof need prove no more than preponderance. So as long as  
22 you find that the scales tip however slightly in favor of  
23 the party with this burden of proof, then that element will  
24 have been proved by a preponderance of the evidence.

25 And I don't know if you see it or not. Behind

1 you'll see a balance scale. All right. I always tell  
2 juries, just think about this instruction. You put all the  
3 evidence that favors one side on the one scale, on the one  
4 platform; all the evidence that favors the other side on the  
5 other platform, and you look how the scales weigh. If  
6 they're equal, 50/50, the party that has the burden of proof  
7 on that issue loses because they have not produced enough  
8 evidence by the greater weight.

9           At the same time, if the scales tip -- and it only  
10 has to be a feather's weight difference -- but if the scales  
11 tip at all in favor of the party that has that burden,  
12 they've met the burden because they have a greater weight of  
13 the evidence. So that's how you think about that  
14 instruction.

15           Some of you may have heard the term proof beyond a  
16 reasonable doubt. That's the standard used in a criminal  
17 case. It is absolutely not the standard that applies in  
18 this case. So this is preponderance of the evidence, with  
19 one exception which I'll get to in a minute.

20           Now, plaintiffs each contend that they were  
21 subjected to torture in violation of customary international  
22 law. This claim must be proved separately as to each  
23 individual plaintiff. To establish this claim, each  
24 plaintiff must prove by a preponderance of the evidence,  
25 one: That military personnel subjected him to severe pain

1 or suffering, whether physical or mental.

2 Two: That military personnel inflicted this pain  
3 or suffering on him intentionally for the purpose of  
4 obtaining information or a confession or for punishment,  
5 intimidation or coercion.

6 And three: That military personnel inflicted this  
7 pain or suffering on him by or with the consent of a public  
8 official or other person acting in an official capacity and  
9 while the plaintiff was in the official custody --  
10 official's custody or under the official's control. In  
11 other words, that military personnel were acting under color  
12 of law.

13 Acting under color of law means that a person is  
14 acting or purporting to act in the performance of his  
15 official duties. It means that the action is clothed with  
16 the authority of the government. A person can act under the  
17 color of law even when his actions overstep or constitute an  
18 abuse of his legal authority.

19 Torture may include mental pain and suffering. To  
20 constitute torture, the mental pain or suffering must be  
21 prolonged mental harm and caused by or resulting from the  
22 intentional infliction or threatened infliction of severe  
23 physical pain or suffering or the threat of imminent death.

24 In evaluating the severity of the pain and  
25 suffering a plaintiff endured, you should consider the

1 duration, frequency and intensity of the methods he endured,  
2 the permanence or lasting effects of the methods used, and  
3 individual factors such as age, gender and religion.

4           The severity of physical or mental pain or  
5 suffering by an individual is not evaluated by the effect of  
6 any acts or methods taken in isolation. Rather, torture  
7 should be measured by considering the cumulative effects of  
8 the acts and methods on the individual.

9           Each plaintiff also contends that he suffered  
10 cruel, inhuman or degrading treatment in violation of  
11 international law. For a plaintiff to prevail on this  
12 claim, he must prove by a preponderance of the evidence,  
13 one: That Army military personnel intentionally inflicted  
14 acts of cruel, inhuman or degrading treatment on him.

15           And two: The person who intentionally inflicted  
16 severe or serious pain or suffering, whether physical or  
17 mental on that plaintiff, did so while he was within the  
18 custody or control of that person.

19           Cruel, inhuman or degrading treatment causes  
20 feelings of fear, anguish or inferiority capable of  
21 humiliating or debasing the victim and possibly breaking his  
22 physical or moral resistance.

23           Treatment is cruel if it causes serious mental or  
24 physical suffering or injury or constitutes a serious attack  
25 on human dignity.



1 Treatment is inhuman if it deliberately causes  
2 severe suffering, mental or physical, which in the  
3 particular situation is unjustified.

4 Treatment is considered degrading if its effect is  
5 such as to arouse feelings of fear, anguish or inferiority  
6 capable of humiliating or debasing any one of the  
7 plaintiffs.

