

Fort Hood Suspect's Defense Has Few Options

More than two dozen soldiers have testified about the day they were shot in a crowded Fort Hood building in November 2009. Some told of looking the gunman in the eye as he fired. A Senate investigation has announced its findings about the suspect: before the rampage, the Army psychiatrist had become an Islamic extremist and a "ticking time bomb."

Now the defense team for Maj. Nidal Hasan, who is charged with 13 counts of premeditated murder and 32 counts of attempted premeditated murder, faces what seems like an impossible task of preventing a conviction and potential death sentence in one of the highest profile cases in military history.

Hasan, 40, who remains jailed and was paralyzed after police shot him that day, could go to trial later this year at Fort Hood, the Texas Army post about 125 miles (200 kilometers) south of Fort Worth. On Wednesday, Fort Hood's commander ordered

Hasan, who is of Palestinian descent, to stand trial after reviewing documents from last fall's evidentiary hearing. For the defense lawyers, "there are huge challenges in this case — challenges that may not be present in other capital cases," said Richard Stevens, a military defense attorney who is not involved in the case.

John Galligan, the lead defense attorney, has said little about the strategies he is considering for the trial. But experts in military law say his choices are limited: hope that Hasan's mental state would prompt a jury to opt for a life sentence, or watch for legal errors or complications that could cause a conviction or death sentence to be overturned.

Galligan is clearly mindful of the reversible-error prospect, and can be expected to challenge every legal decision in the trial that could be used for an appeal. Galligan said 80 percent of the military's death sentences have been commuted to life in prison without parole since the military reinstated the death penalty in 1984. No military convict has been executed since 1961 because of the lengthy appeals process.

"The reversal rate and length of time since an execution show that the military's death penalty system isn't working and shouldn't be used," Galligan told The Associated Press. "The Army here is more interested in getting a capital case and getting a death sentence and moving on, even if it sits there for 20 years."

Eight death sentences have been commuted since 1984 because of procedural or evidentiary errors in trial.

The president must approve any execution in the military court system. In 2008, President George W. Bush signed an execution order for a former Army cook convicted of several rapes and murders in the 1980s, but a federal judge has stayed that order to allow for a new round of appeals in federal court.

Despite what could be a lengthy process, many affected by the Fort Hood rampage believe

death is the only appropriate punishment if Hasan is convicted in the worst mass shooting on a U.S. military installation.

"People will want to hear the other side during the court-martial, but what could he possibly say in his defense?" said Staff Sgt. Jeannette Juroff, who was working in a nearby building that day and helped wounded soldiers.

Galligan initially said he was considering an insanity defense, but then backed off after a mental evaluation of Hasan last year by a three-member military mental health panel.

Galligan has refused to disclose the panel's finding, but indications are that the evaluation would not support a contention that Hasan suffered from a severe mental illness that prevented him from knowing, during the rampage, that his alleged actions were wrong — the legal definition of insanity.

A U.S. Senate report released earlier this year charges that evidence of Hasan's radicalization was "on full display" to his military superiors, and that an instructor and colleague "each referred to Hasan as a 'ticking time bomb,'" but no action was taken to discharge him and his evaluations were sanitized.

A joint terrorism task force overseen by the FBI learned late in 2009 of Hasan's repeated contact with U.S.-born radical cleric Anwar al-Awlaki, who encouraged Muslims to kill U.S. troops in Iraq. The FBI has said the task force did not refer early information about Hasan to his military superiors because it concluded he wasn't linked to terrorism.

Several military law experts said they doubt Hasan will plead innocent by reason of insanity. Fewer than 10 soldiers were found not guilty by reason of insanity in more than 21,000 military trials from 1990 to 2006, according to an Army study.

But Hasan's defense team could argue that he has mental illness without using an insanity defense — especially if he's convicted and they are trying to avoid a death sentence.

"Sometimes one prong of the (mental health evaluation) report will show that a defendant has a mental issue like depression, and the defense can use whatever is in that report at sentencing as mitigating factors," said Greg T. Rinckey, a New York attorney who defends military clients and is not involved with the Hasan case.

That defense tactic was used in the 2005 trial of Sgt. Hasan Akbar. His attorneys didn't dispute that he threw grenades into fellow soldiers' tents in Kuwait in 2003 and then fired on them. But they said he was mentally ill — although legally sane. Akbar was convicted and sentenced to death. His case remains on appeal.

Prosecutors in the Hasan case have said they will not comment before the trial.

Death-penalty cases in the military require at least 12 jury members, more than in other cases. And unlike other trials, their verdict must be unanimous in finding guilt or assessing a sentence. If Hasan is convicted, jurors would decide between life in military prison without parole and the death penalty.

"The biggest challenge is the fact that there are going to be so many witnesses identifying him as the shooter, and the public perception that he's guilty, so this is very difficult from the defense side ... so the chances on appeal are probably going to be better than at trial," Rinckey said.