

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

**KIMBERLY T. STAHLMAN, individually
and as the surviving spouse of
COLONEL MICHAEL R. STAHLMAN,
USMC**

[REDACTED]
[REDACTED]

Plaintiff,

v.

Case No. _____

UNITED STATES OF AMERICA,

**U.S. DEPARTMENT OF DEFENSE and
HON. LEON E. PANETTA, SECRETARY
(official capacity)
1400 Defense Pentagon
Washington, D.C. 20301,**

**U.S. DEPARTMENT OF THE NAVY and
HON. RAY MABUS (official capacity)
2000 Navy Pentagon
Washington, D.C. 20350-2000,**

**NAVAL CRIMINAL INVESTIGATIVE
SERVICE and Director Mark Clookie
(official capacity)
27130 Telegraph Road
Quantico, Virginia 22134,**

**UNITED STATES MARINE CORPS and
HON. GENERAL JAMES F. AMOS
(official capacity)
2 Navy Street
Washington, D.C. 20380,**

and

**ARMED FORCES MEDICAL EXAMINER
and DR. CRAIG MALLAK, CHIEF,
(official capacity)
1413 Research Boulevard
Rockville, Maryland 20850,**

Defendants.

COMPLAINT

1. Plaintiff Kimberly T. Stahlman, individually and as the surviving spouse of U.S. Marine Colonel Michael L. Stahlman, respectfully brings this action under the Administrative Procedures Act, 5 U.S.C. §§ 701-06 against Defendant United States of America; and Defendants the U.S. Department of Defense and Honorable Leon E. Panetta, Secretary (in his official capacity); the U.S. Department of the Navy and Honorable Ray Maybus, Secretary (in his official capacity), the Naval Criminal Investigative Service Secretary and Honorable Mark Clookie, Director (in his official capacity); the U.S. Marine Corps and Honorable General James F. Amos (in his official capacity); and the U.S. Armed Forces Medical Examiner and Honorable Craig Mallak, M.D., Chief (in his official capacity).

PARTIES

2. Plaintiff Kimberly T. Stahlman (“Plaintiff” or “Mrs. Stahlman”) is an individual who resides at [REDACTED] Mrs. Stahlman is the surviving spouse of U.S. Marine Colonel Michael R. Stahlman.

3. Defendant is the United States of America.

4. Defendant U.S. Department of Defense and the Honorable Leon E. Panetta, Secretary of Defense (in his official capacity) is located at Pentagon, 1400 Defense Pentagon, Washington, D.C. 20301.

5. Defendant U.S. Department of the Navy and Honorable Ray Mabus (in his official capacity) is located at 2000 Navy Pentagon, Washington, D.C. 20350-2000.

6. Defendant Naval Criminal Investigative Service (“NCIS”) and Honorable Mark Clookie (in his official capacity) is located at 27130 Telegraph Road, Quantico, Virginia 22134.

7. Defendant U.S. Marine Corps and the Honorable General James F. Amos (in his official capacity) is located at 2 Navy Street, Washington, D.C. 20380.

8. Defendant U.S. Armed Forces Medical Examiner and Dr. Craig Mallak, Chief (in his official capacity) is located at 1413 Research Boulevard, Rockville, Maryland 20850.

JURISDICTION AND VENUE

9. This Court has jurisdiction of this action pursuant to the Administrative Procedure Act, 5 U.S.C. §§ 701-06; the Declaratory Judgment Act, 28 U.S.C. § 2201 (1994); and 28 U.S.C. § 1331 (federal question jurisdiction).

10. Venue is proper in this district pursuant to 28 U.S.C. § 1391, in that a substantial part of the events or omissions giving rise to the claims occurred in this judicial district, and the Defendant is present in this judicial district. Venue also is proper under 5

U.S.C. § 703, because this Complaint is filed against actions of an agency of the United States.

