

## **Ft. Hood Shooting Trial is a Test for Military Jury System**

By Molly Hennessy-Fiske

The jury that will decide the fate of Maj. Nidal Malik Hasan, accused of gunning down fellow soldiers at this central Texas military base, is an elite group of Army officers operating under a military legal system that must strike a delicate balance. Military law and courtroom rules strive to promote fairness to the defendant and free inquiry among jurors of varying ranks, despite constant reminders of the importance of rank, right down to the jurors' seating arrangements. Military law also guarantees that there will not be a hung jury. Hasan is charged with 13 counts of premeditated murder and 32 counts of attempted premeditated murder in connection with the shooting Nov. 5, 2009. In various ways, experts say, his court-martial is testing the military legal system as never before. Hasan, an Army psychiatrist, is representing himself, a rarity for a case that could bring a death sentence. Hasan has no legal training, and that lack of experience shows. During jury selection, the judge had to remind him to ask questions and not make statements, and at trial she has had to explain some courtroom procedures. Unlike the jurors, who are cleanshaven and wear dress uniforms to court, Hasan appears in fatigues and a full beard in defiance of Army regulations that he says clash with his religious beliefs as an American-born Muslim. He has repeatedly declined to cross-examine witnesses. The jury has absorbed it all, watching Hasan from the moment he admitted to the shooting in his opening statement Tuesday. All 13 jurors are officers of Hasan's rank or higher. Unlike the average civilian jury, military juries, or panels, can have more than a dozen members, a requirement in capital cases. At times, these jurors have yawned and briefly closed their eyes. They made a special request Friday to have coffee in court (the judge granted it). But they mostly pay close attention to dramatic testimony from victims and other witnesses, sometimes nodding and frowning. They also reacted to rare moment of humor. On Friday, Staff Sgt. Paul Martin testified that on the day of the attack, he sat waiting with a crowd of soldiers preparing to deploy, including an officer who wanted to try out a new cellphone he'd bought for the trip. "I said, 'You might as well, sir, because we're going to be here forever,'" Martin said, eliciting smiles from some jurors. The smiles quickly faded as Martin described what happened next: He saw a soldier pull a gun from his uniform and open fire, hitting Martin in the arm. "He was shooting us to make sure we were dead, even after we were down," Martin said as jurors took notes with pencils and legal pads. One juror shook his head. Another scrutinized Hasan, who appeared impassive. The jury is mostly white, all but two of them men. Drawn from Army bases throughout the country, the group includes three colonels, nine lieutenant colonels and a major. They have worked in engineering, logistics, military intelligence, aviation, chemicals, ordnance, air defense artillery and the signal corps. Many have served in combat zones, including Iraq and Afghanistan. All but two have command experience. One is a military lawyer, or staff judge advocate; another is an Army flight instructor who served in combat in the Persian Gulf, the Balkans and Afghanistan and received the Bronze Star. Of the two women, one is the major, the lowest-ranking member of the jury and a graduate of West Point and Georgetown University's business school. The other is a colonel, the sole African American juror and the highest-ranking. As such, she is serving as the jury president, or forewoman. Military legal

experts say it's not unusual to have such a high-ranking jury when an officer is on trial, but a three-colonel jury does stand out, said Lisa Marie Windsor, a private attorney and former Army lawyer based at Ft. Hood. "These people are going to have been solicited from all over the country to avoid them having any ties to Ft. Hood in an effort to ensure their impartiality," Windsor said. The jury president sits in the middle of the front row, and the remaining members alternate to the left and right of the president by date of rank. The lowest-ranking members sit on the outside of the second row. Each juror has a computer screen that displays diagrams and other evidence, including bullet fragments extracted from the victims. They can submit written questions, but none had done so by the end of the first week of the trial. That's not unusual, said Geoffrey Corn, a former military prosecutor and law professor at South Texas College of Law in Houston. "They're usually reluctant to submit them," he said. "But you watch — once someone submits one, you'll see more." He said juror questions at the end of military trials can often drag on, forcing lawyers to recall numerous witnesses. The jury will consider 45 counts against Hasan. A two-thirds majority is needed to convict on the murder counts, but the verdict must be unanimous for a death sentence, Corn said. The two-thirds threshold means military courts don't encounter an issue sometimes faced by civilian courts — a hung jury due to a lone holdout. But unlike civilian juries, military juries face the thorny issue of chain of command: How can a mixed-rank group of officers deliberate and vote independently? "That's the big difference between the military and civilian jury system — these people are brought up through an environment where you do what your superior tells you to do. But you get into that jury room and you're all equal, in theory anyway," Windsor said. The jury is supposed to have an open discussion and eventually vote by secret ballot to counter the influence of rank, Windsor said. After deliberations, the most junior member — in this case, the major — collects and counts the ballots and then the jury president announces the verdict. If the verdict is guilty, the case proceeds directly to sentencing. Unlike the procedure in many civilian courts, the jury will determine the sentence in this case. If Hasan is convicted of murder, prosecutors arguing for a death sentence will have to present aggravating factors, such as multiple killings, Corn said. Hasan would have a chance to respond to present mitigating factors and testimony, Corn said. If the jury did not unanimously vote for the death penalty, Corn said, they would vote again to determine by a three-quarters majority whether he should get a life sentence with or without parole.