

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

SUHAIL NAJIM ABDULLAH AL SHIMARI,	}	
Et al.,	}	
	}	
Plaintiffs,	}	Civil No. 08-cv-827
	}	
VS.	}	February 6, 2015
	}	
CACI INTERNATIONAL, INC., et al.,	}	
	}	
Defendants.	}	

MOTIONS HEARING

BEFORE: THE HONORABLE GERALD BRUCE LEE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF: CENTER FOR CONSTITUTIONAL RIGHTS
BY: BAHER AZMY, ESQ.

PATTERSON BELKNAP WEBB & TYLER
BY: PETER NELSON, ESQ.

LAW OFFICE OF JOHN K. ZWERLING
BY: CARY CITRONBERG, ESQ.

FOR THE DEFENDANT: STEPTOE & JOHNSON LLP
BY: JOHN O'CONNOR, ESQ.
SAVANNAH E. MARION, ESQ.
WILLIAM KOEGEL, ESQ.

OFFICIAL COURT REPORTER: RENECIA A. SMITH-WILSON, RMR, CRR
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1 (Thereupon, the following was heard in open
2 court at 11:01 a.m.)

3 THE CLERK: 1:08 civil 827, Al Shimari versus
4 CACI Premiere Technology, Incorporated.

5 MR. O'CONNOR: Good morning, Your Honor.
6 John O'Connor and Savannah Marion from Steptoe and
7 Johnson for CACI. Also with me is Bill Koegel who is
8 general counsel at CACI.

9 THE COURT: Mr. Koegel's changed jobs, huh?

10 MR. KOEGEL: Yes, sir.

11 MR. AZMY: Good morning, Your Honor. Baher
12 Azmy for the plaintiffs. With me is Cary Citronberg,
13 local counsel, the Zwerling firm and Peter Nelson from
14 Patterson Belknap.

15 THE COURT: Good morning.

16 I'm ready.

17 MR. O'CONNOR: Your Honor, the issue before
18 the Court today is whether this case should be dismissed
19 under Rule 12(b)(1) because it presents nonjusticiable
20 political questions.

21 Within that question, there are --

22 THE COURT: You agree this is a 12(b)(1)
23 motion?

24 MR. O'CONNOR: Yes, sir. I don't think
25 there's any dispute about that. And as a 12(b)(1)

1 motion, this is not a -- it's not the 12(b)(6) standard
2 where we go on allegations that are in the complaint.
3 It's not a summary judgment motion where any dispute of
4 fact results in denial of the motion.

5 The Court is required to adjudicate the
6 facts, and if there are any conflicts, the Court's duty
7 is to resolve those conflicts.

8 Though, as we get into it, I think it's our
9 view that there is really not a whole lot of actual
10 genuine dispute as to what the record says. There's a
11 lot of dispute as to what the parties say the record
12 says. But in the end, the briefs don't matter. What
13 matters is in the document in the record.

14 There are two parts to the political question
15 inquiry here. The *Taylor* test is what applies, and the
16 Fourth Circuit made clear in its remanded instructions
17 that both *Taylor* tests apply, and if either one of those
18 is satisfied, then there's a political question and the
19 case should be dismissed.

20 The first test is there's a nonjusticiable
21 political question if the military exercised plenary or
22 direct control over the manner in which the CACI
23 interrogators performed their duties.

24 The second test, which is independently
25 sufficient to require dismissal is that there's a

1 nonjusticiable political question if there's national
2 defense interests that are closely intertwined with what
3 the contractors are doing such that resolving this case
4 would require the Court to second guess actual sensitive
5 military judgments.

6 Now, turning to the first *Taylor* test,
7 plaintiff's opposition paints a picture that we think is
8 not consistent with what the record actually said.

9 THE COURT: I would invite you to tell me
10 your position and let them argue their own side of it.

11 MR. O'CONNOR: I'll do that, Your Honor.

12 Savannah, could you put up the Al Shimari
13 chart.

14 Your Honor, discovery has closed in this
15 case, and the Court even reopened it so that the
16 plaintiffs could take any discovery that they thought
17 they needed. And --

18 THE COURT: Can everyone see that?

19 MR. AZMY: We can, Your Honor.

20 THE COURT: I can't. You have a copy for my
21 old eyes to see?

22 MR. O'CONNOR: Why don't I have Ms. Marion
23 turn it, and I'll present Mr. Azmy a --

24 THE COURT: That's better. Thank you.

25 Mr. Toliver, if you'd close those blinds, it

1 might help me because there's a glare.

2 Thank you.

3 MR. O'CONNOR: Your Honor, we submitted
4 declarations from several military officers who were on
5 the ground in Iraq in Abu Ghraib prison.

6 THE COURT: Colonel Pappas and -- there's
7 another one.

8 MR. O'CONNOR: Colonel Pappas and Colonel
9 Brady.

10 THE COURT: Right.

11 MR. O'CONNOR: Colonel Pappas was head of the
12 brigade at Abu Ghraib prison, was there in the
13 interrogation control element on a daily basis. He was
14 where -- he was the tip of the pyramid at Abu Ghraib for
15 the intelligence collection operation.

16 Colonel Brady was the contracting officer's
17 representative. He is not at Abu Ghraib on a daily
18 basis, but he's in charge of monitoring and making sure
19 the contract is being complied with and things like that.
20 So he is also well familiar with how operations are --

21 THE COURT: He was the CACI employee who was
22 there as the administrative manager as well; is that
23 right?

24 MR. O'CONNOR: We submitted a declaration
25 from Dan Porvaznik who was the administrative site lead,

1 and he was also an interrogator. So he had like anyone
2 else a quote, unquote, case load. He had detainees he
3 interrogated.

4 But, if there were -- in terms of collecting
5 leave requests, getting timesheets submitted,
6 administrative things like that, he was the person at Abu
7 Ghraib that our folks in Virginia would contact and get
8 the administrative things handled.

9 We also submitted extensive excerpts from the
10 deposition of Major Carolyn Holmes who at the time was
11 Captain Carolyn Wood. She was the OIC, the officer in
12 charge of the interrogator control element so she is, at
13 a very retail level involved in the intelligence
14 collection operations. The various interrogation tiger
15 teams had military section heads and they reported to
16 her.

