

[Main page](#)

DEFEND OUR MARINES

HADITHA To Dismiss or Not to Dismiss: Case Under-the-Influence Staggers On

*Any decision from NMCCA almost certain to be appealed,
defendants face long wait for justice*

David Allender | October 17, 2008 | Pdf version

This morning, in Washington, DC, a three-judge panel of military officers will hear oral arguments in the LtCol Chessani case, for and against dismissal of charges.

Chessani was charged, on December 21, 2006, with dereliction of duty and violation of a lawful order. The lieutenant colonel was not present when the incident took place and maintains he did nothing wrong.

In June of this year, charges against Chessani were dismissed by a military judge because the case was tainted with unlawful command influence.

Not so, say Marine Corps lawyers.

Today, Marine prosecutors will have thirty minutes before the Navy-Marine Court of Criminal Appeals (the NMCCA) to argue why charges should be reinstated. They will argue that the supreme authority in the case, General James Mattis, denied any command influence took place.

Robert Muise, a former Marine Corps Staff Judge Advocate and now a lawyer for the defense, will also have thirty minutes. He will argue that General Mattis' testimony is not relevant because his denial of command influence does not meet an objective standard.

Muise is currently a member of the Thomas More Law Center, representing LtCol Chessani pro bono.

Friday's hearing is another step in an agonizingly slow process. The NMCCA's decision may take six months, and whatever their decision, will almost certainly be appealed.

The Chessani case will then go to the Court of Appeals for the Armed Forces and quite possibly the United States Supreme Court.

If his case goes to trial at all, LtCol Chessani may not see the inside of a courtroom for another two years.

Meanwhile, the lieutenant colonel is occupied with administrative duties—and enjoying his family despite the uncertain future. His wife gave birth recently and Chessani is now the proud father of six, all under the age of ten.

If convicted, the lieutenant colonel faces two and a half years imprisonment, dismissal from the Marine Corps, and loss of retirement pay.

The government's decision to pursue the Chessani case in this manner was a surprise to some Haditha trial observers. Charges against the lieutenant colonel were dismissed without prejudice—leaving the door open for charges to be refiled. If the government had taken that route, Chessani's case might already have been adjudicated instead of turning into something of a legal quagmire.

The other remaining Haditha defendant, SSgt Frank Wuterich, is similarly stuck in legal limbo. The government is currently suing CBS over access to outtakes of its interview with Wuterich. CBS has refused and will fight the Marine Corps all the way to the Supreme Court. The staff sergeant's case will probably not go to trial for at least a year.

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