

# Blind Mules—Fiction or Fact? ©

What Defense Attorneys Need to Know—an Expert Opinion

By  
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On January 12, 2000, Gloria Cespedes-Cano and her teenaged daughter Sandra<sup>1</sup> stepped through the doors of the LACSA (Costa Rican national airline) baggage department at John F. Kennedy International Airport and into a nightmare. She was there to reclaim checked bagged that had been lost by the airlines seven days earlier during her return trip home to the US from her native Colombia.

Things immediately got tense. The man at the other side of the counter wore a LACSA uniform but he spoke Spanish the way Ricky Ricardo spoke English.

“Are you certain this bag is yours?” he said.

“Of course I am sure It’s mine,” said Gloria. “That is why I am here.” Something about the way he looked at her started Gloria’s heart racing.

“Did you pack this bag yourself in Colombia before you left?” insisted the man.

“Of course,” said Gloria. “I just told you—it’s my bag, I packed it, you lost it, that’s why I am here.”

“Mommy, what’s wrong?” said Sandra, who had been fretting her mother about the bag all week. It contained her New York City high school soccer uniform that she’d brought to Colombia to impress her cousins. “Just take it and let’s go, Mommy.”

The man produced a document. “I’ll need you to sign this,” he said. “It says that the bag is yours and that you’re responsible for its contents.”

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<sup>1</sup> Pseudonym.

Gloria quickly signed her name where the man indicated. She had barely put the pen down and her world changed forever.

Gun toting federal agents in blue hats and windbreakers surrounded her screaming commands in a loud cacophony of incomprehensible voices. She felt herself shoved hard against a counter. Hands raced over her body, touching her in intimate places. Hands bent her arms behind her. She felt the steel of handcuffs for the first time in her life.

“You are under arrest,” said one of the officers. He read from a card, telling her in Spanish that she had the right to remain silent, that she could have an attorney if she felt she needed one.

“What did I do?” cried Gloria. Behind her Sandra cowered and wailed in fear—a wounded doe in a crowded subway car.

“You are charged with smuggling heroin into the United States...This,” he said, removing a brick shaped package from her bag and slapping it on the counter. “Are you willing to make a statement?”

*Willing?* The Customs agents couldn’t stop Gloria from talking if they wanted to; she told them everything they asked, answered every question. Volunteered information they didn’t ask.

“You don’t have to say anything,” the man reminded her. “You have the right to an attorney.”

“Why do I need a lawyer?” she said. “I did nothing wrong. I never saw that package before. Someone must have put it in my bag.”

Gloria explained that seven days earlier, she and Sandra had checked their unlocked baggage at the airport in Cartagena, Colombia for their return trip home to the USA. They had just spent two weeks visiting family and friends over the Christmas and New Year holidays—a trip for which she had planned and saved for more than two years. The officers could check her bank account and see for themselves where the money came from. Gloria gave him a full and detailed itinerary of her trip, including the address and phone number of every relative with whom she had stayed. She was willing to tell him

anything he wanted to know, give him any kind of cooperation he suggested. She lived simply, worked hard and had never done anything illegal in her life.

Besides, Colombian security police had searched the bag before she had checked it, and *they* had found nothing.

She begged the Customs agent to verify everything she had said. If he checked her work records and bank accounts he'd find that she and her husband each worked 60 hours a week to put food on the table—did that sound like a drug dealer? What did she have to do to prove to him that she was not a drug trafficker, that someone else must have put the drugs in her bag?

*My bet is that at this point most attorneys reading this are thinking, "Big mistake. She should have kept her mouth shut and called for a lawyer." By the end of this article I think you'll agree that if you're claiming a blind mule defense, the worst thing you can possibly do is to remain silent.*

The officers didn't believe a word; the openly snickered. In fact, they seemed completely disinterested in anything Gloria said that wasn't a full confession. They had found three pounds of heroin at the bottom of her bag worth millions of dollars on the street; she *had* to know what she was carrying. There's no such thing as a *blind mule*, said one in Spanish. Gloria Cespedes-Cano was formally charged with Smuggling, Possession and Possession with Intent to Distribute and shoved into a cage.

