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Prisoner Given Chance to Present Evidence: In an Unusual Move

A Marine colonel overseeing Omar Khadr's case agreed to take evidence on his protest of solitary confinement

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Apr. 6--GUANTANAMO BAY NAVY BASE, Cuba -- Alleged al Qaeda terrorist Omar Khadr protested his pretrial solitary confinement at his war-crimes court on Wednesday, and the Marine colonel overseeing the case agreed to take evidence on Khadr's claim.

Such a move is extraordinary in the short, as-yet uncharted history of President Bush's Military Commissions.

Marine Col. Robert S. Chester is supposed to be presiding over a panel hearing allegations that the 19-year-old Canadian committed a war crime by killing a U.S. Army medic in a 2002 firefight in Khost, Afghanistan.

Instead, he agreed to take briefs and potentially call witnesses on Khadr's complaint that guards had placed him in punitive isolation at the Pentagon's detention center for terrorism suspects.

"Excuse me, Mr. Judge. I'm being punished for exercising my rights and being cooperative in participating in this Military Commission," said Khadr, who has topped six feet and was sporting a fuzzy beard at his hearing.

He wore a button-down shirt and Reebok sneakers.

The youth had been held in barracks-like communal captive quarters at the sprawling prison camp overlooking the Caribbean until March 30. He was then moved to the state-of-the-art, Camp 5 prison, housing 80 captives in single-occupancy cement cells.

"Consistent with Army regulations, individuals in a pretrial status are separated from the general population," said a prison camp spokesman, Navy Cmdr. Robert Durand.

Durand disputed the defense team's characterization that the youth was held in "solitary confinement." Camp 5 captives can call to others on their cell blocks, unless guards turn on a fan that muffles their voices.

Earlier, Khadr's Pentagon lawyer created an uproar by slamming his hand on a podium and yelling in frustration at Chester's questioning why he did not formally ask the court to bring the Khadr family lawyers from Canada to assist in the case.

"Every time we come down here, there is an incredible burden just to do my job," Marine Lt. Col. Colby Vokey shouted. "There are no rules here. The rules keep changing."

Khadr asked Wednesday for Canadian attorneys Dennis Edney and Nate Whiting to join his defense team, and Chester chastised Vokey for not filing a formal request.

Vokey exploded in anger over the changing court rules, prompting a recess. In the past, the State Department and a senior Pentagon official, not the presiding officers, decide which attorneys can come to Guantanamo and serve as foreign legal advisor.

Pentagon defense lawyers have protested the evolving rules for the first U.S. war-crimes tribunal since World War II, contending it is not governed by existing military or civilian law.

Moreover, the talk in pretrial hearings called to vet Chester's ability to be an impartial presiding officer strayed far from the point as Khadr timidly read from a hand-written, two-sentence English statement riddled with spelling errors about his confinement.

U.S. forces brought Khadr here at age 15.

The Pentagon calls him an al Qaeda co-conspirator as part of a Canadian Egyptian family that was close to Osama bin Laden in Afghanistan and specifically accuses him of the war crimes of conspiracy, aiding the enemy and murder by an unprivileged belligerent in the 2002 death of U.S. Army Sgt. Christopher Speer.

Speer was a Special Forces medic, who died of wounds from a hand grenade, which the United States says Khadr threw.

Prison commanders have resisted efforts to intervene in the captives' detention, with one exception: In November 2004, U.S. District Judge James Robertson closed the war court as unconstitutional, and they complied with his order to send captives facing trial back into the general prison-camp population.

Chester, presiding officer, professed "complete ignorance" about the prison camps' conditions, located on a barbed-wire-ringed bluff up the road from the makeshift commission building, and said he wanted briefs written on the issue by both sides.

"I'm not prepared to wing it," he said.

Moreover, it is not clear whether he has the power to either investigate conditions -- or order changes.

A recent Pentagon instruction, however, put the onus on prosecutors to make sure the war court does not use evidence obtained by torture.

Wednesday was the second day in a row that Chester held a commission hearing in the aftermath of a U.S. Supreme Court challenge that, in part, centers on what laws and what authorities govern the process.