

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FRANK D. WUTERICH
637 Parker Road
Oceanside, California 92054

Plaintiff,

v.

JOHN MURTHA
2423 Rayburn House Office Building
Washington, D.C. 20515

Defendant.

Civil Action No. 06-_____

* * * * *

COMPLAINT

(Action for Libel; Invasion of Privacy/False Light; Republication by Third Parties)

On November 19, 2005, a tragic incident, all too familiar in time of war, occurred that resulted in the unfortunate deaths of civilian lives in the City of Haditha, Iraq. Since May 2006, John Murtha, without waiting for the results of ongoing official military investigations designed to determine the true facts and which he was personally aware of, has repeatedly, for reasons best known to him, publicly and falsely accused the involved Marines, including the plaintiff Frank Wuterich, of cold-blooded murder and war crimes. Additionally, he has accused the Marines of participating in a cover-up of the events of that day.

The United States of America has taken pride in helping establish democracy in Iraq. This includes installation of due process of the law. Yet anonymous individuals within the Department of Defense in concert with, or through the deliberate exploitation of, Mr. Murtha have sought to destroy the reputations of young Marines who have done nothing other than voluntarily place their lives in jeopardy on foreign soil. Other than those who have their own agendas to pursue through innuendo, leaks and rumors, no evidence has been publicly released

that implicates the young men of the 1st Squad, 3rd Platoon, Kilo Company, 3rd Battalion, 1st Marine Regiment in any criminal activity arising out of events of November 19, 2005. Indeed, as there is none that exists, let those who say otherwise prove it.

This lawsuit challenges them to do so based on the facts and evidence, and not for foreign policy reasons that have little to nothing to do with the involved Marines.

PARTIES

1. Plaintiff Frank D. Wuterich (“SSgt Wuterich”), 26, is now a Staff Sergeant with the U.S. Marine Corps currently stationed at Camp Pendleton, California. At the time of the events in question he was a Sergeant. He was promoted in January 2006. He is a United States citizen and has honorably served this Country since 1998.

2. Defendant John Murtha (“Mr. Murtha”) is a Congressman serving in the U.S. House of Representatives on behalf of the Twelfth District for the Commonwealth of Pennsylvania.

3. Unnamed defendants include officials within the Department of Defense who have continually and inappropriately, if not illegally, leaked false and/or misleading information regarding SSgt Wuterich and his fellow Marines to Mr. Murtha and others.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) and D.C. Code § 13-423.

5. This Court has venue over this matter pursuant to 28 U.S.C. § 1391.

FACTUAL BACKGROUND

6. On November 19, 2005, a tragic incident that unfortunately is witnessed in every conflict throughout the history of warfare occurred in the city of Haditha, Iraq. A Marine squad that was following the rules of engagement prescribed by the U.S. Marine Corps, pursued individuals

they believed were enemy insurgents and in the aftermath as many as 24 civilians were mistakenly killed.

7. SSgt Wuterich, then a Sergeant and the leader of 1st Squad, 3rd Platoon, Kilo Company, 3rd Battalion, 1st Marine Regiment, was in a Humvee convoy of four vehicles that was hit by a roadside bomb or IED (improvised explosive device). The attack resulted in the death of one of their colleagues, Lance Cpl. Miguel Terrazas, 20.

8. SSgt Wuterich, who was driving the third Humvee in the convoy, immediately stopped the convoy. While evaluating the scene, the squad noticed a white, unmarked car full of “military-aged men” lingering near the incident site. The Marines were understandably concerned that this unmarked vehicle was possibly set to explode or that the individuals inside were about to engage in an armed attack. Such coordinated, multi-stage attacks were not uncommon. Although these men were ordered in Arabic to stop, they proceeded to run from the vehicle instead. Upon information and belief, it was standard operating procedure at the time to shoot suspicious people fleeing a bombing. Therefore in following that policy the Marines opened fire killing the men.

9. A Marine in SSgt Wuterich’s squad officially reported to his headquarters that there had been an improvised explosive device (IED) attack and called for a Quick Reaction Force (QRF). The first QRF group encountered an unexploded bomb on a nearby route. This fueled concerns that insurgents were mounting a coordinated attack on the daily morning convoy. As a result a second QRF was called in as well. That group, including Marines with the 3rd Squad and the platoon’s leader, a young second lieutenant, arrived on the scene shortly thereafter.

10. As SSgt Wuterich began briefing the platoon commander, AK-47 shots rang out from residences on the south side of the road. One or more of the Marines personally saw bullets striking the ground around them. It was believed the shots originated from a specific house, and after a discussion with the platoon leader, they decided to clear the house. A four-man team of Marines, including SSgt Wuterich, kicked in the door and found a series of empty rooms. They quickly noticed that there was one room with a closed door and they heard people rustling behind it. They then kicked in that door and, based on the rules of engagement as they understood them to be, tossed a fragmentation grenade into the room. One Marine, who had experience clearing numerous houses from a deployment in Fallujah, fired a series of “clearing rounds” through the dust and smoke, killing several people, who later turned out to appear to be civilians.

11. Following the clearing of the first house it was believed that insurgents had slipped out the back door to a house nearby. The Marines moved to the second house, kicking in the door, killing one man inside and then, by following the understood rules of engagement, used another fragmentation grenade and gunfire to clear another room full of possible insurgents.

12. SSgt Wuterich, not having specifically found identifiable insurgents, told the team to stop and headed back to the platoon leader to reassess the situation. At no time did the Marines ignore pleas or cries from civilians to spare them. Any accusation that the Marines “executed” civilians or deliberately targeted noncombatants is either a horrendous misunderstanding or intentional lie. After clearing the second house, SSgt Wuterich called on the radio and reported the “collateral damage.” When the company radio operator asked him to estimate how many civilians had been killed, he said he thought it was about 12 to 15. The platoon leader, who was

on the scene, never expressed concern regarding the unit's actions and never tried to hide what took place.

