

**Hector M. Laffitte**  
**District of Puerto Rico**

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**Appointed by:** President Ronald Reagan, 1983.

**Law School:** University of Puerto Rico, LLB., 1958; Georgetown University, LL.M., 1960.

**Prior Legal Experience:** Hartzell, Fernandez & Novas, 1959-64; Nachman, Feldstein, Laffitte & Smith, 1965-66; Laffitte & Dominquez, 1970-83.

**Background and Reputation in the Legal Community**

Judge Laffitte practiced with three Puerto Rico law firms for twenty-four years, seventeen of those years as a name partner. His specialty was labor law. As a lawyer, he provided *pro bono* services for the Puerto Rico Civil Rights Commission, the Governor's Committee on Judicial Appointments, and the Governor's Advisory Committee on Labor Policy.

Lawyers rate Judge Laffitte as intelligent and experienced. He is considered formal and tough but is liked and respected by many of the lawyers surveyed. Plaintiffs' attorneys consider Judge Laffitte to be a conservative judge and pro-government. Civil defense lawyers, however, consider him generally even-handed but sensitive to the political issues in a case. Most criminal defense lawyers say that Laffitte is very pro-government. Comments included: "He's extremely pro-government. He is so pro-government that I consider him my adversary." "He leans toward the government – but he is open to reason."

Lawyers also often say that this judge can be harsh at sentencing. Comments included: "He is not vicious or cruel – but he is severe. . . ." "Downward departures are practically unheard of in this district." However, lawyers note that, consistent with his pro-government views, he is generous with cooperators.

**Juan M. Arocho-Gonzalez**

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Sentencing Transcript at 13-15, *United States v. Juan M. Arocho Gonzalez*, Cr. 94-376 (September 27, 1995).

**Offense:** Continuing Criminal Enterprise; Conspiracy to Distribute More than Five Kilograms of Cocaine; Distribution of Cocaine within 1000 feet of a School; Distribution of Cocaine within a Public Housing Facility.  
**Sentence:** 20 year mandatory minimum.  
**Projected Release Date:** June 14, 2012.

Juan Arocho-Gonzalez was born into poverty in a Puerto Rico housing project as one of seven children. For his first eight years, Juan's father drank and brutally abused his mother. After his parents separated, his mother frequently abandoned the home, returning for a few hours every morning, leaving Juan to be watched over by his older sisters from the time he was about thirteen. Without any parental supervision, Juan's childhood deteriorated. His sisters were unable to control Juan and his brothers, Roberto and Juan-Ramon,<sup>2</sup> and all three boys became involved in drugs and street life. Juan never made it past the fifth grade and he began smoking marijuana regularly. By the time of this case at age twenty-one, Juan had already been snorting heroin and cocaine for some time, supporting his habit through drug sales.



During 1994, an informant tipped off the police that a drug distribution point had been established within the Augstin Stahl Public Housing Project in Aguadilla, Puerto Rico. Using the informant's apartment, the police videotaped several months of drug activity centered around Juan and Roberto's apartment in the complex. According to the government's evidence at trial, this drug spot appeared to be in operation about eighteen hours a day, seven days a week. Later, undercover agents for the DEA purchased small quantities from several of the defendants. Juan negotiated a .54 gram sale and Roberto, 2.1 grams sale of cocaine. None of the observed or monitored buys involved more than this kind of small retail quantities of either cocaine and heroin. However, the video surveillance showed that the Arocho-Gonzalez brothers were supervising the sales, collecting the proceeds, and distributing drugs to the other peddlers, which included up to ten people (including some minors).

To close the investigation, the police arrested the participants and executed search warrants on Juan and Roberto's apartment and another defendant's residence. At Juan's home, the police recovered just 8.2 grams of cocaine, along with drug packaging paraphernalia, scales, and money wrappers.<sup>3</sup> Only about \$70 was recovered from the defendants and their apartment and no other property of significant value was seized from any of the other participants.

Ultimately twelve defendants including Juan, Roberto, and their sister Sonia were charged in a multi-count indictment but only Juan and Roberto were indicted under the Continuing

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Juan-Ramon committed suicide in 1994 as the result of his drug use and other personal problems.

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The drug operation was centered in Apartments 165 and 161. The brothers lived in Apartment 161 and that is where the search warrant was executed. Another .95 grams of cocaine were found at the apartment of another defendant in the case (along with 23 grams of marijuana).

Criminal Enterprise statute (“CCE”), which carries a mandatory twenty year term.<sup>4</sup> Not facing any CCE counts or enhancements for leadership roles, all the other defendants quickly agreed to plead guilty to conspiracy charges and they were sentenced to terms ranging from 105 days to 25 months (even though several of these defendants had prior criminal records).<sup>5</sup>

Before trial, Juan and Roberto were offered a deal that required a ten year sentence for each. Although they were willing to admit that they had engaged in drug dealing, they insisted that all the charged defendants equally participated in selling small quantities for profit and/or to pay for their personal drug use and that they were not the ringleaders. Thus, against their attorneys’ advice, Juan and Roberto went to trial and were convicted on all eleven counts, including the CCE charge.