Three nightmare years later, at trial in the Eastern Judicial District of New York, a badge-carrying government expert, wearing a blue striped suit, a power tie and a little American flag pinned to his lapel, would take the witness stand. He would speak with great authority and in a professional manner as he told the jury deciding Gloria Cano's fate, exactly the same thing: "There is no such thing as a blind mule." He would weigh in with his years of training and experience, like a Tom Clancy figure come-to-life and explain that the reason there is no such thing as a drug courier who is unaware that he or she is carrying drugs—a blind mule—is simply that the illegal cargo is so valuable

that professional drug dealers would *only* use people who are thoroughly *trusted* and responsible for the safe delivery of said drugs.

The expert would be spouting the Drug Enforcement Administration and the United States Justice Department's current and official position as enunciated in a widely disseminated article entitled "Blind Mules—Fact or Fiction?":

*"It is incumbent on [DEA] to explain to judges, juries, and the public the absurdity of the premise that drug traffickers would entrust their extremely valuable commodities to unwitting couriers, running the risks inherent in allowing the drugs to be in the possession of someone not directly responsible for their successful delivery."*<sup>2</sup>

Take note here that the government's position does not just limit itself to the Blind Mule defense, it includes *all* "unwitting couriers," which as you are about to see, goes a lot farther than cases like Gloria's. In my trial consulting practice of the past fifteen years since my retirement from DEA, I have heard government experts consistently testify that *any* kind of coerced or unwitting participation in drug trafficking is a circumstance so absurd that on its surface it cannot be accepted as a reasonable claim.

To any narcotic investigator with real experience working with international drug traffickers during the 1970s and 80s, this kind of expert testimony which denies the use of unwitting participants in drug trafficking, is not only patently incorrect it is inconsistent with two decades of drug war history and policy. I happen to be a frontline witness to the changes in narcotic enforcement prosecutions from the early 1970s, when President Nixon first declared war on drugs, to the present time. A Blind Mule and/or unwitting and/or coerced participation defense during those years, was considered as both valid and in some circumstances likely, by both prosecutors and investigators alike. It was understood that the narcotics trafficking business was devoid of trust; that the closest of family members, under threat

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<sup>2</sup> "BLIND MULES- FACT OR FICTION?" By Special Agent Jim Delaney Drug Enforcement Administration, Sacramento District Office

of decades in prison and/or for the promise of six and seven figure reward payments would easily turn informant on one another and that the notion of a drug trafficker simply trusting a lowly mule—the current expert opinion—was truly absurd.

Thus, the purpose of this article is to demonstrate the change in government expert opinion and illustrate its overall negative impact on our justice system, the war on drugs and the war on terror as well as the fact that the logic behind this change is simply counterintuitive. Sound like hyperbole? Just hang in there and let's see.

For Gloria Cespedes-Cano's attorney, Michael Hammerman of New York City, understanding the *facts* behind this fact-to-fiction change in expert opinion and prosecutorial philosophy would make the difference between a successful defense strategy and his client spending decades behind bars.

### **Blind Mules as Fact**

I first heard the term *blind mule* in 1970, when I was one of three Spanish-speaking agents assigned to the Hard Narcotics Smuggling Division of US Customs in the Port of New York. The cocaine and heroin markets were expanding rapidly as were the numbers of “mules”—drug couriers—arriving from source countries like Colombia, Mexico and Southeast Asia. Being a fluent Spanish speaker I worked round the clock on interdiction, arresting and debriefing mules by the hundreds; trying to “flip” them —convince them to turn informant—as quickly as possible in order that they could effectively aid us in identifying and arresting those who were awaiting their imminent arrival.<sup>3</sup>

Whenever headquarters notified me that a customs inspector had detained a mule it meant a 100 MPH race to the airport. A *flip* had to be done quickly, because often the drug cartel would have its people waiting in the airport scant yards from where their mule was being held. If too much time elapsed they would vanish. I would have at most an hour to convince the mule

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<sup>3</sup> Now referred to by many federal agencies as CW (Cooperating Witness) as a means of evading the Discovery demands of the less experienced defense attorneys.

to cooperate, put the dope back into his or her bra, or prosthetic leg, or bowling ball, or coffin, or shoes, then seal up the drilled hole from whence spurted white powder—whatever concealment technique they happened to be using—in order to complete a “controlled delivery”—an undercover delivery of the drugs under tight surveillance to the intended receivers.

