UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

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

DEFENDANT CACI PREMIER TECHNOLOGY, INC.'S REPLY IN SUPPORT OF ITS MOTION *IN LIMINE* REGARDING THE RELEVANCE OF PLAINTIFFS' APPREHENSION

I. INTRODUCTION

Plaintiffs' Opposition takes as an established fact the unproven contention that Plaintiffs were subjected to torture and CIDT at Abu Ghraib prison, and that CACI personnel were involved in such torture or CIDT. These premises are very much in dispute. Plaintiffs' contentions are supported by their own self-serving testimony, and not much else. The rest of their case is built on showing that three CACI employees were implicated in discrete acts of misconduct wholly unconnected to Plaintiffs. By contrast, Plaintiffs' factual contentions are refuted by their own prior statements. Two of the three Plaintiffs made contemporary statements in which they made nary an allegation against civilians. Plaintiffs' contentions are also refuted by all of the interrogators and interpreters who participated in the few interrogations to which Plaintiffs were subjected.

In this credibility battle, CACI is entitled to attack Plaintiffs' credibility. Evidence regarding the circumstances of Plaintiffs' apprehensions show bias against Coalition Forces and

explain why Plaintiffs just might shade the truth in order to pursue a claim against a government contractor who supported operations at Abu Ghraib prison. CACI is entitled to pursue this defense and its motion *in limine* should be granted.

II. ANALYSIS

Plaintiffs have not established that they were mistreated, and their attempts to do so rest entirely on their own credibility—credibility which the jury may appropriately discount if it finds Plaintiffs to be biased. "Bias is a term used in the 'common law of evidence' to describe the relationship between a party and a witness which might lead the witness to slant, unconsciously or otherwise, his testimony in favor of or against a party." *United States v. Abel*, 469 U.S. 45, 52 (1984).[1] Bias creates a powerful incentive for a witness to lie, thus the Supreme Court and the Federal Rules of Evidence permit parties to utilize a broader array of evidence to make credibility attacks based on motive or bias as compared to other grounds for attacking credibility. *See Quinn v. Haynes*, 234 F.3d 837, 845 (4th Cir. 2000) (explaining why extrinsic evidence is admissible to show bias, but not to impugn general credibility).

Plaintiffs quibble with what weight the jury should assign CACI's evidence of Plaintiffs' bias and motives to lie, arguing at bottom that the jury "understands [that] Plaintiffs' interests are misaligned with CACI." Dkt. #1704 at 6. The more important question that CACI seeks to answer for the jury is *why*; why would the Plaintiffs be motivated to fabricate their claims of

[1] In *Abel*, the trial court admitted evidence of a witness's background, including his membership in the Aryan Brotherhood, to impeach the witness's testimony with his bias and propensity to slant or fabricate his testimony. *Abel*, 469 U.S. at 52-55. The Supreme Court held that testimony regarding the witness's affiliation with a murderous and deceitful gang was admissible despite the potential prejudice because it bore on the "*source* and *strength* of [the witness's] bias." *Id*. at 54 (emphasis original). Analogously here, CACI seeks to present evidence that the Plaintiffs harbored strong biases toward Coalition Forces prior to their detention.

torture and mistreatment? The answer will not require "mini-trials," it is not complicated: prior to litigation, and prior to crossing paths with Coalition Forces (including the civilian contractors that supported them), there is substantial evidence that the Plaintiffs were already "misaligned" with those Coalition Forces. *See* Dkt. #1686 at 4-6 (explaining the circumstances of Plaintiffs' apprehension). Showing Plaintiffs' clear hostility to Coalition Forces goes directly to their bias and incentive to falsify claims against a contractor supporting the Coalition effort. As the Court properly instructed, it is for the jury to decide the weight to afford that evidence:

> You, as jurors, are the sole and exclusive judges of the credibility of each of the witnesses called to testify in this case, and only you determine the importance or weight, if any, that their testimony deserves. **After making your assessment concerning the credibility of a witness, you may decide to believe all of that witness's testimony, only a portion of it, or none of it at all.** In making your assessment of that witness, you should carefully scrutinize all of the testimony given by that witness, the circumstances under which each witness has testified, and **all of the other evidence which tends to show whether a witness, in your opinion, is worthy of belief.** Consider each witness's intelligence, motive to testify, **motive to falsify,** state of mind and appearance and manner while on the witness stand.

Dkt. #1626 at 83:19-84:8 (4/22/2024 Trial Tr.) (emphasis added).