17 THE COURT: Well, let me ask you to start
18 with the contract itself. Does the contract delegate the
19 means of carrying out the interrogations or how to do it
20 or who to interview? Does the contract --

21 MR. O'CONNOR: Delegated to CACI, absolutely
22 not, Your Honor. The contract provides that the CACI
23 interrogators are to act as directed by higher military
24 authority. And, in fact, the military had complete
25 control over -- they decided who would be detained, who

1 would be interrogated and we can find that in the Pappas
2 declaration. You can find it in the Porvaznik
3 declaration.

4 The military decided who would interrogate a
5 detainee. The military decided detainee X should be
6 interrogated because we think he might have intelligence
7 value. Then Major Holmes and her military folks would
8 decide which tiger team we're going to assign that to.
9 Is it one where the interrogation is CACI employee or is
10 it one where the interrogator is Sergeant Jones? And she
11 would make that decision and it would get assigned to an
12 interrogation team to be handled.

13 The military established the interrogation
14 rules of engagement. Major Holmes was very clear about
15 that. She also was very clear that she was the one who,
16 when there were modifications to be made, that she
17 modified them. She even posted them. She created slides
18 that explained these interrogation techniques are
19 permitted. These other interrogation techniques are
20 permitted if you have approval from either Major Holmes
21 or General Sanchez, whatever the case might be.

22 THE COURT: So the interrogator does not just
23 walk into a detainee's cell and bring them out to
24 interrogate them without preparing a plan.

25 And was that plan submitted to the military

1 to review before the interrogation occurred?

2 MR. O'CONNOR: Absolutely, Your Honor.

3 That's exactly the next point. There's not just general
4 rules about what you can do or can't do. There has to be
5 a plan for every interrogation.

6 And interestingly, there is a former CACI
7 interrogator, a fellow by the name of Torin Nelson who,
8 in the *Saleh* case, we agreed that discovery in *Saleh*
9 would be treated as discovery in this case. And, he was
10 questioned under oath, and plaintiff's counsel asked him
11 about interrogation plans and actually asked him sort of
12 a leading question to see, well, if it was -- if he would
13 say it wasn't required to submit an interrogation plan.
14 And he was steadfast. He was like, oh, there was
15 absolutely a requirement. That's the words he used
16 "absolutely a requirement".

17 THE COURT: And the report of interrogation
18 was submitted to whom afterwards?

19 MR. O'CONNOR: It was submitted into a
20 classified military database. So they would have all the
21 information from all the interrogations collected in this
22 database so that they could then see big pictures, see
23 little pictures, figure out what they're learning from
24 any place where they're taking interrogations.

25 THE COURT: Well, how could the military tell

1 who was CACI and who was an Army soldier? How could they
2 tell?

3 MR. O'CONNOR: How could the military tell?

4 THE COURT: Yes.

5 MR. O'CONNOR: Because when a CACI employee
6 would arrive in Iraq, the military would decide what camp
7 they wanted to put them, at Abu Ghraib or Fallujah or
8 somewhere else. And so the military would arrange
9 transportation. You couldn't just drive in Iraq.

10 And they would show up, and they would be
11 presented to Major Holmes who, as she testified, she
12 would then talk to them, interview them, get an idea of
13 what they could do and then they would be placed on a
14 tiger team.

15 So she would know John Smith is a CACI
16 interrogator and Sergeant Ashton is a military
17 interrogator.

18 THE COURT: But the tiger team was all given
19 the same marching orders as it relates to how they
20 operate; is that right?

21 MR. O'CONNOR: Absolutely, and they all
22 reported -- tiger teams -- four or five tiger teams would
23 then report to a section head, and the section head was a
24 soldier. It would be usually a non-commissioned officer,
25 sergeant or staff sergeant who would be overall in

1 charge.

2 And that section head would then report to
3 Major Holmes. And there were three or four sections and
4 each section had four or five or six tiger teams.

5 A tiger team would be an interrogator. It
6 would be an analyst, sometimes. And it would be an
7 interpreter.

8 And the investigators could be CACI. It
9 could be military. A section might have two CACI
10 interrogators and three military interrogators and there
11 are five tiger teams.

12 Analyst, same thing. It could be military.
13 It could be a CACI analyst. The interpreters, we -- CACI
14 didn't provide any interpreters. So the interpreters are
15 either -- I believe they were all civilian contractors.
16 They may have had some military interpreters, but we
17 certainly didn't provide any interpreters.

18 THE COURT: You only supplied the
19 interrogators.

20 MR. O'CONNOR: And some analysts and a lot of
21 other things in Iraq, but we did not supply any
22 interpreters.

23 So, the -- so, not only are they submitting
24 their reports, the military is deciding on the collection
25 activities.

1 And so, as we put it in our brief, and we
2 made a conscious decision to, at length, quote exactly
3 what these witnesses are saying so it's unfiltered. The
4 military exercised complete control. This was not a
5 situation where they said to CACI, here is some
6 detainees. Interrogate them and find out what you can
7 find and you figure out how to do it best.

8 They said, give us your people. We will put
9 them in sections that are headed by military. The
10 military section heads will report to Captain Wood. You
11 would submit interrogation plans that have to be approved
12 by the section head and then by Captain Wood. You're
13 going to follow the rules that the military established.
14 If you want exceptions for techniques that can be used
15 sometimes, then you'll do that. But that has to also get
16 approved by the military. And then you're going to
17 submit a report back to the military.

18 And then you're going to go on to the next
19 detainee that the military has told you that you're going
20 to be interrogator for.

21 THE COURT: This is the case where these
22 plaintiffs assert that they were subjected to cruel and
23 inhuman treatment, abuse, torture, all these things.
24 They say that investigators from CACI directed the MPs to
25 do this.

1 Who bears the burden of showing the evidence
2 of who was in control of these rogue MPs, if that's who
3 actually did these things?

4 MR. O'CONNOR: In our view, Your Honor, the
5 plaintiff bears the burden of establishing subject matter
6 jurisdiction. So we would say as a general matter, they
7 have the burden of proving that.

8 However here, the record is not in conflict.
9 There is substantial conflict between the briefs. But we
10 went and took depositions of some of the MPs that were
11 court marshalled, Ivan Frederick, Charles Graner, Megan
12 Graner, three or four others.

13 And the testimony they gave was that an
14 interrogator would give directions to an MP about
15 conditions of treatment for their assigned detainees
16 only, that nobody was coming down and saying here is
17 generally how I want you to handle things at the heart of
18 Abu Ghraib Prison.

19 Instead, Interrogator X, it could be Sergeant
20 Ashton; it could be CACI employee, John Smith, walks down
21 and says, this is what I need you to do with my detainee.
22 I want you to do X, Y, or Z.