13. After going through the houses, SSgt Wuterich moved a small group of Marines to the roof of a nearby building to watch the area. They saw a man in all black clothing running from one of the houses they had searched. The Marines killed him.

14. They then noticed another man, also in all black clothing, scurrying between two houses across the street and repeatedly observing the Marines' observation post. When they went to investigate, the Marines found a courtyard filled with women and children (all of whom were treated with respect and obviously never targeted despite being witnesses to the ongoing events) and asked where the man was. When the civilians pointed to a third house, the Marines entered and found at least one of the men armed with an AK-47. This individual was flanked by three other men. The armed individuals attempted to fire their weapons and the Marines killed them in defense.

15. The unit stayed at the scene for hours, particularly to help collect bodies. They were well aware that photographs were being taken yet they took absolutely no actions to interfere with the photography or to hide or cover-up anything that occurred. For months no one questioned the actions of SSgt Wuterich or his squad. Upon information and belief, later statements that were provided by Iraqis in the Haditha neighborhood were intentionally false or mistaken. False statements originating from Iraqis have even included accusations that the Marines had lined civilians up against the wall and executed them. It is a known tactic of insurgents and those Iraqis opposed to the U.S. presence in Iraq to fabricate or exaggerate incidents in order to implicate U.S. forces in war crimes or other unlawful or inappropriate conduct.

16. Prior to *Time Magazine* bringing public attention to the Haditha tragedy in or around March 2006, upon information and belief, at no time prior to that time did any serious inquiry or questions ever arise about the events of that day. Upon further information and belief, U.S. reporters who were in or around the proximity of Haditha on November 19, 2005, and who knew many of the members of the 1st Squad, 3rd Platoon, Kilo Company, 3rd Battalion, 1st Marine Regiment, neither witnessed nor heard that any event that took place that day was controversial or suspect.

17. SSgt Wuterich has been publicly identified as the leader for his squad and linked to the Haditha tragedy, at least since May 25, 2006 when he was mentioned by ABC News as someone being investigated as part of the military probe into the events of November 19, 2005. Of course, anyone who was familiar with the squad prior to that time would know of his relationship to the events of that day. But now any comments uttered about what happened that day inexplicably apply to him in the eyes of the public.

18. Upon information and belief, in or about Spring 2006, Mr. Murtha was one of several Congressional Members in the House of Representatives and U.S. Senate who was provided information by officials within the Department of Defense concerning the ongoing investigation into the Haditha tragedy. According to news reports Mr. Murtha was briefed by, among others, Marine Commandant Gen. Michael Hagee. Mr. Murtha had no legitimate need-to-know of any information relating to the specific circumstances of the Haditha investigation.

19. Upon information and belief, the Department of Defense officials who have briefed or leaked information to Mr. Murtha deliberately provided him with inaccurate and false information.

20. Based on the inaccurate and false information, Mr. Murtha has made repeated statements concerning the Marines involved in the tragic incident, which included SSgt Wuterich, that are defamatory in nature. Indeed, he has even inappropriately compared the tragic events of Haditha with the infamous war crimes and deliberate wide-spread massacre of civilians at My Lai in Vietnam. Many of these comments were uttered outside of Mr. Murtha's scope of employment as a Congressman.

21. Upon information and belief, no other Member of Congress who was provided with information pertaining to the Haditha investigation has thought it appropriate to publicly comment upon. This is due, in part – but not limited to – the inappropriateness of the circumstances and the lack of available evidence of wrongdoing. Indeed, some Congressional Members who have been provided information have specifically stated that it would be inappropriate to comment prior to the completion of the official investigations and any courts-martials, should they be deemed necessary. This further demonstrates that some or many of Mr. Murtha's comments were made outside of his scope of employment.

COUNT ONE (LIBEL)

22. Plaintiff SSgt Wuterich incorporates and realleges the facts and allegations set forth in Paragraphs 1-21.

23. Upon information and belief, since at least May 2006, Mr. Murtha has spread false and malicious lies about SSgt Wuterich and his squad of Marines. These comments were made outside of the scope of his employment as a U.S. Congressman and intended to serve his own private purpose and interests. Furthermore, these comments, both verbally and in writing, have been reproduced by countless third parties throughout the world.

24. Mr. Murtha's statements provide the impression, implicitly or explicitly, that SSgt Wuterich and others deliberately murdered innocent Iraqi civilians in a cold-blooded massacre. Such conduct, of course, if true would constitute a criminal act. Thus, these accusations alone constitute libel per se. The statements are libelous and false and intentionally convey to the reader or listener the false impression that SSgt Wuterich and his squad were untrained, broke or overreacted under the stress, committed despicable inhumane acts, violated the Uniform Code of Military Justice and thereafter engaged in an inappropriate, and under military law illegal, cover-up of the events. As a result, Mr. Murtha has caused harm to SSgt Wuterich and others by tarnishing his reputation.

25. Upon information and belief, Mr. Murtha's statements have appeared in print and on television, as well as the Internet, throughout the United States, including the District of Columbia, and the world thereby causing SSgt Wuterich harm in all locations where publication occurred. Indeed, in some locations the lives of SSgt Wuterich and his family may be in jeopardy in light of the allegations he finds himself accused of perpetrating.

26. The statements published and promoted by Mr. Murtha include, but are not limited to, the following:

(a) CNN, The Situation Room, May 19, 2006

BLITZER: There's an investigation of what happened at Haditha. As you well know, U.S. marines were involved in an incident, civilians were killed. The chairman of the house armed services committee Duncan Hunter says, there's been no resolution, this investigation continues. I want to play for you what he said today. Duncan Hunter.