FACTUAL BACKGROUND

I. Colonel Michael R. Stahlman.

11. Colonel Michael R. Stahlman (or “Colonel Stahlman”) was born in Chevy Chase, Maryland in 1962, as the son of a U.S. Department of State official and U.S. Peace Corps pioneer. Young Michael Stahlman excelled in sports and academics. At age 14, he begged his father to let him attend the Marine Military Academy. He continued to excel through high school, where he graduated first in his class and then was accepted to the prestigious U.S. Naval Academy. Colonel Stahlman graduated with distinction from the U.S. Naval Academy in 1985. After graduating, he was selected to attend flight school and became a Naval Flight Officer. He then was selected to attend law school under a highly selective military-funded program. In 1993, Colonel Stahlman obtained his law degree (J.D.). In 2000 he earned his L.L.M., and he then spent a number of years teaching criminal law at the U.S. Army Judge Advocate General School.

12. During his over twenty years in the U.S. Marine Corps (“USMC”), Colonel Stahlman established a remarkable record of service, leadership and achievement. His lengthy list of degrees, awards and commendations includes: the Airborne Course certificate, the Naval Flight Officer certificate, the Tactic Recon Aircrew certificate, the Navy Justice School Law Course (with Honors), the USMC Command and Staff College completion certificate and diploma, the Judge Advocate General School Master of Law in

Military Law diploma, the U.S. Air Force Air War College diploma, the USMC Marine Expeditionary Force Commendation, the USMC Meritorious Service Medal, the Navy Achievement Medal, the Marine Corps Achievement Medal, the Joint Service Commendation Medal, the National Defense Service Medal, the Sea Service Deployment Ribbon, the Marine Corps Drill Instructor Ribbon, the Global War on Terrorism Service Medal, the Korean Defense Service Medal, a Certificate of Outstanding Recognition awarded by the United States and Thailand, Superior Performance awards on the USMC's physical fitness test, the U.S. Army Commendation Medal and the President's Meritorious Service Award. In short, Colonel Stahlman by record and by all accounts was the model of a Marine – a man of discipline, courage, intelligence, honor and integrity.

13. Colonel Stahlman also was a triathlete¹ who had competed in numerous triathlons. He trained daily, including when he was stationed overseas. Even in 2008, when he was stationed in Iraq at Camp Ramadi, Colonel Stahlman continued to rise early every morning for physical training.

14. Colonel Stahlman also was a dedicated husband to the Plaintiff, Kimberly Stahlman, and a devoted father to their two young daughters. Like her husband, Mrs. Stahlman shouldered the burdens and enjoyed the benefits of life in the “Marine-family” with commitment and grace. Marine life was not always easy, but by 2008 the Stahlman family had learned to endure it and flourish. They were looking forward to Colonel

¹ A “triathlon” is a competitive endurance event in which competitors, for example, complete a 1.2 mile swim race followed immediately by a 56-mile bicycle race followed immediately by a 13.1 mile running race.

Stahlman's retirement.

II. Colonel Stahlman's Deployment to Iraq.

15. In 2007, Colonel Stahlman and his family were looking forward to the Colonel's retirement and to spending more time together as a family. Colonel Stahlman already was actively considering a post-retirement career of teaching law at a local University.

16. At the time in 2007, Colonel Stahlman was working as the Staff Judge Advocate and Acting Chief of Staff for the Marine Corps Air Ground Combat Center and stationed at 29 Palms, California. He had not yet been deployed to Iraq. Colonel Stahlman was of the view that before retiring, he was duty-bound to complete at least the basic one-year deployment to Iraq. Colonel Stahlman specifically requested to be deployed to Iraq. His request was granted, and Colonel Stahlman's one-year deployment in Iraq commenced in early January of 2008.

17. By July of 2008, Colonel Stahlman was stationed at Camp Ramadi near Baghdad. At Camp Ramadi, Colonel Stahlman served as the Multi National Force West Rule of Law ("ROL") Coordinator, responsible for: (1) coordinating Iraqi police interactions with all Iraqi judges and prosecutors, (2) coordinating all contacts with the Iraqi court system, (3) interactions with all long-term Iraqi incarceration facilities, and (4) interactions with U.S and Coalition Force detention facilities. Colonel Stahlman also was involved in internal base criminal investigations, such as the investigation of a reported fuel theft ring at Camp Ramadi. As a result, Colonel Stahlman served as figurehead of

sorts for the Coalition Force in its effort to work with Iraqi law enforcement authorities to control the violent, criminal underbelly of the war and reconstruction effort.