Plaintiffs illustrate precisely why the jury, as sole arbiter of credibility and bias, is best positioned to hear the evidence regarding Plaintiffs' motivations to testify untruthfully. For example, though Plaintiffs claim there is a "formal finding" from 2004 that Al Shimari was not an enemy combatant, his dossier from 2010 concludes that he was an enemy combatant, and was placed on the U.S. Army's National Ground Intelligence Center Biometric Watchlist because of the threat he posed to Coalition Forces. Ex. 1 (DoD – 00289). Each juror must come to their own conclusion on the weight to assign that evidence, then hold it up against Al Shimari's testimony to determine whether to believe his story or not. *See Campbell v. Roanoke Coca-Cola Bottling Works*, 189 F.2d 223, 224 (4th Cir. 1951) ("Questions of the credibility of witnesses are,

of course, for the jury, not the court."); *Fenn v. United States*, 175 F. Supp. 3d 602, 612 (E.D. Va. 2016) ("bias is best left for the jury to weigh.").

The sanitized version of Plaintiffs' stories does not afford the jury a full and fair opportunity to evaluate whether the Plaintiffs have a motive to lie. As CACI has argued *ad nauseum*, ***if*** Plaintiffs' claims of abuse are true (and that is a big if), there is nothing that would justify that abuse. But Plaintiffs biases' and motives to fabricate their claims of abuse are a fundamentally separate issue from the strawman Plaintiffs erect to preclude evidence that Plaintiffs again baselessly claim would be used to "justify the detention and/or torture of Plaintiffs." *See* Dkt. #1704 at 3. CACI has never argued that, and its arguments in the first trial make clear that CACI has no intention of making that argument now. The jury is quite capable of appreciating that nuance and drawing the distinction between bias and "deserving" illegal treatment. *See, e.g.*, Dkt. #1029 at 22:1 (12/10/2023 Hrg. Tr.) ("our juries are very fair"); Dkt. #1578 at 18:4 (4/12/2024 Hrg. Tr.) ("our juries are smart"); *id*. at 4:3 ("juries pick up on all sorts of subtle things").

Plaintiffs' credibility, and the veracity of the mistreatment they allege, is a gating question the jury must answer first. That credibility is highly probative, and the jury is entitled to evaluate it against "all of the other evidence which tends to show whether" Plaintiffs are "worthy of belief." *See* Dkt. #1626 at 84:1-5 (the Court's final instructions to the jury); *see also Davis v. Alaska*, 415 U.S. 308, 316 (1974); *Chavis v. North Carolina*, 637 F.2d 213, 225 (4th Cir. 1980) (recognizing that *Davis* stands for the principle that "[o]ne of the most important factors affecting credibility is the presence of any bias, prejudice or incentive on the part of a witness to favor one party to the litigation"). By choosing to testify on their own behalf, the Plaintiffs have asked the jury to believe their testimony over the testimony offered by CACI's

witnesses. As a result, CACI is entitled to expose their biases—an entitlement that lies at the bedrock of the American adversarial legal system. A party who testifies presents himself as a person worthy of belief, and exposes himself to possible cross-examination designed to impeach that credibility. *Mason v. Mathiasen Tanker Indus., Inc.*, 298 F.2d 28, 31 (4th Cir. 1962) ("Where a party elects to make himself a witness he may be cross-examined as such."); *Murray v. Lilly*, 2020 WL 625194, at *2 (S.D. W. Va. Feb. 10, 2020) ("If the plaintiff testifies at trial, then he will put his credibility at-issue.").

Lastly, Plaintiffs create a new diversion and accuse CACI's counsel of trying to foreclose the American justice system to non-English speaking criminal defendants and asylum seekers by calling out the logistical difficulties attendant to Plaintiffs' presentation of their testimony. Dkt. #1704 at 8-9. CACI has never made such an argument or such a suggestion. By all appearances, it is the conduct of Al Shimari and Al Zuba'e that have permanently disqualified them from the privilege of entering this country. Trying to pin the blame on CACI, which has no role in Plaintiffs' exclusion from the country, for the logistical difficulties of Plaintiffs' testimony is particularly inapt.

III. CONCLUSION

For the foregoing reasons and those raised in its Motion, CACI's Motion *in Limine* should be granted. CACI should be permitted to introduce evidence regarding Plaintiffs' backgrounds and the circumstances of their apprehension.

Respectfully submitted,

/s/ John F. O'Connor

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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of September, 2024, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following counsel:

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