8 You must consider the totality of the  
9 circumstances in determining whether any individual  
10 plaintiff was subjected to cruel, inhuman or degrading  
11 treatment which caused severe psychological or physical  
12 harm.

13 Whether treatment is cruel, inhuman or degrading  
14 depends upon an assessment of all the particularities of the  
15 evidence before you, including the specific conditions at  
16 issue, the duration of the measures imposed, the objectives  
17 pursued by the perpetrators, and the physical or mental  
18 effects on the persons involved.

19 Acts of torture constitute cruel, inhuman or  
20 degrading treatment. The difference between torture and  
21 cruel, inhuman or degrading treatment is the intensity or  
22 degree of the physical or mental suffering inflicted. The  
23 two violations are understood to be on a continuum of  
24 misconduct.

25 Even if you find that a plaintiff did not suffer

1 from harm severe enough to constitute torture, you may still  
2 find that the plaintiff endured cruel, inhuman or degrading  
3 treatment.

4 Now, the plaintiffs' theory in this case of course  
5 is one involving conspiracy. So a conspiracy is an  
6 agreement between two or more persons to commit a wrongful  
7 act.

8 To hold defendant liable under a theory of  
9 conspiracy to commit torture or cruel, inhuman or degrading  
10 treatment as to any of the plaintiffs, that plaintiff must  
11 prove by a preponderance of the evidence the following four  
12 facts:

13 One: That there was an agreement between two or  
14 more persons to inflict torture or cruel, inhuman or  
15 degrading treatment on detainees at the Abu Ghraib hard  
16 site.

17 Two: That the defendant knowingly and  
18 intentionally joined the conspiracy.

19 Three: Either the defendant or a co-conspirator  
20 committed an overt act in furtherance of the conspiracy.

21 And four: The torture and/or cruel, inhuman or  
22 degrading treatment to which plaintiffs were subjected  
23 resulted from acts taken in furtherance of the conspiracy.

24 Now, knowledge and participation in a conspiracy  
25 may be shown by circumstantial evidence. Once the

1 conspiracy is formed, each member of the conspiracy is  
2 liable for the actions of the other co-conspirators  
3 performed during the course and in furtherance of the  
4 conspiracy.

5 To prevail on his conspiracy theory, a plaintiff  
6 does not have to show that the conspirators met with all the  
7 alleged co-conspirators, or that there was a formal  
8 written -- or that there was a formal or written agreement  
9 or that all conspirators agreed on every detail of the  
10 conspiracy.

11 An agreement to commit torture or cruel, inhuman  
12 or degrading treatment may be inferred from circumstances  
13 including the nature of the acts done, the relationships  
14 between the parties, and the interests of the alleged  
15 co-conspirators.

16 The mere presence at the scene of wrongful conduct  
17 by itself does not make one a conspirator. Even knowing  
18 that wrongful conduct is occurring does not make one a  
19 conspirator. Rather, there must be evidence that a  
20 defendant knowingly and intentionally did something that  
21 enabled the wrongful conduct to occur.

22 Now, the fact that I have instructed you as to the  
23 proper measure of damages -- and I'm going to do that in a  
24 second -- should not be considered as indicating any view of  
25 mine as to which party is entitled to your verdict in this

1 case. Instructions as to the measure of damages are given  
2 for your guidance only in the event you should find in favor  
3 of a plaintiff from a preponderance of the evidence in the  
4 case in accordance with the other instructions.

5 If you find in favor of a plaintiff and against  
6 the defendant, then you must determine an amount that is  
7 fair compensation for the damages suffered by that  
8 plaintiff. Compensatory damages seek to make the party  
9 whole, that is to compensate a plaintiff for the damage  
10 suffered because of a defendant's wrongful conduct. The  
11 damages, if any, that you award should be full and fair  
12 compensation; no more and no less.

13 If you decide to award compensatory damages, you  
14 should be guided by dispassionate common sense. Computing  
15 damages may be difficult, but you must not let that  
16 difficulty lead you to engage in arbitrary guesswork.

17 On the other hand, the law does not require a  
18 plaintiff to prove his losses with mathematical precision,  
19 but only with as much definiteness and accuracy as the  
20 circumstances permit.