18. More specifically Colonel Stahlman took the lead in a number of high profile law enforcement projects. For example, he was responsible for the development of the Iraqi Government Center and Jail located at “Hurricane Point,” a former Saddam Hussein palace located on an island in a split in the Euphrates River. This monumental task was for the purpose of holding judicial proceedings, and detaining and prosecuting some of Iraq’s most dangerous terrorists (including the more than 23,000 prisoners held at the Camp Bucca Prison, a facility commonly referred to as a “breeding ground for terrorists”). The Bucca prisoners were scheduled to be released with the impending expiration of U.N. Resolution 1790, on December 31, 2008, which allowed Coalition Forces to detain prisoners without the benefit of trials. Without the Resolution in place and a Judicial System to legally hold potential terrorists, some of the most dangerous criminals in the world would be released into society.

19. Colonel Stahlman also was involved in an ongoing, high-stakes dispute with a number of former high-level Iraqi government officials and Tribal Leaders over the ownership and use of the land and palace at Hurricane Point. As Colonel Stahlman described the risks in a July 22, 2008 letter to his parents (nine days before he was shot), “We’ve been able to hold off having someone else in the Iraqi government take it but we have to keep our eyes and ears wide open.” In the same letter, he told his parents that he “can’t wait to go on leave and see Kim and the girls” in September 2008; and that he will be

“voting by absentee ballot” in the November 2008 elections.

20. Colonel Stahlman also was involved in a highly-controversial project referred to as the Theater Internment Facility Rehabilitation Center (“TIFRIC”), a detention facility intended to be used to separate Sunni and Shiite prisoners. The TIFRIC was canceled in early July of 2008 when, according to witnesses, it was up to 90% complete.

21. Upon information and belief, up to \$90 million knowingly was spent on TIFRIC even though with the expiration of U.N. Resolution 1790, it would not be needed. As a result, after the expenditure of tens of millions of United States or Coalition dollars, the nearly completed TIFRIC facility literally was disassembled and the raw materials stored. The location of the dismantled building materials is unknown. In an uncharacteristically terse note dated July 26, 2008 (five days before he was shot), Colonel Stahlman characterized the TIFRIC debacle as the Coalition ROL “sticking it to Anbar once again.” Upon information and belief, Colonel Stahlman’s mounting concern over the TIFRIC disaster led him consider the potentially career-killing step of breaking his chain-of-command to “blow the whistle.” Colonel Stahlman’s daily journals with an entry regarding the TIFRIC stating “PIC Whitehouse Evidence Package.”

22. Colonel Stahlman also presided at one of the controversial and widely reported “Haditha trials.” The Haditha trials were military proceedings against U.S. Marines accused of massacring Iraqi civilians after an improvised explosive device explosion and ensuing firefight. Colonel Stahlman made an unpopular recommendation

that charges against the Defendant be dropped.

23. In June of 2008, Colonel Stahlman began to write home about his excitement over an upcoming 15 days of leave set for early September 2008 that meant a welcome trip home to see his wife and young daughters. For example, on June 26, 2008, Colonel Stahlman wrote to Mrs. Stahlman, “just 2 more months until I come home” and “missing you terribly!!!.” Similarly on June 29, 2008, Colonel Stahlman again wrote to Mrs. Stahlman to say, “we made it to 5 months so just 2 more months until I come home albeit just 15 days.”

24. A month later on July 27, 2008, Mrs. Stahlman e-mailed Colonel Stahlman in order to relate that one of their daughters “has been such a lovebug lately. I hope that she will be in that mode when you get home. Better go. I will try to e-mail tomorrow.” Colonel Stahlman was in Fallujah at the time. Writing back from Fallujah, Colonel Stahlman responded, “Thanks Kim, I was wondering what happened. I’ll try calling during the week if I can make it back to Ramadi. MISSING YOU TERRIBLY!!!! Love, Mike.”

25. The next day, July 28, 2008 (three days before Colonel Stahlman was shot), Colonel Stahlman’s daughter e-mailed her father to say: “I miss you so much but were [sic] halfway there! Also i [sic] was wondering that when you come back in September you could take me to the water park.” Still writing from Fallujah, Colonel Stahlman responded to tell his daughter, “I LOVE YOU SOOOOO MUCH TOO!!! The water park sounds great.”

