UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

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

DEFENDANT CACI PREMIER TECHNOLOGY, INC.'S REPLY IN SUPPORT OF ITS MOTION *IN LIMINE* TO EXCLUDE EVIDENCE REGARDING TRAINING AND EXPERIENCE OF CACI EMPLOYEES

I. INTRODUCTION

Plaintiffs' opposition is an exercise in obfuscation. Plaintiffs make representations about CACI's 2019 motions *in limine* to create the misleading perception that the Court previously rejected motions *in limine* in which CACI sought to exclude training evidence. Nothing of the sort occurred and the documents to which Plaintiffs cite unambiguously refute Plaintiffs' proposition.

On the merits, the questions are simple:

1. Putting aside the state secrets issues in this case, is there a causal connection between the level of training in interrogations and a propensity to commit universally-condemned misconduct such as torture and CIDT?

2. Is it fair to allow generalized evidence of the training levels of CACI employees as a whole – that about half were not school-trained interrogators – while simultaneously prohibiting CACI from presenting evidence as to the level of training possessed by the two CACI interrogators who actually interacted with these Plaintiffs?

As for the first question, Plaintiffs, as the proponents of training evidence, cannot meet their burden of establishing a causal connection between training level and propensity to engage in torture and CIDT. The Court doesn't have to take CACI's word for it; this is the opinion expressed *in this case* by the esteemed Dr. Rejali, whom Plaintiffs jettisoned for unspecified health reasons but whose opinions, under the Court's order allowing a replacement expert, still form the contours of the expert evidence Plaintiffs may present on torture and CIDT. Thus, Plaintiffs are stuck with Dr. Rejali's opinion that more training does not meaningfully affect propensity to engage in the monstrous conduct prohibited by the law of nations.

As to the second question, when the Court allows a case to proceed notwithstanding a successful invocation of the state secrets privilege, the Court must ensure that what is left of the case is fair to the affected party. Even if training levels were relevant, and Plaintiffs' own expert says they are not, allowing Plaintiffs to present generalized training data, or the training levels of specific individuals not interacting with Plaintiffs, is unfair to CACI when it is prevented by the state secrets privilege from showing whether the CACI employees having input into Plaintiffs' treatment fell within the half of its employees who were school-trained interrogators. For these reasons, the Court should grant CACI's motion.

II. BACKGROUND

As Plaintiffs acknowledge, the Court is very familiar with the procedural history of this case. Because this is one of nine (9) motions *in limine* being heard by the Court on the same day, CACI will not go down every rabbit hole where Plaintiffs take liberties with the record. But two merit special attention.

Plaintiffs' opposition is drafted craftily to imply, but not specifically represent, that the Court has already decided and rejected motions *in limine* by CACI on the issue of training. Specifically, Plaintiffs' opposition state as follows:

> CACI filed a motion *in limine* to exclude, among other things, evidence of CACI employee hiring and training, arguing that such evidence is irrelevant. *See* ECF Nos. 1209 at 19, and Dkt. #1235 at 23-24. But the Court allowed Plaintiffs, and in turn CACI, to present evidence on this subject during the trial in April 2024.

Dkt. #1702 at 3.

A quick read of this passage, particularly when preparing for a hearing involving nine motions, might lead one to believe that the Court denied CACI's motion *in limine* and that this ruling is law of the case. Such a belief would be wrong. In fact, the two motions *in limine* cited by Plaintiffs (Dkt. #1209 and #1235) address a long list of objections to Plaintiffs' deposition designations and exhibits. One ground raised by CACI was that it was unfair to allow Plaintiffs to present generalized training evidence while the state secrets privilege barred CACI from presenting evidence as to the training level of the specific CACI interrogators who interacted with Plaintiffs. Dkt. #1209 at 14; Dkt. #1235 at 19-20. Those motions were noticed for a hearing on April 5, 2019. Dkt. #1208, 1234. However, on April 3, 2019, two days before the scheduled hearing, the Court stayed all proceedings based on the Court's determination that CACI's then-pending appeal was not frivolous and divested the Court of jurisdiction. Dkt. #1296. After the stay was lifted, the Court did not revisit the 2019 motions *in limine*, leaving them undecided. Thus, ***the Court never ruled on CACI's motion in limine to exclude training evidence***.

Similarly, Plaintiffs point to the February 27, 2019 hearing transcript in which the Court made several statements about the relevance of training, but their discussion obscures what actually happened. The Court's discussion of training actually *supports* CACI's position. In this hearing, which occurred *after* all of the pseudonymous depositions of interrogators assigned to interrogate Plaintiffs, the Court addressed some issues relating to the state secrets privilege. In particular, the Court expressed its view *to the United States Government's counsel* that it was

crucially important that *CACI* be able to present training evidence at trial. Dkt. #1145 (Feb. 27, 2019 Tr.) at 27:2-30:18. The Court stated that CACI should be able to present evidence of the training it provided to its personnel. *Id.* at 28:22-29:7. But as CACI's counsel pointed out, that was inadequate because what CACI really needed to be able to present at trial was the training and experience of the CACI interrogators who interacted with Plaintiffs, regardless of the source of the training, to rebut Plaintiffs' theme that inadequate training caused abuse of these Plaintiffs. *Id.* at 29:25-30:18. CACI's counsel further explained that this evidence remained protected by the state secrets privilege and unavailable for presentation at trial. *Id.* Thus, the Court expressly stated that it was important for CACI to be able to present training evidence, but did not overrule the United States' invocation of the state secrets privilege to deprive CACI of evidence of the training of CACI employees interacting with Plaintiffs.

