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“Defend Our Marines” website steps forward in spades.

By Major Bill Donahue, USMC -RET | August 18, 2008

DEFEND OUR MARINES

Trial for Marine in civilian court two weeks away

Defend Our Marines offers match for defense fund donations

by David Allender | August 7, 2008

Major Bill Donahue (USMC, retired) heads United American Patriots, a national non-profit 501(c) 3 organization and its Warrior Fund project. His mission is to ensure justice for soldiers and Marines accused of crimes arising out of combat in Iraq.

Donahue speaks with passion about his cause. And he speaks with understandable pride about his successes. Donations from Warrior Fund were crucial to the recent exonerations of Sgt. Leonardo Treviño and Sgt. 1st Class Trey Corrales. Regarding contributions from across America, lawyer Rick Stevens said “you all played a part in these victories”.

“My Board of Directors and I are doing this because we know that the government isn’t

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giving our troops a fair shake,” Donahue says. “We also know that our soldiers and Marines already have the deck stacked against them. When a sitting congressional representative, John Murtha, can publicly proclaim our Marines as being ‘cold-blooded murderers’ even before any investigation begins, it is evident that politics is playing a major hand in these prosecutions. Either patriotic Americans step forward with money they would otherwise spend at the movies or these troop’s families will have to mortgage their lives to pay for an adequate civilian legal defense. JAG-appointed attorneys are notoriously inexperienced in these sorts of cases. We know times are tough for many citizens, but think about how tough spending the rest of your life in a military prison would be like—for just doing your duty.”

As has been reported extensively by Nat Helms for Defend Our Marines, the Third Battle of Fallujah will take place in courtrooms.

Jose Nazario will go on trial in civilian court in just two weeks (Donahue’s organization is shouldering the lion’s share of his legal fees). Nazario is charged voluntary manslaughter for the deaths of insurgents inside a house during combat operations. He is also charged with a long list of lesser charges including “knowingly using and carrying a firearm”.

As a Marine, Nazario faced the full might of the Iraq insurgency. Now, as a defendant, he faces the full might (and unlimited resources) of the United States government. Nazario’s resources are practically nonexistent, but Bill Donahue aims to tip the scales just a little by raising cash for his defense.

Here’s how you can help.

Go online to the **Warrior Fund** (www.unitedamericanpatriots.org) and donate now (just write “Jose Nazario Defense Fund” in the comment field during the checkout process). Or if, you prefer, send a check, to...

United American Patriots Inc
Attn: Warrior Fund / Jose Nazario case
5817 Starboard Drive, Suite 100
Greensboro NC 27410

Defend Our Marines will match the first \$1,000 dollar-for-dollar with a \$1,000 contribution of our own.

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Sgt John "Johnny" Winnick II USMC faces Article 32 hearing

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We've never made such a direct appeal for help here on Defend Our Marines but are doing so now because we believe that Jose Nazario deserves the thanks of a grateful nation, not the prospect of life in prison.

We also believe in Bill Donahue as a man who is totally committed to justice. And we believe neither Jose nor his family should have to forfeit their lives in financial ruin to prove his innocence.

It's urgent and imperative that the defenders of our nation receive just treatment from the citizens they'd give their lives to protect. If you agree, please step up today. Without your help, a good man like Nazario will never have the justice he so richly has earned.

[Blog Note: True to his word, David Allender has sent UAP a personal check for \$1,000.00. And, through his website, he has raised more than \$830.00 more for Nazario's defense. David is a true American Patriot]

Go to the Defend Our Fallujah Marines main page at

<http://www.warchronicle.com/TheyAreNotKillers/DefendOurMarines.htm>

Or, contact David at at WarChronicle@verizon.net

Topics: [Americans speak out...](#), [Fund Raising](#), [Military Cases](#), [Patriotism](#), [The Unvarnished Truth](#) | [No Comments »](#)

[Former] Marine Nazario decries prosecution in a civilian court.

By Major Bill Donahue, USMC -RET | August 18, 2008

Ex-Marine decries prosecution in civilian court (Chelsea Carter's call)

[Blog Note: Jose Nazario is NOT an "ex-" Marine. He is a FORMER Marine...Murtha IS an EX-Marine!]

By CHELSEA J. CARTER – 23 hours ago

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IRVINE, Calif. (AP) — A former Marine sergeant facing the first federal civilian prosecution of a military member accused of a war crime says there is much more at stake than his claim of innocence on charges that he killed unarmed detainees in Fallujah, Iraq.