26. On July 30, 2008 (the day before Colonel Stahlman was found shot), Mrs. Stahlman e-mailed her husband to say, "Hi Honey Just checking in again to see if you made it back [from Fallujah] safe. Are you o.k.?" The same day, Colonel Stahlman responded to his wife's message and assured her, "Kim, Everything is great. Just ready for a break and time with you. Missing you terribly and need lots of hugs and kisses!!! Love, Mike." Colonel Stahlman then telephoned Mrs. Stahlman and spoke to her and his two daughters. He asked Mrs. Stahlman to send him tablets for a mild asthma condition that was being exacerbated by the sand in Iraq.

27. Colonel Stahlman returned from Fallujah to Camp Ramadi on or about July 30, 2008. On July 30, 2008, Colonel Stahlman checked in with the young Marine Sergeant in charge of a convoy scheduled for the next day in order to ensure that everything for the convoy was documented and ready. The July 31, 2008 convoy was intended for Colonel Stahlman and others to travel to Hurricane Point to meet the Iraqi contractor and the Iraqi Provincial Judge involved in the Iraqi Government Center and Jail (which, as noted above, Colonel Stahlman was charged with developing under the cloud of an ongoing land-dispute with several former Bath-party senior officials of the Saddam Hussein government). At the time, Colonel Stahlman recently had also recommended the firing of two Iraqi Judges for allegedly taking bribes.

28. Late in the evening of July 30, 2008, Colonel Stahlman worked on a number of Microsoft Word letters of recommendation (presumably for individuals under his command).

29. An e-mail dated July 31, 2008, that purports to be from Colonel Stahlman to Mrs. Stahlman states: “Kim, sorry about what you are about the [sic] find out. I love you and always will. You and the girls are the best thing that ever happened to me. Love, Mike.” Server records indicate that on July 31, 2008 Colonel Stahlman’s password logged onto the server at 6:24 a.m. and logged off at 6:28 a.m. The e-mail is time-stamped 5:29 a.m. The version of the e-mail printed from Mrs. Stahlman’s Yahoo e-mail account is time-stamped 7:28 p.m.²

III. The Shooting of Colonel Stahlman.

30. On the morning of July 31, 2008, per his usual morning routine, Colonel Stahlman woke very early, dressed in his exercise (PT) clothes, presumably exercised, and then went directly to his office where he was observed in his PT outfit and had at least one conversation.

31. When Colonel Stahlman did not appear for the 8:30 a.m. Hurricane Point convoy, a Sergeant was sent to get him.

32. When the Sergeant arrived at Colonel Stahlman’s CHU (Central Housing Unit), the door was unlocked. The Sergeant knocked. When no one answered, he opened the door and walked in. The lights were off and the air conditioning appeared to be on high (which was unusual in that Colonel Stahlman preferred a low level of air

² As discussed below, the investigative record indicates that a Microsoft time patch was needed to adjust for the fact that Iraq does not follow daily savings time. However, it is unclear whether anyone checked to determine whether or not this patch actually was being used.

conditioning). The CHU contained two small housing areas: one unoccupied area to the left when one faces the entrance and the second (Colonel Stahlman's) area to the right. A shared bathroom is located between the two areas.

33. The Sergeant entered the CHU, turned to Colonel Stahlman's area on the right. He observed the sheet from the top bunk of Colonel Stahlman's bunk bed pulled down and hanging over the bottom bunk. The sheet extended approximately to the top of the lower bunk mattress. When the Sergeant lifted the sheet, he found Colonel Stahlman lying on the mattress with his head on the pillow and unresponsive with a gunshot wound to his head. Colonel Stahlman's body was tilted to the left with his knees drawn slightly up as if he was about to stand at the time of the shooting. His 9mm was tucked under his waist. His left eye was hanging out of its socket. The Sergeant ran from the CHU to get help. Medics and other first responders quickly arrived. Colonel Stahlman was transported to a hospital at Balad Air Base, and then to the National Naval Medical Center in Bethesda, Maryland. He died there on October 5, 2008.

