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Court-martial in Iraqi detainee killing to begin

By GREG RISLING Associated Press Writer
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LOS ANGELES—Did two Marine Corps sergeants murder unarmed detainees during one of the fiercest battles of the Iraq war or were they following orders from their superiors?

A military panel at Camp Pendleton will have to decide whether Sgt. Jermaine Nelson and Sgt. Ryan Weemer are guilty of unpremeditated murder and dereliction of duty when they each face separate courts-martial in the coming weeks. Opening statements in Nelson's court-martial are expected on Tuesday; Weemer is scheduled to stand trial March 30.

Both men have made it difficult for prosecutors by repeatedly refusing to testify against one another.

Their hopes for acquittal also may have been boosted after their former squad leader, Jose Nazario, was tried in U.S. District Court and found not guilty of voluntary manslaughter, assault with a deadly weapon and discharging a firearm during a crime of violence.

Some legal experts believe trying Nelson's and Weemer's cases in a military court will help the two defendants because their peers understand the rules of engagement.

"There is an element of sympathy for these youngsters, but I don't mean to imply military juries are going to give them a pass," said Gary Solis, a former Marine Corps prosecutor and judge who teaches law of war at Georgetown University Law Center. "You never know how a jury will react."

Nelson, from New York, and Weemer, of Hindsboro, Ill., have pleaded not guilty to the charges. If convicted of

murder, they each face a maximum of life in prison.

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Nazario, Nelson and Weemer were part of the second assault on Fallujah in November 2004 known as "Operation Phantom Fury," which involved vicious house-to-house fighting.

Prosecutors allege four Iraqis were killed after being captured in a house where weapons were found.

The case came to light in 2006, when Weemer volunteered details to a U.S. Secret Service job interviewer during a recorded lie-detector screening that included a question about the most serious crime he ever committed.

In the interview, Weemer said the unarmed Iraqis were slain because they didn't have time to take the men to jail.

"We called up to the platoon leader and the response was, 'Are they dead yet?'" Weemer said on the tape that was played at an earlier hearing.

Nelson gave an account to a Naval Criminal Investigative Service agent in March 2007 in which he indicated Nazario demanded that he and Weemer help him kill the Iraqis.

"So Nazario comes up, he says, 'I just did one, I'm not doing all of them myself so you're going to do one,'" Nelson told the NCIS investigator. "So I'm thinking I didn't want to get shot myself."

Nelson was "told what to do by a superior officer, and that's what my guy did," said Nelson's attorney, Joseph Low. "I don't know how that is a crime."

While the tapes will likely be used against both men at their courts-martial, prosecutors will need other evidence to prove Nelson and Weemer committed a crime.

"They can't convict on a confession alone—even confessions have to be corroborated," said Tom Umberg, a former Army colonel and military prosecutor. "If Weemer doesn't testify against Nelson, it will be tough."

Weemer's attorney, Paul Hackett, has argued that prosecutors want to court-martial Nelson first to strip away his Fifth Amendment right against self-incrimination in order to testify against Weemer.

Nazario, the squad leader, was charged under the Military Extraterritorial Jurisdiction Act, reserved for civilian contractors who are accused of crimes while working for the U.S. overseas or former military member. Nazario had left the service and his case was the first federal civilian prosecution of a former serviceman accused of a war crime.

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