(BEGIN VIDEO CLIP)

REP. DUNCAN HUNTER, (R) ARMED SERVICES CHAIRMAN: If there were problems in the chain of command, if there was a cover-up, if anything wasn't reported, let the chips fall where they may. But don't presume anything. Those reports aren't finished yet. But the reports and the investigations are being pursued with great integrity.

(END VIDEO CLIP)

BLITZER: He was responding in part to you, because you've suggested this week that there in effect was a massacre.

MURTHA: Well there was. There's no question about it. I know, in talking to a number of people, and the information, I've never given you bad information yet. I talked to [sic] about it, in the context of the fact that these troops are under such tremendous pressure and that's what happens when they're under tremendous pressure. When this thing's all over, you're going to see exactly what I've said to be true. That, there was an IED attack, it killed one marine, and then they overreacted and killed a number of civilians without anybody firing at them. That's what you're going to find out.

But my whole point is, I -- I understand what happened. I don't excuse what happened, but I understand it because the pressure. Going out every day, they miss an IED explosive device, they find IEDs, somebody gets killed with an IED. They don't know who the enemy is, the pressure is tremendous. So when you find something like that, you're going to find these people cracking. And that's what happened to this --

BLITZER: The marines say they're still investigating. They don't know what happened yet. The pentagon says the same thing. How do you know what happened?

MURTHA: Wolf, you read the "Time" magazine articles. There are pictures, there are photos. You don't have to talk to the military about the proof. But you will see when the investigation is done that this was an overreaction by our troops, and this is the type [sic] thing that hurts you so badly. We're trying to win the hearts and minds of the people. Abu Ghraib was another example where they had inadequate forces, untrained people, undisciplined people in a prison. Had one person in a prison who had a court order against him, he couldn't see his family. He told the army that, and they still put him in a prison. So here we are with troops untrained, inadequate forces. They go out every day and there's tremendous stress and this is the kind of things that happens.

(b) CNN, Anderson Cooper, May 30, 2006

COOPER: Congressman Murtha, you believe the military investigation will ultimately show that the troops in Haditha -- quote -- "overreacted because of the pressure on them and killed innocent civilians in cold blood." That's a quote from you.

How are you so sure at this point? The investigation isn't even complete.

MURTHA: Well, the Marine Corps at the highest level came over and briefed me a couple months ago.

I read the article in "TIME" magazine. I wasn't satisfied that anything was being done, that they were not really following up on this thing. But the more facts that have come out, the more convinced I am that there was an overreaction to the stress -- due to the stress that these young folks are under.

I mean, these -- these guys have done everything we have asked them to do. They're well-disciplined troops. But, at some point, they crack. And I just saw a mother say today that, when they come home, they don't get the psychological counseling they need.

This is a tremendous -- they wear 70 pounds on their body. They're out there every day. And, of course, there's less of them, so that means they're under stress every day with IEDs, which -- the explosive devices, and somebody shoot -- and they don't know who the enemy is. So, you have all those things built into this, and I can understand. I don't excuse it.

COOPER: Two investigations going on, one about the incident, the other about any possible cover-up. You say there is a cover-up. How high do you think it goes?

MURTHA: Well, I don't know.

General Pace just said on CNN that he learned about it in February. This thing's been going on for six months. They knew the day afterwards that this wasn't accurate, the information that was being put out. They put off "TIME" magazine. They were not open about this whole thing. And that's what frustrates me so much.

COOPER: Again, the investigation is still going on. Couldn't it have been the fog of war? There was a military lawyer quoted in "The Washington Post" on November 19, quoted, who said that, look, that day, November 19, was an unusually -- it was an unusually violent day.

MURTHA: Anderson, let me tell you something.

Two months ago, the day afterwards, they knew that the IED attack, they only killed one Marine. There was no hostile fire. There was nobody firing at our Marines. A taxi pulled up. They killed the people in the taxi. Then they went into the rooms and killed women and children.

One young woman on CNN today said, I -- he -- the young Marine, her son, carried the body of a -- I mean, this breaks my heart to think that this happened. And then they tried to cover it up. That even makes it worse.

COOPER: There have been those who said you are politicizing this. You're jumping to judgment. The investigation's still going on.

A man by the name of Ilario Pantano, a Marine who was accused with two counts of premeditated murder, charges which were later dropped, he wrote a letter to "The Washington Post." And he said this -- quote -- "Not only is he" -- meaning you, Mr. Murtha -- "certain of the Marines' guilt, but he claims to know the cause, which he conveniently attributes to a policy he opposes. Let the courts decide if these Marines are guilty. They haven't even been charged with a crime yet, so it is premature to presume their guilt, unless that presumption is tied to a political motive."

MURTHA: Well, let me tell you something. They're trying to kill the messenger.

There's no question in my mind. The highest level of the Marine Corps has come to me and told me what happened. And there is no question in my mind exactly what happened.

It's the transparency which is so bad. This happened on November 19. And they knew about it two days later. They knew exactly what happened. And, all this time, they have tried to confuse the whole thing. Now they're blaming me for -- for bringing it out. If I hadn't brought it out, I'm not sure it would have come out.

COOPER: There was also an unnamed lawyer quoted in "The Washington Post" who said that there was a report that some of the radio traffic indicates there was some small-arms fire in the wake of this IED, and perhaps that played some role in it, meaning the Marines thought they were under fire. Have you heard that from the people you were briefed by?

MURTHA: Anderson, I can only tell you that's not the information I have.

(c) CNN, The Situation Room, May 30, 2006

BLITZER: Joining us, a leading critic of the war in Iraq, Congressman John Murtha, Democrat of Pennsylvania, himself a 37-year veteran of the United States Marine Corps.

You have suggested, Congressman, that there was a cover-up of this incident that actually occurred back in November. Specify what you have learned, what you have been told.