21 Compensatory damages are the measure of the loss  
22 or injuries sustained by the injured plaintiff, and they  
23 embrace shame, mortification, humiliation, indignity to the  
24 feelings and the like. You should consider the following  
25 elements in determining the amount of compensatory damages

1 to the extent you find them proved by a preponderance of the  
2 evidence: Emotional pain and suffering, mental anguish,  
3 physical disfigurement and/or physical pain. In making an  
4 award for such damages, you must use your best judgment and  
5 establish an amount of damages that is fair and reasonable  
6 in light of the evidence before you. No evidence of a  
7 monetary value of such intangible things as pain and  
8 suffering has been or need be introduced into evidence.

9           There is no exact standard for fixing the  
10 compensation to be awarded for these elements of damages.  
11 Any award you make must be fair in light of the evidence  
12 presented at trial.

13           Now, if you should find that the defendant is  
14 liable for a plaintiffs' injuries, then you have the  
15 discretion to also award compensatory -- I'm sorry, to  
16 award, in addition to compensatory damages, punitive  
17 damages. You may award punitive damages if a plaintiff  
18 proves by clear and convincing evidence that the defendant's  
19 conduct was malicious and reckless, not merely unreasonable.

20           An act is malicious and reckless if it is done in  
21 such a manner and under such circumstances as to reflect  
22 utter disregard for the potential consequences of the act on  
23 the safety and rights of others.

24           The purpose of punitive damages is to punish a  
25 defendant for shocking conduct and to set an example in

1 order to deter the defendant or others from committing  
2 similar acts in the future. Whether to award punitive  
3 damages is within your discretion. You're not required to  
4 award them.

5 Punitive damages are appropriate only for  
6 especially shocking and offensive misconduct. If you decide  
7 to award punitive damages, you must use sound reason in  
8 setting the amount. It must not reflect bias, prejudice or  
9 sympathy toward any party. But the amount may be as large  
10 as you believe necessary to fulfill the purpose of punitive  
11 damages. In this regard, you may consider the financial  
12 resources of the defendant in fixing the amount of punitive  
13 damages.

14 Each plaintiff's punitive damage claim must be  
15 proven by clear and convincing evidence. And this is a  
16 higher standard of proof than preponderance of the evidence.  
17 Clear and convincing evidence means that the thing to be  
18 proved is highly probable or reasonably certain.

19 You probably have heard the phrase proof beyond a  
20 reasonable doubt. That's even stricter. So what we're  
21 talking about here is we have three standards of proof in  
22 the law. We have proof by preponderance of the evidence,  
23 that's the basic standard I just gave you. Clear and  
24 convincing evidence is somewhere above that. Proof beyond a  
25 reasonable doubt is the highest.

1           So I can't give you a mathematical precision  
2 explanation of what clear and convincing evidence is; it's  
3 just much higher than simply preponderance of the evidence.

4           This is the last instruction.

5           Upon retiring to your jury room to begin your  
6 deliberations, you must elect one of your members to act as  
7 your foreperson. The foreperson will preside over your  
8 deliberations and will be your spokesperson here in court.  
9 But as I've told you many times before, you're eight  
10 co-equal judges, so the fact that one of you will be the  
11 foreperson does not mean that that person's opinion or  
12 memory of the evidence is worthy of any more consideration.  
13 You're eight co-equal judges. But we need one person who  
14 can sort of keep things organized and will also be the  
15 person who will sign the verdict form. So the foreperson  
16 will preside over the deliberations and will be your  
17 spokesperson here in court and will ultimately sign the  
18 verdict form.

19           Now, your verdict, that is your decision, must  
20 represent the collective judgment of the jury. To return a  
21 verdict, it is necessary that each juror agree to it. In  
22 other words, it must be unanimous.

23           It is your duty as jurors to consult with one  
24 another and to deliberate with one another with a view  
25 towards reaching an agreement, if you can do so without

1 violation to your individual judgment.

2 Each of you must decide the case for yourself, but  
3 do so only after an impartial consideration of the evidence  
4 in the case with your fellow and sister jurors.

5 In the course of your deliberations, do not  
6 hesitate to re-examine your own views and to change your  
7 opinion if convinced it is erroneous; however, do not  
8 surrender your honest conviction solely because of the  
9 opinion of the other jurors or for the mere purpose of  
10 thereby being able to return a unanimous verdict.