IV. Evidence on the Scene.

34. As noted, Colonel Stahlman was found with his handgun tucked under his left waist. Colonel Stahlman is right-handed. He trained in the use of his handgun with his right hand only. If Colonel Stahlman had shot himself, the weapon would have fallen out of his hand and to the mattress by the side of his head or the floor. Once shot in the head, Colonel Stahlman could not have held onto the handgun, extended his arm down his side, and placed the weapon under his waist as it has been medically determined that he

immediately was incapacitated and incapable of purposeful movement. Furthermore, the reported percentage of persons who shoot themselves and do so with their non-dominant hand is substantially less than ten percent.

35. A non-descript white cloth was found on the floor next the side of the bed where Colonel Stahlman lay and near the weapon. The white cloth had visible gunpowder and biological particulate on it. The white cloth therefore was in direct contact with the gun and the hand firing the gun at the time the weapon was fired. The white cloth was not the property of Colonel Stahlman. Nor is it any part of the uniform or standard possessions of a U.S. Marine or other service member. Nor is it recognizable as medical debris.

36. Colonel Stahlman used a military “helmet bag” as his work briefcase. After the shooting, Colonel Stahlman’s helmet bag was missing. It never has been located.

37. Colonel Stahlman was found with his head on his pillow centered on the bed. The pillow and the mattress have matching blood stain patterns. The pillow was found positioned in such a manner that the stain on the pillow was significantly separated from the matching stain on the mattress. The pillow and Colonel Stahlman were moved after the shooting and before the discovery of Colonel Stahlman by first responders.

38. As noted above, when Colonel Stahlman was discovered the sheet from the top bunk was hanging down to the top of Colonel Stahlman’s mattress below. The hanging sheet has blood spatter misting on the side of the sheet facing away from Colonel Stahlman and the lower bunk bed when he was discovered. At the moment that Colonel

Stahlman was shot, the sheet was not hanging in the manner in which it was found by first responders.

39. Colonel Stahlman's nightstand was located against the CHU wall near the head of the bed. The nightstand had blood spatter on the side and top surfaces. If the sheet was hanging down when Colonel Stahlman was shot, it would have been between Colonel Stahlman's head and the nightstand. This is further indicia of scene alteration between the moment of the shooting the discovery of Colonel Stahlman by first responders.

40. The blood spatter pattern on the nightstand also contained a clear void. Hence at the time of the shooting, a person or object was located between Colonel Stahlman's head and the nightstand. The void is consistent with a person standing next to the head of the bed at the moment of the shooting.

41. Colonel Stahlman had 35 identical water bottles with white lids in his room. A different bottle with a yellow lid was found on the floor next to the nightstand. The bottle was located in the midst of the blood-spatter pattern on the side of the nightstand. The blood spatter is not continued on the visible surface of the bottle or the cap, but is present on the side of the nightstand by the floor even though this area would have been shielded from blood spatter had the bottle been in place at the time of the shooting. At the moment of the shooting, the bottle was not located where it was found next to the nightstand. This is further demonstration of the activity in the room between the moment of the shooting and the arrival of first responders.

42. There is significant disparity between the location of blood spatter and the trajectory of the one bullet located after the incident. That bullet passed through the thin CHU wall into a locker in an adjoining CHU. That bullet had no DNA on it. The bullet that killed Colonel Stahlman was not the bullet located in the locker of the adjoining CHU.

43. Neither the mattress nor the pillow was examined for a second bullet. Neither a second bullet, nor the round that first responders reportedly cleared from the weapon, were located. The number of rounds left in the magazine was not counted.

44. The bullet hole in the wall had gunpowder residue on it. If that bullet had passed through Colonel Stahlman, it is highly unlikely that the hole would be surrounded by gunpowder residue. This is further indicia that the bullet that created this hole was not the bullet that killed Colonel Stahlman.

45. Colonel Stahlman's mattress was never searched for a second bullet or a bullet hole. The number of rounds left in Colonel Stahlman's service weapon magazine, and hence the possible number of rounds it fired, was not counted.

46. If Colonel Stahlman shot himself, his hand would have gunpowder residue on it. Colonel Stahlman's hands were never tested for gunpowder residue.