REP. JOHN MURTHA (D), PENNSYLVANIA: Well, what I worry about, Wolf, is that this happened six months ago and nothing -- you heard nothing about it. As a matter of fact, the original story was that an IED killed these 15 people. It became very confusing to the public. "Time" magazine came out with an article, and they still tried to cover it up.

Now, there were payments made to victims, which aren't made unless we kill them, one way or the other. And, secondly, they knew about it the day afterwards. So, there's no excuse for not having this be more open and know exactly what -- and the longer it goes, the worse it is for us, because it looks like it's the policy of our troops to do something like this.

But the Marine Corps itself told me there were 24 people killed. There was no other enemy action, except the one explosive device. Now, they are under tremendous pressure, Wolf. You have heard me say this before. They are stressful. They go out every day. They see arms blown off, legs blown off. There's inadequate number of forces.

So, I understand what happened. But you can't excuse it, and the cover-up is inexcusable. So, the chain of command, the chain of command, somebody in the chain of command said, we don't want to talk about this. It's so devastating that we don't want it to be made public.

Well, it's going to be made public at someplace. The Iraqis already knew about it. The Marines knew about it. It was going to come out and they should have been very open about this from the very start.

BLITZER: Here's what the chairman of the Joints Chiefs, General Peter Pace, himself a Marine, said yesterday on CNN's "AMERICAN MORNING."

Listen to this.

(BEGIN VIDEO CLIP)

GEN. PETER PACE, JOINT CHIEFS CHAIRMAN: To my recollection, the first we knew about it back here in D.C. was around the 10th of February and the very next day is when the investigations began. So, from my perspective, as soon as we found out that there were allegations, the investigations began.

(END VIDEO CLIP)

BLITZER: What do you think about that, Congressman?

MURTHA: Well, I will tell you, that's a pretty flat statement there. It seems to me something as horrendous as this should take a little something in the statement. I mean, you know, this is a terrible event, a tragic event. It affects the troops. It affects our morale. It affects the ability of them to recruit against us.

And just say, well, it is going to start as soon as February, it should -- and even that was too long a period of time. They should have known about it before then, if they didn't know about it.

It's a failure of leadership when they didn't know about it. When other Marines knew about it, when the Iraqis knew about it, when they made payments about it, and they didn't know about it in Washington? I mean, I think we have to find that out. Senator Warner said he's going to have hearings, and he ought to have hearings. He ought to find out who knew what when.

BLITZER: There are some who are already making comparisons between Haditha and My Lai in Vietnam, the massacre in which hundreds of Vietnamese civilians were killed, an incident that you well remember.

Is that a fair comparison, a fair analogy?

MURTHA: Well, I think it's a fair analogy, except for the numbers. There was about 124, I think, in the My Lai incident. And then there was 24 here.

But it's the same thing, overstressed, these troops going out every day, IEDs go off. Some of them have seen 30 IEDs go off without being -- all at once. They're killed or one of their friends is killed. So, the pressure is tremendous.

It's one of those things where we have become the enemy. The Iraq -- there's only 1,000 al Qaeda, as I have said over and over again. There's no progress. Since I made my statement November 17, was two days before this happened, and it's worse today than it was then. There was 500 incidents at that time in a week, and now there's 1,000 incidents a week. So, it has gotten worse during that period of time. And these troops are under tremendous stress. And we ought to redeploy as quickly as we can and let the Iraqis handle this themselves.

(d) NPR, Day to Day, May 30, 2006

ALEX CHADWICK, host:

And I'm Alex Chadwick.

Coming up, a Supreme Court decision makes it tougher to be a government whistle blower.

BRAND: First, allegations that U.S. Marines murdered Iraqi civilians last November. Military investigators are looking into the killings that took place in the city of Haditha. The Pentagon says the official findings are several weeks off.

CHADWICK: A second investigation is looking into why top Pentagon officials didn't know about the alleged incident sooner. Congressman John Murtha, Democrat of Pennsylvania, believes there's been a cover up. We spoke earlier.

Congressman Murtha, these are the details that we've seen reported in November of last year: a roadside bomb went off in the town of Haditha, one Marine was killed. Other members of his unit then shot several unarmed Iraqis in a nearby taxi, and then went into two houses and shot others including women and children - 24 Iraqis killed in all, murdered. You have been briefed by military investigators. Are these details correct?

Representative JOHN MURTHA (Democrat, Pennsylvania): Well, not by military investigators, I've been briefed by the Commandant of the Marine Corps and the people at the highest level, and that's exactly right, that's accurate.

CHADWICK: You said this week that there has been not just a crime here, but also a cover up by Marine officers. How do you know that, and how far up do you think it goes?

Rep. MURTHA: They knew that the original explanation, that an IED caused the casualties, was not true the day afterwards.

The Marine Corp knew it - and you've got to remember, the chain of command in Iraq is not to the Commandant of the Marine Corps. The chain of command is through General Casey to General Abizaid. And two months ago I told General Abizaid, General, you've got to get this out in the public. You have to get this investigation over with.

They just told me a week ago it would take two more months. This happened six months ago. It's unconscionable that it would take this long to have an investigation. I heard a Lance Corporal on one of the stations this morning say he was there, the next day he carried out the body of a young child that was shot through the head. So the next day, they knew that it wasn't an IED that killed them. They knew that it wasn't an explosive device, there was no shrapnel, there was no firefight. This is what worries me.

Who in the chain of command stopped the investigation? Who tried to cover this up? Because not only the Marines knew it, the Iraqis knew about it because they paid the victims of this thing - if it had been an explosive device by the Iraqis, they wouldn't have paid them.

It breaks my heart that Marines would be involved in something like this, but you can't let it go. But the point is, first of all, it should never have happened. The stress is tremendous on these young people going out, even if it's the first tour.