In those early years of drug war, most of the mules I encountered at JFK airport, and later at Miami International, claimed they had no idea they were carrying drugs. The term “Blind Mules” was born.

Some had alibis that would have strained the credulity of a pet rock, like Maria Gloria Naranjo, who was traveling on a false passport and claimed she thought she was carrying “white gold” sewn into the padding of her bra and panties by people she had never met, to be delivered to people she didn’t know. Or Felix Rodriguez, who claimed he thought he was carrying “white gold” in his prosthetic leg, put there by unknown people at a time and place he couldn’t quite remember and who had supplied him with a false passport and paid him \$500 to make the delivery in New York where he would be met by more people he didn’t know at an address that didn’t exist.

Other alibis, like those of a series of women who claimed they were prostitutes hired to work in New York or Miami were more plausible. They carried specially constructed suitcases full of new clothing concealing large amounts of cocaine in false bottoms and sides, claiming they had been given the suitcases and the clothing as part of their “jobs” but were ignorant of the hidden drugs.

I qualify the prostitutes’ blind-mule alibi as “more plausible” as the direct result of three days of face-to-face undercover meetings in Buenos Aires with, Pedro Castillo, a major Bolivian cocaine supplier in 1979.<sup>4</sup> Castillo, who believed he was dealing with an American Mafiosi, agreed to deliver 10 kilos of cocaine to me in Miami; a deal which he subsequently completed sending him to federal prison for 20 years. During my undercover meetings with

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<sup>4</sup> The full story of the Pedro Castillo case can be found in *The Big White Lie*, by Michael Levine and Laura Kavanau-Levine, Thunder’s Mouth Press, 1996.

international drug traffickers like Castillo—and there were many—I would always use the long hours spent in negotiations as a pretext to learn all I could about how they operated. How they thought.

I pressed Castillo hard for details as to how the drugs were entering the U.S. and who was to be responsible if they were seized—important items for dope dealers to iron out before a transaction. He told me that for larger loads of cocaine—more than ten kilos—he would hide the drugs in commercial shipments. For the smaller loads going to both the U.S. and Europe, he used prostitutes.

“The U.S. government will pay any one of them hundreds of thousands of dollars for dropping a dime on you,” I said. “How can you trust them?” His answer was that some would not know what they were carrying others had families to worry about. Blind Mules and coercion as far as this real-life drug trafficker was concerned were facts of life— “trust” was not.<sup>5</sup>

### **Unwitting Recipients as Fact**

In 1971, Jaime Ibarra, the intended recipient of unaccompanied baggage from Santiago, Chile, claimed that he had no idea why the baggage was addressed to his name and temporary address at a New York City hotel. The unaccompanied suitcase crammed with old shoes which in turn were crammed with 6 kilos of cocaine had been seized by customs inspectors at the Lufthansa Airlines baggage department. Things looked bad for Jaime; he had overstayed his visa, lied to me as any illegal alien might have done and had the Bill of Lading for the undelivered suitcase in his hotel mailbox where it had been sent by Lufthansa Airlines.

Jaime’s innocence was proven by a three-month investigation that revealed the existence of a Colombian Cartel that was able to select names of South American tourists from hotel registers in New York, to whom

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<sup>5</sup> Castillo consummated the deal and “rode shotgun”—accompanied—four Bolivian prostitutes on a flight to Miami; each was carrying 2.5 kilos of cocaine to be delivered to my “cousin” (an undercover DEA agent). Castillo was arrested and convicted.

unaccompanied baggage containing cocaine would be addressed. If the bag made it through customs, someone masquerading as the addressee would make the pickup at the baggage counter.<sup>6</sup> If Customs detected the drugs, as happened in the Ibarra case, the unwitting addressee was, as they say, on his own.