47. An individual in a neighboring CHU stated that early in the morning of July 31, 2008 he believed that he heard a gunshot followed about 30 seconds later by the sound of a truck backing up.

48. On August 8, 2008, eight days after Colonel Stahlman was shot, Mrs. Stahlman received an e-mail from [REDACTED] " Attached to the

e-mail was a picture of Colonel and Mrs. Stahlman's daughter. This picture was only available in Colonel Stahlman's hospital room and through the password-protected website "Picasa." Mrs. Stahlman responded, asking the identity of the sender. She received a response from "[REDACTED]" that stated simply, "do you know who this is a picture of?" She inquired as to the identity of the sender, and the response was "I am her great uncle shalom." The phrase "shalom meshulam" is believed to mean "peace has a price." The phrase "Uncle Shalom" has been used as a derogatory reference to the United States and Israel.

V. DoD and Navy Investigative Mandates.

49. U.S. Department of Defense ("DoD") Instruction ("DoDI") No. 5505.10 (Jan. 31, 1996), "Investigation of Non-Combat Deaths of Active Duty Members of the Armed Forces," is issued pursuant to statute "to implement policy for the investigation of noncombat deaths of members of the Armed Forces not medically determined to be from natural causes."

50. Section 4.1 of DoDI 5505.10 mandates as follows:

It is DoD policy that . . .

All noncombat deaths of members of the Armed Forces on active duty, not medically determined to be from natural causes, *shall be investigated as potential homicides until evidence establishes otherwise.*

DoDI 5505.10 § 4.1(emphasis added).

51. Similarly U.S. Department of the Navy Instruction ("NavyI") 5430.107 (Dec. 28, 2005), "Mission and Functions of the Naval Criminal Investigative Service," is

issued pursuant to statute and mandates that:

NCIS *shall* investigate the following categories of incidents:

a) *Any non-combat death*, on or off naval installations, facilities, vessels, or aircraft, where the cause of death cannot be medically attributable to disease or natural causes. Pursuant to reference (p), *NCIS shall investigate the circumstances until criminal causality can be reasonably excluded.*

NavyI 5430.107 § 7.b(1)(a) (emphasis added). Citing Navy Instruction 5520.3 (the predecessor Instruction to Navy Instruction 5430.107), the NCIS Investigations Manual reiterates that: “In all instances of unattended death on a Navy or Marine Corps installation or vessel the possibility of foul play always exists. Therefore, NCIS should conduct an investigation even in those instances where the death appears from the outset to have resulted from suicide.”

52. Judge Advocate General Instruction (“JAGI”) 5800.7D (June 20 2007), “Manual of the Judge Advocate General,” “sets forth principles governing the convening, conduct, review, and storage of administrative investigations conducted in or by the Department of the Navy (DON) under the authority of this Manual.” Section 0239 states:

0239 STANDARD OF PROOF

To find that the acts of a deceased service member may have caused harm or loss of life, including the member’s own, through intentional acts, findings of fact relating to those issues must be established by clear and convincing evidence; see Appendix A-2-a for a definition of that term.

JAGI 5800.7D § 0239. The phrase “clear and convincing” means that the “evidence must leave no serious or substantial doubt as to the correctness of the conclusion in the mind of objective persons, after considering all the facts.” *Id.* § 214(b).

53. DoD Directive (“DoDD”) 6010.16 (March 8, 1988), issued pursuant to statute, established “an Armed Forces medical examiner system with an Office of the Armed Forces Medical Examiner (OAFME) and an Armed Forces Medical Examiner (AFMO) . . . to conduct scientific forensic investigations for determining cause and manner of death under specific circumstances” The OAFME and AFMO are located at the Armed Forces Institute of Pathology in Bethesda, Maryland. The manner of death categories are: homicide, suicide, accidental, natural, undetermined and unclassified. DoDD 6010.16 (Enc. 1 No. 3). In case of Colonel Stahlman, the “manner of death” was recorded by the Armed Forces Medical Examiner based upon the result of the NCIS investigation.

VI. The Manner of Death Investigation.

54. As discussed above, DoD and Navy Instructions and Directives issued pursuant to statute mandate that the shooting of Colonel Stahlman is to be: (A) investigated and treated as a homicide; (B) unless and until; (C) after consideration of all of the facts; (D) there is clear and convincing evidence otherwise.