27. The false, misleading and defamatory/slanderous statements were intentionally published and promoted by Mr. Murtha with malice, gross negligence, and/or with reckless disregard as to whether they were true or false. The tortious acts complained of herein were committed, in part, in the District of Columbia and elsewhere, and SSgt Wuterich sustained injury in said jurisdictions and others as a result of these tortious acts.

28. As a direct and proximate cause of the publication of Mr. Murtha's statements, SSgt Wuterich has been, among other things, embarrassed, mortified, and humiliated before the general public and has suffered emotional distress. He may, in fact, end up facing prosecution in part, or in whole, because of the negative and false portrait of his conduct that Mr. Murtha has created. SSgt Wuterich's reputation as an honest, loyal and caring soldier has been seriously harmed and will now always bear a stain of being associated with the Haditha incident due to the conduct of Mr. Murtha.

29. Mr. Murtha's comments have contributed to an unfair and false negative impression of American troops, such as SSgt Wuterich, who are serving or have served in Iraq. On June 12, 2006, CNN reported that a new poll revealed that when asked about the alleged atrocities at Haditha, Iraq, 57 percent of respondents think it is fairly likely or very likely that U.S. troops have committed war crimes in Iraq. Mr. Murtha's comments concerning Haditha have in part, or in whole, contributed to this derogatory and false public view.

30. Mr. Murtha's public defamatory comments are deliberately or at least inappropriately implicitly, if not explicitly, pressuring the Department of Defense to institute criminal charges against SSgt Wuterich and others so that they serve as individual scapegoats in order to send a broader message to the rest of the world, particularly in the Middle East, that any allegations, no matter how baseless, of possible atrocities committed against Iraqis will be pursued. Actual punishment is a secondary message. Additionally, Mr. Murtha's comments inappropriately taint any prospective court-martial member pool, as well as create a general negative image for SSgt Wuterich and his squad colleagues that may follow them for the rest of their lives.

31. Mr. Murtha's public defamatory comments also may be interpreted by prospective court-martial members as expressing directly or indirectly, conclusions reached by the Commandant of the Marine Corps, the senior leader in the Marine Corps hierarchy. That putative conclusion broadcasts to the entire population of prospective court-martial members the message that SSgt Wuterich and his Marines are guilty, thus constituting unlawful command influence prejudicing all future military justice proceedings in the case by setting up a presumption of guilt.

32. As a direct and proximate cause of the publication of Mr. Murtha's statements, third persons have also relied on the false and inaccurate statements contained therein to the detriment of SSgt Wuterich's reputation.

COUNT II (INVASION OF PRIVACY/FALSE LIGHT)

33. Plaintiff SSgt Wuterich incorporates and realleges the facts and allegations set forth in Paragraphs 1-21.

34. The false, misleading and defamatory statements disseminated by Mr. Murtha portray SSgt Wuterich as a cold-blooded killer, untrained and falling victim to stress, as well as being involved in a cover-up of the tragic events of November 19, 2005.

35. Mr. Murtha has intentionally disseminated with malice his hearsay version of the events of November 19, 2005 with knowledge of the false and libelous nature of the statements contained therein and/or with gross negligence or reckless disregard for the truth.

36. Mr. Murtha's statements have invaded SSgt Wuterich's privacy and placed him in a false light. These statements include, but are not limited to the following references and third-party republications:

(a) CNN, The Situation Room, May 19, 2006

BLITZER: There's an investigation of what happened at Haditha. As you well know, U.S. marines were involved in an incident, civilians were killed. The chairman of the house armed services committee Duncan Hunter says, there's been no resolution, this investigation continues. I want to play for you what he said today. Duncan Hunter.

(BEGIN VIDEO CLIP)

REP. DUNCAN HUNTER, (R) ARMED SERVICES CHAIRMAN: If there were problems in the chain of command, if there was a cover-up, if anything wasn't reported, let the chips fall where they may. But don't presume anything. Those reports aren't finished yet. But the reports and the investigations are being pursued with great integrity.

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BLITZER: He was responding in part to you, because you've suggested this week that there in effect was a massacre.

MURTHA: Well there was. There's no question about it. I know, in talking to a number of people, and the information, I've never given you bad information yet. I talked to about it, in the context of the fact that these troops are under such tremendous pressure and that's what happens when they're under tremendous pressure. When this thing's all over, you're going to see exactly what I've said to be true. That, there was an IED attack, it killed one marine, and then they overreacted and killed a number of civilians without anybody firing at them. That's what you're going to find out.

But my whole point is, I -- I understand what happened. I don't excuse what happened, but I understand it because the pressure. Going out every day, they miss an IED explosive device, they find IEDs, somebody gets killed with an IED. They don't know who the enemy is, the pressure is tremendous. So when you find something like that, you're going to find these people cracking. And that's what happened to this --

BLITZER: The marines say they're still investigating. They don't know what happened yet. The pentagon says the same thing. How do you know what happened?

MURTHA: Wolf, you read the "Time" magazine articles. There are pictures, there are photos. You don't have to talk to the military about the proof. But you will see when the investigation is done that this was an overreaction by our troops, and this is the type thing that hurts us so badly. We're trying to win the hearts and minds of the people. Abu Ghraib was another example where they had inadequate forces, untrained people, undisciplined people in a prison. Had one person in a prison who had a court order against him, he couldn't see his family. He told the army that, and they still put him in a prison. So here we are with troops untrained, inadequate forces. They go out every day and there's tremendous stress and this is the kind of things that happens.

(b) ABC, Good Morning America, May 29, 2006

GRAPHICS: COVER-UP?

GRAPHICS: DID MARINES KILL IN COLD BLOOD?