If the Ibarra case had happened in the past fifteen years, he would have been arrested without any follow-up investigation and prosecuted. A government expert would have appeared at his trial to assure the jury that there was no such thing as an unwitting receiver of \$1/2 million in cocaine and he would probably still be in jail today.

### **National Drug Policy and the Search for Truth Doctrine —Then**

The kind of investigation and prosecution that Gloria Cespedes-Cano and many others who claim unwitting and/or coerced participation in drug trafficking face today could never have happened during the early years of our war on drugs. Both my training and the Prosecutors with whom I worked demanded a due diligence investigation to prove, beyond a *reasonable* doubt, that a man or woman caught transporting or receiving drugs *knew* exactly what he or she were doing. We were trained to adhere to the Search-for-Truth Doctrine which meant that if an investigative step held a likelihood of unearthing exculpatory evidence or information, a case agent was not permitted to omit or avoid it for any reason.

Full and careful debriefings of *all* who claimed to be blind mules and/or unwitting and/or coerced participants, supported by painstaking corroborative investigations and other interdiction tactics, was SOP for all agents working interdiction. Both our supervisors and the United States Attorneys offices demanded strict adherence to the Search-for-Truth doctrine and National Drug Policy. A due diligence investigative effort would either reveal continuing efforts to deceive and that the Blind Mule claim was not a reasonable one, or

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<sup>6</sup> Full story of the Jaime Ibarra investigation may be found in *Undercover* by Donald Godddard, Times Books, March, 1988.



that the defendant's story *might* be true. What is important to stress here is that, with the "discovery" that a Blind Mule claim is "absurd," the due diligence investigation no longer happens and, as a result our Department of Justice is now working *for* the drug traffickers.

For example, during the 1970s and 80s all those claiming blind mule status, no matter how incredible sounding the story, were given the opportunity to tell their stories fully and/or aid in a controlled delivery to whomever was expecting their arrival. The thorough documentation and investigation of blind mule statements, often resulted in the arrests, convictions and conspiracy indictments of top-level traffickers.

In cases of deception, it was the Search-for-truth investigative effort that furnished the prosecution with *evidence* that Blind Mule (unwitting participation) claims were untrue beyond a reasonable doubt—not that they were simply "absurd" by virtue of expert testimony. I served often as a prosecution expert during the 1970s and 80s and never uttered those words.

### **National Drug Policy**

Adherence to the Search-for-Truth Doctrine also forced investigators to adhere to what is referred to as National Drug Policy. NDP, reiterated by every presidential administration in White House Drug Policy Statements, has always been interpreted by the Drug Enforcement Administration, the lead agency in our war on drugs, as a national mandate for investigators to pursue and exhaust all investigative leads and/or information that even might reveal the sources and tentacles of distribution of a drug organization. It was the very heart and soul of the War on Drugs.

During the early 1980s, as an Operational Inspector assigned to the office of Professional Responsibility, one of my primary duties was to ensure that DEA offices worldwide in every one of its investigations adhered to National Drug Policy.

The bottom line, as I will illustrate below, is that, with the "discovery" during recent years that any claim of forced or unwitting participation *must* be

false, National Drug Policy and the Search-for-Truth doctrine became meaningless phrases and the quality and professionalism of world class investigative organizations hit bottom, where it remains to this day. In fact, in a very real sense, our Department of Justice is now working *for* the dopers. And in this era of terrorism supported by drug trafficking, this is no small matter.

### **Do Prosecutors Really Believe There is No Such Thing as a Blind Mule?**

Under cross-examination, during a recent trial wherein I provided expert testimony as to the federal agents' violations of the Search-for-Truth Doctrine, standards and training and National Drug Policy during and after the arrest of a defendant claiming blind mule status, I was asked: "Isn't it true that when these blind mule claims are in fact investigated, nothing ever comes of the investigation?"

