

## Judicial Profile

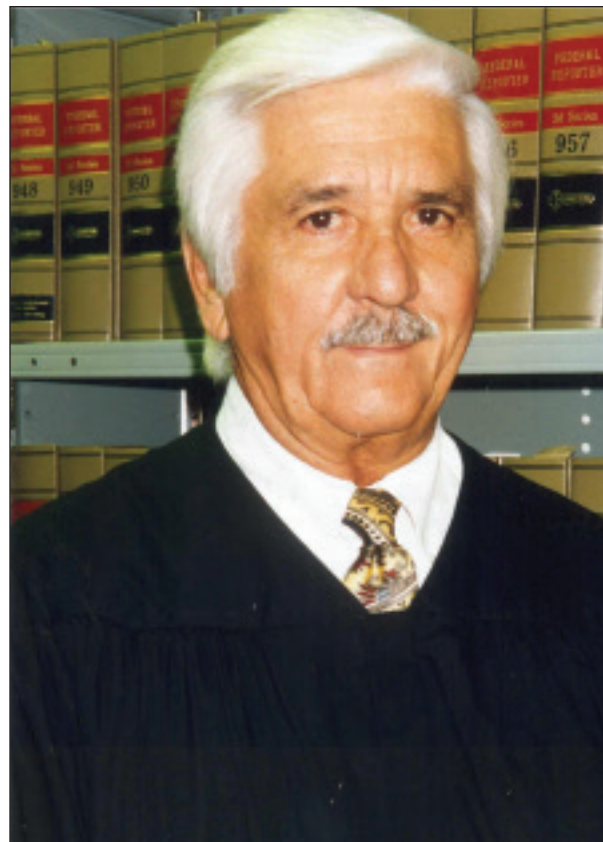
RICHARD GRAFFAM

# From the Bunker to the Bench: Hon. Raymond “Ray” Acosta Senior U.S. District Judge, District of Puerto Rico

IN MARCH 1943, in the middle of his senior year at Teaneck High School in New Jersey, an idealistic 18-year-old Ray Acosta joined the U.S. Navy to fight the Nazis. Little did he know that he had started on a path that, through luck, fate, and sheer determination, would lead him to a full, happy life and to meet his calling. This includes a 50-year marriage to his lovely wife, Marie, as well as being the proud father of Regina, Greg, and Annie and the delight of his funny and richly creative grandchildren. Add to this the culmination of his professional career: becoming an Article III judge for more than 25 years and handling the largest mass disaster litigation in the history of the United States—the San Juan Dupont Plaza Hotel fire litigation, MDL-721—and we have a fascinating story that tells itself.

In the beginning, carrying a transmitter almost half his weight, Radioman 2nd Class Ray Acosta, six days after his 19th birthday (celebrated quietly aboard a “sealed” ship), tossed through the rough North Atlantic waters with his amphibious unit and landed on Utah Beach in Normandy. He was on the communication staff of the *NOIC-Utah*—the naval officer in charge of the beachhead that fateful D-Day. Acosta lived and worked out of a captured German bunker while the enemy kept strafing and bombing the beachhead for weeks after the landing. (The walls of the bunker, which has been converted into a museum, still bear his name and those of his companions.)

Just prior to landing on Utah Beach on June 6, 1944, he had survived the Operation Tiger slaughter by German torpedo boats off the coast of Wales that left more than 800 people dead—anonymous heroes whose names and deaths could not even be whispered for months thereafter for fear of revealing the



Allied attack on Normandy.

After three hard months on the Normandy beachhead, Acosta was selected by the *NOIC-Utah's* Commodore James E. Arnold to attend Officers Candidate School (V-12 program) and ordered to report to Asbury Park, N.J., by the end of September. The only problem was that he was given no details as to how he was to get to New Jersey from France. Resourceful as always, he literally hitchhiked all the way to Cherbourg, talked his way into crossing the channel on a Coast Guard cutter to Plymouth, England, then arrived in London, where he hurled himself to the curbside a number of times as the dreaded buzz bombs landed around him. On one occasion a bomb landed in a nearby cemetery, which upturned numerous coffins, prompting him to remark, “Even the dead aren’t permitted peace.” From London he trekked to Helensborough, Scotland, where he located the *Queen Mary*

1 at the Firth of Clyde. Destined for New York City, the ship made a stealthy stop in Halifax, Nova Scotia, where Winston Churchill and his entourage disembarked (to the cheerful surprise of most on board) for his meeting with President Franklin D. Roosevelt at the Quebec Conference.

Back in New Jersey, Ray Acosta would shed his military uniform and rejoin private life. With a “war diploma” in hand and a scholarship to his name, he enrolled in Princeton University. One winter evening, as he was waiting for a train at Princeton Junction Station, he realized that he was standing next to Albert Einstein. He was in awe, and at the same time he agonized over whether to introduce himself in order to shake the great man’s hand. He couldn’t get up the nerve and has regretted it ever since. After that, he went to Rutgers University Law School, which put him two steps closer to his calling.