REPRESENTATIVE JOHN MURTHA (DEMOCRAT)

There's no question about what happened. And the problem is who covered it up and why did they cover it up? Why did they wait so long?

(c) CNN, Anderson Cooper, May 30, 2006

COOPER: Congressman Murtha, you believe the military investigation will ultimately show that the troops in Haditha -- quote -- "overreacted because of the pressure on them and killed innocent civilians in cold blood." That's a quote from you.

How are you so sure at this point? The investigation isn't even complete.

MURTHA: Well, the Marine Corps at the highest level came over and briefed me a couple months ago.

I read the article in "TIME" magazine. I wasn't satisfied that anything was being done, that they were not really following up on this thing. But the more facts that have come out, the more convinced I am that there was an overreaction to the stress -- due to the stress that these young folks are under.

I mean, these -- these guys have done everything we have asked them to do. They're well-disciplined troops. But, at some point, they crack. And I just saw a mother say today that, when they come home, they don't get the psychological counseling they need.

This is a tremendous -- they wear 70 pounds on their body. They're out there every day. And, of course, there's less of them, so that means they're under stress every day with IEDs, which -- the explosive devices, and somebody shoot -- and they don't know who the enemy is. So, you have all those things built into this, and I can understand. I don't excuse it.

COOPER: Two investigations going on, one about the incident, the other about any possible cover-up. You say there is a cover-up. How high do you think it goes?

MURTHA: Well, I don't know.

General Pace just said on CNN that he learned about it in February. This thing's been going on for six months. They knew the day afterwards that this wasn't accurate, the information that was being put out. They put off "TIME" magazine. They were not open about this whole thing. And that's what frustrates me so much.

COOPER: Again, the investigation is still going on. Couldn't it have been the fog of war? There was a military lawyer quoted in "The Washington Post" on November 19, quoted, who said that, look, that day, November 19, was an unusually -- it was an unusually violent day.

MURTHA: Anderson, let me tell you something.

Two months ago, the day afterwards, they knew that the IED attack, they only killed one Marine. There was no hostile fire. There was nobody firing at our Marines. A taxi pulled up. They killed the people in the taxi. Then they went into the rooms and killed women and children.

One young woman on CNN today said, I -- he -- the young Marine, her son, carried the body of a -- I mean, this breaks my heart to think that this happened. And then they tried to cover it up. That even makes it worse.

COOPER: There have been those who said you are politicizing this. You're jumping to judgment. The investigation's still going on.

A man by the name of Ilario Pantano, a Marine who was accused with two counts of premeditated murder, charges which were later dropped, he wrote a letter to "The Washington Post." And he said this -- quote -- "Not only is he" -- meaning you, Mr. Murtha -- "certain of the Marines' guilt, but he claims to know the cause, which he conveniently attributes to a policy he opposes. Let the courts decide if these Marines are guilty. They haven't even been charged with a crime yet, so it is premature to presume their guilt, unless that presumption is tied to a political motive."

MURTHA: Well, let me tell you something. They're trying to kill the messenger.

There's no question in my mind. The highest level of the Marine Corps has come to me and told me what happened. And there is no question in my mind exactly what happened.

It's the transparency which is so bad. This happened on November 19. And they knew about it two days later. They knew exactly what happened. And, all this time, they have tried to

confuse the whole thing. Now they're blaming me for -- for bringing it out. If I hadn't brought it out, I'm not sure it would have come out.

COOPER: There was also an unnamed lawyer quoted in "The Washington Post" who said that there was a report that some of the radio traffic indicates there was some small-arms fire in the wake of this IED, and perhaps that played some role in it, meaning the Marines thought they were under fire. Have you heard that from the people you were briefed by?

MURTHA: Anderson, I can only tell you that's not the information I have.

(d) CNN, The Situation Room, May 30, 2006

BLITZER: Joining us, a leading critic of the war in Iraq, Congressman John Murtha, Democrat of Pennsylvania, himself a 37-year veteran of the United States Marine Corps.

You have suggested, Congressman, that there was a cover-up of this incident that actually occurred back in November. Specify what you have learned, what you have been told.

REP. JOHN MURTHA (D), PENNSYLVANIA: Well, what I worry about, Wolf, is that this happened six months ago and nothing -- you heard nothing about it. As a matter of fact, the original story was that an IED killed these 15 people. It became very confusing to the public. "Time" magazine came out with an article, and they still tried to cover it up.

Now, there were payments made to victims, which aren't made unless we kill them, one way or the other. And, secondly, they knew about it the day afterwards. So, there's no excuse for not having this be more open and know exactly what -- and the longer it goes, the worse it is for us, because it looks like it's the policy of our troops to do something like this.

But the Marine Corps itself told me there were 24 people killed. There was no other enemy action, except the one explosive device. Now, they are under tremendous pressure, Wolf. You have heard me say this before. They are stressful. They go out every day. They see arms blown off, legs blown off. There's inadequate number of forces.

So, I understand what happened. But you can't excuse it, and the cover-up is inexcusable. So, the chain of command, the chain of command, somebody in the chain of command said, we don't want to talk about this. It's so devastating that we don't want it to be made public.

Well, it's going to be made public at someplace. The Iraqis already knew about it. The Marines knew about it. It was going to come out and they should have been very open about this from the very start.

BLITZER: Here's what the chairman of the Joints Chiefs, General Peter Pace, himself a Marine, said yesterday on CNN's "AMERICAN MORNING."

Listen to this.

(BEGIN VIDEO CLIP)

GEN. PETER PACE, JOINT CHIEFS CHAIRMAN: To my recollection, the first we knew about it back here in D.C. was around the 10th of February and the very next day is when the investigations began. So, from my perspective, as soon as we found out that there were allegations, the investigations began.

(END VIDEO CLIP)

BLITZER: What do you think about that, Congressman?