55. As noted, Colonel Stahlman was found shot shortly after 8:30 a.m. on July 31, 2008. The Navy’s investigation commenced at 9:35 a.m. that morning. The same day, the Navy informed Mrs. Stahlman that her husband has suffered a self-inflicted gunshot wound.

56. Within two days, an investigation was opened into the possible punishment of Colonel Stahlman by a Court Martial for suspected “malingering” in violation of Article

115 of the Uniform Code of Military Justice (“UCMJ”). UCMJ Article 115 defines a “malingerer” as: “Any person ... who for the purpose of avoiding work, duty, or service (1) feigns illness, physical disablement, mental lapse or derangement; or (2) intentionally inflicts self-injury.”

57. The initial and subsequent investigative interviews focused almost exclusively upon possible motives for suicide. Uniformly, persons interviewed were queried, often repeatedly, about possible motives of indications for suicide and yet stated that Colonel Stahlman was not the type of person to take his own life, and that there was no notable change in his actions or demeanor leading up to August 31, 2008.

58. For example, in a record of an August 7, 2008 interview, the interviewee states that Colonel Stahlman:

Exhibited no suicidal warning signs, appeared happy and upbeat, was not giving away any property or personal items, spoke of his children often and showed no signs of despair. [Colonel Stahlman] discussed his plan to enter an Ironman competition and doing better on his racing times on his bicycle. {Interviewee} stated {Colonel Stahlman} worked out every morning at 0400 prior to coming to the office.

59. The Defendants have conducted little or no investigation into security risks faced by Colonel Stahlman in connection with his work at Hurricane Point and the related land ownership dispute with former Saddam Hussein government officials.

60. The Defendants have conducted little or no investigation into security risks faced by Colonel Stahlman in connection with his role as a presiding Judge in one of the Haditha proceedings.

61. The Defendants have conducted little or no investigation into security risks faced by Colonel Stahlman in connection with his role investigating criminal activity within Camp Ramadi such as reported fuel thefts and corrupt Iraqi Judges.

62. The Defendants have conducted little or no investigation into security risks faced by Colonel Stahlman in connection with his role in TIFRIC, his concern over gross financial negligence or fraud on the TIFRIC project, or his apparent “whistleblowing” on the TIFRIC project.

63. The Defendants have conducted little or no investigation into how Colonel Stahlman could have shot himself with his non-dominant hand, held on to the weapon, and then tucked the weapon under his left waist. Joseph M. Guileyardo, M.D., a Board Certified Anatomic Clinical and Forensic Pathologist, has examined the record of the shooting injury to Colonel Stahlman and opined that the shooting left him without the ability of purposeful movement leaving only involuntary movement such as muscle spasm as seizure activity. This is consistent with the statement of a first responder that Colonel Stahlman’s left arm was “twitching uncontrollably.”

64. The Defendants have conducted little or no investigation into the white cloth found with gunpowder and biological particulate on the floor next the side of the bed where Colonel Stahlman lay.

65. The Defendants have conducted little or no investigation into what happened to Colonel Stahlman’s helmet bag that was missing from the scene of Colonel Stahlman’s shooting (and evidently never has been located).

66. The Defendants have conducted little or no investigation into the fact that blood stain patterns on Colonel Stahlman pillow and mattress match and yet his pillow was found positioned in such a manner that the stain on the pillow was significantly separated from the matching stain on the mattress.

67. The Defendants have conducted little or no investigation into how the sheet hanging from the top bunk down to Colonel Stahlman's mattress below received blood spatter misting on the side of the sheet facing away from Colonel Stahlman and the lower bunk bed when he was discovered.

68. The Defendants have conducted little or no investigation into how the nightstand received blood spatter on its side and top surfaces if the sheet was hanging between Colonel Stahlman and the nightstand when he was shot

69. The Defendants have conducted little or no investigation into the cause of the void in the blood spatter pattern on the nightstand that reveals that a person or object was located between Colonel Stahlman's head and the nightstand.

70. The Defendants have conducted little or no investigation into the singular bottle found on the floor next to the nightstand; or why that bottle located in the midst of the blood-spatter on the side of the nightstand is devoid of any visible blood spatter.