Bored with a brief stint in private practice, the young attorney joined the FBI as a special agent (back then a law or accounting degree were strict prerequisites) and was assigned to the San Diego office, where he was the liaison with the Mexican Police *Comandancia* in Tijuana. Later, he was assigned to the Washington Field Office, where he surveilled Soviet agents during the height of the Cold War, after which he worked in Miami, investigating violations of the Neutrality Act and other matters dealing with the activities of Fidel Castro that might constitute violations of U.S. laws. At one point, he met the greatly revered, not to say feared, J. Edgar Hoover, whose unforgiving eye and strict dress code would cause agents to check their attire and make sure there was no sweat on their palms as they shook the director’s hand. Virtual exile to what was then considered the bureau’s Siberia, Butte, Mont., was the fate of any FBI agent who committed an infraction of the bureau’s regulations or conduct.

It was in Washington, D.C., that Special Agent Acosta met Marie Hatcher, who also worked for the FBI as a stenographer, charming her with humorous notes that he would secretly drop on her typewriter. His success at winning her heart led to his lifelong aptitude and love for calligraphy and cartooning, earning him various admirers and not a few victims of his witty puns.

Married with children in tow or on the way, Special Agent Acosta, a native New Yorker, resigned to take the position of assistant U.S. attorney in the District of Puerto Rico, where both his parents were born and which he had previously visited only once for a short week. From 1958 to 1961, he prosecuted all sorts of civil and criminal cases (there were no divisions between the two then, especially when there was only one U.S. attorney and one assistant—Ray Acosta).

In 1962, President Lyndon Johnson appointed Acosta as a delegate to the United States–Puerto Rico Status Commission. The commission held hearings for two years and issued a report to Congress with

recommendations concerning the future relationship between United States and Puerto Rico—an issue that, to this day, has often been hotly debated but never settled.

After another less than overwhelming experience in private practice, including a partnership, he took a most distinctive leap away from the practice of law and, at the behest of the president of the second largest bank in Puerto Rico, established the first trust division in any of the local banks. For 12 years, from 1968 to 1980, he worked in the banking industry and prepared the model that was later followed by all the local banks when the trust market ballooned in Puerto Rico. He also set up the first bank-trusted pension plan on the island, while volunteering his time for two years to serve as president of the United Fund of Puerto Rico. In this position, his primary task was lobbying the legislature to permit payroll deductions for charitable contributions by employees. Subsequently, the law was enacted after much teeth-pulling. Even though he blazed a new trail in banking, this was not his true vocation, and fate and luck again intervened to get him back on that path.

Just prior to his banking career, Judge Acosta did something that would leave an indelible mark on federal practitioners in Puerto Rico—and, later, in the entire United States—for years to come: in 1967, he



Raymond L. Acosta in front of a German bunker, Utah Beach, Normandy, France, June 1944.

and two other government attorneys established what was then called the Antilles Chapter of the Federal Bar Association (Puerto Rico is part of the Greater Antilles Islands in the Caribbean) and the judge became the chapter's first president. The chapter had less than 10 members, all of whom were federal government attorneys. But, as with most things Judge Acosta handled, the Antilles Chapter was destined for big things. Today, with more than 600 government and nongovernment lawyers as members, the FBA's Puerto Rico Chapter is one of the largest and most successful chapters in FBA history. The impact and network Judge Acosta created through the FBA and other organizations, as well as his work as a federal prosecutor, would later serve him well and bring him back to the road that he was meant to follow.

Back in the field of law, Judge Acosta got a tip from a fellow FBA member, U.S. District Judge Juan Pérez Giménez (then a U.S. magistrate judge), and applied for the newly vacant U.S. attorney position in Puerto Rico. In 1980, President Jimmy Carter appointed Acosta as the U.S. attorney for the District of Puerto Rico. Much had changed since the judge's days as assistant U.S. attorney in the late 1950s. The district now had civil and criminal divisions—mainly created to fight drug trafficking and money laundering. The office had at least 15 attorneys. As a U.S. attorney, Acosta oversaw some major busts as well as some major wins, and the position changed significantly becoming one

that was always in the public eye and sometimes politicized by the media and certain factions.

But a not so simple twist of fate would again touch the man who would become "the judge." Acosta learned by chance that there would be a vacancy on the federal court bench and that the prime candidate, Héctor M. Laffitte (now a retired federal judge), could not accept because of professional commitments at the time. Judge Acosta made the move that would turn into his mission. Enjoying the bipartisan support that usually follows a fair, impartial man with a lustrous career, in 1982, Raymond L. Acosta was appointed by President Ronald Reagan, who followed President Carter's footsteps, as the 10th U.S. district judge for the District of Puerto Rico.

Little did Judge Acosta know that this appointment was not the beginning of the end, but the end of his pursuit of what providence held for him. He finally achieved his goal with the mammoth—if not monstrous—case commonly known as the Dupont fire litigation, the complex, multidistrict case that arose out of the catastrophic fire that engulfed a hotel in San Juan, Puerto Rico on New Year's Eve 1986, killing 97 people and injuring more than 140. Incidentally, Judge Acosta's residence was a mere two blocks away from the hotel; thus, he was probably the first judge in history to witness a mass disaster personally and subsequently try the case that arose as a result.

