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Opinion

Editorial

Civil justice for an ex-Marine

The case of an ex-Marine acquitted of Iraq-related charges validates the law that sent him to federal court.

September 7, 2008

In acquitting a former Marine accused of a war crime in Iraq, a federal jury in Riverside has done more than render a verdict to the best of its ability. It also has cast doubt on the notion that acts committed in the fog of war can't be fairly scrutinized in the daylight of a civilian trial.

Former Sgt. Jose Luis Nazario was accused of voluntary manslaughter in the 2004 killing of four unarmed detainees in Fallouja, Iraq, the scene of a major U.S. counterinsurgency operation. By the time Nazario was charged, he had been mustered out of the Marines. The manslaughter charge was brought by the Justice Department under the [Military Extraterritorial Jurisdiction Act](#), which allows for the prosecution of acts committed abroad that, if they took place in the United States, would constitute a crime punishable by more than a year in prison.

Before Nazario's trial, his lawyer argued that it was unseemly to "allow civilian juries to Monday-morning-quarterback military decisions." Sen. Jeff Sessions (R-Ala.) reacted to the Nazario case by suggesting that it would be preferable for crimes committed on active duty to be prosecuted by court-martial even if the accused had left the service. Others argued that the prosecution of Nazario was a misuse of a law primarily designed to punish U.S. military contractors who committed crimes abroad.

It's true that the law, originally passed in 2000, was amended in 2004 to allow for the prosecution in U.S. courts of Pentagon contractors. But the original law also covered "criminal offenses committed by certain members of the armed forces" and seemed to rule out a court-martial for suspects who have left the armed services. Thus, the prosecution of Nazario for acts he allegedly committed while in uniform, though unusual, is well within the intent of the law.

That law shouldn't be lightly changed. Ideally, members of the military who are accused of wrongdoing should be investigated and tried in a court-martial before they return to civilian life. But in rare cases such as Nazario's, when a suspect is no longer a member of the military, a trial in a civilian court protects both the defendant's rights and the nation's interest in holding Americans abroad to account. If anything, a civilian jury may be more sympathetic to a defendant who served in a combat zone. "You don't know what combat is until you're in combat," the jury forewoman told *The Times*.

She added, however, that "there just wasn't enough evidence," an opinion echoed by other jurors. It seems that civilians can sift through the evidence against a former Marine without becoming jury-box generals.

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