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NOT GUILTY ON ALL COUNTS!

"Marine Dream team", and justice, prevails in Nazario trial

Defend Our Marines | Nathaniel R. Helms | Thursday, August 28, 2008 [[pdf](#)]

Riverside, California – Jose L. Nazario, Jr is a free man.

A jury of nine women and three men needed six hours to decide the landmark case that also sends a warning to federal prosecutors about second-guessing warriors in combat.

Bedlam erupted in the US District Court when the bailiff announced "not guilty" on the third and final charge. Lead defense attorney Kevin B. McDermott, and his self-styled and unarguably dynamic "Marine Dream Team" that gutted the prosecution, joined the impromptu celebration with high fives and big grins.

Nazario was accused of manslaughter, abetting murder, assault, and feloniously using his weapon to kill somebody, the government said.

Despite two years of relentless effort by Special Agent Mark O. Fox and his team of NCIS investigators, no evidence to corroborate confusing witness testimony was ever found.

Juror Nicole Peters said she sat in the boiling sun for an hour after the verdict, waiting for Nazario to come out of the courtroom so she could congratulate him.

"I never thought he was guilty," she said. "When we went in, it was nine to three for not guilty. By lunch there was only one juror who thought he was guilty," she added. The hold-out kept saying, "but he killed somebody."

The high school guidance counselor from Gavilan Hills, California said she couldn't leave without giving the man she helped free a big hug. While she waited in the meager shade of the court house, Peters explained why she helped set Nazario free.

"What happened to the other people who were supposed to be there?" she rhetorically asked, referring to Marine Corps Sergeants Ryan Weemer and Jermaine Nelson, Nazario's co-defendants. "We heard about them and then they weren't here."

Weemer and Nelson, who face courts martial later this year, are charged with murder and dereliction of duty at nearby Camp Pendleton. Both Marines face life sentences in addition to possible felonious criminal contempt charged if presiding US District Judge Stephen Larson decides to send them for another stay in the federal slammer.

"Who are we to decide what men in war are doing? My father was a military man in Belgium who went through World War II fighting the Germans. He understands," Peters said.

Moments later, Peter was hugging Nazario's mother Sandra Montanez and then Nazario himself. That led to another round of tearful embraces among family and friends congregating to congratulate Nazario.

The soft-spoken warrior clawed his way out of Spanish Harlem to be a decorated, stand-up sergeant of Marine Corps light infantry who was honorably discharged after eight grueling years. He was fired from his job as a Riverside police officer when NCIS special agents frog marched him through his own police headquarters.

That indignity was the beginning of a bruising year-long ordeal that left his house in hock to the government for bond money, and his wife and kid in upstate New York, while he sweated it out with his mother in murderously hot Riverside.

The government used another Marine to shabbily build a case against Nazario by taping phone conversations that were as disgusting in content as they were in motivation. Sgt. Jermaine Nelson, who later decided to risk imprisonment for refusing to testify, was used to try and entrap Nazario into saying he executed two insurgents and help dispose of two more.

Two jurors called the tape orchestrated by NCIS Special Agent Mark O. Fox a jumble of irrelevancies that raised the specter of who ordered Nazario to kill the prisoners rather than whether he did it of his own volition.

"I was actually looking for something from the government to sway me the other way," said tobacco chewing real estate agent Ted Grinnell., from Lake Elsinore. "We had no idea about what happened before the trigger was pulled. We didn't get to hear the whole story."

The 36-year old Navy veteran said he would have voted to convict Nazario to "send the military the message it is not above the law" except the evidence was just not there.

Nazario's father-in-law, Fred Jones, was in the US District Court every day of the trial. Jones retired to Riverside from Washington, D.C. to be near his daughter and grandson. He got there just in time to watch his beautiful new family go back to upstate New York to find a job after Nazario lost his.

Over doughnuts Thursday morning, Jones lamented that nobody hires suspected felons so Jose never did get a job.

Like everyone else in the courtroom, Jones was as jumpy as a scalded cat over what was inevitably going to come, except he tried not to show it. Every time the bailiff walked down the hallway the gather spectators and press started whispering and wondering if "they" were in yet.

While everyone waited, Jones commented that he thought it was a "hell of a way" to treat a young man "who did everything right and still got his ass kicked."

While he was putting on his rider's helmet after the verdict, Jones laughed a few times between bouts of moistening eyes. He said he is ready for his grandson and daughter to get back in their new house. It was collateral for the \$50,00 bond the government demanded before setting Nazario free after he was arrested.

It took a year for the trial to get under way. When it finally did, it was as dramatic as it was important. It had all the elements of a great novel including colorful characters, rock hard warriors, calculating investigators and cold, business-like prosecutors who appeared to find the entire episode distasteful

Jerry Behnke, the Assistant US Attorney who led the hard hitting prosecution, walked out of the courtroom with very little comment after shaking hands with the defense team.

When he encountered the cameras waiting on the broiling sidewalk, he said he would respect the jurors decision and then walked away with out another word. NCIS Special Agent Fox dematerialized somewhere and was never seen again.

The Marine Dream Team was truly a piece of work. Among them there is enough rank to run a battalion including the company clerk, something former enlisted man Joe Preis never fails to bring up in banter.

He likes to call retired Marine Corps colonel Doug Applegate “the O-6” in reference to Applegate’s exalted rank. Preis was an artillery forward observer who fought with the Ninth Marines, the unenviable “Walkin’ Dead” that slammed through Somalia on that abortive peacekeeping mission. Applegate, who has an uncanny resemblance and manner to silky smooth Fred Astaire, calls Preis “Stillborn.”

Now Preis is a lawyer at the silk stocking Pepper Hamilton LLP law firm that ponied up a tremendous amount of money to keep Nazario from getting bulldozed into the ground.

Without a strong defense, made possible by big bucks from Pepper Hamilton and aid from hundreds of private donors, Nazario faced a ten years of mandatory jail time.

The government never reveals what it spends, but sending two teams of NCIS investigators to Fallujah, Iraq to find an unblemished house filled with confused Iraqis who maybe bought it from somebody who moved to Syria is a glimpse of the time, money and energy the Feds were willing to expend.

Later at his hotel suite McDermott humbly offered that if it hadn’t been him and his Marine Dream Team another Marine would have stood up to face the heat.

McDermott has always been a maverick, according to Applegate. He has a special fondness for the young grunts that seem to always take the beating when things go wrong in the front office.

“That is what the Brotherhood of Marines is all about,” McDermott said.



Jose Nazario and his mother, Sandra Montianez
(photo by Nathaniel Helms, *Defend Our Marines*)

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