

VIEW FROM THE COURTROOM: NAZARIO TRIAL, DAY TWO

THE STUFF OF LEGENDS

Defend Our Marines | Nathaniel R. Helms | Friday, August 22, 2008

Riverside, California--The heated atmosphere at the US District Court in Riverside grew even more contentious Friday morning when two Marine sergeants accused of murder by military authorities refused to testify in the manslaughter case of their former squad leader Jose Luis Nazario.

The air was already charged with anticipation when sergeants Ryan Weemer and Jermaine Nelson, both 26, marched in ramrod straight to tell US District Judge Stephen Larson that they were refusing to obey his order to testify against their former squad leader.

All three men are charged with participating in the execution of four enemy combatants their squad captured at Fallujah, Iraq on November 9, 2004.

Two years ago, Weemer spilled the beans on the alleged murders when he tried to get a job uniformed job in the Secret Service guarding the White House

At the time, Weemer was managing a coffee shop in Chesterfield, Missouri and I was writing a book about heroes. Weemer was one of them.

He was a newlywed, going to college, when I met him. He told me he was trying to sort out the horrible things he witnessed and participated in before and during the infamous Hell House fight.

It was there that two Marines earned Navy Crosses and all the men in 3rd Platoon, Kilo Company, 3rd Battalion, 1st Marines were installed in the Pantheon of Heroes reserved for only the most gallant Marines.

Weemer told me he was shot three times at Hell House while engaged in a face-to-face duel with two Chechen foreign fighters who ultimately came out on the losing end of the encounter.

In time I discovered that the Hell House battle, and the days of constant combat that preceded it, left him psychologically scared and unable to process the horrible things he had experienced during the worst fight the Marine Corps has been in since the Vietnam War.

There were other stories as well, dark secrets he was holding deep inside, stories that showed in his haunted eyes. Even so, I never imagined the next time I saw him would be two years later in a California courtroom.

Nelson, an assaultman attached to 3rd Platoon, was also there, trying to break in to save Nazario, Weemer and ten other Marines trapped inside the slaughter house. Before the bloody skirmish ended one of those Marines was dead, and ten more were wounded.

In the end, all the enemy combatants died and the house they were fanatically defending was ground into dust by a bulldozer called in to finish the job. It was the stuff of legends.

So is this trial.

When Nelson and Weemer marched into the court room one at a time to face the judge, Nazario was sitting quietly on their left. As usual, nothing was on his face to give away what he might be thinking. The two decorated Marine sergeants exchanged furtive, almost embarrassed looks with Nazario that proclaimed in an instant how miserable they all must feel.

Nazario, ever the stoic Marine, says he tries not to think about it.

Inside, Nazario's guts are churning, his mother Sandra Montianez claims. The fiery 46-year old Manhattan native with a heavy New York accent has a formidable temper that she can barely suppress when the prosecution characterizes her son as an unfeeling murderer and callous killer who slaughtered innocent Iraqis.

Sitting behind her Friday allowed me to unobtrusively watch her care-worn face in profile, changing from anger to disbelief and back to anger while the judge and lawyers argued back and forth.

"I gave them to him when he was seventeen," she said. "He was so proud and now look what they are doing to my son."

Sandra fondly remembers him as the tough little kid who by sheer willpower pulled himself out of Spanish Harlem to graduate from high school and join the Marines instead of the drug gangs like many of his youthful peers.

"I keep life books about him growing up," she said. "Everything he did I have written down. He is my only son and they want to hurt him after all he has done for his country."

Occasionally on the way to court in the morning, in the truck a friend lent Nazario until the trial is over, she rubs the back of his shaven head like she did when he was a kid with curly black hair.

"His son Gabriel has hair like that," she said on the way to court Friday morning. "He doesn't even have to comb it because it is so curly and beautiful."

Nazario merely shook his head and laughed softly, something he rarely does once he enters the courthouse.