In the view of **Jose Luis Nazario Jr.**, U.S. troops may begin to question whether they will be prosecuted by civilians for doing what their military superiors taught them to do in battle.

Nazario is the first military service member who has completed his duty to be brought to trial under a law that allows the government to prosecute defense contractors, military dependents and those no longer in the military who commit crimes outside the United States.

“They train us, and they expect us to rely back on that training. Then when we use that training, they prosecute us for it?” Nazario said during an interview Saturday with The Associated Press.

“I didn’t do anything wrong. I don’t think I should be the first tried like this,” said Nazario, whose trial begins Tuesday in Riverside, east of Los Angeles.

If Nazario, 28, is convicted of voluntary manslaughter, some predict damaging consequences on the battlefield.

“This boils down to one thing in my mind: Are we going to allow civilian juries to Monday-morning-quarterback military decisions?” said Nazario’s attorney, Kevin McDermott.

Others say the law closes a loophole that allowed former military service members to slip beyond the reach of prosecution. Once they complete their terms, troops cannot be prosecuted in military court.

Scott Silliman, a law professor and executive director of the Center on Law, Ethics and National Security at Duke University, says it has little to do with questioning military decisions and everything to do with whether a service member committed a crime.

“From a legal point of view, there is no difference in law between war and peace,” he said.

The **Military Extraterritorial Jurisdiction Act law [MEJA]** was written in 2000 and amended in 2004 **primarily to prosecute civilian contractors** who commit crimes while working for the U.S. overseas. **One of the authors contends prosecuting former military personnel**

was “not the motivation.”

“I don’t fault the Department of Justice for using what legal authority they have if a clear criminal act has been committed. But I do think that it would be preferable for crimes committed on active duty be prosecuted by court martial rather than in civilian courts,” said Sen. Jeff Sessions, R-Ala.

“I think maybe what it says is we need to rethink the question of military personnel who are subject to prosecution.”

Telephone messages for a spokesman in the U.S. attorney’s office in Los Angeles seeking comment were not returned.

Nazario, of Riverside, is charged with one count of voluntary manslaughter on suspicion of killing or causing others to kill four unarmed detainees in November 2004 in Fallujah, during some of the fiercest fighting of the war. He also faces one count of assault with a deadly weapon and one count of discharging a firearm during a crime of violence.

If convicted of all charges, he could face more than 10 years in prison.

The case came to light in 2006, when Nazario’s former squadmate, **Sgt. Ryan Weemer**, volunteered details to a **U.S. Secret Service** job interviewer during a lie-detector screening that included a question about the most serious crime he ever committed.

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. He has pleaded not guilty.

According to a Naval Criminal Investigative Service criminal complaint, several Marines allege Nazario shot two Iraqi men who had been detained while his squad searched a house. The complaint claims four Iraqi men were killed during the action.

The complaint states the squad had been taking fire from the house. After the troops entered the building and captured the insurgents, Nazario placed a call on his radio.

“Nazario said that he was asked, ‘Are they dead yet?’” the complaint states. When Nazario responded that the captives were still alive, he was allegedly told by the Marine on the radio to **“make it happen.”**

Nazario later received the Navy-Marine Corps Commendation Medal with a 'V' for valor for combat and leadership in Fallujah.

Though Nazario and his attorneys declined to discuss the facts of the case with the AP, the former Marine has always maintained his innocence.

After leaving the military, Nazario worked as an officer with the Riverside Police Department and was close to completing his one-year probation. He said he knew nothing of the investigation until he was arrested Aug. 7, 2007, after being called into the watch commander's office to sign a performance review.

He said he was leaning forward to sign when he was grabbed from behind by his fellow officers, told he had been charged with a war crime and was turned over to Navy investigators waiting in a nearby room. Because he had not completed probation, the police department fired him.

Since then, he said, has been unable to find work.

"You're supposed to be innocent until proven guilty," he said. ***"I've put in applications everywhere for everything. But nobody wants to hire you if you have been indicted."***

Without income, Nazario said, he has been forced to move in with his parents in New York. He and his wife resorted to selling some of their household goods, such as electronics equipment, to a pawn shop.

His wife, once a stay-at-home mother to their 2-year-old son, has gone to work as a customer service receptionist, he said. She will be unable to attend his trial.

"She has to work. We need the money," he said, his eyes reddening as he blinked away tears.

