

SUPPLEMENTARY INSTRUCTION NO. 1

Borrowed Servant Doctrine

A person can be in the general employ of one company while at the same time being the employee of another company. In determining the liability of a company for acts performed by one of its employees who is also working for another company, you must consider who controlled the work of the employee when the alleged misconduct occurred.

In this case, the interrogators, while employees of CACI, were performing work on a government contract with the United States military. Therefore, the issue you must determine is under whose direction and control were the interrogators when they committed the alleged misconduct. In other words, when an employee has been lent by one employer to perform the services of another employer you have to consider who was controlling the employee's work at the time of the alleged misconduct.

Again, CACI has the burden to prove the borrowed servant defense by a preponderance of the evidence. If you find that CACI has satisfied both of the elements as described in Jury Instruction No. 19 by a preponderance of the evidence, then it is not liable for the conduct of its interrogators. On the other hand, if CACI has not proven both elements by a preponderance of the evidence, this defense does not prevail.