The fire was started by three arsonists in an effort to intimidate the hotel management during a labor dispute. Although the fire itself lasted several hours, it took only a few minutes to kill the 97 people—87 of them stacked in a grotesque mound against the exit door of the hotel's casino.

Five days after the fire, the first lawsuit was filed in the District of Puerto Rico and assigned to Judge Acosta by random selection. On May 21, 1987, just five years into his judgeship, Judge Acosta was designated the transferee judge by the Multi-District Litigation Panel. Later, the judge would liken management of the case to "suddenly flying a Boeing 747 after a lifetime limited to piloting single-engine planes." The case, which the *National Law Journal* described as "the largest mass disaster litigation in U.S. history," involved more than 2,400 plaintiffs and 250 defendants. More than 2,300 depositions were taken in a scant 18-month period. Trial commenced on March 15, 1989, a mere 27 months after the fire. After three phases of the trial—lasting a total of 19 months—Judge Acosta approved a settlement of \$220 million.

Judge Acosta instituted a number of



Judge Acosta receiving a medal from the mayor of Ste. Marie Dumont, Normandy, France, in commemoration of the 50th anniversary of D-Day, June 6, 1994.

innovations to deal with the enormity of the litigation. To accommodate the 50–60 attorneys, their clients, and witnesses who were in attendance on any given day, he ordered the construction of a special courtroom on the mezzanine floor of a local bank building. He approved the first use of satellite-transmitted live testimony into the San Juan courtroom from various parts of the United States. He also initiated the concept of a “settlement coordinator” by using the services of U.S. District Judge Louis Bechtle of Philadelphia to explore settlement possibilities while Judge Acosta pressed on with discovery and logistical matters in the case—a case described by Judge Bruce M. Selya of the First Circuit as a “litigatory monster” of “heroic proportions.”

The Dupont fire litigation became the judge’s mission. Suddenly, and quite providentially, all the experiences and skills he had acquired in his life—as a D-Day survivor, an FBI agent, a federal prosecutor, and even the head of a bank’s trust division—coalesced with his ever present humor, dignity, and humility as well as his loving family’s emotional support, which the judge needed in order to bear with the long hours and stress that such a case would bring. With this case, he met his calling. Judge Acosta knew from the onset of the litigation that he would be creating a map for others to follow in mass disaster cases, and he set out to do it right from the very beginning.

In the end, attorneys for the plaintiffs as well as the defense praised the judge for his fairness, strict control of his courtroom, inventiveness (the satellite transmissions and the specially constructed courtroom, for example), and simply his “willingness to go the extra mile.” Incredibly, the intense, historic litigation and the judge’s humanism and judicial skillfulness helped make these courtroom foes into lifetime friends. On Jan. 12, 2002, the litigants, along with Judge Acosta and Judge Bechtle, celebrated a 15-year reunion in Puerto Rico that included vivid anecdotes, good humor, and universal praise for Judge Acosta’s “fairness, patience, creativity and hard-work” as stated by FBA member David Indiano, one of the members of the Plaintiff’s Steering Committee. Gary Bostwick, one of the defense attorneys, said that Judge Acosta’s orders in MDL-721 essentially “rewrote the Manual for Complex Litigation.”

As much as Judge Acosta tamed the litigatory monster, the experience did not diminish the human qualities that distinguish him today as an active judge and happy family man; rather, the experience enriched his life. As Vilma Vilá, his senior law clerk and former head of the civil division of the U.S. attorney’s office the judge once headed, pointedly noted, “One of the main reasons the judge is such an excellent and different kind of jurist is because he had a varied, rich life outside the bench and continues to do so. That gives him another perspective and humanizes his courtroom and dignifies the profession.”

This humanistic trait was exemplified recently when

the judge had a second chance to deal with a criminal case that had practically haunted him for years. One of the most difficult things any judge has to do is to sentence criminals, especially when the sentence is a forced life term for a young first-time offender, who ran with the wrong crowd and got caught distributing high volumes of drugs. The Federal Sentencing Guidelines at the time gave the judge no choice when it came to the sentence to be imposed, but it pained him greatly to remember that “life is life” and to realize that the 29-year-old standing before him with his beautiful, loving family would be returned to them in a coffin. Years passed, the judge took senior status (which allowed him to determine that he would never again preside over a criminal trial), and just as the judge had another dream about that young offender serving a life term in prison, he received a jail-house motion from the man exactly 20 years after his sentencing. Today, as a result of changes in the law, that man got a second chance to change his life. In his “heart of hearts,” the judge resentenced the man to a shorter term. The government appealed, but later recanted, and recently dismissed the appeal, thus vindicating the judge’s decision.

These days Judge Acosta is a very active and youthful senior U.S. district judge. (He has maintained his full shock of white hair as long as anyone can remember.) He resides in San Juan, Puerto Rico, and Chapin, S.C. He is a skilled tennis player, who certainly has learned to use the right serves and swings in all aspects of his novelistic life. **TFL**

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