MURTHA: Well, I will tell you, that's a pretty flat statement there. It seems to me something as horrendous as this should take a little something in the statement. I mean, you know, this is a terrible event, a tragic event. It affects the troops. It affects our morale. It affects the ability of them to recruit against us.

And just say, well, it is going to start as soon as February, it should -- and even that was too long a period of time. They should have known about it before then, if they didn't know about it.

It's a failure of leadership when they didn't know about it. When other Marines knew about it, when the Iraqis knew about it, when they made payments about it, and they didn't know about it in Washington? I mean, I think we have to find that out. Senator Warner said he's going to have hearings, and he ought to have hearings. He ought to find out who knew what when.

BLITZER: There are some who are already making comparisons between Haditha and My Lai in Vietnam, the massacre in which hundreds of Vietnamese civilians were killed, an incident that you well remember.

Is that a fair comparison, a fair analogy?

MURTHA: Well, I think it's a fair analogy, except for the numbers. There was about 124, I think, in the My Lai incident. And then there was 24 here.

But it's the same thing, overstressed, these troops going out every day, IEDs go off. Some of them have seen 30 IEDs go off without being -- all at once. They're killed or one of their friends is killed. So, the pressure is tremendous.

It's one of those things where we have become the enemy. The Iraq -- there's only 1,000 al Qaeda, as I have said over and over again. There's no progress. Since I made my statement November 17, was two days before this happened, and it's worse today than it was then. There was 500 incidents at that time in a week, and now there's 1,000 incidents a week. So, it has gotten worse during that period of time. And these troops are under tremendous stress. And we ought to redeploy as quickly as we can and let the Iraqis handle this themselves.

(e) NPR, Day to Day, May 30, 2006

ALEX CHADWICK, host:

And I'm Alex Chadwick.

Coming up, a Supreme Court decision makes it tougher to be a government whistle blower.

BRAND: First, allegations that U.S. Marines murdered Iraqi civilians last November. Military investigators are looking into the killings that took place in the city of Haditha. The Pentagon says the official findings are several weeks off.

CHADWICK: A second investigation is looking into why top Pentagon officials didn't know about the alleged incident sooner. Congressman John Murtha, Democrat of Pennsylvania, believes there's been a cover up. We spoke earlier.

Congressman Murtha, these are the details that we've seen reported in November of last year: a roadside bomb went off in the town of Haditha, one Marine was killed. Other members of his unit then shot several unarmed Iraqis in a nearby taxi, and then went into two houses and shot others including women and children - 24 Iraqis killed in all, murdered. You have been briefed by military investigators. Are these details correct?

Representative JOHN MURTHA (Democrat, Pennsylvania): Well, not by military investigators, I've been briefed by the Commandant of the Marine Corps and the people at the highest level, and that's exactly right, that's accurate.

CHADWICK: You said this week that there has been not just a crime here, but also a cover up by Marine officers. How do you know that, and how far up do you think it goes?

Rep. MURTHA: They knew that the original explanation, that an IED caused the casualties, was not true the day afterwards.

The Marine Corp knew it - and you've got to remember, the chain of command in Iraq is not to the Commandant of the Marine Corps. The chain of command is through General Casey to General Abizaid. And two months ago I told General Abizaid, General, you've got to get this out in the public. You have to get this investigation over with.

They just told me a week ago it would take two more months. This happened six months ago. It's unconscionable that it would take this long to have an investigation. I heard a Lance Corporal on one of the stations this morning say he was there, the next day he carried out the body of a young child that was shot through the head. So the next day, they knew that it wasn't an IED that killed them. They knew that it wasn't an explosive device, there was no shrapnel, there was no firefight. This is what worries me.

Who in the chain of command stopped the investigation? Who tried to cover this up? Because not only the Marines knew it, the Iraqis knew about it because they paid the victims of this thing - if it had been an explosive device by the Iraqis, they wouldn't have paid them.

It breaks my heart that Marines would be involved in something like this, but you can't let it go. But the point is, first of all, it should never have happened. The stress is tremendous on these young people going out, even if it's the first tour.

(f) CBS, Early Show, May 31, 2006

Representative JOHN MURTHA (Democrat, Pennsylvania): I won't excuse these kind of things. I don't excuse the people at Abu Ghraib, I don't excuse what happened over at Haditha.

KAUFFMAN: Congressman John Murtha claims the military is involved in a cover-up of the incident. But Senator John Warner disagrees.

37. As a direct and proximate cause of the publication of Mr. Murtha's statements, SSgt Wuterich has been, among other things, embarrassed, mortified, and humiliated before the general public and has suffered emotional distress. He may, in fact, end up facing prosecution in part, or in whole, because of the negative and false portrait of his conduct that Mr. Murtha has created. SSgt Wuterich's reputation as an honest, loyal and caring soldier has been seriously harmed and will now always bear a stain of being associated with the Haditha incident due to the conduct of Mr. Murtha.

COUNT III (REPUBLICATION BY THIRD PARTIES)

38. Plaintiff SSgt Wuterich incorporates and realleges the facts and allegations set forth in Paragraphs 1-21.

39. Since Mr. Murtha first went public with his statements condemning the Haditha tragedy and accusing the involved Marines, to include SSgt Wuterich, of being cold-blooded killers who perpetrated a massacre and participated in a cover-up, various third parties have and are still

continuing to repeat, either in writing or verbally, the false, misleading and defamatory statements tainting SSgt Wuterich. The republications have taken the form of news articles, editorials, letters to the editor, television broadcasts and Internet discussions. Each of these republications, which were and are being published or available throughout the United States, including, but not limited to, the District of Columbia, and throughout the world, create a new and distinct cause of action against Mr. Murtha.

