

## Fort Hood Trial to Follow Regular Military Justice Rules

By Greg Flakus Jury selection has begun in the murder trial of Major Nidal Hasan, the army psychiatrist accused of opening fire at Fort Hood, Texas in November 2009, leaving 13 people dead. Many commentators and families of victims have complained about legal wrangling that delayed the trial for three-and-a-half years, but now that the trial is under way, it could go swiftly. Prospective jurors have arrived from various posts around the United States to be part of the pool from which panel members will be chosen to hear the Hasan case. In military courts, juries are referred to as panels. Military legal system expert Geoffrey Corn, who teaches at the South Texas College of Law, says the prospective jurors were brought in from outside Fort Hood to avoid any possibility of prejudice and ensure a panel of proper rank. "In the military, every juror, every panel member, must outrank the accused. So there will be nobody of equal or lower rank than Major Hasan in this case. That means it is going to be a highly educated, highly experienced jury," said Corn. In most cases, prosecutors and defense attorneys spend the first few days questioning prospective jurors. Once the panel is selected, the prosecution is called on to present evidence and then the defense presents its case, just as in civilian courts. But Corn says there can be no undecided, or hung, juries in military trials because a unanimous decision is required on each separate count, and the voting is done on paper ballots, anonymously. "When that panel, that jury, gets to the point of voting on each offense, if one member votes not guilty, then the verdict is not guilty. So it is a much more difficult burden for a military prosecutor," he said. The burden he refers to is the burden of proof, by which a defendant is considered innocent until proven guilty. Since there are capital murder charges against Hasan, he was not allowed to plead guilty, and Corn says in order for the death penalty to be applied in this case, the prosecutors have to prove that Hasan planned the attack on fellow soldiers. "What they can do is offer this evidence of what he was adhering to, what he was viewing on his computer, the messages he was receiving and sending, in order to show the jury that this was not a spur of the moment killing. This was something he planned and thought about in order to produce an effect," he said. Former military attorney Lisa Windsor, who now works for the Tully Rinckey law firm in Washington, says proving Hasan guilty of capital murder may not be difficult, given the amount of evidence. But she says the panel considers sentencing separately and does so fairly soon after producing the verdict. "You may have a pretty extended period of time between verdict and sentencing in a civilian case; in a military case you generally go right into sentencing. They might have a break in order to allow family members and people to be present, but they are not going to have too long a break," said Windsor. Both she and Geoffrey Corn say the trial will probably last until August because of the time needed just to present all the evidence and question the many witnesses. They say witnesses would include some of the people wounded in the attack and could be questioned by Major Hasan, since he has opted to defend himself. The judge, Colonel Tara Osborn, has required Hasan's court-appointed attorneys to remain on standby in the courtroom, however, and Geoffrey Corn says they are likely providing him with some assistance. "They are not telling him what to do, but they are trying to make sure that he understands his options. The ethical instinct of a lawyer is to

never give up, so those defense attorneys are still going to help him avoid the death penalty if they can do it," said Corn. Corn says there are more than a dozen prisoners on the U.S. military's death row currently, but that the military has not executed anyone for more than 40 years. Still, he says, given the nature of this case and the number of people killed, the death penalty very well could be imposed and carried out.