23 Well, there's no evidence at all, and
24 discovery is closed, that any of our employees were
25 assigned to any of these plaintiffs.

1 THE COURT: I want to focus on what you just
2 said.

3 MR. O'CONNOR: Yes, sir.

4 THE COURT: So, are you saying that discovery
5 has not revealed any individual plaintiff who was
6 asserts -- who can identify CACI employee as a person who
7 subjected them to abuse?

8 MR. O'CONNOR: That's right, Your Honor. In
9 fact --

10 THE COURT: I thought there was some mention
11 of one plaintiff who was a media person saying he had
12 contact with a CACI person. Is that right?

13 MR. O'CONNOR: Well, he doesn't say that
14 and -- there is evidence in the record that -- well,
15 there was an incident in the hard site where Iraqi police
16 were working there smuggled a pistol to a detainee. The
17 detainee used that pistol and shot a soldier.

18 And in the process, there was great concern
19 that there might be other guns or weapons that had been
20 smuggled into the prison. So Colonel Jordan who worked
21 for Colonel Pappas got an ad hoc group of interrogators
22 and interpreters and went in and questioned detainees.

23 There is reference in the record that one
24 CACI interrogator may have -- well, as part of that
25 process questioned a reporter. Now, one of the

1 plaintiffs was a reporter.

2 THE COURT: But the reporter was detained.
3 He was a detainee. He wasn't there --

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

5 THE COURT: He was there as a detainee.

6 MR. O'CONNOR: But, in truth trying to
7 identify that there is a reference in the record that the
8 one reporter who had been detained, that a CACI employee
9 questioned a reporter. That's --

10 THE COURT: In other words, the other
11 plaintiffs have not been able to identify anyone who
12 is --

13 MR. O'CONNOR: That's right. And in fact,
14 Your Honor --

15 THE COURT: Do you all have depositions of
16 these plaintiffs? Has that ever happened?

17 MR. O'CONNOR: Well, we tried. Your Honor
18 might have remembered --

19 THE COURT: So my question is you have not
20 had depositions?

21 MR. O'CONNOR: Only of one.

22 THE COURT: All right.

23 MR. O'CONNOR: Al-Ejaili. Remember, Your
24 Honor, the other three, the United States won't allow
25 them into the country. So, that's a complicating factor

1 that we've litigated many times in this court along the
2 way.

3 THE COURT: I know. I wanted to make a
4 record as to whether or not the plaintiffs had an
5 opportunity to offer testimony and if there is -- was any
6 testimony before me from the plaintiffs about their view
7 of what has happened here.

8 Now, we live in a world where maybe where
9 they're living now there is no access to the Internet and
10 there's no ability to video conference. But were any
11 efforts like that made to secure depositions of the
12 plaintiffs?

13 MR. O'CONNOR: Your Honor --

14 THE COURT: I'm talking about on a remand,
15 not --

16 MR. O'CONNOR: Not on remand. Not on remand.
17 I mean, the plaintiffs had said that their efforts were
18 continuing to try to get the plaintiffs in the country,
19 but that's it.

20 Now, I want to answer the Court's question.

21 THE COURT: I want to make sure you
22 understand my question. I have conducted a criminal
23 trial where all the witnesses were in Saudi Arabia and we
24 did it through video uplink and live real-time
25 communication and that was the Abu Ali case. But I'm

1 asking now about whether, after remand, where plaintiffs
2 have some burden here, there was any effort made to have
3 any video deposition from whenever they could get to
4 where there was a video conference. That didn't happen.
5 Is that what you're saying?

6 MR. O'CONNOR: Not by either side.

7 THE COURT: All right.

8 MR. O'CONNOR: Now, Your Honor, I do want
9 to -- this all started with the question about whether
10 the plaintiffs had said that a CACI interrogator abused
11 them, and I want to answer that because I haven't given
12 you a full answer.

13 THE COURT: Completely answer that question.

14 MR. O'CONNOR: At the -- at the very
15 beginning of discovery in this case, we served
16 interrogatories. And those interrogatories are part of
17 the record here on our motion.

18 And one of the things we asked was to
19 identify any interactions that you had with a CACI
20 question. And, we've filed with our motion here the
21 response to that investigator from all four plaintiff.
22 And all four plaintiffs say they don't have any
23 information concerning an interaction between themselves
24 and a CACI employee. Basically what they say is we don't
25 know who we interacted with is basically what they're

1 saying.

2 THE COURT: Okay.

3 MR. O'CONNOR: So they could be deposed on
4 that, but that's all they're going to be able to say.
5 They don't have any idea who they may have interacted
6 with.

7 Your Honor might remember that --

8 THE COURT: Does that include military as
9 well?

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

11 THE COURT: All right.

12 MR. O'CONNOR: Well, our question was about
13 CACI employees.

14 THE COURT: Okay, never mind.

15 MR. O'CONNOR: That's why I don't want to say
16 more than I can.

17 THE COURT: All right.

18 MR. O'CONNOR: Now, so as we see it, this is
19 the military show. And, if you read *Taylor* and if you
20 read *Al Shimari*, on the first *Taylor* test, if there is
21 plenary and direct control by the military, that's it.
22 That's the end of the inquiry, and there's a
23 nonjusticiable political question.

24 There's no -- the second test involves why
25 you have to make some judgments about how the litigation

1 will be affected.

2 THE COURT: If you would turn to that brief,
3 that would be helpful to me, to the issue of judicially
4 manageable standards and question of military judgment.
5 If you turn to that, that would be helpful to me.

6 MR. O'CONNOR: Yes, sir.

7 The second *Taylor* test which asks whether
8 military judgments would have to be second guessed in
9 this litigation, there is a whole laundry list of ways.

10 Now, the one way that this case is different
11 from *Carmichael* and *Taylor*. In *Carmichael* and *Taylor*,
12 both the Eleventh Circuit and the Fourth Circuit said
13 this test is met in these cases and the case had got
14 dismissed on the second *Taylor* test.

15 And the Fourth Circuit in *Taylor* endorsed the
16 *Carmichael* decision. Now, the one thing that's different
17 between these cases is in those cases there is no
18 military between the contractor and the injury.

19 In *Carmichael*, it's a convoy that flipped
20 over. There's no question that the driver who flipped
21 the truck over was a KBR civilian contractor.

22 In *Taylor*, there is no question that the
23 folks who turned on the electrical power and electrocuted
24 that marine were KBR civilian contractors.

25 Our case is different because no one has

1 alleged and in the foot of exhibits, the Court -- that
2 have been submitted on this motion, the Court won't find
3 where anyone has said that the CACI employees directly
4 did anything to these plaintiffs.

