

Litigators of the Week: Fourth Circuit Upholds \$42M Verdict in Abu Ghraib Torture Case

By Ross Todd

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In November 2024, a pro bono team at **Patterson Belknap Webb & Tyler** teamed with lawyers at the **Center for Constitutional Rights** to win a \$42 million verdict for three Iraqi men who were tortured at the Abu Ghraib prison during the U.S. occupation. Two decades after the underlying events, federal jurors in Alexandria, Virginia held government contractor CACI Premier Technology, which provided interrogators at the facility, liable for conspiring with military personnel to torture detainees at the prison.

In September **Patterson Belknap** pro bono chair Michael Buchanan and CCR's **Baher Azmy** argued on behalf of their clients in what was the case's sixth trip to the Fourth Circuit. Last week the appellate court upheld the verdict against CACI in full.

Litigation Daily: How would you describe what was at stake for your clients in this appeal?

Michael Buchanan: For our three clients, whom Patterson Belknap represents pro bono, this decision affirms not only the jury's verdict in their favor but also their brave decision to seek redress in the United States. I continue to be amazed that our clients—despite everything they



Courtesy photos

Michael F. Buchanan (L) of Patterson Belknap Webb & Tyler, and Baher Azmy (R) of the Center for Constitutional Rights.

suffered at the hands of U.S. persons at Abu Ghraib prison—placed their trust in American lawyers, the American legal system, and an American jury. The Fourth Circuit's decision confirms that their trust was well placed. We are honored by that trust and proud to have helped them reach this point.

How did this matter come to you and your respective organizations?

Baher Azmy: The Center for Constitutional Rights was central to numerous challenges to

human rights abuses stemming from the Bush administration's "war on terror." One of the survivors of the abuses at Abu Ghraib reached out to a Detroit-based civil rights lawyer, **Shereef Akeel**, who knew to call CCR to see if we could develop a case for accountability.

Buchanan: CCR approached Patterson Belknap in 2012 to join their team. The firm agreed to take it on pro bono, joining CCR as co-counsel. Since then, Patterson Belknap has partnered with CCR and dedicated more than 24,000 hours to the matter to date.

Who was on the team and how did you divide the work, both during the trials and in this appeal?

Buchanan: This appellate victory, which follows our trial victory in November 2024, is the culmination of an immense team effort that spans nearly two decades, six appeals, and two trials. Alongside Baher and me, many terrific lawyers represented our clients at trial and on this appeal, including **Andrew Haddad**, **Alexandra Mahler-Haug** and **James Mayer** of Patterson Belknap and **Katie Gallagher** of CCR, as well as **Robert LoBue**, **Muhammad Faridi**, **Scott Kim**, **Bonnie Robinson**, **Thomas Kicak**, **Michael Fisher**, **Shereef Akeel**, **Mohammed Alomari** and **Charles Molster III**. In addition, our paralegals—**Joyce Addae**, **Sean O'Shea** and **Kaihan Rahimi**—are extraordinary. They worked side-by-side with us every step of the way, offering the perspective of jurors and sharing thoughtful feedback on our trial strategies.

Azmy: It also bears noting that this was the sixth ruling by the Fourth Circuit – and the prior appeals developed very important law regarding the political question doctrine, extraterritoriality and human rights principles undergirding the Alien Tort Statute.

Trying a case about events at Abu Ghraib dating back to 2003 meant dealing with faded memories, unavailable witnesses and cultural barriers. How did those realities shape the way you told

your clients' stories to the jury and the appeal you faced after jurors rendered their verdict?

Buchanan: Presenting this case to the jury posed many difficult challenges. We had to bridge a wide gap with our clients, who lived outside the United States, did not speak English, came from an entirely different culture and were unfamiliar with our legal system. While one client was able to travel to the United States and testify live, the other two clients could not, so we prepared them via Zoom and arranged for their remote testimony from Iraq, which presented technical and logistical issues given the time differences and frequent power outages in Baghdad. Our clients were also still struggling with trauma from the torture and abuse they suffered, which included physical and sexual violence as well as psychological harm. As we explained to the jury through the cross-examination of the defendant's own expert witness, the physical and psychological impacts of the torture they suffered remain with them to this day, making it very difficult for them to recall and discuss what happened to them. In addition, the topics that we asked our clients to testify about were especially shameful, embarrassing, and painful for them, particularly as Iraqi men.

The passage of time between the events at issue and trial compounded the difficulty of trying this case. Some witnesses had passed away, others were not available, and some were limited in their capacity to testify. It was critical to problem-solve around these challenges. For example, we presented the jury with contemporaneous evidence that corroborated our clients' testimony, including pictures taken at Abu Ghraib showing exactly the kinds of abuse they were subjected to, the U.S. Army's investigative reports from 2004, and letters written at the time by military police involved. We also had military police co-conspirators testify, admitting they took direction from CACI interrogators and describing what they saw, heard and did to detainees. Testimony

from former CACI employees, as well as from CACI's own witnesses, also proved to be critical in establishing the conspiracy, the torture and abuse of detainees at Abu Ghraib, and CACI's role and conduct.

The Fourth Circuit framed this as a “paradigmatic” application of the Alien Tort Statute, but it comes more than 20 years after the underlying conduct, with this being the sixth time the case has been up to the court on appeal. What does this decision ultimately say about the power and the limits of the ATS as a legal tool to address wartime abuses?

