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Court hears arguments in case of Marine vs. Murtha

By Susan Crabtree

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A Marine who is suing Rep. John Murtha for defamation wants a federal appeals court to order the powerful Pennsylvania Democrat to testify under oath about comments he made related to the deaths of unarmed Iraqi civilians in the town of Haditha in 2005.

An attorney for Staff Sgt. Frank Wuterich on Tuesday asked the U.S. Court of Appeals for the District of Columbia to compel Murtha to give a deposition in the case. Attorney Mark Zaid said he needs information about how often and in what context Murtha claimed that Marines in Iraq engaged in "cold-blooded murder and war crimes" in killing the Iraqi civilians.

A government lawyer representing Murtha argued that the congressman does not have to agree to testify under oath and is immune from the lawsuit because he was acting in an official capacity as a member of Congress when he made the comments to the media.

Last year a federal judge ordered Murtha, a decorated former Marine and Vietnam veteran and close ally of Speaker Nancy Pelosi (D-Calif.), to testify in the case. His lawyers are appealing that decision.

Wuterich and another Marine involved in the Haditha incident filed suit against Murtha in 2006. The



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defamation case against Murtha likely would dissolve if Wuterich, who still faces criminal charges for his role in the slayings, is found guilty of misconduct.

So far there have been no guilty verdicts related to the Haditha slayings, and Wuterich's is the only unresolved case. Charges against three other Marines initially accused of murdering Iraqi men, women and children have been thrown out.

There's no end in sight to the court wrangling surrounding Wuterich's criminal case, however. No date has been set for his criminal trial, which has been delayed while prosecutors try to force CBS to hand over portions of a "60 Minutes" interview with Wuterich that were never televised.

Murtha made the "cold-blooded" comments in a 2006 press conference and in a subsequent interview with CNN anchor Wolf Blitzer. He said he made the remarks to illustrate the intense pressure troops in Iraq face, and to highlight efforts to cover up the Haditha slayings.

When Murtha made the remarks, the Marines were still conducting their investigation into the matter.

Murtha cited a Time magazine report when asked how he knew the killings were conducted in cold blood and why he thought there was a cover-up. Murtha's lawyers later claimed that Defense Department officials briefed him and "deliberately provided him with inaccurate and false information," according to a court filing.

Besides determining Murtha's liability, the case could have far-reaching implications for what lawmakers can and cannot say legally.

Wuterich's attorneys argue Murtha's comments on Haditha do not fall within the scope of Murtha's employment, so any immunity the law provides to lawmakers does not apply. To bolster that argument, they say other lawmakers refrained from commenting about the matter and claimed it would be inappropriate for them to do so.

Zaid told the three-judge panel Tuesday that the deposition would only require two to three hours of Murtha's time and would not impinge on his official duties as a congressman.

During Tuesday's oral arguments, Judge Harry Edwards appeared skeptical of Zaid's argument.

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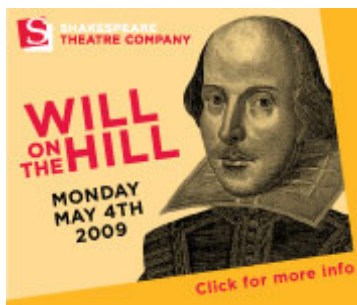
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