5 And so, they're pursuing --

6 THE COURT: But they're asserting a
7 conspiracy.

8 MR. O'CONNOR: That's right. Your Honor
9 originally dismissed the conspiracy count, and they've --
10 and they brought it back. The Court gave them leave to
11 amend. It came back, and we filed a motion to dismiss
12 which had not been ruled on by the time the case was
13 dismissed by the Court.

14 But, you're right. That's exactly right.
15 They're proceeding on a conspiracy theory. And I think
16 that's particularly important for the *Taylor* -- the
17 second *Taylor* test because at the very threshold, the
18 military decisions that are going to be second -- that
19 would be have second guessed in this case is propriety of
20 whatever decisions were made by whatever soldiers
21 allegedly did, whatever these plaintiffs say was done to
22 them. Because they're not -- no one is going to say a
23 CACI -- none of these plaintiffs are going to say a CACI
24 employee punched me, kicked me, did anything to me.

25 And so, at issue is the reasonableness of

1 what the military police at the prison did, the
2 reasonableness of the military supervision of the
3 military police personnel, the reasonableness of the
4 military's decision to allow MPs to be involved in
5 assisting interrogators in, if Your Honor say, setting
6 the conditions, but whatever was necessary to facilitate
7 that interrogator's interrogation.

8 THE COURT: There's been much discussion
9 about whether or not there's a standard or a norm that
10 the Court could apply to what are appropriate
11 interrogation techniques. There's been a lot of
12 discussion recently whether the *Yoo* memo and other things
13 that were present during that timeframe affected what
14 were appropriate ways to interrogate someone.

15 I'm not going to vote the vice-president who
16 has his own view of what torture is and what's
17 appropriate techniques. But how would I make a judgment
18 about what the executive should tell the military about
19 what techniques to use, whether it is to hang somebody
20 from the ceiling or to deprive them of sleep or to play
21 music loud. How am I to do that?

22 MR. O'CONNOR: I don't think the Court can,
23 and I don't think the Court should. And this is
24 reminiscent of what happened in the *Yoo* case. The Ninth
25 Circuit ended up throwing out the *Yoo* case. They threw

1 it out on immunity grounds.

2 But basically, what the Court said was, the
3 definition and the thinking of what's appropriate and
4 what's allowed and what qualifies as torture and what
5 doesn't qualify as torture, that's been evolving, and
6 appropriately so. But it's been evolving over the past
7 10 years.

8 And, in fact, as we pointed out in our
9 initial brief -- or I guess in our Alien Tort Statute
10 elements briefs, the United States just recently changed
11 its view on cruel, inhuman and -- CIDT, cruel and
12 something treatment.

13 THE COURT: Cruel, inhuman, degrading
14 treatment.

15 MR. O'CONNOR: The United States just at the
16 end of 2014 changed its view. The United States' view
17 until that point had been that treaty does not apply to
18 facilities overseas. Just as a blanket rule, it does not
19 apply. And the United States changed its view at the end
20 of last year, 10 years after the events that are alleged
21 here.

22 So, we agree that it's neither appropriate or
23 possible for the Court at this point to sit and judge and
24 instruct on what should have been done 10 years ago under
25 a very different way of thinking and balancing that

1 against -- and I think it's always appropriate to balance
2 what you're doing against what you're -- what the
3 intelligence value of what you're trying to obtain.

4 And we've heard lots of -- Hilary Clinton was
5 asked about the ticking time bomb. What can you do to
6 somewhere if they know where there's a ticking time bomb
7 somewhere in Manhattan?

8 And the answer to that is a lot different
9 that if you're trying to find out if somebody stole, you
10 know, a pack of Twinkies from the 7-Eleven. There is a
11 lot of consideration that are very weighty that affect
12 national defense.

13 THE COURT: I think at the beginning of this
14 case, I made a judgment about this question --

15 MR. O'CONNOR: Yes, sir.

16 THE COURT: -- that Judge Nehemiah reversed.
17 And one of the questions that has been raised I think by
18 Judge Wilkinson in his dissent from the en banc decision
19 is what law would apply here, and how would I go about
20 deciding that question. I think we've had that issue
21 briefed before. Is it Ohio law, Virginia law, Maryland
22 law, Iraqi law and what are the elements that I would
23 apply for torture?

24 And what you all have given me, because the
25 Fourth Circuit instructed me to give you -- and I'm going

1 to give you a ruling on that, but how would I decide that
2 question? Do I apply Iraqi law? Are these questions
3 that I have to decide, too.

4 MR. O'CONNOR: Your Honor, you -- the Court
5 decided those questions back in April of 2013, and
6 decided that basically, based on CPA Order 17, the common
7 law counts all had to go because there was -- couldn't
8 apply Virginia law. State law can't cabinet what the
9 federal government can't do and can't apply the law of
10 Iraq which is an invaded and occupied country.

11 On appeal, the Fourth Circuit ruled on the
12 Alien Tort Statute and extraterritorial issues. And
13 having reversed on that, what the Court said was, well,
14 Judge Lee also dismissed the common law counts as I just
15 discussed and also grant summary judgment on statute of
16 limitations for the common law counts.

17 And we're not saying -- we're expressing no
18 opinion. They called Your Honor's opinion thorough, but
19 they said we're not opining on the correctness of those.
20 But we're going to reverse those because if this case
21 would go out on political question, that's what it ought
22 to go out on. It -- basically, if you don't have
23 jurisdiction, then we shouldn't have decisions --

24 THE COURT: I understand that, but I guess
25 I'm focused on judicially manageable standards as it

1 relates to the case itself. And, of course, the -- the
2 issue of torture I think there may be agreement between
3 both sides that there is some elements of using force to
4 coerce a person for information being applied by an
5 official in an official capacity.

6 We may be able to go that far with it, but
7 then there are other issues about what role the military
8 judgment about the techniques to be used would have on
9 the instruction.

10 MR. O'CONNOR: And the elephant in the room
11 in terms of manageability, Your Honor. It's not -- I
12 mean, one of them is three of the plaintiffs have no
13 apparent ability to get into this country and I don't
14 know whether the fourth one could get in here again.

15 But, as Your Honor's pointed out, this case,
16 if it were to be tried, is -- credibility is very
17 important. And, Your Honor had in the past said they're
18 going to have to come here, because a jury would have to
19 look them in the eye and decide if they're telling the
20 truth or not. But, that's a significant hurdle to
21 manageability.

