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Judge rules Friday trial recess

NEW BRUNSWICK — Superior Court Judge Theodore Appleby yesterday ruled that the JoAnne Chesimard murder trial will be in recess this Friday despite a ruling by the U.S. Third Circuit Court of Appeals that would permit it to be held.

The judge said a Saturday session will be held this week, but indicated he may rule differently in subsequent weeks as the trial continues. A stay, barring Friday court sessions, had been in effect pending the federal appeals court ruling.

The U.S. Circuit Court, in a 6-to-4 decision, affirmed the ruling of U.S. District Court Judge George Barlow.

Judge Barlow had dismissed the defense complaint on grounds that attorneys for Mrs. Chesimard had failed to exhaust their remedies on the issue of Fridays off

because of her Muslim religion.

Attorney William Kunstler said a request for a stay of the federal appeals court decision will be made before Justice William Brennan Jr. of the U.S. Supreme Court. The defense will also ask for an emergency airing of the issues before the nation's highest court, Kunstler said.

Judge Appleby had initially rejected a defense request for Friday recesses because that day is the Muslim sabbath. The issue was appealed to the Appellate Division of Superior Court, which denied leave to appeal, but the issue was never taken to the N.J. Supreme Court.

"Given the nature of Ms. Chesimard's important and sensitive claim, we cannot characterize it as frivolous nor can we as-

sume that the N.J. Supreme Court would ignore it. The N.J. Supreme Court is a distinguished tribunal which has been most solicitous of the first amendment rights of members of the Muslim faith," the majority federal appeals court decision said.

Argument before the entire 10-member appeals court centered solely on the issue of jurisdiction. Kunstler stressed in asking Judge Appleby to continue the Friday adjournments that the issue itself was not tested, only the procedure.

Kunstler also said that he had rearranged his schedule to permit his appearance on Friday before the Rhode Island Supreme Court.

"This court should not be run at his convenience," First Assistant Prosecutor Ed-

ward J. Barone said in pressing for Friday court sessions.

"How about the state's convenience and the convenience of these 15 jurors?", he asked. "A ten judge panel told you you were correct and we are asking you to enforce your order," he said to Judge Appleby.

"The federal court said there should be no interference in an ongoing trial," Barone said.

Kunstler replied that the federal appeals court ruled on the issue of not exhausting the state remedies and not on the merits of the case. "Sure, we lost procedurally but we are asking for an emergency hearing before the Supreme Court," he said. Substantive issues would be argued if that hearing is granted, Kunstler said.