It was a Kundalini moment for an expert witness. I could not believe the soft arcing pitch this experienced prosecutor had just tossed me. But something was wrong. It was too easy—was it a setup? <sup>7</sup>

Instead of just citing about fifteen or twenty cases emanating from blind mule arrests, that, due to search-for-truth investigative efforts during the 1970s and 80s had been hugely successful on a global scale and contrasting them with the monstrous investigative failures of today, I was short-circuiting. The question had also provoked an instant of blinding insight.

This prosecutor actually *believed* the government expert or (I reasoned) he would never have asked such a question. For an instant the implications of this level of (lets be charitable here) naïveté left me breathless. Prior to this moment it had always been much easier for me to look at the discovery of the non-existence of blind mules as just another tactic of inept or lazy federal investigators of the type that allowed 9-11 to happen right under their noses combined with win-at-all-cost prosecutors.

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<sup>7</sup> US v Dorothy Henry, Federal Court, Washington, DC, 2002.

I started to slip into lecture mode. My answer was that the prosecutor's assertion could not have been more untrue and that the dogged and thorough investigation of blind mule claims has led to some of the farthest reaching international drug cases in history; cases that simply do not happen any more. I began to illustrate with examples. Of course, the prosecutor quickly cut off any elaboration with no objection from the defense. Thank God I don't have to depend on the *Rules of Criminal Procedure* in the writing of this piece. And there is no investigation that better illustrates the point I was trying to make than one that began with my arrest of John Edward Davidson, Blind Mule extraordinaire.

### **US v John Edward Davidson & Liang Saw Tiew et al.**

The year I met John Edward Davidson, 1971, was the same year that President Nixon declared war on drugs. The Special Agents of US Customs didn't need a declaration of war, by 1971 they had been combating drug smugglers for decades. The investigative tactics involved with the apprehension of a "mule" —the "flip" followed by the "controlled delivery" run concurrently with an intensive conspiracy investigation—had already been initiated and were showing huge and unprecedented successes. Books have been written about this era and the accomplishments of these immensely talented and streetwise investigators, who were second to the FBI and CIA only in public relations and in the imaginations of fiction writers. Thus, for the purposes of this article I will confine my examples to cases in which my knowledge comes from my own participation.

When I transferred into the Customs Agency Service from the Bureau of Alcohol Tobacco and Firearms in 1970 I was a willing student of these tactics and soon found myself deeply involved in many of the major international investigations of that time. In 1973, the Drug Enforcement Administration was created by Presidential Order. I was one of 750 U.S. Customs agents transferred into the new agency. One of my first assigned duties was the

management of smuggling investigations as well as the training of DEA Agents without Customs experience in the same interdiction and investigative tactics I had used as a Customs Agent. One of the investigations I used as a lecture tool, *US v John Edward Davidson, et al*, began on July 4, 1971.

I had “the duty” that day, which in Customs parlance meant I was on 24 hour call status. It was about 1:PM, when headquarters called. I was at a party at an uncle’s home in Babylon, Long Island. There had been two arrests at JFK International; one a Peruvian woman with a half kilo of cocaine hidden in body orifices where the sun doesn’t shine and a Caucasian male with 3 kilos of heroin hidden in the false bottoms of three Samsonite suitcases. Each had been in custody for about 10 minutes when I got the call.

I made it, red light spinning, siren screaming and brake drums smoking, to the rear entrance of the IAB (International Arrivals Building) in less than 15 minutes, which meant that I would have, at most, an hour to flip one of the two mules and let him (or her) walk out the double doors into the arrivals area with his bags to see if anyone approached or followed. I had a couple of undercover, plainclothes patrol officers standing by and more agents on the way.