Azmy: This is the first case brought by Abu Ghraib survivors to have made it to trial, following more than 17 years of litigation, and including over 15 attempts by CACI to have the case dismissed, six appeals and a mistrial after a deadlocked jury. It exemplifies how the Alien Tort Statute provides foreign nationals with a path to the U.S. courts in appropriate and specific circumstances and shows how the ATS was designed to contribute positively to the United States' foreign relations. Our clients' claims involve unique facts arising out of the United States' invasion and occupation of Iraq and the detention and torture of detainees at Abu Ghraib prison. As the Fourth Circuit noted in its opinion, the United States deposed the Iraqi government, suspended Iraqi law and created a plenary governing body, and issued orders giving the United States full authority and control over all the Iraqi detention and prison facilities.

Buchanan: The defendant, CACI, is a U.S. private government contractor, whose employees at Abu Ghraib were working under a contract with the United States. The trial evidence established that CACI interrogators conspired with U.S. military police at the prison's "Hard Site" to inflict torture and abuse on detainees, including our clients, in order to "soften them up" for interrogations. America, and the world, was shocked when photos of detainees being tortured and

abused at Abu Ghraib came to light in 2004. Following the abuses at Abu Ghraib, the U.S. Army investigated, members of the military were court-martialed and sent to jail, and both Congress and the president condemned the abuse. But CACI did not take responsibility and was not held accountable in any meaningful way until the jury returned its verdict. The jury's verdict 20 years later, which rightfully holds CACI liable for its role in the torture and abuse at Abu Ghraib, is a critical step towards needed accountability, and helps close out this chapter of American history.

CACI threw nearly every defense available at this appeal—ATS extraterritoriality, immunity, political question and state secrets. On appeal, which issue concerned you most, and why?

Buchanan: This case has already seen many appeals; this was the sixth. In this latest one, CACI made 11 separate arguments for why the jury verdict should be overturned. We had the benefit of the Fourth Circuit's prior rulings on many of these issues, as well as many thoughtful pretrial rulings from Judge Brinkema, and were confident that we would prevail on all of them, especially with the completed trial record. After the first jury deadlocked over the borrowed servant doctrine (CACI's primary defense), we knew exactly the trial record we needed to make to counter CACI's arguments.

And Judge Brinkema exercised careful and methodical stewardship over the trial. As a result, we had the benefit of an extensive, well-developed trial record that provided the legal and factual support for countering CACI's attacks on the verdict from all angles. All in all, the evidence at trial not only confirmed our arguments as to why our clients' claims had merit but also strengthened them.

Azmy: To pause briefly on CACI's lead argument on appeal: extraterritoriality. The Fourth Circuit rejected CACI's argument because of the unique circumstances of Abu Ghraib and the particular time and place in which the events occurred, as

we've already highlighted. In addition, in rejecting CACI's extraterritoriality challenge, the Fourth Circuit focused on the extensive role that CACI's U.S. headquarters played in enabling the abuse, as we also demonstrated at trial through witness testimony and documentary evidence.

Looking back, what trial decisions helped this verdict stand up on appeal?

Buchanan: Based on the jury notes from the first trial, we knew that CACI's "borrowed servant" defense presented perhaps our biggest hurdle. So, we spent the time between trials completely re-thinking how to present the evidence showing the many ways that CACI maintained control over its employees at Abu Ghraib; for example, by expanding on the methods and means by which CACI's on-site supervisor had control over the CACI interrogators, and by presenting evidence of CACI interrogators instructing military police to abuse detainees. More specifically, CACI's site lead at Abu Ghraib made helpful admissions on cross-examination about the extent of CACI's control over its interrogators at Abu Ghraib, which went far in rebutting CACI's borrowed-servant defense. Torin Nelson, a former CACI interrogator, also helpfully testified to abuse of detainees by his fellow CACI interrogators. We added another live witness at the second trial: Sabrina Harman, a member of the military police who was shown in photos posing with naked detainees, provided powerful evidence about the conditions at Abu Ghraib and the role that CACI interrogators played in the abuse of detainees.

Judge Quattlebaum's dissent argues that the majority expanded ATS liability beyond Supreme Court precedent. How do you respond

to his concern that this decision holding CACI accountable for torture in Iraq goes too far?

Azmy: The Supreme Court's precedents, which the Fourth Circuit faithfully applied, show that the Alien Tort Statute should provide foreign nationals like our clients access to the U.S. courts in precisely the kind of unique and extraordinary circumstances presented here. This case involved a U.S. corporation operating under a U.S. contract at a U.S.-run prison in U.S.-occupied territory, where the United States had suspended Iraqi law and mandated application of U.S. law, whose U.S.-citizen employees instructed U.S. military police to torture and abuse Iraqi detainees, including our three clients.

What will you remember most about this matter?

Buchanan: The moment the jury verdict was read. The emotions in the courtroom were powerful. Our team broke down in tears hearing that years of perseverance had paid off, and it reinforced our belief in the American legal system and the rule of law.

Azmy: I have actively litigated this case since 2011 and in those 15 years, and over 50 appearances in district court, it is challenging to identify a singular memory. Still, I think I will hold most of all, the testimony of Salah Al-Ejaili which was brave, resilient, and healing for him, and even more, the feeling of immense pride and relief emanating from his body in the hours after-knowing he finally and boldly spoke truth against a powerful corporation in a U.S. courthouse, and in so doing, stood up for his family, other victims of human rights atrocities, and his own deep sense of justice.