40. Mr. Murtha is liable for any republications by third parties which were reasonably foreseeable and/or the natural and probable consequence of the original publications. Furthermore, Mr. Murtha intended, knew or should have known that third parties would repeat and publish his false, misleading and defamatory accusations.

41. The third party republications that have substantially repeated the false, misleading and defamatory statements against the Marines involved with the Haditha tragedy, including SSgt Wuterich, originally uttered by Mr. Murtha include, but are not limited to, the following:

(a) NBC, Nightly News, May 17, 2006

BRIAN WILLIAMS, anchor:

There are disturbing new allegations tonight from the congressman and decorated Marine veteran who stunned the Bush administration about six months ago with his call for US withdrawal from Iraq. Tonight Congressman Jack Murtha, a Democrat from the state of Pennsylvania, is in the news again and in a big way, accusing US Marines of killing innocent civilians in cold blood. We're joined for more on this story tonight by our NBC News Pentagon correspondent Jim Miklaszewski.

Jim, good evening.

JIM MIKLASZEWSKI reporting:

Brian, this all stems from an incident that occurred last November and today the military's investigation is still dragging on.

From the very beginning, Iraqis in the town of Haditha claimed US Marines deliberately killed at least 15 unarmed Iraqi civilians, including seven women and three children. This young Iraqi girl claims the Marines killed six members of her family, including her parents. 'The Americans came into the room where my father was praying,' she says, 'and shot him.' Today, in a remarkable statement in Washington, Democratic Congressman John Murtha claims it's true.

Representative JOHN MURTHA (Democrat, Pennsylvania): There was no firefight. There was no IED that killed these innocent people. Our troops overreacted because of the pressure on them, and they killed innocent civilians in cold blood.

(b) UPI, May 17, 2006

A Pentagon investigation will show that U.S. Marines killed 15 civilians in Iraq "in cold blood" a U.S. congressman said in Washington.

Murtha said military sources have told him the Pentagon investigation will show the troops "overreacted because of the pressure on them, and they killed innocent civilians in cold blood."

(c) Voice of America, May 18, 2006

On Wednesday, Representative John Murtha, said the military investigation indicates the Marines did kill the civilians and for no reason.

"There was no firefight," he said. "There was no IED that killed these innocent people. Our troops over-reacted because of the pressure on them. And they killed innocent civilians in cold blood."

(d) ABC, Good Morning America, May 29, 2006

GRAPHICS: COVER-UP?

GRAPHICS: DID MARINES KILL IN COLD BLOOD?

REPRESENTATIVE JOHN MURTHA (DEMOCRAT

There's no question about what happened. And the problem is who covered it up and why did they cover it up? Why did they wait so long?

(e) Fox News Sunday, June 25, 2006 (also published by the Federal News Service on June 26, 2006)

REPRESENTATIVE JOHN MURTHA: (D-PA)(From videotape.) Our troops overreacted because of the pressure on them, and they killed innocent civilians in cold blood. We can't operate, we can't sustain this operation

(f) inewsnetwork Inc., June 27, 2006

THERE IS SOMETHING GOING ON WITH JACK MURTHA HE CALLS MARINES COLD BLOODED MURRERS [sic] BEFORE THERE WAS AN INVESTIGATION OF HADITHA

(g) Pittsburgh Post-Gazette, July 2, 2006

On the Web and on conservative talk shows, criticism of Mr. Murtha reached a new high last month with his predictions that Marines would be found guilty of having killed Iraqi civilians

"in cold blood" in the town of Haditha. His opponent, Ms. Irey, seized on the statement in a Washington news conference in which she demanded that he make a public apology. Mr. Murtha said his military sources had told him the investigations would back his account.

(h) Fox News: Hannity & Colmes, July 6, 2006

REP. JACK MURTHA (D), PENNSYLVANIA: There was no firefight. There was no IED that killed these innocent people. Our troops overreacted because of the pressure on them. And they killed innocent civilians in cold blood.

(i) Washington Post, July 9, 2006

But Haditha did not become a major issue until May, when Rep. John P. Murtha (D-Pa.), who had turned sharply against the Iraq war, said at a news conference that Marines had "killed innocent civilians in cold blood." Murtha is a former Marine and had been briefed by a senior Marine officer on the probe.

(j) This particular statement below was republished throughout the world by countless news services, newspapers, websites and televisions stations.

"There was no firefight. There was no IED (improvised explosive device) that killed those innocent people," Rep. John Murtha, D-Pa., said during a news conference on Iraq. "Our troops "overreacted because of the pressure on them. And they killed innocent civilians in cold blood. That is what the report is going to tell."

42. All of the above republications were also republished, and continue to be available, via Lexis/Nexis and other media source entities. Other unknown publications have published or will publish in the future the false, defamatory, and misleading statements originally uttered by Mr. Murtha.

43. As a direct and proximate cause of the publication of Mr. Murtha's statements, and the foreseeable republications, SSgt Wuterich has been, among other things, embarrassed, mortified, and humiliated before the general public and has suffered emotional distress. He may, in fact, end up facing prosecution in part, or in whole, because of the negative and false portrait of his conduct that Mr. Murtha has created. SSgt Wuterich's reputation as an honest, loyal and caring soldier has been seriously harmed and will now always bear a stain of being associated with the Haditha incident due to the conduct of Mr. Murtha.

WHEREFORE, Plaintiff Frank Wuterich respectfully requests the following relief from defendant John Murtha:

1. General, special, compensatory and punitive damages in an amount to be proven at trial, but greater than \$75,000;
2. A public retraction and apology;
3. An injunction prohibiting future publication of any allegations regarding SSgt Wuterich;
4. Plaintiff's costs of suit and reasonable attorney fees; and
5. Any further and additional relief which the Court deems just and proper.

PLAINTIFF DEMANDS A TRIAL BY JURY

DATED: August 2, 2006

Respectfully submitted,

/s/

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