To prove a CCE conspiracy, the government must show that a defendant committed a drug felony offense as part of a continuing series of such violations, in concert with five or more persons to whom he acted as a supervisor, organizer or manager, and from which multiple operations, he realized substantial income or other resources. Although Juan’s trial attorney failed to move for a judgement of acquittal at trial,<sup>6</sup> the Court of Appeals did consider Roberto’s argument that the government had failed to prove the elements of the CCE count.<sup>7</sup> Roberto’s best argument was that the government introduced no direct evidence that the brothers accumulated any wealth from this operation. They still lived in a public housing apartment and no cars, jewelry, or cash were seized by the police. However, the First Circuit upheld the conviction because a government witness estimated that the income for the operation over the seven months observed by the police would have generated almost \$300,000, there was sufficient evidence for an inference that substantial revenue must have been derived, regardless of whether that money was seized or realized as profit.<sup>8</sup>

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*See* 21 U.S.C. §848(a). Roberto was alleged to be the principal leader and Juan a manager/organizer of the operation.

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These defendants, like Juan and Roberto, were also charged with distributing drugs in a public housing project and within 1000 feet of a school. Although some defendants pled guilty to these counts as well, all sentences ran concurrent to the penalty for the lead charge of conspiracy. At the sentencing hearing, Juan’s attorney spoke about this disparity, stating that not only did “many of [the co-defendants] have prior records, some of them had been on probation, and yet the sentences that were offered to them were that low.” Sent. Tr. at 7.

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Juan had a new attorney at sentencing. She noted that she doubted the government had shown “substantial income or resource” at the trial but she understood that as an “attorney for sentencing I am not about to deal[] with the — matter that I wish I could do, and those are matters that would have to be taken in appeal.” Sent. Tr. at 8.

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Because his attorney failed to preserve the issue, the Court of Appeals held that it could only reverse if he could show the conviction “was clearly and grossly unjust.” *Gonzalez v. United States*, 911F.ed 121 (unpublished), 1996 WL 433404 (1<sup>st</sup>. Cir. 1996) at 2. Because Roberto’s similar claim was defeated on the merits, Juan also would have lost this argument even if it had been preserved.

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Thus, it was irrelevant if the defendants had paid most of the proceeds to their suppliers, or sunk the proceeds back into the business, or simply didn’t charge enough to cover their costs. The CCE statute’s sole focus is on revenue.

Given the mandatory twenty-year sentence, there was not much that could be done at the sentencing hearing to help Juan.<sup>9</sup> Nevertheless, Juan asked for and obtained a new attorney for the sentencing hearing and she moved for downward departure based on his extraordinarily deprived childhood. Judge Laffitte held that he had to deny the motion, telling the attorney, “Well the thing is, counsel that the – there’s a mandatory minimum.”<sup>10</sup> He also told Juan’s new attorney that she “had presented an excellent, eloquent address to the Court in mitigation of punishment . . . but the Court’s hands are tied on the case law. . . I cannot do any – I can’t – my hands are tied and I can do nothing else . . . . This case – the thing is that he was charged with a criminal – continuing criminal enterprise, and that is what really jumps this case . . . .”<sup>11</sup>

When given an opportunity to speak, Juan did not deny that he had been selling drugs but he contested the claim that he was a leader of any criminal enterprise and he complained that the quantities held against him at sentencing were too high. He said to the judge, “But I – in truth, since the first time I arrived to this courtroom before you, I explained to you that I really did was what the others did. I didn’t do less or more than they did.”<sup>12</sup> The judge responded first by chiding him that he might have committed worse crimes or been killed if he hadn’t been arrested in this case. Judge Laffitte then explained that Juan was overlooking the fact that a lot of cocaine was sold at that location and that is why he was charged with in excess of 5 kilograms. Juan countered that “. . . . I never saw much drug together, five kilos, leave alone five kilos. I never seen as much drug as there was talk about here. I only sold baggies, and you can see it clearly on the videos what I’m doing in them: selling baggies like all the rest of them.”<sup>13</sup>

When this frustrating colloquy concluded, Judge Laffitte expressed his feelings about the sentence by saying

Well, let me say there’s only one word to describe this case: It’s a tragedy. And it is a tragedy not because of the facts because there is no question that this defendant was selling drugs right and left from that public housing, even selling drugs in front of babies and children... but it is the youth of this defendant when viewed in the light of the severe, stiff provisions of the sentencing guidelines and the statute that make this case tough and difficult and sad.<sup>14</sup>

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It is not completely clear what Juan’s Guideline range would have been in the absence of the CCE count. On just the drug count, his Offense Level would have been 32, but he would have likely had increases for the protected location and his supervisory role. However, in the absence of the CCE count, he might have gotten a reduction for acceptance of responsibility. Also without the CCE mandatory minimum, the judge might have considered the downward departure request. Without knowing for certain, Juan’s Guideline range without the CCE count (and without a downward departure) would probably have been at least 135 months and perhaps has high as 210 months.

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Sent. Tr. at 8.

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Sent. Tr. at 14.

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Sent. Tr. at 20.

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Sent. Tr. at 20.

