

Legal Process Starts for Fort Hood Defendant

The 2007 file photo provided by the Uniformed Services University of the Health Sciences shows Nidal Malik Hasan when he entered the program for his Disaster and Military Psychiatry Fellowship. Hasan, 39, is accused of killing 13 people on Nov. 5, 2009, at Fort Hood, the worst killing spree on a U.S. military base. The new reality that there is a threat from violent Islamic extremism from within the U.S. It is difficult to say whether the uptick in cases is because law enforcement has gotten better at catching suspects or if there are simply more to catch.

Maj. Nidal Malik Hasan, the Army psychiatrist charged with killing 13 people in a shooting spree at Fort Hood and wounding dozens of others, begins an arduous legal process today that could end in his death.

The Article 32 proceeding, as it is called, could run for more than a month with Col. James Pohl sifting through the evidence. Pohl's task will be to gather evidence and then tell higher-level commanders if a trial should be ordered.

It isn't clear how Hasan's lawyer, himself a former military judge, will counter testimony, likely from GIs in a crowded Fort Hood deployment center. Some said Hasan, a devout Muslim, cried "God is great!" in Arabic, but retired Army Col. John Galligan will say only that he's in an uphill battle to save his client's life.

"To get complete acquittal, it's difficult to say whether that would happen or not until we've got him through the Article 32 and the sanity board," he told the San Antonio Express-News. "If there's a sanity board issue enough that presents a realistic mental responsibility issue, we could be talking about the possibility of an acquittal."

HEAVY SECURITY

Lawyers familiar with the military justice system say the board is Galligan's best hope. At least 32 survivors could be called, as well as first responders who included two police officers credited with shooting him.

Paralyzed from the chest down, Hasan is charged with 13 specifications of premeditated murder and 32 specifications of attempted premeditated murder. While the Army has not said if it will seek the death penalty, Galligan repeatedly has asserted that the Pentagon has assembled a "hit team" of prosecutors.

Article 32 hearings are a routine first step toward trial. Often compared to a grand jury, it will be anything but routine — starting with far heavier security. This proceeding, moreover, could run for weeks or more. That's longer than most hearings, which last days - or less.

"Most Article 32s in my experience are four hours," said Albany, N.Y., attorney Greg Rinckey, a one-time military lawyer.

Fort Hood's public affairs office has told media the hearing would run through Oct. 29 and recess until Nov. 8. More than 100 witnesses could be called to the stand.

The hiatus will mark the Nov. 5 anniversary of the shooting, a date called "5-11" by troops and civilians here. The Article 32 is set to run through Nov. 18, but could reconvene Dec. 1.

DEFENSE STRATEGY

Galligan hasn't said how he'd counter eyewitness testimony. One soldier, Pfc. Alan Carroll, 21, of Bridgewater, N.J., told the Express-News that he stood only feet from Hasan when he was shot.

"When me and him made eye contact before he shot me in the leg, it was pure anger," Carroll told the paper during an interview at his outpost in Afghanistan.

One unanswered question is if the sanity board, a group of mental health experts, will appear during the Article 32. The three-member panel, ordered to evaluate Hasan this month, last week was not allowed to see him.

Rinckey said the sanity board likely would be Galligan's best option, but veteran military attorney Frank Spinner said such panels tend to side with the government. A better option, he said, would be for the defense to get its own forensic psychiatrist.

While Rinckey said the hearing probably would help the defense by delaying the trial and giving clues to the prosecution's strategy, Spinner wasn't so sure.

"In a very broad and general sense there may be some truth to that, but in this particular case I don't know ... because you're going to get all the discovery you want," said Spinner, who represented Marine Capt. Richard Ashby, accused of killing 20 people by flying his jet into an Italian gondola in 1998.

"This is not a who-done-it thing."