III. ANALYSIS

A. Plaintiffs Have Not Established a Causal Connection Between Formal Interrogator Training and Torture/CIDT; Its Own Expert Rejected Any Such Connection

Plaintiffs' relevance theory is that lack of school training for interrogators makes them more likely to engage in conduct, such as torture and CIDT, that is universally condemned and which everyone knows is wrong. Thus, Plaintiffs urge, it was foreseeable to CACI that its inadequately-trained interrogators would abuse detainees. They treat this as an obvious point that need not be supported. But Plaintiffs' own expert refutes Plaintiffs' premise. Dr. Rejali, Plaintiffs' expert on torture and CIDT, who Plaintiffs replaced shortly before trial but whose report controls the opinions Plaintiffs may offer, expressly rejected the notion that any substantial causal link exists between training and torture. As he explained, there are two schools of thought on the causes of torture, the dispositional hypothesis and the situational hypothesis. The dispositional theory attributes torture to people who are "inherently violent."

Rejali Report (Ex. 1) at 1040-41. The "situational hypothesis" attributes torture to persons being placed in "situations [that] ma[ke] them violent." *Id.* Neither hypothesis is dependent on training. For those espousing the dispositional hypothesis, the key is not allowing unhealthy people to have power over others. *Id.* at 1050-52. For those espousing the situational hypothesis, the key is to "clean up the environment." *Id.* at 1052-54.

Importantly, though, from Plaintiffs' expert's own telling "[i]t's not a question of proper personnel screening and even training may have a minimal effect. The key would be field supervision." *Id.* at 1056-57. Indeed, Dr. Rejali states that scholars agree that "the situational hypothesis accounts for more torture," and he could not have been clearer in stating that such torture is caused by inadequate field supervision and not a lack of training. *Id.* at 1059-60; *see also id.* at 1214-1215 ("Research indicates that regardless of how good the training and oversight, some inappropriate behavior will occur."); *id.* at 1242-44 ("'No torture' reflected a unit's disciplined nature, not each soldier's knowledge of the Geneva conventions. If a unit had good discipline, they weren't abusive. Violence arose from situations, not dispositions.").

Thus, Plaintiffs' own expert agrees with CACI that someone sitting in an interrogation school classroom or hearing the Geneva Conventions read to them does not suddenly have the epiphany that he or she should not torture. As the proponent of the training evidence, Plaintiffs have the burden of establishing a foundation that shows a causal connection between inadequate training and commission of law of nations violations. If anything, Plaintiffs' evidence refutes such a connection. Therefore, exclusion of training evidence would be appropriate *even if* the state secrets privilege did not distort the evidence regarding training.

B. It Is Entirely Unfair for Plaintiffs to Present Evidence Regarding the Training of CACI Employees as a Group While Denying CACI the Opportunity to Show the Training Level of the CACI Interrogators Who Actually Had Input into Plaintiffs' Treatment

The Memorandum CACI filed with its Motion explained why the state secrets pervading this case make it particularly unfair for Plaintiffs to present evidence of the overall training of CACI employees, or the fact that some employees who are not alleged to have interrogated Plaintiffs were originally hired as screeners and placed into interrogator positions by decision of the U.S. Army chain of command.

The following hypothetical makes CACI's point:

> Imagine a personal injury case in which the Plaintiff was run over by a tractor-trailer and sues the tractor-trailer company for relief. Further imagine that "about half" of the defendant's employees lacked training as a tractor-trailer driver. Would it be fair for the plaintiff to admit that training information into evidence, as well as the training records of three other drivers who had been in other accidents, while simultaneously prohibiting the defendant from presenting evidence that the driver who had the accident with the plaintiff was a fully-qualified and licensed tractor-trailer driver with a completely clean driving record?

CACI submits that no court would allow the case to proceed in the way described because it is completely unfair to the defendant. And those courts would be right.

IV. CONCLUSION

The Court should grant CACI's motion.

Respectfully submitted,

/s/ John F. O'Connor

John F. O'Connor
Virginia Bar No. 93004
Linda C. Bailey (admitted *pro hac vice*)
Joseph McClure (admitted *pro hac vice*)
STEPTOE LLP
1330 Connecticut Avenue, N.W.
Washington, DC 20036
(202) 429-3000 – telephone
(202) 429-3902 – facsimile
joconnor@steptoe.com
lbailey@steptoe.com
jmcclure@steptoe.com

Nina J. Ginsberg
Virginia Bar No. 19472
DiMuroGinsberg, PC
1001 N. Fairfax Street, Suite 510
Alexandria, VA 22314-2956
703-684-4333 – telephone
703-548-3181 – facsimile
nginsberg@dimuro.com

Counsel for Defendant CACI Premier Technology, Inc.

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:

Cary Citronberg, Esq.
Zwerling/Citronberg, PLLC
114 North Alfred Street
Alexandria, VA 22314
cary@zwerling.com

Charles B. Molster, III
Law Offices of Charles B. Molster, III PLLC
2141 Wisconsin Avenue, N.W., Suite M
Washington, D.C. 20007
cmolster@molsterlaw.com

/s/ John F. O'Connor
John F. O'Connor
Virginia Bar No. 93004
Attorney for Defendant CACI Premier Technology, Inc.
STEPTOE LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 429-3000 – telephone
(202) 429-3902 – facsimile
joconnor@steptoe.com