22 But to me, the big elephant in the room is
23 that the identity of anyone who might have interrogated
24 these plaintiffs is classified. To me, that's the
25 biggest manageability issue that we have is we would love

1 to know were these four plaintiffs interrogated and if
2 so, by whom. Is it military people? Is it -- is it CACI
3 interrogators?

4 Our former employees can't tell us because
5 it's classified. The United States has declined to
6 provide that information, and we filed a motion to compel
7 on that. And that's a motion that's been -- Your Honor
8 told us not to re-file that until we sort out the
9 political question which I think is right.

10 But, it -- if this case were to go forward
11 and if it were to get past summary judgment which I think
12 we would have a pretty strong no-evidence motion, this
13 Court would have to confront, am I going to require CACI
14 to go to trial with no way to find out who might have
15 interrogated these four plaintiffs who are trying to get
16 money from CACI? Or am I going to tell the United States
17 I know you classified this, but you're going to give it
18 up.

19 I mean, those are exactly the kind of things
20 that make this case completely unmanageable in my mind.

21 THE COURT: And the United States still has
22 not entered an appearance in the case until it was
23 dragged in by the Fourth Circuit. Is that right?

24 MR. O'CONNOR: That's right. And did not in
25 *Carmichael* where the Court tossed the case on political

1 question, did not in *Taylor* where the Court tossed the
2 case on political question.

3 THE COURT: Thank you very much.

4 MR. O'CONNOR: Thank you, Your Honor.

5 MR. AZMY: Good morning, Your Honor.

6 THE COURT: Good morning.

7 MR. AZMY: Your Honor, even if CACI were
8 correct about the formal relationship between the
9 military and CACI --

10 THE COURT: You're addressing that issue of
11 control?

12 MR. AZMY: Yes.

13 THE COURT: All right.

14 MR. AZMY: Even if they were correct about
15 that formal relationship which we rigorously dispute,
16 they would still not be entitled to the political
17 question defense for two fundamental reasons.

18 First, the formal organizational chart does
19 not address how the harms actually happened here, which
20 was of specific concern to the Fourth Circuit in *Shimari*.
21 We allege these injuries happened on the nightshift,
22 outside of formal interrogations where the undisputed
23 evidence shows there was no control, let alone
24 authorization by the military for this brutality.

25 And --

1 THE COURT: I want to make sure. I think
2 that -- are you trying to say that these brutality
3 occurred at the hands of interrogators at night when they
4 were not there to interrogate? So that means, they came
5 back after hours to beat up the detainees? Is that what
6 you're saying? I didn't think that was your theory.

7 I thought your theory was that the CACI
8 interrogators instructed the MPs to torture these
9 individuals --

10 MR. AZMY: Exactly.

11 THE COURT: -- and that they were present.
12 You're saying they were not present?

13 MR. AZMY: No, CACI was present and the MPs
14 were present, but not the military, not high-level
15 military officials.

16 So the military wasn't controlling CACI.
17 CACI was controlling the MPs as a result of the command
18 vacuum that Fay and Jones documented consistently
19 existed.

20 If I could -- we cite about eight or nine
21 findings from Fay Jones specifying the absence of
22 military command. Of course, that's why what happened
23 happened at Abu Ghraib. Fay said there was no credible
24 exercise of appropriate oversight of contract
25 performance. That's at Exhibit G. Jones says there was

1 a lack of command presence, particularly at night. That
2 was clear.

3 There was a lack of an MI commander in chain
4 of command which allowed military -- military police
5 soldiers untrained in interrogations to be used to enable
6 interrogations.

7 Jones also says there was a failure to
8 effectively screen, certify and then integrate
9 contractor, interrogators, analysts and linguists.

10 THE COURT: I understand what you just read,
11 but that would not be admissible testimony.

12 MR. AZMY: It would, Your Honor, under 8038.
13 It's an official government report, official
14 investigative report and we're happy to brief that.

15 THE COURT: You'd have to tie that to what
16 happened to these individuals. This is not a case, a
17 class action case about conditions at Abu Ghraib. This
18 is a case involving four plaintiffs who have claimed that
19 they were tortured individually by --

20 MR. AZMY: The question here is political
21 question. And, CACI continues to confuse the question
22 presented by suggesting we don't have a connection
23 between CACI and the plaintiffs. That's a question of
24 causation. That is not relevant here.

25 THE COURT: I want you to focus on control if

1 you would, because that's where I'm focused.

2 MR. AZMY: Sure.

3 THE COURT: And basically a lot of times --

4 MR. AZMY: Sure.

5 THE COURT: -- showing me their proof on
6 control, and I'm inviting you now to tell me about
7 your --

8 MR. AZMY: Okay. So, our proof is the
9 Fay-Jones report which consistently says there was an
10 absence of command presence, testimony from military
11 analyst, Warren Hernandez, who said -- this is at Exhibit
12 QQ. "The place was loosely run and interrogators had
13 free reign for interrogations. We knew we couldn't touch
14 them". He was referring to civilian interrogators here,
15 as the context makes clear.

16 We have ample testimony showing that the MPs,
17 sorry, the CACI interrogators were controlling the MPs on
18 the nightshift.

19 Joyner and Corporal Graner and Ambuhl
20 testified that Big Steve and Johnson in particular had
21 positions of authority. Civilian interrogators were
22 quote, "in charge", and everyone believed they had to
23 follow their orders. That's at Exhibit B and Exhibit EE.
24 This is all in our briefs.

25 General Taguba, of course, says Big Steve was

1 partly responsible for abuses and set conditions for the
2 abuses in Abu Ghraib.

3 Colonel Henry Nelson, this is an exhibit to
4 Taguba's report, talks about a conspiracy of silence
5 between interrogators and MPs, including CACI which led
6 to the abuse.

7 Major General Fay, Exhibit G, names five CACI
8 employees, including Big Steve Johnson and Tim Dugan who
9 shared responsibility or complicity in abuses that
10 occurred at Abu Ghraib.

11 THE COURT: How are those linked to
12 plaintiffs?

13 MR. AZMY: First of all, Your Honor, and I
14 want to be clear, we don't have to directly link them to
15 the plaintiffs. This is a conspiracy theory as you've
16 suggested.

17 THE COURT: So your answer is that there is
18 no link to the plaintiffs.

19 MR. AZMY: There is -- there is for some.
20 But I want to be clear because this was the issue on the
21 third amended complaint. We don't have to --

22 THE COURT: You may not have to, but I'm
23 asking you to tell me if you have any evidence that --

24 MR. AZMY: Yes, yes.

25 THE COURT: Let me finish my question. You

1 may think you know what I'm going to say. I'm hopeful
2 that you don't.

