

VIEW FROM THE COURTROOM: NAZARIO TRIAL, DAY ONE

"This kind of case is supposed to be in a military court"

Defend Our Marines | Nathaniel R. Helms | Thursday, August 21, 2008 | Related story: [Fallujah murder trial underway](#)

Riverside, California--There is a lot at stake in the utilitarian court room dominated by the Seal of the United States District Court for Central California at Riverside.

This is where former Marine Corps Sergeant Jose Luis Nazario, 28, is on trial for allegedly killing enemy combatants his squad captured in the opening hours of the battle for Fallujah, Iraq almost four years ago.

Two other Marines in the squad he led are charged with unpremeditated murder and dereliction of duty by the Marine Corps.

For the record, Nazario says it never happened.

On trial with Nazario is almost 250 years of American law that our nation's warriors are not to be second-guessed by disassociated, ill-informed civilians thousands of miles and millions of emotions away from their battlefields.

Nazario was a squad leader in the notorious 3rd Platoon, Kilo Co., 3rd Battalion, 1st Marines, the Thundering Third, which, incidentally, has not been mentioned thus far.

In 2005, the Thundering Third was picked to deck the halls of the Pantheon of Heroes at the National Museum of the Marine Corps in Quantico, Virginia because of its magnificent performance at Fallujah.

Somebody sure has a weird sense of humor.

Nazario stands accused of executing the prisoners because he received an unlawful order over his radio from an unknown superior to do so. So far that allegation hasn't even been mentioned either.

"Docile" combatants and a repugnant case of civilians judging warriors

According to the government, Nazario simply decided to whack four innocent Iraqi men who just happened to be in a house full of hot weapons, ammunition, and spent cartridges when his squad barged in to take the place over. The government prosecutor told the jury he was upset because his friend and subordinate, LCpl Juan Segura, had just been killed.

Assistant U.S. Attorney Charles Kovats didn't mention that Segura was the first Marine to die in Operation Phantom Fury, later rechristened Operation Al Fajr to mollify Iraqi prestige. Before it was over in mid-December, 32 other Marines from the Thundering Third, including five from Kilo Company, would die as well. Kovats didn't mention that either.

As expected, the opening arguments were interesting. The government fumbled its way though understandably unfamiliar terrain trying to make sense out of things that don't make sense. In a civilian courtroom, trying to equate combat to criminal behavior seemed ludicrous on its face.

Kovats did have the temerity to call the allegedly dead enemy combatants “docile.” I once shared dehydrated American tomato sauce and orange drink for a few days with some mujehadin jihadists from Chechnya, Pakistan and Azerbaijan while in Bosnia in 1993.

I certainly wouldn’t characterize them as docile. The Chechen fondly told me he would like to kill me but I was useful at the moment. Instead he went off to madly snuff out the Serbs, in his mind all Slavs were infidels of an even worst sort.

The defense, led by veteran military lawyer Kevin B. McDermott was far more interesting to listen to. Government lawyers like to drone, McDermott likes to make impassioned pleas to the sensibility of the jurors.

Of course he said Nazario was innocent. Defense lawyers always say that. But he added a warning that isn’t usually heard. He told the jurors they were making decisions that would affect the lives of all our soldiers, sailors and Marines for years to come.

A former Marine himself, McDermott candidly admits he finds it repugnant that civilians should judge the actions of warriors.

After opening arguments ended, the government put on its case. Because it doesn’t have any bodies, names, identities, nationalities, physical evidence, or grieving widows and orphans to prove the existence of the phantom decedents, it is falling back on policy and procedures to prove a crime occurred.

A joke going around is that the Naval Criminal Investigative Service special agent heading the investigation actually found the dead guys; they were hiding among Saddam’s weapons of mass destruction.

The first prosecution witness was a retired Marine named Courtney Johnson. Johnson fought his war as a corporal during Desert Storm when Iraqi soldiers were surrendering en masse to journalists that had sneaked over the border ahead of the Marines slipping into Kuwait. He admitted he had never been confronted with the kind of face to face war Nazario experienced.

Johnson recited from manuals placed into exhibit books placed on his podium. He talked about what Marines are supposed to learn about enemy prisoners of war and when they were supposed to learn it.

Everybody passed, he said. It reminded me of getting qualified expert on the rifle range with a pencil; a poke here, a poke there, and every man a marksman.

The next witness was a sharp young infantry major named Daniel E. Schmitt. He told the jury that the Marine Corps called the environment of combat “chaos.” The government never mentioned he was Nazario’s first company commander after he got out of boot camp.

Schmitt was sent to Riverside from his duty station in Iraq to testify about teaching Nazario the rules of war. He said that when he is finished he is going straight back to the war.

Schmitt passionately explained that one of the problems in preparing young Marines to enter combat in Iraq was getting their heads around shooting women holding babies. At first, the actors the Marines employed to add reality to the exercise simulated holding babies. When the Marines didn’t buy it the trainers went to Wal-Mart and bought doll babies to simulate the real thing.

After that, the Marines had a lot harder time shooting the moms, he said with a straight face. That was a good thing, he added. The baby toting mamas represented an important component of the training program dealing with identifying and reacting appropriately to perceived threats.

An obvious look of consternation passed over the face of one of the women jurors while Schmitt was explaining how the Marines decided whether the mothers holding the babies were also hiding bombs behind their children.

I wondered whether it was even possible for the jurors to ever imagine women holding bombs and their babies in the same embrace. That doesn’t happen very often in Riverside. In fact, a cursory search for Riverside moms with bombs and babies drew a blank.

Deciding whether or not to shoot Iraqis digging holes in the side of the road was easier to come to grips with, Schmitt explained.

“Digging holes in the side of the road is a non-growth industry because we know holes in the side of the road is where they plant bombs,” he said. “At the end of the day it is a mental, moral, or personal decision of the Marines. No Marine is ever denied the right of self defense.”

No doubt the defense lawyers liked that answer. Nazario certainly did.

The last witness to testify Thursday was Capt. Jonathon Vaughn, a Marine who was the Thundering Third’s JAG – Judge Advocate General (not to be confused with an SJA, Staff Judge Advocate)– who was the battalion’s lawyer at Fallujah.

As one would expect from a lawyer, Vaughn had a lot to say. He even had a picture of himself teaching an ROE class in Iraq to show the jury in case anyone doubted his veracity. He looked good.

Vaughn testified that he taught and re-taught the rules of engagement and the law of war to 3/1 Marine in Iraq over and over before he was injured at Fallujah on November 12 and evacuated.

Halfway through his testimony a juror complained to the bailiff that he didn’t understand the terminology and acronyms Vaughn and the trial lawyers were using to explain what they were all talking about.

Admittedly, there were enough letters floating around the room to make an alphabet soup. ROE (rules of engagement), UCMJ (Uniform Code of Military Justice), and LOAC (Law of Armed Conflict), to name a few.

“The jury was kind of confused by all the military lingo because this kind of case is supposed to be in a military court,” Nazario later observed.

It was undoubtedly the most logical explanation of the entire day.

Nathaniel R. Helms
Defend Our Marines
21 August 2008



***Nat Helms** is a Contributing Editor to **Defend Our Marines**. He is a Vietnam veteran, former police officer, war correspondent, and, most recently, author of [My Men Are My Heroes: The Brad Kasal Story](#) (Meredith Books, 2007).*

Nazario case [MAIN PAGE](#) | [CONTACT US](#) | [HADITHA](#) | Related site: [DEFEND OUR TROOPS](#)