

A Few More Questions and Answers About Nidal Hasan's Trial

By Mike Hashimoto Earlier today, before the Nidal Hasan guilty verdict, I tossed a few technical questions to the Tully Rinckey law firm in Washington for its expertise in military law. (That's the firm where retired Col. Lisa Marie Windsor practices; she helped set up the Hasan trial by doing a Q&A with us last month, just before testimony began.) Today, we were able to ask questions of managing partner Greg Rinckey, also a former Judge Advocate General Corps officer. Remember, these questions were posed before the panel reported its verdict, which was unanimous guilt on all 45 charges, including 13 charges of premeditated murder, from Hasan's Nov. 5, 2009, shooting rampage at Fort Hood. This makes Hasan eligible for the death penalty, something the military hasn't carried out in more than five decades. Our editorial off the guilty verdict, by the way, encourages the panel to deny Hasan the martyrdom he so clearly seeks by denying him the death penalty. I would respectfully disagree, of course. If the military is going to have a death penalty and doesn't apply it to a traitorous jihadist whose goal was to kill as many American soldiers as possible, there's no point in having a death penalty on the books. But that's just me. Here are our earlier today questions to Rinckey and his responses: Q.

Is the number of panelists, 12 or 13, significant? A

. A panel in this type of case needs at least 12 members. My assumption is 13 is what was left out of the pool after all challenges had been made. An odd number is generally more favorable to the defense when you need a two-thirds majority to convict, but in this case that wouldn't be a factor. Of course, in any case, the more people the government has to convince, the harder it is to get a conviction. Q.

The panel is voting now on guilt and, I presume, casting individual votes on each of the 45 charges. I know that it takes a unanimous guilty verdict on, I believe, two or more of the murder charges to make him eligible for death. My question is whether you expect the jury votes on guilt to wrap up today or extend into the weekend. A

. Yes, I would expect the jury to come to a conclusion today on guilt or innocence. Q

. After guilt is determined, there will be what I've seen described as a "trial within a trial" on punishment. So, in this case, the panel — not the judge — will determine the punishment, correct? And if it's not death, I'd assume there's a range of punishment (i.e., years in military prison), as in civilian trials. The panel, too, would make that determination, or would it be the judge? A.

The panel will make the determination on the penalty. Any sentence of 10 years or more and the votes have to be a minimum of 75 percent and the death penalty would have to be unanimous. Q.

If the punishment phase began later today, does the jury hear new presentations and more evidence from each side? If so, how long would you expect the punishment phase to go on? A

. I expect the punishment phase to last a few days. New material can be introduced, and the government will allow family members to discuss how the deaths impacted and even ruined their lives. This is a very emotional part of the trial, and the government will want to be careful to give victims closure and to make sure all pieces of evidence are submitted. This is the opportunity for the defense to mitigate the crimes as best they can. Maj. Nidal Hasan may bring up a mental health disorder that caused him to switch sides in the war. Or, he could use this opportunity to get on his soapbox and defend his actions. Other options open to Hasan include taking the stand in his own defense and or providing sworn or unsworn testimony. Regardless, the judge, Col. Tara Osborn, will give him more leeway during this phase than earlier in the trial. If she tries to rein him in too soon it could cause grounds for appeal. Q

. And last thing: Would it be typical or atypical for the judge to keep everyone at work Saturday and Sunday, or would you expect her to recess after today until Monday? A

. In military trials it is certainly not unusual for the judge to bring everyone back on a Saturday or Sunday for both the trial and punishment phase. Military are on duty 24 hours a day seven days a week, however, in my opinion the judge will not bring them back on the weekend. It is one more thing that could provide the defense an appeal. They could say the jury was upset about being forced to convene on the weekend and it affected their decision-making.