3 My question is whether you have any evidence
4 to link --

5 MR. AZMY: Yes.

6 THE COURT: -- these plaintiffs' injuries
7 through contact with a CACI interrogator who was linked
8 to a military person that you've mentioned.

9 MR. AZMY: Yes, for plaintiff Al-Ejaili, he
10 arrived on November 9th and alleges was interrogated by
11 Graner who -- and Graner was taking directions from Big
12 Steve. That's what Graner testified to.

13 He was put in painful stress position, came
14 in -- Graner came in the next morning, made him clean up
15 his own vomit.

16 And then there's testimony that -- from
17 Sergeant Beachner who found Big Steve, Stefanowicz,
18 interrogating Al-Ejaili on November 10th and told him to
19 stop because the nature of the interrogation violated the
20 interrogation rules of engagement.

21 And all of that is consistent with our theory
22 which is that Big Steve was instructing Graner at night
23 to soften up Mr. Al-Ejaili for the interrogation that Big
24 Steve would do the next day.

25 THE COURT: And then Big Steve would not be

1 there when it took place?

2 MR. AZMY: That's right. He sent the MPs in
3 to quote, "soften up detainees".

4 THE COURT: All right.

5 MR. AZMY: Plaintiff Rachid, you're right,
6 Your Honor, he wasn't deposed and we can address that.
7 But he alleges the allegations on 12(b)(1) can be
8 considered that he was beaten by Graner and sexually
9 assaulted by a co-conspirator, one who Frederick
10 testified always worked with CACI employee Johnson.

11 Plaintiff Zuba'e alleges he was abused by
12 Graner specifically. Plaintiff Shimari, the evidence is
13 less strong, but again, he suffered all of the kinds of
14 interrogation techniques that Frederick testified Big
15 Steve ordered the MPs to undertake, sleep deprivation,
16 stress positions, sexual humiliation and that goes to the
17 conspiracy theory which happened in just one tier just
18 over 3 months in a manner -- in response to the command
19 vacuum where CACI came in at night and was trying to
20 exploit the command vacuum to get intelligence.

21 THE COURT: One of the arguments that you
22 make is that the issue of what occurred is intertwined
23 with the judgment of political question. Who has the
24 burden here of showing me that I have subject matter
25 jurisdiction, Mr. Azmy?

1 MR. AZMY: We do, Your Honor. The question,
2 though, is when looking at a 12(b)(1) motion and where
3 the facts on political question are intertwined with the
4 merits, the Fourth Circuit has instructed repeatedly that
5 where there's a factual dispute, you have to treat it
6 like a summary judgment motion and defer that decision
7 later. Otherwise the Court would be deciding merit
8 issues at the 12(b)(1) stage instead of at trial in
9 violation of the Seventh Amendment.

10 So where --

11 THE COURT: This is where I gave everybody
12 time for discovery. In fact, I gave you more time than
13 you wanted.

14 MR. AZMY: Yes. We believe on the
15 question -- we think all that's actually disputed and
16 should be deferred is the formal how things were supposed
17 to work.

18 We believe it is undisputed. There is no
19 dispute that one, there, was a command vacuum at the
20 time -- during which these abuses occurred. That is
21 not -- no control and certainly no authorization for
22 abuses of these detainees.

23 Pappas and Brady did not authorize this.
24 Two, that in fact in the command vacuum, CACI was
25 controlling the MPs, not the other way around because

1 there was no command vacuum. And three, none of this was
2 authorized. It violated -- and here, we want to be
3 clear. We're not questioning military judgments. We're
4 seeking to enforce them.

5 The military prohibits, the Geneva Convention
6 prohibits abuse of detainees. The Army Field Manual
7 prohibited this. The relevant interrogation rule of
8 engagement operative in October of 2003 prohibited all of
9 this. This only happened because there was no control.

10 And --

11 THE COURT: Well, what has been presented to
12 me suggests that there is a procedure that was in place
13 concerning plans for interrogation being submitted to the
14 military for review, the military having to approve that.
15 Ultimately, the interrogation techniques that were
16 authorized to be used being directed by the military,
17 military presence during some of the interrogations, and
18 a report of investigation being submitted -- report of
19 interrogation being submitted to the military.

20 What element of control did CACI have in
21 that?

22 MR. AZMY: Okay. Within that formal
23 structure, we believe and the Fourth Circuit -- the
24 Fourth Circuit stressed that we need to look at both the
25 level of plenary control and they stress that we should

1 also look at how things actually worked because they were
2 quote "concerned about plaintiffs' allegations" that
3 abuses happened outside of formal interrogations on the
4 nightshift.

5 THE COURT: They were, and the difficulty I
6 have is I have to determine it based on evidence
7 submitted to me.

8 MR. AZMY: Yes. And the evidence around
9 the -- outside the formal interrogation is what we submit
10 is undisputed. The evidence is command vacuum and
11 control by CACI over MPs and the absence of any
12 supervision, sorry, any authorization for this conduct.

13 On the formal level, we think there is not
14 even enough of the plenary control that *Taylor* requires.

15 THE COURT: Tell me about your view of the
16 contracts.

17 MR. AZMY: And so, yes, the contract in this
18 case is fairly similar, if not nearly identical to the
19 contract in *Taylor*. The contract here says that CACI
20 must quote -- will quote, "assist, supervise, coordinate
21 and monitor all aspects of interrogation activities and
22 the contractor is responsible for providing supervision
23 for all contractor personnel". And the contract in
24 *Taylor* said "contractor shall have exclusive supervisory
25 authority and responsibility over employees. Contractor

1 shall be responsible for the safety of employees", same
2 in *Harris v. KBR* in the Third Circuit. And the Court
3 stressed that there's enough discretion there that makes
4 the control not plenary.

5 Now, the other data point we have -- so,
6 there's *Taylor* on one point saying there is discretion
7 and supervisory authority on the one hand.

8 The other data point we have, Your Honor, is
9 *Carmichael*. *Carmichael* involved a contractor who had to
10 operate a fuel convoy through a very dangerous part of
11 Iraq. And the military specified every single detail,
12 the speed, the route, the -- how close they should be to
13 other trucks. They were actually literally required to
14 follow in the tire tracks and an accident happened.

15 And the Court stressed that there is not the
16 slightest hint that the contractors had any ability to
17 question those essential judgments.

