

LAW REVIEW 1135

Military Extraterritorial Jurisdiction Act

By Captain Samuel F. Wright, JAGC, USN (Ret.)

10.2—Other Supreme Court Cases

12.0—Military Criminal Justice

Jose Luis Nazario, Jr. enlisted in the Marine Corps in September 1997 and was honorably discharged in October 2005. Like everyone joining the armed forces since the early 1980s, he had an eight-year obligation. Because he spent the whole time on active duty, he had no remaining reserve obligation after he left active duty. Unlike most young men and women leaving active duty, he was not a member of the Individual Ready Reserve (IRR) after he left active duty.

After his honorable discharge, he joined the Police Department of the City of Riverside, California as a rookie police officer in April 2006. The Naval Criminal Investigative Service (NCIS) investigated allegations that Nazario and a squad that he led had unlawfully killed two detainees in Fallujah, Iraq on November 9, 2004.

Congress enacted the Uniform Code of Military Justice (UCMJ) in 1950, replacing different laws that applied to the Army (including the Air Force as part of the Army until 1947) and to the Navy and Marine Corps and to the Coast Guard. As enacted in 1950, Article 3(a) of the UCMJ permitted trial by court martial of discharged veterans, for offenses allegedly committed while on active duty. In a case involving a former Air Force airman who had been honorably discharged five months before his arrest for alleged crimes committed in Korea on active duty, the Supreme Court held that Article 3(a) of the UCMJ was unconstitutional and that a discharged veteran cannot constitutionally be subjected to trial by court martial. *Toth v. Quarles*, 350 U.S. 11 (1955).

Reservists not on active duty (including IRR members) can be and sometimes are recalled to active duty for court martial for serious offenses allegedly committed while on active duty. 10 U.S.C. 802(d).

see also Lawrence v. Makysm, 58 M.J. 808 (2003)

But Nazario was not a reservist and could not be recalled to active duty. But for the 2000 enactment of the Military Extraterritorial Jurisdiction Act (MEJA), there would have been no way to hold Nazario criminally accountable for the crimes he allegedly committed while on active duty in Iraq in 2004.

Reservists not on active duty (including IRR members) can be and sometimes are recalled to active duty for court martial for serious offenses allegedly committed while on active duty. 10 U.S.C. 802(d). But Nazario was not a reservist and could not be recalled to active duty. But for the 2000 enactment of the Military Extraterritorial Jurisdiction Act (MEJA), there would have been no way to hold Nazario criminally accountable for the crimes he allegedly committed while on active duty in Iraq in 2004.

MEJA provides: “Whoever engages in conduct outside the United States that would constitute an offense punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States—(1) while employed by or accompanying the Armed Forces outside the United States; or (2) while a member of the Armed Forces subject to chapter 47 of title 10 (the Uniform Code of Military Justice), shall be punished as provided for that offense.” 18 U.S.C. 3261(a).[\[1\]](#)

In accordance with MEJA, the United States Attorney for the Central District of California obtained a grand jury indictment against Nazario and then tried him for manslaughter in that court. The jury found him not guilty of the charges. *United States v. Jose L. Nazario, Jr.*, Case No. EDCR 07-00127-SGL.

[\[1\]](#) MEJA is most useful not only in prosecuting honorably discharged veterans like Nazario but also military spouses and family members, Department of Defense and Department of State civilian employees and contractors, and other U.S. citizens who commit serious crimes while accompanying United States military forces outside our country.