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Later, after bemoaning that Juan had turned down a plea offer for ten years, the judge again noted that “[O]ne has to pass sentence in this case with a heavy heart because of the youth of this defendant, but that’s what the law says, and that’s what I have to do. . . . [U]nless the court of appeals reverses the conviction in the criminal enterprise, I think he’s got to unfortunately do his time, almost a generation. Twenty years is almost a generation.”<sup>15</sup>

What remains unclear about this case is why the prosecutors pursued the CCE count in the first place. In most districts, CCE charges are reserved for extensive criminal conspiracies that resemble organized crime, and where the government has evidence that the leaders amassed real wealth as a result of the operation. It may be that the imposition of the twenty-year CCE sentence was a “trial tax,” an additional punishment that resulted from the brothers’ foolish decision to not to accept the ten year plea offer.

Judge Laffitte noted at sentencing that Juan had been unwise to turn down the plea offer. The judge attributed his decision to youth and attitude; “I think maybe he was cocky. He was adamant. You know, youth – young –that they either can do no wrong; that they’re never wrong, that they know everything.”<sup>16</sup> Judge Laffitte may have been right about Juan’s reasons for refusing the ten year deal, but Juan still insists that the evidence that he was an organizer of the drug ring was falsified. In support, he notes that the government’s primary police witness against him, Agent Edwin Lopez Perez of the Commonwealth of Puerto Rico Police Department, was later expelled from the force for misconduct and lying.<sup>17</sup> Juan believes that if the jury had know that the primary police witness was dishonest, he might have been acquitted, at least of the more serious charges.<sup>18</sup>

While Juan is right to feel outrage that a dishonest cop was instrumental in his conviction, given the videotapes, it is not clear that this credibility evidence would have been sufficient to produce a different outcome. Moreover, in making this argument, Juan stills seems not grasp just how broadly the CCE statute reaches. Even if their co-defendants did not consider Juan and Roberto their bosses, if the brothers indeed collected money or distributed drugs to the dealers for resale over a consistent period of time, that would be enough under the law to allow an inference of “supervision” and “organizing.” Hence, the facts presented at trial do seem sufficient to support the conviction.

Nevertheless, while perhaps not well articulated, Juan does have a point that the government’s decision to charge him and his brother under the CCE statute was not typical for this kind of low level street market distribution with no weapons, no violence, and no obvious accumulation of wealth. As the Supreme Court noted in analyzing the statute

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Sent. Tr. at 13-14.

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Sent. Tr. at 15.

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Sent. Tr. at 15.

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The officer lied about his score on a promotion test and later tried to cover up his misconduct by additional misstatements to the investigator. *See* October 10, 1996 letter to Edwin Lopez Perez from Pedro A. Toledo, Superintendent (copy on file with author).

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Juan filed a successive habeas petition on this issue which was denied.

[T]he CCE offense is aimed at what Congress perceived to be a peculiar evil: the drug kingpin. . . . As the Court said in *Garrett*: "A common-sense reading of this definition [of 'engaged in a continuing criminal enterprise'] reveals a carefully crafted prohibition aimed at a special problem. This language is designed to reach the 'top brass' in the drug rings, not the lieutenants and foot soldiers."<sup>19</sup>

Thus, while he may have been a supervisor at this "drug point," Juan really was no more than a supervisor of nickel and dime bag dealers, hardly a true kingpin as envisioned by the statute. Dealers at his level rarely are convicted of CCE because the penalties available under the drug conspiracy statute are usually more than sufficient punishment. Nevertheless, for whatever reason the prosecutors chose to charge and prosecute this count, Juan and Roberto seem likely to have to serve their full sentences.

The impact of this sentence will be felt by more than just Juan and Roberto. Before his arrest, Juan had a three year relationship with Lillian Ponce Morales with whom he had two children, the youngest a newborn at the time of the sentencing. Juan writes from prison that Lillian has cut off all contact with him and his children.

He also writes that the biggest problem

with the prison environment . . . is that there really is no rehabilitation. The system is not designed to help you, or to make you better, it is designed to lock you up and keep you out of the way. The problem for me, and others like me, and society in general, is that some day, most of the incarcerated will be released back into society – only now we are older, more frustrated, probably with less to lose.<sup>20</sup>

Still, Juan recognizes that "some good has come out of this experience, like my new found faith in God, a healthier lifestyle, a re-focusing of sorts on the truly important issues." He adds that he has "become a regular figure in the Chapel, not that I am a fanatic, just that I know that I need to change, and God is the only way possible for me to achieve any kind of true change."<sup>21</sup>

Juan hopes that when he is eventually released, he can work and "recover some of the time lost with my children. Being here, it's a big waste of time, not punishment, but just a waste. . . . I guess my kids are the ones being punished."<sup>22</sup> His children will be nineteen and seventeen before he is free to see them again.

*Compiled from Sentencing Transcript, PSI, PACER docket sheet, inmate letters, appellate opinions.*

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*Richardson v. United States*, 526 U.S. 813, 828-29 (1999), quoting *Garrett v. United States*, 471 U.S. 773, 781 (1985).

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August 12, 2005 letter to the author at 2 (on file with author).

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*Id.*

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*Id.*