18 And that's critical because to say that the
19 contractor in that case was -- when the contractor was
20 following military directions to go exactly between 30
21 and 35 miles an hour, to say that that's negligent is
22 only and exclusively questioning a military judgment
23 about how fast one should go in a war zone which courts
24 can't do. How do you make that determination?

25 And so, there is a range of discretion here.

1 Other evidence in the record that supports discretion is
2 the site manager Porvaznik testified that he would, if an
3 interrogator were ordered by the military to do an
4 interrogation that violated CACI's code of conduct, he
5 would not authorize it. He would intervene. That
6 suggests -- the contractor couldn't do that in
7 *Carmichael*.

8 Colonel Wood said that she wasn't aware of --
9 didn't know all of the interrogators and didn't sit in on
10 all of the interrogators and sometimes couldn't tell the
11 difference between military and civilian interrogator.

12 Torin Nelson said he never was told that he
13 had to follow military orders. And then we have
14 Hernandez again who says the place was loosely organized
15 and contractors had free reign.

16 So that's -- even on the formal level there's
17 a range of discretion that does not leave an absence of
18 space between a military decision and a contractor
19 decision as was in *Carmichael*.

20 And then just -- you know, another --
21 another, I think, important difference between all of
22 those political question cases and this case, all of
23 those cases were negligence cases where the defendant,
24 through their contributory negligence defense against the
25 government had to draw the government into the courtroom

1 to allocate responsibility for the electrocution or the
2 fuel convoy between the contractor and the military.

3 And again, where to place the barracks and
4 how to run a fuel convoy are classically military.

5 THE COURT: Well, I appreciate your
6 description of the cases from your point of view. I
7 guess the difficulty that I have is that we're dealing
8 with detainees in a military prison in a combat zone
9 which is being run by MPs and military officers where the
10 interrogators are there to assist -- to do the same jobs
11 as the soldiers who are there.

12 Could I ask you to turn to the issue of
13 judicially manageable standards. And I think before I
14 said I could do it and apply Virginia law, and then you
15 all came back and said, no, apply Ohio law. And here we
16 are.

17 So the issue of management of standards,
18 would I have to second guess military judgments about
19 which enhanced techniques to apply and how to run the
20 prison at night when these rogue MPs may have been
21 running around attacking detainees?

22 MR. AZMY: You wouldn't, Your Honor, for
23 several reasons. First, the undisputed evidence from the
24 military investigative reports, but I'll say none of this
25 stuff was authorized or sanctioned. And from the record

1 evidence that says the interrogation rules of engagement,
2 as well as the Geneva Convention, as well as Army Field
3 Manual prohibit this.

4 We would be enforcing the military judgments.
5 Of course, General Donald Rumsfeld said what happened was
6 atrocious.

7 And in terms of concrete judicially
8 manageable statutes -- standards, we, again, unlike the
9 negligence cases, we have statutes here. We have the War
10 Crimes Act which is 18 USC 2241, and we have the Torture
11 Statute which is 18 USC 2340, and we have a
12 well-developed body of law about what counts -- what
13 meets those standards, including law that was set out
14 by -- in *Quraishi* and other cases.

15 So I think this is an important point because
16 I'm not aware of any political question case in the
17 Federal Reporter where the defense applies when the court
18 simply has to compare a statute to conduct alleged
19 because that's -- you know, the military can't -- the
20 military didn't authorize this. But the military
21 couldn't authority something that is prohibited by
22 statute. And it's the Court's duty to look at the
23 statute and compare it to the applicable conduct.

24 THE COURT: I understand that conduct, but
25 what about *Padilla versus Yoo*, what about that?

1 MR. AZMY: So, Yoo, first, that's a qualified
2 immunity case. That's a government employee.

3 THE COURT: I'm focused on judicially
4 manageable standards now.

5 MR. AZMY: Well, the other problem with that
6 Yoo cases he was opining on how to treat so-called enemy
7 combatants outside the Geneva Convention. There is no
8 dispute here that the Geneva Convention applies in Abu
9 Ghraib.

10 And so, and --

11 THE COURT: The question about what
12 interpretation the United States gave the Geneva
13 Convention isn't there.

14 MR. AZMY: Not in Iraq. In Guantanamo and in
15 black sites in the Army brig where Jose Padilla was
16 abused, sure, but not in -- not in undisputed armed
17 conflict which was a traditional armed conflict in that
18 sense.

19 And so, it's fairly, I think, straightforward
20 inquiry for the Court based on the -- these statutory
21 authorities and comparing the conduct as against what the
22 conspirators undertook.

23 THE COURT: So, the law to apply would be the
24 federal law concerning war crimes and torture. There's
25 no necessity to refer to any other law, and I don't have

1 to question military judgments.

2 MR. AZMY: That's our view, Your Honor.
3 Thank you.

4 THE COURT: All right, thank you.

5 MR. O'CONNOR: Your Honor, just a few points
6 to follow up. I think Mr. Azmy got it wrong in talking
7 about when Your Honor asked tell me what the record shows
8 about interactions between CACI employees and your
9 clients. And Mr. Azmy said, well -- first of all, he
10 talked a lot about Graner. Graner is not our employee.
11 Graner is a specialist who got court marshalled and we
12 deposed him. He is an Army soldier.

13 But, he talked about the incident with the
14 reporter and the one CACI employee. And I think he got
15 something diametrically incorrect. I could see how he
16 did it. He said oh, CACI employee was interrogating a
17 reporter and was violating the interrogation rules of
18 engagement.

19 The record says exactly the opposite. There
20 was a Beachner statement that said there was -- and then
21 after that, there was a big punch, there was a three-hole
22 punch in the statement where the Army somewhere put it in
23 a binder. And it says, there was blank, violating the
24 IROE in that particular interrogation.

25 THE COURT: I don't know what you're quoting

1 from. I'd like to see it.

2 MR. O'CONNOR: I'm quoting -- right now, I'm
3 quoting from Exhibit 26 to my supplemental declaration
4 which is --

5 THE COURT: Page number?

6 MR. O'CONNOR: Page 30.

7 THE COURT: Thank you.

8 MR. O'CONNOR: This is not the statement. I
9 don't believe the actual statement is in the record.
10 This is the deposition of Beachner.

11 THE COURT: Okay.

12 MR. O'CONNOR: And what happened is -- so, he
13 was asked about that, and we had the big hole punch. And
14 I had found on the Internet, of all places, another copy
15 of Beachner's statement that didn't have the hole punch.
16 And what he actually says in it was when he had
17 approached the CACI employee and said this is my guy.
18 Let me do it. He said he stopped. And the missing words
19 were, "nothing violating the IROE in that particular
20 interrogation".