71. The Defendants have conducted little or no blood spatter analysis or match the blood spatter the trajectory of the bullet located in the adjoining CHU. In addition, the Navy has refused to respond to a blood spatter analysis report performed by former NCIS Senior Forensic Consultant and Supervisory Agent Michael Maloney that demonstrate that

the blood spatter clearly does not match the trajectory the bullet found in the adjoining CHU. NCIS further refused to meet with Mr. Maloney to discuss his blood spatter analysis or other findings.

72. The Defendants have conducted little or no investigation into the evidentiary value of the mattress or whether or not there was a bullet hole in the mattress.

73. Upon information and believe, the Defendants failed to count the number of rounds left in the magazine of the weapon. As of September 26, 2008, and on information and belief through June of 2011, the number of remaining rounds was still uncounted and being depicted as “unknown.”

74. The Defendants have conducted little or no investigation into why the bullet hole in the wall had gunpowder residue on it if it was made by the bullet had passed through Colonel Stahlman’s head.

75. The Defendants never tested Colonel Stahlman’s hands for gunpowder residue.

76. The Defendants have conducted little or no investigation into the witness report of the sound of a truck backing up 30 seconds after he heard a gunshot.

77. The Defendants have conducted little or no investigation into the e-mail received eight days after the shooting by Mrs. Stahlman that attached a personal picture of the Stahlman’s youngest daughter.

78. Instead of investigating the above leads, the Navy has ignored them all and fixated on the July 31, 2008 5:28 a.m. e-mail. If the e-mail indeed was sent by Colonel

Stahlman (which itself is unclear for the reason explained above), it does not say that he is going to kill himself. It does not even communicate a farewell or goodbye. The Armed Forces Medical Examiner has conceded that the e-mail itself “may not meet the criteria for a ‘real’ suicide note.” It does appear to warn Mrs. Stahlman to expect to hear significant and upsetting news about a work-related matter (perhaps connected to Haditha, Hurricane Point, or Colonel Stahlman’s intention to blow the whistle on the TIFRIC project).

79. Based on the results of the investigation (such as it was conducted) and an autopsy, the Armed Forces Medical Examiner concluded that the manner of the death of Colonel Stahlman was “suicide.” The conclusion of “suicide” was reiterated in the report of the Maryland Department of Vital Records and Death Certificate.

80. Colonel Michael L. Stahlman was buried at Arlington National Cemetery. His tombstone noted Colonel Stahlman as a Purple Heart recipient. A number of weeks later, Colonel Stahlman’s tombstone was ripped out and replaced with a tombstone that omits any reference to a Purple Heart

CLAIM
Violation of Administrative Procedure Act

81. Plaintiff incorporates all of the foregoing allegations into this allegation.

82. As explained above, DoD and Navy Instructions and Directives issued pursuant to statute mandate that the shooting of Colonel Stahlman is to be investigated and treated as a homicide unless and until, after consideration of all of the facts, there is clear and convincing evidence otherwise. For the reasons explained above, Defendants have

violated those investigative mandates in numerous respects. Defendants therefore have acted in a manner that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

WHEREFORE, Plaintiff respectfully asks the Court to enter an Order and Judgment in her favor that:

(A) Requires the Defendants to change the “manner of death” of Colonel Michael L. Stahlman from “suicide” to “homicide”; or

(B) Requires the Defendants to change the “manner of death” to “undetermined,” to reopen the investigation into the manner of death of Colonel Stahlman, to complete such investigation in a manner that complies with applicable Directives and Instructions, and only then, based upon the results of such investigation, to make a new manner of death determination that complies with the applicable law, Directions and Instructions, and which otherwise is rationale and not arbitrary or capricious; and

(C) Grants such other and further relief the Court may deem to be just, lawful and proper.

Respectfully submitted,

LAW OFFICE OF VICTOR A.
KUBLI, P.C.

By: /S/
Victor A. Kubli
~~Victor A. Kubli~~
13948 Bromfield Road
Germantown, Maryland 20874
Ph.: (301) 801-2330
Fax: (301) 528-1663

Counsel for Plaintiff

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