As luck would have it the other agent on call that day was Jack Daniocek, another fluent Spanish speaker. Jack was senior to me and wanted to handle the Peruvian woman, so by default I would, within minutes, find myself in a windowless room seated across a bare metal table from John Edward Davidson and the beginning of an adventure that would take me to the other side of the world. It would also be my first, personal glimpse into the minds of major international drug traffickers who would accept me as one of their own—a firsthand, uncensored perspective that I believe is entirely absent from most of today’s expert testimony.

The Customs inspector who had detected the heroin quickly filled me in on what I needed to know. Davidson had just arrived from Bangkok, Thailand carrying three expensive Samsonite suitcases full of gifts and clothing. His passport showed seven trips to Thailand in the past 18 months. The weight of

each empty suitcase was exactly one kilo more than it should weigh. A small hole drilled through the bottom of each revealed that the extra kilo was 99% pure heroin, known as “Dragon Brand.” Davidson’s claim, so far, was that the suitcase had been filled by “Chinese People” he’d met in Thailand during his R&Rs from the battlefields of Vietnam, and that he thought he was smuggling precious gems to evade import duties.

*Blind Mule? A Vietnam vet who thought he was smuggling jewelry? Gimme a New York break,* I thought. *This guy knew exactly what he was doing.* But I also knew that no federal prosecutor would accept that assessment without an investigation that would show that it was *unreasonable* to believe his claim; an investigation that might lead to the identification of the true source of the drugs, or one that would show proof of the kind of deception common in drug smuggling cases.

Davidson was a smallish man with close-cropped blonde hair. He wore granny glasses that gave him the look of a graduate student in theology. As it would turn out, he was anything but.

As I took a seat across from him, I noted grey eyes that reacted to my every expression. He studied me as I read his two page, handwritten declaration. I was conscious of the passing time. I had to assume that, since he was carrying millions of dollars worth of heroin, blind mule or not, *somebody* was waiting for him. I had at most 30 minutes to get his cooperation and put him out on the airport concourse like a baited hook.

“I read your claim,” I said. “I don’t think a jury is going to believe it, but if you are truly a blind mule, you have a chance to prove it yourself.” I had his rapt attention. “Are you willing to cooperate with me?”

“What do I have to do?”

“First, according to your statement, some John Doe should be waiting for you right outside.”

“I doubt if they’ll still be waiting,” he said.

“They will,” I said. “That’s more than a million bucks worth of heroin you’re packing, my friend. They’ll wait to make certain this isn’t a typical airline delay.”

“What if they don’t wait?”

“Why wouldn’t they? We just announced over the PA that due to a baggage belt breakdown, some of the passengers on your flight will be delayed. Right now we’re holding a bunch of them just waiting for you to make a decision, John.”

It was all a lie, but he couldn’t know any different.

Without waiting for an answer I shoved his statement at a Customs Patrol Officer. “Get the attaché in Bangkok on the phone right now. I want this guy’s every movement checked. Particularly phone calls made from hotels. Dates, times, numbers called, run everything for drug connections. Also check Mr. Davidson’s finances. Call IRS, get his tax returns. I want to know everything about this man possible before we bring him to the magistrate. If he’s lying I want to be able to tell that to the judge.”

The bewildered CPO took the paper and left. Of course most of that could be not be done any time soon, but to defeat a claim of Blind Mule at trial, I knew it *all* and more, had to be done before trial.

I looked at Davidson, the color had drained from his face.

“I’m gonna be straight with you,” I said. “I don’t believe you. I’m just giving you all the rope you need to hang yourself. If I can prove you lied on this paper... (I shoved it in front of him) ... you’re just gonna end up pissing off some judge and maybe a jury, and your facing a possible five decades in prison. The secret you’re carrying right now is how much time you’ve got left before who’s ever waiting for you is in the wind and I won’t be able to help you any more. Thirty of forty years from now when you’re still in a cage, you might remember this moment as your last chance. It’s your choice my friend. ”

Davidson looked at the government-issue clock on the wall in front of him and then said:. “I have about 3 minutes to make a phone call, or they’ll vanish.”