Nazario said he has no regrets about being a Marine, only regrets about what has happened since.

"My faith in the system is shaken. There's no doubt about that," he said.

One of Nazario's defense attorneys, Doug Applegate, said he believes that ultimately the former Marine will be acquitted because of lack of evidence.

"There are no bodies, no forensic evidence, no crime scene and no identities,"
he said.

It is unclear what, if anything, Marines being subpoenaed to testify will say about the events in the house in Fallujah.

Another Marine, **Sgt. Jermaine Nelson**, 26, of New York is slated to be court-martialed in December on charges of unpremeditated murder and dereliction of duty for his role in the deaths.

Although he has not entered a plea in military court, Nelson's attorney has said his client is innocent.

Nelson and Weemer were jailed in June for contempt of court for refusing to testify against Nazario before a federal grand jury believed to be investigating the case. Both were released July 3 and returned to Camp Pendleton.

Chelsea J. Carter covers military affairs in Southern California. Associated Press writer Ben Evans in Washington contributed to this report.

Blog Note: For the most complete coverage of this case, and others like it, go to

<http://www.warchronicle.com/TheyAreNotKillers/DefendOurMarines.htm>.

David Allender runs this site and pays for it out of his own pocket. He truly is An American Patriot!

Topics: [Military Cases](#), [Sgt Jose Nazario, former US Marine](#) | [No Comments »](#)

Federal Judge attempts to pitch Marines against each other!

By Major Bill Donahue, USMC -RET | August 15, 2008

Former Marine Sergeant Jose Nazario, Sgt Ryan Weemer and Sgt Jermaine Nelson are three United States Marines who have been charged with "*committing crimes during combat actions*".

Jose Nazario is being pursued in the civilian Federal courts system because he has already been HONORABLY discharged. Sgt Weemer and Sgt Nelson are on active duty. They will be facing military Court-martial.

Jose Nazario and his brother Marines, Weemer & Nelson, are all charged with a combat incident that

purportedly occurred back on November 9, 2004 in Fallujah, Iraq while serving as members of the 2nd Battalion, 5th Marine Regiment, 1st Marine Division.

The charges are:

1. Voluntary manslaughter,
2. Assault with a deadly weapon,
3. Discharging a firearm during a crime of violence and,
4. "Causing an act to be done"

I received the email below from Kevin McDermott who is Nazario's case attorney:

From Kevin McDermott, attorney for (former) Marine Sergeant Jose Nazario (8/15/08):

Bill,

Here is the latest order from the judge in the Nazario case. Both men are currently refusing to testify against Jose. And I believe they will stay the course but please put out the word as their strength in standing firm is our best defense.

McD

(Read the Judge's orders below)

Activity has occurred in the following cases:

[5:07-cr-00127-SGL USA v. Nazario](#)

Order on Stipulation [71](#)

Docket Text:

ORDER by Judge Stephen G. Larson as to Defendant Jose Luis Nazario, Jr. arantina EX PARTE

APPLICATION to Compel Testimony of **Jermaine Nelson**[64]. IT IS ORDERED pursuant to 18 U.S. C. § 6002 that Jermaine Nelson give testimony or provide other information which he refuses to give or to provide on the basis of his privilege against self-incrimination as to all matters about which he may be interrogated in the course of these proceedings. IT IS FURTHER ORDERED that no testimony or other information compelled under this order, or any information directly or indirectly derived from such testimony or information, shall be used against Jermaine Nelson in any criminal case, except that he shall not be exempted by this order from prosecution for perjury, giving a false statement, or otherwise failing to comply with this order. (mrgo)

5:07-cr-00127-SGL USA v. Nazario
Order on Ex Parte Application 72

Docket Text:

ORDER by Judge Stephen G. Larson as to Defendant Jose Luis Nazario, Jr, granting EX PARTE APPLICATION to Compel Testimony of **Ryan Weemer**[65]. IT IS ORDERED pursuant to 18 U.S.C. § 6002 that Ryan Weemer give testimony or provide other information which he refuses to give or to provide on the basis of his privilege against self-incrimination as to all matters about which he may be interrogated in the course of these proceedings. IT IS FURTHER ORDERED that no testimony or other information compelled under this order, or any information directly or indirectly derived from such testimony or information, shall be used against Ryan Weemer in any criminal case, except that he shall not be exempted by this order from prosecution for perjury, giving a false statement, or otherwise failing to comply with this order. (mrgo)

5:07-cr-00127-SGL USA v. Nazario - USA
Voir Dire Questions (Proposed) 73

Docket Text:

PROPOSED VOIR DIRE QUESTIONS filed by Plaintiff USA as to Defendant Jose Luis Nazario, Jr (Behnke, Jerry)

Whatever happened to the Constitutional right against self-incrimination. According to the ORDERS cited above, both Weemer and Nelson will be granted immunity, e.g., “...*no testimony or other information compelled under this order, or any information directly or indirectly derived*

from such testimony or information, shall be used against ...” either Weemer or Nelson.

