

Federal Court
Blistered from the bench

February 01, 2006 By: Julie Kay

S. District Judge Federico A. Moreno lashed out at a federal prosecutor and deputy prison warden Tuesday, calling rules at the Federal Detention Center in Miami barring inmates from being able to meet with their lawyers in conference rooms “asinine” and “stupid.”

After threatening to bring accused Cali cartel drug lords Gilberto and Miguel Rodriguez-Orejuela to his courtroom to meet with their lawyers, prosecutors agreed to alter restrictive regulations at the Special Housing Unit of the Federal Detention Center in Miami so that lawyers can meet with their clients under better conditions.

“I think this is absolutely stupid, it is asinine,” Moreno yelled. “To not use a conference room when it’s empty anyway — that makes no sense. If I have to run the SHU myself, it will take the 11th Circuit Court of Appeals to stop me.”

The outburst came during a hearing on whether the Rodriguez-Orejuelas should be released from the SHU unit and whether the government has knowledge about whether the brothers’ legal fees to their new attorney, David Markus of Miami, are clean.

The judge exploded in anger after Markus and his co-counsel Roy Kahn of Miami argued that they are not permitted to use a conference room in the unit to meet with their clients — even though the room is usually empty — due to a prison rule that the room can only be used if four attorneys are present. Instead, they told Moreno, they have to meet them in a tiny room with no bathroom, air conditioning or water and share documents through a tiny slot in the glass.

“This is a bureaucratic impediment to my ability work with my client,” sputtered Kahn.

About 80 inmates are housed in SHU, a solitary confinement area where inmates are sent for punishment or when they are a security threat to others or themselves. Accused terrorist Jose Padilla and his co-defendants are housed there.

Appearing frustrated that the prison, prosecutors and defense attorneys had not been able to work out the issue, Moreno lashed out at the government and Deputy Warden Douglas Wombacher, who testified, in the middle of the hearing.

Wombacher appeared to enrage Moreno when he replied that the rule allowing the conference room to be used only if four attorneys are with a client was based on a “numeric ratio.”

Finally, Moreno threatened to make his courtroom available for meetings between the Rodriguez-Orejuelas and their lawyers if the prison did not accommodate them.

“I don’t want to do that,” he said. “But we have bathrooms here. I can be very innovative at resolving conflicts. I have to give people access to their lawyers.”

The other options, he said, were for Moreno to show up at the jail for hearings or to hold an evidentiary hearing with the prison warden on the issue. He also discussed touring the facility.

Moreno’s courtroom is located in the building next door to the Federal Detention Center.

Under assault, Assistant U.S. Attorney Matthew Axelrod, after a quick private consultation with Wombacher, agreed to change the regulations and allow the conference room to be used by any attorneys. “The policy will change,” he said.

Axelrod had argued that the prison has reasons for its rules regulating the use of the conference room. He said contraband had been found in the bathroom when lawyers were allowed to use it. He also said that the policy of only allowing groups of four lawyers to use the conference room was instituted because other inmates complained that the Rodriguez-Orejuelas were meeting with their lawyers daily and monopolizing the room.

Additionally, Moreno disclosed at the hearing that the brothers are being accused of bribing inmates to testify on their behalf. According to government court papers, the Rodriguez-Orejuela brothers paid \$50,000 to an unidentified inmate to present false testimony at their trial.

Moreno disclosed that that accusation was first made during a hearing last week involving another alleged Colombian drug dealer,

Florentino Rivera-Farfan. That hearing was also before Moreno.

Lee Stapleton Milford, the Miami attorney for Rivera-Farfan, declined to comment after the hearing.

That is another reason the Rodriguez-Orejuelas should be in solitary confinement, Axelrod argued. "We don't want them coming into contact with other inmates," he said.

Attorneys for the brothers pointed out that U.S. District Judge Patricia Seitz allowed reputed cocaine kingpins Willie Falcon and Sal Magluta to meet with their lawyers in the general population visiting room — a large room with bathrooms and drinking fountains.

Moreno also sought to resolve the issue of whether legal fees Miguel Rodriguez-Orejuela paid Markus are clean. Markus has asked the government to review his files and inform him if they have knowledge that the fees are derived from illegal gains, but prosecutors have refused. Rodriguez-Orejuela's previous attorney, Jose Quiñon of Miami, said he could not satisfy himself that the fees were untainted and withdrew from the case. The issue is being closely watched by other local defense attorneys.

"We don't feel we have an obligation to render an opinion about his fee," Axelrod said. "Yet I don't think it would be fair to sandbag him and bring it up in September."

The trial is scheduled to begin that month.

Moreno pressured the government to state whether it had knowledge whether the fees Markus accepted were dirty and if he could be charged with money laundering. After much questioning, Axelrod said he had no such knowledge.

Moreno said neither the government nor he want to get involved in the issue because it would set policy and a precedent for future cases.

"If they did it for you they'd have to do it for everyone," he said. "You go to Washington or the appellate court to set policy. I don't think I should meddle in the attorney-client relationship."

But he gave the government a subtle message when he told Markus, "If you were ever charged with anything, you'd have a perfect defense. You should feel good about this, confident and relaxed. You think the government would want to be the recipient of the government's wrath? This is not a blessing, but almost."

He also said he did not think taxpayers should be footing the bill for the Rodriguez-Orejuelas' defense.

After the hearing, Markus said that he is more comfortable with his fee and will continue representing Miguel Rodriguez-Orejuela.

"I'm pleased that Judge Moreno required the government to say that no crime has been committed and that no conflict exists," he said. "It's now on the record."

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