11 Remember at all times you're not partisans, you  
12 don't represent the plaintiffs, and you don't represent the  
13 defendant. Instead, you are judges, specifically judges of  
14 the facts of this case, and your sole interest is to seek  
15 the truth from the evidence received during the trial.

16 Now, your verdict must be based solely upon the  
17 evidence received in the case. Nothing you've seen or read  
18 or heard outside of court may be considered. Nothing that I  
19 have said or done during the course of this trial is  
20 intended in any way to suggest to you what I think your  
21 verdict should be. Nothing said in these instructions, and  
22 nothing in any form of verdict is to suggest or convey to  
23 you in any way what the verdict should be.

24 Verdict forms have been prepared for you, and I'm  
25 going to go over just one of them because there are three



1 identical forms, but we have one for each individual  
2 plaintiff to reiterate the fact that you have to consider  
3 each plaintiff's case individually.

4           So the verdict form, first of all, has the caption  
5 of the case and the case number, and then it says: To  
6 answer any question in this verdict form, the jury must be  
7 unanimous. So we're reminding you about that obligation.

8           As to the first plaintiff we're listing here,  
9 Mr. Al-Ejaili. Number 1: Has plaintiff proven by a  
10 preponderance of the evidence that defendant, CACI Premier  
11 Technology, Inc., is liable to plaintiff for conspiring with  
12 military personnel to inflict torture or cruel, inhuman or  
13 degrading treatment on detainees in the Abu Ghraib hard site  
14 that resulted in plaintiff being tortured or subjected to  
15 cruel, inhuman or degrading treatment? That's Question  
16 Number 1. And the jury answers either yes or no. And we  
17 have yes first because most people just say yes or no. It  
18 doesn't -- that's not meant to suggest any kind of an  
19 answer.

20           If your answer is yes, then please answer  
21 Questions 2 and 3. On the other hand, if your answer is no,  
22 you do not need to further answer any other questions, and  
23 the foreperson should just go to the second page, and he or  
24 she should write their signature, please then print it,  
25 because we can't always read your signature, and the date

1 that the decision is made. All right.

2 On the other hand, if you find that the plaintiff  
3 has proven by a preponderance of the evidence the  
4 conspiracy, then the next Question Number 2 is: What  
5 amount, if any, of compensatory damages has plaintiff proved  
6 by a preponderance of the evidence. And there you would  
7 write the damage amount.

8 And Number 3: What amount, if any, of punitive  
9 damages has plaintiff proven by clear and convincing  
10 evidence. And there you would write whatever number you  
11 give. And we have a similar -- exactly the same form for  
12 the other two plaintiffs as well.

13 Now, when you go into the jury room, you will  
14 immediately have your notes, your notebooks, you'll have  
15 four sets of the jury instructions, and you'll have the  
16 verdict form. You will very quickly be getting the  
17 exhibits, but you can start your deliberations before the  
18 exhibits come in.

19 Some courts don't actually send exhibits into the  
20 jury, they wait until the jurors start to ask for exhibits.  
21 We just send them all to you. And you will have these two  
22 indexes which should help you in finding things.

23 Now, it's very important that during your  
24 deliberations you do not, in any respect, let anybody know  
25 what you're thinking about the case in terms of any votes

1 you might be taking or whatever.

2           If it becomes necessary during your deliberations  
3 to communicate with the Court, that is if you have a  
4 question or if there's a problem, it's too cold, it's too  
5 hot, you need a white board, whatever, the procedure is for  
6 you to send that to me in writing with the foreperson or one  
7 of the other jurors having signed the note and the date, and  
8 you give it to my court security officer, Mr. Hendrick.

9           No member of the jury should ever attempt to  
10 communicate with the Court or anyone else by means other  
11 than a signed writing. And I will only communicate back  
12 with you either by bringing you back into court and just  
13 giving you further instructions or trying to answer your  
14 question this way, or in some cases I may send back a note  
15 to you. All right. But that is how we will be  
16 communicating.