Within a minute and half he was dialing a phone number in Gainesville, Florida. It was answered by Allan Trupkin, the financier, at the time one of the major heroin trafficking groups on the East Coast.

“Yeah,” said Trupkin.

“It’s me,” said John, his eyes on the rolling tape-recorder. He was now officially *flipped*.

“Where the fuck are you?” said Trupkin..

“Still at the airport,” answered Davidson smoothly. “The baggage belt broke or something.”

“It’s okay? “

“I’m fine. I missed my connection, but I’m okay.”

“What time you gonna get here?”

Davidson looked at me for a cue. I mouthed his answer.

“Next plane I can get,” he said.

“Fuck! You don’t know, man. We were really worried.”

“Okay, I’m on my way,” said Davidson and he hung up.

I had an immediate problem. Davidson had cut the conversation short while Trupkin was still clearly willing to talk—a sign of deception. The only evidence the recording would reveal was that Trupkin was waiting anxiously for Davidson’s arrival—end of story. This did not look good. Davidson was now my confidential and very criminal informant, my CI, which opened a textbook full of legal problems, the first being that Mr. Trupkin might be some low level dupe Davidson was using to protect the main man—the head of his organization whom he might fear more than a long jail term—a very common ploy of all criminal informants.<sup>8</sup>

I had to prove differently. It was now time for the Controlled Delivery operation.

Customs technicians working quickly, replaced all but one ounce of the heroin with a white powder substance that looked and felt identical to the

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<sup>8</sup> See “King Rat” by Michael Levine, *Utne Reader*, *Prison Life*, for more on the misuse of criminal informants by police agencies.

heroin, all of which was perfectly resealed inside the false bottom suitcases. Within two-and-a-half hours Davidson, my partner George Sweikert and the suitcases were on a flight to Jacksonville, Florida, where a team of twenty Customs agents and plainclothes patrol officers were waiting to convoy us to Gainesville.

At about 3:a.m., about fourteen hours after the arrest of Davidson at JFK International airport, I lay hiding in a rear room of a luxuriously equipped house trailer in the middle of a Gainesville swamp watching Allan Trupkin's headlights approach through a field of high grass that concealed twenty federal agents laying in ambush. Within minutes, Trupkin and his heroin addicted gofer, John Clements were ripping into the Samsonite suitcases, as a hidden tape-recorder rolled .

“What did you get, Dragon or Elephant?” Trupkin asked.

“Dragon,” said Davidson.

“I love you brother,” said a jubilant Trupkin.

Within minutes, I had enough on tape to establish that Trupkin was, neither a blind mule receiver nor an innocent or entrapped dupe. I gave the bust signal and the trap was closed. Ironically, it was the drug addicted-gofer, John Clements who would refuse to either cut a deal or cop a plea that ended up with the longest jail term of the three: 27 years in prison—a sentence which he has since completed.

### **Undercover With the Source in Thailand**

What had started out as a Blind Mule case in New York did not end in Gainesville, Florida. Davidson next agreed to introduce me to his Bangkok heroin connection as his Mafia financier. One month later—after coded letters were interchanged between Davidson and a man I would later identify as Liang Sae Tiew, a/k/a “Gary” —I landed in Bangkok, Thailand posing as “Mike Pagano” Mafia capo.

For the next two weeks I had daily meetings and “social” outings with “Gary” and his associate, “Mr. Geh,” whose Thai name I would later learn was Thirachai Pluksamane. They were associated with a place called “The



Factory” in Chiang Mai, Thailand where their organization was producing hundreds of kilos of heroin a week, by far the largest source of heroin discovered at that time. I read Gary and Mr. Geh as being anxious to increase their distribution in the United States. And there I was sitting right in front of them, the *capo di tutti fruti* of the fake Mafia.

My cover story was that since the French Connection had been busted, we (the Italian Mafia) were looking to expand our operations into Asia and that I knew almost nothing about Golden Triangle heroin other than what John had told me. They believed me and wanted to do business with me badly, enough to answer any questions I had. One of the areas I focused on was the methodology of smuggling. None of “my people” liked the idea of doing the smuggling ourselves, the way John did; it was just too risky. What did they suggest?

