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Judge to Rule Tomorrow Whether to Freeze Saudi's War Court Trial

CAROL ROSENBERG
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A federal judge will rule tomorrow on whether to freeze a portion of the president's war court slated to go forward at Guantánamo next week -- until the Supreme Court decides a constitutional question surrounding President Bush's Military Commissions.

U.S. District Judge Emmet Sullivan said at a hearing this afternoon that he will announce a decision tomorrow on whether to issue an injunction in the case of Ghassan al Sharbi, 31, a Saudi graduate of an Arizona aeronautical university facing a war-crimes charge at the offshore Pentagon prison.

A Navy captain, Daniel E. O'Toole, has scheduled a hearing for Tuesday at Guantánamo Bay, Cuba. At issue is whether O'Toole, a military judge acting as presiding officer, can compel Navy Lt. William Kuebler to serve as Sharbi's defense attorney -- even though the Saudi has refused counsel and wants to boycott the proceedings.

Vermont attorney Robert Rachlin, who filed Sharbi's habeas corpus petition, argued that even pretrial proceedings could prejudice any future trial -- because the Supreme Court has yet to decide on the legality of the formula the Defense Department used to craft the first U.S. war-crimes tribunal since World War II.

The Supreme Court is expected to decide before it breaks for the summer on June 30.

In his only commission appearance, last month, Sharbi stunned courtroom observers by appearing to confess to the war crimes the United States alleges he committed before Pakistani troops captured him at a safe house in Faisalabad in March 2002.

"I'm going to make it easy for you guys," Sharbi said in American-sounding English. "I fought against the United States. I took up arms."

Absent a ruling on whether the war court is legal, Rachlin told Judge Sullivan, the comments that Sharbi blurted out illustrate "the gravity of the prejudice and injury that can occur even at a preliminary stage."

No trial date has been set in the Sharbi case.

Sharbi, a 2000 electrical-engineering graduate of EmbryRiddleAeronauticalUniversity in Prescott, Ariz., is accused of being part of an al Qaeda plot to build car-bomb detonators in Pakistan and ship them to Afghanistan in March 2002.

He was soft-spoken, even deferential as he explained to the presiding officer, O'Toole, that he would not accept an American attorney -- uniformed or otherwise.

"To me, it's the same circus -- different clown," Sharbi said at the April 27 hearing at GuantánamoBay.

Bush administration attorney Terry Henry argued this morning that the Pentagon prosecutions are "an important part of the war effort" -- even as the Supreme Court decides.

"We insist that war be conducted in accordance with the Laws of War," said Henry, a Justice Department lawyer. "The military obviously is anxious to move forward."

Sullivan, who has been appointed to the federal court by President Bill Clinton, urged the Bush administration to decide on its own to delay until after the high court decides.

Absent a voluntary delay, he said, he would rule this afternoon. Sullivan reconvened the session at 3 p.m. today -- and postponed a decision until tomorrow. He recessed until 11 a.m. Friday.

"The Law of War can't trump the rule of law," Sullivan said at the morning hearing. "You're asking me to hold that the Law of War trumps the rule of law. Thank goodness it's America -- we all follow the rule of law. We'll follow what the Supreme Court says."

By afternoon, he called the question of an injunction "a weighty issue," and wanted to devote more consideration.

Sullivan is the same federal judge who in 2003 and 2004 suspended The Pentagon's mandatory anthrax vaccination program for American military service members.

In that case, he ruled that President Bush had not waived a 1998 law prohibiting the use of certain experimental drugs unless people individually agree, saying: "The United States cannot demand that members of the armed forces also serve as guinea pigs for experimental drugs."

Sullivan has been a federal district court judge since 1994.

He heard the case at the U.S. District Court on Constitution Avenue in Washington, D.C. Rachlin, who is Sharbi's lawyer on a power of attorney from the captive's father in Jeddah, Saudi Arabia, argued by teleconference from a courthouse in Burlington, Vt.

The Miami Herald covered the proceedings by audio hook-up from Miami.

Regardless of what Sullivan rules, the Military Commissions are slated to convene next week in Guantánamo in the case of another captive -- Abdul Zahir of Afghanistan.