17           It will be important for us for you to -- whoever  
18 is chosen as the foreperson to do a couple of things right  
19 away. And that is, Number 1, to send us a schedule that you  
20 want to follow. Once a jury gets a case, you control the  
21 schedule. If you want to stay until midnight tonight, you  
22 can stay until midnight, but we've probably got to get word  
23 to the building people so we can keep the heating or air  
24 conditioning. If you want to come in at 7:30 tomorrow  
25 morning, as long as you're all here, I'm always here before

1 7:30, you know, we'll accommodate you. You set the  
2 schedule.

3 I have found from past experience, a lot of my  
4 jurors get used to the schedule, and I wind up seeing you  
5 like the one-hour lunch break at 1:00, we like the  
6 mid-morning break, mid-afternoon, but that's all up to you.

7 But the reason why we like to know what your  
8 schedule is because I require one lawyer per side to remain  
9 in the courtroom while you're deliberating, because if you  
10 have a question, I can't answer your question without  
11 checking it with counsel for both sides. So if I've let all  
12 of them go, you know, having to re-herd everybody, you know,  
13 you might be waiting unnecessarily, and I really do work  
14 hard not to waste your time. But, at the same time, if we  
15 know that you're not deliberating, you're taking your break,  
16 then they can also leave the courtroom.

17 The other thing that's really, really important  
18 is, as I've said many times now, you're eight co-equal  
19 judges, and so when you go to deliberate, you want to hear  
20 what each other is saying about the evidence and what your  
21 opinions are. So even if just one of you is in the  
22 restroom, you should stop deliberating because, you know,  
23 the seven of you would be talking, and that one juror is not  
24 hearing what you've got to say. And that's part of the job  
25 of the foreperson is to make sure you don't start

1 deliberating until all eight of you are together. The same  
2 thing in the morning when you come back, and I'm sure you'll  
3 come back tomorrow morning because it's late today, until  
4 everybody is there, you know, you can chat about the  
5 weather, baseball, the football game, whatever you want to  
6 talk about. Don't talk about the case. All right. And  
7 that's very important that jurors remember that.

8           When you have finally reached a verdict, then the  
9 procedure would be for the foreperson, as I said, to fill  
10 out the verdict form, fold it over, you let my court  
11 security officer know that you have a verdict, we'll bring  
12 you back in and return the verdict in open court. All  
13 right.

14           Counsel, approach the bench.

15                           (Bench conference.)

16           THE COURT: Good on this one?

17           MR. O'CONNOR: You correctly read 25. The paper  
18 said aiding and abetting.

19           THE COURT: We're going to have to fix that.  
20 We've got it.

21           MR. FARIDI: With the exception of the borrowed  
22 servant instruction that we spoke about earlier, everything  
23 else is fine.

24           MR. O'CONNOR: We have no objection, Your Honor.

25           THE DEPUTY CLERK: I just want to say for the

1 admissions, PTX 171, that's actually not in evidence.

2 MR. FARIDI: PTX 171, which were the request for  
3 admissions, we didn't put them into evidence because we just  
4 read that.

5 MR. O'CONNOR: We have no issue with that being in  
6 evidence.

7 MR. FARIDI: That's fine.

8 THE COURT: I think it should be in evidence.

9 (Plaintiffs' Exhibit Number **171** admitted into evidence.)

10 MR. O'CONNOR: Just those three -- I think just  
11 three admissions; right?

12 MR. FARIDI: I think the three CACI --

13 THE COURT: I'll tell the jurors just three of the  
14 admissions in 171.

15 MR. FARIDI: Yes.

16 THE COURT: Is that how the exhibit's prepared  
17 right now?

18 MR. FARIDI: We'll have the exhibits prepared  
19 right now, Judge. We'll bring them to your staff in the  
20 next 15 minutes or so.

21 MR. O'CONNOR: That's fine.

22 THE COURT: Okay. I'll tell them that.

23 (Open court.)

24 THE COURT: The lawyers have reminded me that with  
25 Exhibit 17 -- Plaintiffs' 171, which is the admissions, to

1 save you time and trouble, there are only three admissions  
2 that were relevant to the case, so don't be alarmed if you  
3 see -- I don't know if you're going to black it out or what  
4 you're going to do, but that's how that exhibit is going in.

