

A Tale of Two Trials

By Philip Jankowski While Bales' court hearings move swiftly, Hasan case drags on

Court hearings last week for two soldiers accused of capital murder paint drastically different pictures of military justice. While the accused Fort Hood shooter's trial remains mired by defendant Maj. Nidal Hasan's decision to represent himself, the court-martial of an Army staff sergeant accused of killing 16 civilians in Afghanistan has gone off without a hitch. Staff Sgt. Robert Bales, 39, pleaded guilty to all charges Wednesday in a plea agreement that took the death penalty off the table. Bales' sentencing trial in Washington state will begin Aug. 19. His trial should end roughly 1½ years after he fatally shot nine women and three children. In the meantime, it has been more than 3½ years since Hasan allegedly killed 13 and wounded 32 on post. The Army psychiatrist told the presiding judge last week he targeted soldiers deploying for Afghanistan in order to protect the Taliban. "I hate to say this, but I've never seen a case go as long as Hasan's," said retired Col. Richard Rosen, a military law expert at Texas Tech University. Hasan also signaled a desire to plead guilty, but military rules prevent a judge **from accepting guilty plea when the death penalty is on the table**

Several factors play into why Bales' case moved so rapidly, while Hasan's has languished. Most important was the government's willingness to cut a deal with Bales. Bales admitted to the killings, but prosecutors at the Joint Base Lewis-McChord faced greater challenges in putting on their case than the team of government attorneys prosecuting Hasan at Fort Hood, Rosen said. The crime scene in Bales' case is in Afghanistan, which creates a host of logistical issues for prosecutors and gives them more incentive to offer him a plea agreement. "In part, it is in the difficulty of trying the case," Rosen said. "It would take witnesses from Afghanistan." Bales also could be painted as a more sympathetic character to a jury. The sergeant went through multiple combat deployments and had a good service record prior to the Afghan killings. His lawyers appeared to be planning a defense that would place some of the blame on the Army for sending him back into combat, even after he reported suffering from PTSD. They will likely rely on that narrative during his upcoming sentencing hearing. "That's why they may have been willing to deal here," Rosen said. "As opposed to Hasan, he was not in the deployed environment. They're completely different cases in that respective." **Hasan's health**

Retired Col. Lisa Marie Windsor, a former attorney at Fort Hood who is now in private practice, said Hasan's case faced unusual delays from the start. A Fort Hood police officer severely wounded Hasan during the mass shooting on post, leaving him paralyzed from the waist down. Hasan was physically incapable of standing trial while he recovered. "With Sgt. Bales, he did not have the physical issues that Maj. Hasan has," Windsor said. Presiding judge Col. Tara Osborn made Hasan's physical health an issue last week. After hearing testimony from a physician and Hasan's declarations that he was healthy enough to represent himself, Osborn ruled Hasan could act as his own attorney. **Setbacks**

Hasan's new defense has held up the start date of the trial (originally May 29) more than two weeks, and the major is now requesting a three-month delay to prepare evidence. Osborn should rule on his request for a continuance Tuesday. It is the latest in a court-martial that has faced several setbacks. Hasan has changed counsel twice now, first by firing his civilian counsel, Belton attorney John Galligan. Later, Hasan's decision to wear a beard for religious purposes in defiance of military appearance regulations ultimately led to the ouster of the first judge from the case. "He has no motive for this trial to go any quicker," Windsor said. "The best thing for him is to draw it out as long as he possibly can. Once he goes to trial, there is very little chance of acquittal."