"He can't sleep, he can't eat. At night he tosses and sits up in bed all night. He isn't going to show it, Marines aren't supposed to show emotion, but this is hurting him deeply. He was so proud to be a Marine," she said.

It is enough to make a person choke back tears of his own.

Assistant US Attorney Jerry Behnke doesn't care about what a great kid and stand-out Marine Nazario used to be. He is only interested in getting a victory. He claims it will be good for the country.

His efforts were already dealt a body blow Tuesday when Larson suppressed an important incriminating statement made by Weemer to the Secret Service, the statement that triggered the investigation. Behnke exploded into anger when the two Marines told him they refused to testify. Without their eyewitness testimony, the prosecution's already shaky case slides further into doubt.

Weemer and Nelson are currently under open arrest at Camp Pendleton, waiting to go to court-martial for murder and dereliction of duty. Nelson is scheduled to go on trial in December and Weemer is scheduled to be arraigned Monday.

He is expected to plead not guilty, his attorney Christopher B. Johnson said.

"There is a charade being perpetrated on this court," Behnke charged Friday, demanding that both men be immediately confined for six months, the maximum punishment a misdemeanor conviction for criminal contempt allows.

"It is not fair and right to the United States or this government's case," he fumed.

Unmoved, Larson urged Behnke to "take the long view that in the end justice will be served."

Larson, who has shown remarkable restraint during the entire bizarre proceeding, shrugged off Behnke's demand to immediately jail the Marines. Instead, he ordered the men before his bench on September 29th to decide what he ought to do with them.

"There is no maximum limit to what sentence this court can impose," he warned the assembled cast.

Both Nelson and Weemer already spent three weeks in civilian confinement in May and June after Larson, and another US district judge, sent them to the slammer for refusing to testify to the Grand Jury that indicted Nazario. They never budged.

"Placing either of these two men in jail would have no effect," Larson reasoned. "There is probably not a whole lot in this world that these men fear."

The heated exchanges between Larson and Behnke and the defense teams are merely the latest development in the first federal trial in which a civilian jury will decide whether the alleged actions of a Marine under orders in combat violate civilian law.

The issue may never be decided unless Nelson and Weemer testify, Behnke warned.

Weemer and Nelson told Larson there was nothing that could compel them to testify. Their lawyers, Christopher B. Johnson and Joseph Low, told the court that both Marines believed the government's offer of testimonial immunity was not enough protection to guard them against Marine Corps legal retribution.

Behnke called Low's effort to shield his client from prosecution "a charade," and the lawyer and former Marine took umbrage.

"He will not testify," Low said. "And I take issue with the characterization this is a charade."

Weemer's attorney Christopher B Johnson asked the judge for leniency, arguing that the thrice wounded Marine was already fighting for his life. He asked Larson to make a summary judgment and sentence the Marines to time already served.

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

Larson demurred, arguing that upholding the honor of the Marine Corps was a Marines' most important responsibility.

"This court is once again calling on his honor and integrity," Larson said.

Behnke revealed that both Weemer and Nelson were offered government deals to testify against Nazario, something long rumored since the deals were offered last month. He said that Nelson, who was once cooperating with the government, was even offered a chance to testify in return for the dismissal of his murder charge, no jail time for a guilty plea for dereliction of duty, and the option to remain in the Marine Corps.

Weemer was also offered a deal that he apparently rejected out of hand.

Nazario's federal trial marks the first time a civilian jury will decide whether the alleged actions of a former service member in combat violate civilian laws. The law, called the Military Extraterritorial Jurisdiction Act or MEJA, was written in 2000 to give the federal government a means to prosecute service members and civilians who violate US law overseas

Nazario, 28, has pleaded not guilty to voluntary manslaughter, causing others to murder, assault with a deadly weapon, and discharging a firearm during a crime of violence.

Weemer was ordered this month to stand trial in military court on charges of unpremeditated murder and dereliction of duty in the killing of an unarmed detainee in Fallujah..

Nelson is scheduled for court-martial in December on charges of unpremeditated murder and dereliction of duty. His lawyer says he is innocent.

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