5 All right, folks.

6 Then what we're going to do now is -- it's, what,  
7 4:30-ish. What we want you to do as we're getting the  
8 paperwork ready for you is decide who wants to become the  
9 foreperson, and then decide how you want to spend the rest  
10 of the day. If you do want to stay past 6:00, you may; you  
11 don't have to. All right. It would also be nice if you  
12 could decide sort of how you think you want to do tomorrow.

13 Now, just looking down the road, this Monday is  
14 Veteran's Day, and so it is a federal holiday, we are  
15 closed. So if you have not reached a verdict by the end of  
16 tomorrow, whatever time you decide to stop tomorrow, we  
17 would be coming back into session on Tuesday. So I just  
18 want you to just keep that in mind. All right.

19 We'll recess court to await the decision of the  
20 jury.

21 (Jury not present at 4:27 p.m.)

22 (A recess was taken.)

23 THE COURT: All right. So the jury has indicated  
24 to my court security officer they want to go home tonight.  
25 They're tired. That's always better, I think, to have a

1 fresh jury. Plus, it's going to take a bit longer to get  
2 all the exhibits together, so I'm going to send them home.

3           You've got -- I think we've given you a copy of  
4 their note. They want to start tomorrow morning, the  
5 standard 9:30 time. So we need one lawyer. I don't need  
6 all of you, just one lawyer per side is enough. If you all  
7 want to be here, that's fine, but you should be here at 9:30  
8 tomorrow morning. Okay. You can leave your stuff alone if  
9 you want to.

10           All right. I'm just told I have a sentencing at 9  
11 tomorrow morning, so, guess what, you will have to clean  
12 your tables. All right.

13           Let me see. I think that should be it. Is there  
14 anything that we need to raise with the jury?

15           MR. O'CONNOR: Your Honor, we object to the  
16 request for more water. I'm just kidding.

17           THE COURT: You know, that was the Judge Bryan  
18 approach for lawyers, not to have water on counsel table.  
19 Things went a lot faster in those days.

20           All right. We'll bring the jury in.

21           THE COURT SECURITY OFFICER: Yes, Judge.

22           Rise for the jury.

23                   (Jury present at 4:53 p.m.)

24           THE COURT: All right. Folks, I know you're tired  
25 and you want to go home and that's perfectly fine; I



1 understand that.

2 We've gotten your note, so you want to be back at  
3 9:30. So remember, out of courtesy for each other, if one  
4 of you is late, nobody can start work. All right.

5 Now, it's very important, it's even more important  
6 now than it was before, that you continue to follow my  
7 instructions. No private emails to each other, no  
8 investigation about the case whatsoever. You know, keep  
9 following the instructions about not talking about the case.

10 Our student juror, I think you're okay now with  
11 your professor?

12 THE JUROR: Yes.

13 THE COURT: Are you cleared through next Wednesday  
14 should the jury be here next week?

15 THE JUROR: Excuse me?

16 THE COURT: Will you be all right about next week?  
17 I told him that you might be here through Wednesday.  
18 Because when we did the voir dire, remember, I said it could  
19 go until next Wednesday. I don't know how long it will take  
20 you all to deliberate. There is no rush. All right. You  
21 just take your time.

22 We will have for you -- when you come in tomorrow  
23 morning, we'll have more water, we will have the white board  
24 or whatever. Yeah, we have a white board we can get for you  
25 and some markers. And I think that's all you're requesting.

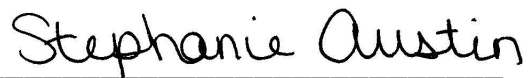
1 And so, again, get I good night sleep. I think you're going  
2 to get extra tonight. It may be raining tomorrow. You know  
3 rain in Northern Virginia on a Friday morning, so be careful  
4 about traffic. All right. We'll let you go this evening,  
5 folks, and we'll see you back tomorrow morning. All right.

6 (Jury not present at 4:56 p.m.)

7 (Proceedings adjourned at 4:56 p.m.)

8 -----

9 I certify that the foregoing is a true and accurate  
10 transcription of my stenographic notes.

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12 \_\_\_\_\_

13 Stephanie M. Austin, RPR, CRR  
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