



Written by [Joe Wolverton, II, J.D.](#) on June 3, 2010

## Accused Ft. Hood Shooter Makes First Pre-trial Court Appearance

Sitting gravely silent in a wheelchair and dressed in his dark green Class A uniform, Army Major Nidal Hasan made his first courtroom appearance on June 1 in connection with the charge that he murdered 13 people and attempted to murder 32 others during a shooting spree on Fort Hood, Texas on November 5, 2009. The proceeding was a preliminary hearing wherein motions by both sides were heard by the judge.



Hasan is confined to a wheelchair as a result of paralysis suffered after he was shot by police officers attempting to bring him down after his assault at the army processing center where soldiers go prior to deployment to Afghanistan or Iraq. Hasan's own unit was scheduled for deployment to Afghanistan days after the attack.

Although he mounted a table and screamed a Muslim oath while murdering fellow soldiers on November 5, Nidal Hasan's "Yes, sir" was barely audible as he answered questions posed to him by the judge in his case.

Hasan's lead attorney, John Galligan, requested a continuance of the Article 32 hearing, citing the need for additional time to read and digest the thousands of pages of documents sent to him by the lawyers for the Army. The motion for a continuance was granted and the hearing was rescheduled for October 4, 2010.

The Article 32 hearing is a requisite step in the investigatory process of court martial as established by the Uniform Code of Military Justice. The hearing is similar in purpose and procedure to a civilian grand jury proceeding where a judge receives the testimony of witnesses and counsel to aid his inquiry into the truth of the matter set forth in the charges. At the conclusion of the hearing, the presiding officer will make a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.

In Hasan's case, the judge will deliberate over 13 counts of premeditated murder and 32 counts of attempted murder, the worst such incident ever on a U.S. military facility.

The June 1 hearing lasted approximately one hour and from the moment he wheeled his way into the courtroom and for the duration of the proceeding, Major Hasan was closely guarded by armed military police. At one point, a member of Hasan's defense team reported that his client was cold and was permitted to wrap a large army-issue blanket around Hasan. At times, Hasan would draw the blanket closely over his face and cover his nose.

According to the procedure outlined in the Uniform Code of Military Justice, Hasan was asked if he



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understood his rights, to which he responded, "Yes, sir"; he was asked if he had read the charges against him, to which he answered, "Yes, sir"; and he was asked if understood he had the right to a speedy trial, to which he responded, "I understand, sir."

Wary of security concerns in light of the unconscionable nature of the acts of which the former army psychiatrist is accused, officials at Ft. Hood blocked all the roads leading to the building housing the courtroom on Tuesday. They augmented this security measures by placing bomb-sniffing dogs in the parking lot and walking them around all vehicles parked in the lot. Military police officers waved hand-held metal detecting scanners across they body of everyone entering the courtroom, screening even the judge and the attorneys. Reports from Ft. Hood indicate that these precautions are highly unusual.

Col. Michael Mulligan is the Army's lead prosecutor and he objected to the defense's motion for continuance of the Article 32 hearing, averring that his side would be ready to proceed in July. He reported that the prosecution had not yet received the FBI ballistics report or the associated government review, but that all such relevant discovery material would be sent to the defense immediately upon receipt thereof.

The military judge conducting the investigation in the Hasan case is Colonel James Pohl. Pohl stated that he intended to call all 32 living victims of the shooting to testify at the Article 32 hearing. He additionally indicated that the army is as yet undecided as to whether it will seek to impose the death penalty on Hasan should he be found guilty of the charges he faces.

Pohl did, however, report that the army prosecution team sent a notice last month to Hasan's lead advocate, John Galligan, claiming that Hasan was eligible for the death penalty in this case, as there was the aggravating factor of multiple deaths in the same incident.

To be put to death for his crimes, a jury of servicemen would have to determine that there was an aggravating factor in the case. Only the existence of an aggravating factor may trigger the death penalty under military law.

At the conclusion of the Article 32 hearing, Hasan will undergo a psychiatric evaluation to ascertain whether Hasan was suffering from a mental illness at the time of the shootings of which he is accused occurred. If Hasan's mental state is determined to have been impaired at the time of the events of last November, then according to the UCMJ, an official clinical psychological diagnosis must be made to establish Hasan's competency to stand trial and to assist in his own defense.

Tuesday's procedure marked the first time that Nidal Hasan appeared in court incident to the charges made against him. He did attend an earlier hearing held just days after the shooting, but that procedure was conducted in his hospital room at the Brooke Army Medical Center in San Antonio where he was receiving medical treatment for wounds he received the day of the attack.

Presently, Hasan is being held at the Bell County Jail awaiting the convening of the tribunal that will try his case. Hasan is not eligible for bail, as such is not contemplated by the Uniform Code of Military Justice. Under those rules, an accused serviceman may be held in pretrial confinement upon finding by a military magistrate that there is probable cause to believe that the service member committed an offense that is triable by a court-martial.

*This Tuesday, June 1, 2010 courtroom sketch shows Maj. Nidal Hasan, left, wrapped in a blanket and seated in a wheelchair during a pre-trial hearing in Fort Hood, Texas: AP Images*



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