Yeh, uh huh!

We have seen this sort of judicial coercion before. But both Weemer and Nelson are standing fast. They have chosen to NOT testify against their brother-in-arms, Jose Nazario.

The prosecution HATES this because, without Weemer’s and Nelson’s “testimony”, they have no case.

Read this press release dated May 1, 2008 21:05:05 EDT

OCEANSIDE, Calif. — A federal judge Monday refused to drop charges against a former Marine charged in the killing of several men his squad detained during a pivotal 2004 battle in Iraq.

Federal District Court Judge Stephen G. Larson denied a defense request to dismiss federal charges against former **Sgt. Jose L. Nazario Jr.** The judge ordered the case to trial, beginning July 8.

Nazario, a former squad leader with Camp Pendleton, Calif.-based 3rd Battalion, 1st Marines, is facing two counts of voluntary manslaughter in connection with a house-clearing operation in Fallujah on Nov. 9, 2004.

Government prosecutors allege in court briefs that Nazario, “placed a call over his radio,” then “executed” one male detainee and ordered two subordinates to “execute” two other detainees found inside a house in the insurgent-held city.

Nazario completed his enlistment and was discharged Oct. 11, 2005. He was no longer subject to the Uniform Code of Military Justice, but prosecutors filed the charges under a little-known law, the Military Extraterritorial Jurisdiction Act.

Defense attorneys argued that Nazario shouldn’t be prosecuted by the civilian courts for combat actions.

“This is the first time you ever had a former service member being tried in court,” **defense attorney Kevin B. McDermott** said. “MEJA has never been addressed

before in this type of fashion.”

MEJA, which Congress approved and which took effect in 2000, extends military jurisdiction to members of the armed forces who “engage in conduct outside the United States that would constitute an offense punishable by imprisonment for more than one year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States.”

Nazario’s defense attorneys contend MEJA doesn’t address or apply to conduct during any combat action. Such prosecutions, they warn, would subject any service member to prosecution and investigation for alleged combat-zone crimes many years later.

McDermott said a comment made by a combat veteran drinking alcohol at a bar “15 to 20 years from now ... ends up in federal court.”

“There is no end to this war for any veterans,” he said. “You are on the hook forever.”

Defense attorneys say a trial would force a civilian jury to second-guess combat actions, rules of engagement and tactics, which they say aren’t within the scope of MEJA. They questioned the court’s jurisdiction, writing that charges filed against Nazario are *“in a context that Congress never intended that evolve from non-justiciable political questions that MEJA cannot overcome.”*

Prosecutors argued that the detained men were no longer combatants when they were shot.

“The killings in this case were unlawful because they violated clearly established law of war,” U.S. Attorney Thomas P. O’Brien and assistant U.S. attorneys Sheri Pym, Jerry Behnke and Charles J. Kovats wrote in a brief to the court, citing the handling and killing of detainees. They said because Nazario “was not acting ‘in conformity with (the President’s) orders’ the political question doctrine is inapplicable.”

Nazario’s attorneys said the Marines found weapons and ammunition in the house during the street-by-street house-clearing operation.

Larson, the judge, was not persuaded.

Nazario, who is married and has a son, has pleaded not guilty. After his indictment last summer, he lost his job as a probationary police officer in Riverside, Calif. His wife has returned to work in New York City, McDermott said.

“He’s taking care of his son,” he said. “He is unemployable.”

The Marine Corps has charged two other Marines — Sgts. Jermaine Nelson and Ryan Weemer — with murder and dereliction of duty charges in the alleged shootings. It was Weemer’s admission during a polygraph examination that prompted an agent with the Naval Criminal Investigative Service to look into the allegations.

Topics: [Military Cases](#), [Sgt Jose Nazario, former US Marine](#), [Sgt Nelson USMC](#), [Sgt Ryan Weemer](#), [The Unvarnished Truth](#) | [No Comments »](#)

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