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**MILITARY: Marines refuse to testify in detainee killings**

By MARK WALKER - Staff Writer

RIVERSIDE ---- Two Marines who refused to testify Friday against a comrade facing a civilian court trial for the 2004 slayings of four detainees in Iraq are guilty of criminal contempt of court, a federal judge ruled.

U.S. District Judge Stephen Larson said he would schedule a hearing within 30 days to determine what punishment to levy against Marine Sgts. Ryan Weemer and Jermaine Nelson for withholding testimony against their fire team leader in Iraq, former Marine Sgt. Jose Luis Nazario Jr.

Assistant U.S. Attorney Jerry Behnke was visibly angered at their refusal to testify, and called the move "a charade being perpetrated on this court."

The judge said that while there wasn't sufficient reason for them not to testify, "Placing either of these two men in jail would have no effect. There is probably not a whole lot in this world that these men fear."

It's the latest development in the first-of-its-kind federal trial in which a civilian jury will decide whether the alleged actions of a former service member in combat violated the rules of engagement.

The military has granted limited immunity to Nelson and Weemer, meaning that anything they say cannot be used against them. Their attorneys argued the promise wasn't good enough.

Nazario is being tried for manslaughter and for ordering members of his squad to take part in the slaying of captives during a battle for the city of Fallujah in November 2004.

When called to the stand Friday morning outside the presence of Nazario's jury, Weemer and Nelson each cited a Fifth Amendment right against self-incrimination.

Nelson and Weemer face trial in military court later this year on murder and dereliction of duty charges for their alleged roles in the killings.

Nazario sat stoically at the defense table as attorneys for his two comrades made impassioned pleas to the judge.

"Look at the Purple Heart on his chest," attorney Christopher Johnson said of Weemer, "and think of what it must take this Marine to refuse a lawful command. To him, this is a nightmare."

Attorneys for the two men say the immunity the Marine Corps granted them has a loophole and thus isn't good enough to guarantee that their words won't be used against them when they head to court-martial at Camp Pendleton.

The problem, the attorneys said, is that the letter granting immunity was not signed by Lt. Gen. Samuel Helland, who wields power over the courts-martial for the two men. Instead, the letter was signed by an attorney on Helland's staff.

Behnke called Weemer and Nelson to the stand and confronted them about the signature. Both said they would still decline to testify, even if Helland signed the immunity grant.

Nelson and Weemer were jailed for nearly three weeks earlier this year when another judge found them in civil contempt for refusing to answer a federal grand jury's questions as it evaluated the case against Nazario.

In court Friday, Behnke revealed that Nelson had earlier rejected a plea deal from the Marine Corps: plead guilty to dereliction of duty in exchange for the service dropping the murder charge. The deal would also have allowed Nelson to stay in the service.

His attorney, Joseph Low, later said his client rejected the offer because he was not going to testify against his fellow Marines.

Nazario was out of the Marine Corps when the allegations came to light and was not eligible to be called back into the service to face trial in military court.

That left the U.S. attorneys office as the only entity that could prosecute the case. Nazario's case is the first to reach court under a law adopted by Congress in 2000 that allows for prosecution of former service members accused of committing crimes on a foreign battlefield.

His attorneys argue the nine women and three men selected to hear the case that continues on Tuesday are not in a position to "second guess" a decision made in the heat of battle.

The alleged killings took place on the first day of a bloody battle that has earned a spot in Marine Corps lore. The killings came during a massive Marines offensive on the city in the Anbar province after the squad found the four men hiding in a house with a cache of weapons.

The incident came to light after Weemer revealed it during a lie detector test taken as part of a job interview for a position with the Secret Service.

Nazario faces a minimum of 10 years in prison if convicted of all charges.

Nelson and Weemer each face the possibility of life in prison if a military jury convicts them.

Marine Maj. Timothy Jent, who commanded the 3rd Battalion, 1st Marine Regiment company that the three accused men were part of testified Friday afternoon that each member of the unit went through at least three

training sessions in handling detainees.

Jent said the Marine Corps had designated a detainee holding facility where captured insurgents were to be taken.

Among those in the courtroom was Nazario's mother, Sandra Montianez.

"I gave my son to this country at age 17," Montianez said. "This is how the country repays me."

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