21 And Beachner testified that that's what he
22 said in the statement and that was correct. So that's at
23 page 30 of Beachner's deposition. Actually the one
24 potential interaction -- it's not really exactly shown,
25 but there is a potential interaction between a CACI

1 employee and one of the plaintiffs. That single
2 interaction, the one witness said he didn't do anything
3 wrong. There was nothing in violation of the IROE in
4 that interrogation, and we cleared that up in the
5 deposition.

6 THE COURT: Who are you talking about?

7 MR. O'CONNOR: Excuse me.

8 THE COURT: Who are you talking about when
9 you say that?

10 MR. O'CONNOR: Which plaintiff?

11 THE COURT: What you just said about which
12 plaintiff, yes.

13 MR. O'CONNOR: Al-Ejaili.

14 THE COURT: He said nothing had been done
15 wrong?

16 MR. O'CONNOR: No, Beachner said that the
17 CACI employee had done nothing in violation of the IROE
18 in connection with that interrogation the one time that
19 they that ad hoc group interrogating about weapons.

20 THE COURT: But, a moment ago you said
21 something about Mr. Al-Ejaili. What were you saying?

22 MR. O'CONNOR: Plaintiff stated that he is
23 the detainee that was interrogated there. That might be
24 right. No one has exactly confirmed that. There is a
25 reporter that might be Al-Ejaili.

1 But the evidence is that nothing was done
2 wrong in that one interaction.

3 THE COURT: Nothing was done wrong in that
4 one action is what I was trying to figure out you were
5 saying.

6 MR. O'CONNOR: I was not as clear as I could
7 have been.

8 THE COURT: I wanted to know if the
9 allegation was that he was tortured or abused in that
10 interaction by the CACI employee.

11 MR. O'CONNOR: And Beachner said that the
12 CACI employee did nothing wrong.

13 THE COURT: All right.

14 MR. O'CONNOR: The -- Mr. Azmy said, well,
15 basically, we get a summary judgment standard because
16 that's what -- if there's intertwining between the merits
17 and the political question, that's not what the cases
18 say. We dealt with this in our reply. *Kearns* talks
19 about a motion made at the outset and the question is --

20 THE COURT: You get discovery.

21 MR. O'CONNOR: You get discovery. That's
22 right, Your Honor. And they got their discovery, more
23 than they wanted.

24 Mr. Azmy said we're not trying to challenge
25 military decisions. We're trying to enforce them.

1 That's exactly what the plaintiffs said in *Carmichael* and
2 *Taylor*. And both courts rejected that.

3 In *Carmichael*, the military is telling them
4 how to run convoy. They don't tell the KBR driver to
5 drive off the road and flip the truck. And the plaintiff
6 said this is not a political question because we're going
7 to accept as reasonable everything that the military
8 dictated about this convoy. And we just want to
9 challenge what he did that was not dictated by the
10 military.

11 And the Eleventh Circuit said no dice. If
12 there's total control, that's the end of the inquiry.
13 And there's a still a lot of military decisions that are
14 going to become relevant in a trial of the case.

15 Same thing with *Taylor*. The marine said to
16 the KBR electricians do not turn on the power until we
17 tell you it's safe. KBR turned the power on and someone
18 got electrocuted.

19 And plaintiff in *Taylor* said we're not going
20 to challenge anything about what the military decided to
21 do. We're only going to challenge where KBR did exactly
22 what the military said don't do.

23 And the Fourth Circuit said that doesn't
24 work, that there's still way too many military decisions
25 involved in this case.

1 THE COURT: I've asked you the questions that
2 I have.

3 MR. O'CONNOR: Very well, Your Honor, I want
4 to say one last thing mainly because my client handed me
5 a note that says I should say it, and I always try to do
6 that.

7 THE COURT: All right.

8 MR. O'CONNOR: Mr. Azmy talked about setting
9 conditions. Setting conditions is when you put -- when
10 you've got an authorized technique like sleep deprivation
11 and you tell the MPs, don't let him sleep or wake him up
12 every couple hours because we have a sleep deprivation.
13 And that's what Frederick testified about the CACI
14 employees told -- and military interrogators would tell
15 the MPs, this is what needs to be done with this
16 particular detainee. And that's just another way of
17 enforcing the conditions that the Army allowed at Abu
18 Ghraib prison.

19 THE COURT: What do you call that?

20 MR. O'CONNOR: They call it setting the
21 conditions, which basically, setting the conditions for
22 the interrogation and there were things like sleep
23 deprivation or noise, lots of things like that, stress
24 positions that were authorized by the military. And
25 various interrogators, military and civilian would tell

1 the MPs and this is an accepted practice that the
2 military allowed, that interrogators would tell the MPs
3 this guy is on sleep deprivation. Here's what you need
4 to do to make sure he's not getting the sleep. He's on
5 dietary manipulation. Here is what you have to do with
6 him; noise for this guy, various things that were
7 actually allowed by the military.

8 Thank you.

9 THE COURT: Counsel, the matter has been sent
10 back to me by the Fourth Circuit to address the question
11 of political question. And they gave me clear
12 instruction, and you all, I believe, have abided by them
13 and so have I.

14 I thank you for the quality of your
15 preparation and the submissions that you've made.

16 This obviously is a matter of quite
17 complexity, so I'll take the matter under advisement and
18 issue a ruling in due course.

19 And thank you for the quality of your
20 preparation.

21 Thank you.

22 MR. O'CONNOR: Thank you, Your Honor.

23 (Proceedings concluded at 11:55 a.m.)
24
25

1 CERTIFICATE OF REPORTER

2
3 I, Renecia Wilson, an official court
4 reporter for the United State District Court of Virginia,
5 Alexandria Division, do hereby certify that I reported by
6 machine shorthand, in my official capacity, the
7 proceedings had upon the motions in the case of Al
8 Shimari, et al vs. CACI International.

9 I further certify that I was authorized and
10 did report by stenotype the proceedings and evidence in
11 said motions, and that the foregoing pages, numbered 1 to
12 48, inclusive, constitute the official transcript of said
13 proceedings as taken from my shorthand notes.

14 IN WITNESS WHEREOF, I have hereto subscribed
15 my name this 11th day of February, 2015.

16
17 /s/
18 _____
19 Renecia Wilson, RMR, CRR
20 Official Court Reporter
21
22
23
24
25