Among the many ideas they suggested was the use of tourists and American GIs as unwitting dupes—blind mules. The rare gem and jewelry market in Bangkok was known as a place where jewelry could be purchased at as little as a tenth of appraised value in the U.S. It was common for Customs Inspectors to catch tourists with undeclared jewelry. This was not considered a criminal offense, and once the duty was paid the “violator” was usually sent on his or her way. There was also a market for rare artifacts uncovered in ancient temples and archeological digs, which had to be smuggled out of the country. My two hosts had a false-bottom suitcase manufacturing operation where expensive luggage was turned into undetectable containers for drugs; they also had skilled artisans who could perfectly conceal drugs in the actual artifacts or exotic Thai food products, all which made a blind mule scam a fairly easy operation to run.

A “friendship” is struck up with a gullible tourist at one the luxury hotel discos, traveling to either Europe or the U.S. and a seduction begun. If the dupe seems appropriate, an offer is made to carry some “jewelry” or rare artifacts, back to the U.S. concealed in suitcase, in return for cash and/or another all expense paid vacation to Thailand. A selection of expensive jewelry,

or some seemingly rare artifacts might even be shown to the dupe. Or one might use the actual artifact that would later be filled with drugs. It seemed that Davidson's claim of blind mule was—as opposed to current government claims—based on solid fact, not invention.

*In one recent case of mine, precisely this was done with a Canadian college student.<sup>9</sup> He was befriended and seduced in an extremely careful and methodical manner. His new “friend” gave him a birthday “gift” of an all expense paid trip to an Asian country. At the last minute the friend asked the dupe to deliver some hard-to-find coffee to other friends in Asia. The coffee cans were precise duplicates of the well known brand name, “Melita”, the only difference was that they contained Canadian grown marijuana worth as much as \$500,000 in this country.*

Gary and Mr. Geh also suggested a mail drop operation. Heroin perfectly concealed inside wooden and bronze sculptures and then mailed to a location or business from where I could receive packages anonymously. While they did not specify the use of “blind mule” recipients, the possibility, depending on specific situations, was clearly there.

*The notion of drug smugglers having illegal narcotics mailed to their true addresses and/or the addresses of witting conspirators, seemed too stupid to even discuss, yet my reviews as trial consultant of numerous “mail delivery” cases (a species of Controlled Delivery) would indicate that the prosecution, in a majority of cases around the nation, would have juries believe that this is common practice.*

According to Gary and Mr. Geh, these scams were working well for some of their customers in both Europe and the U.S., but they were limited to relatively smaller amounts of heroin. If I truly wanted to expand operations to hundred kilo shipments as I had claimed, they recommended my investment in a business that imported goods to the US from Thailand, as a front. They had expert craftsmen who could conceal heroin within just about any article or

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<sup>9</sup> Name withheld at the request of attorney Ken Westlake of Vancouver, BC.

container imaginable. Here again it should not take much imagination to realize that the use of this type of front business would involve the handling and transportation of hidden drugs by any number of blind mules.

### **Ship Smuggling Cases – Blind Mules Then**

As my heroin trafficker hosts spoke of the effectiveness of using front organizations to avoid detection, my mind went to some of the other cases we were investigating at that moment. The Hard Narcotics Smuggling Unit was then deeply involved in complicated international investigations involving the use of major corporations like *Gran Colombiana* Shipping lines and Pan American airways for the smuggling of drugs, all of which, by both necessity and design, involved the use of blind mules and/or unwitting accomplices.

Ships from Colombia, for example, would arrive in port with hundreds of kilos of cocaine masterfully secreted in ship containers, cargo and even inside the hull compartments of the ship itself.

As a Spanish speaker I had personally interrogated hundreds of crewmembers, most of whom claimed total ignorance of the illegal cargo. Thousands of man hours were spent interviewing and investigating *all* Blind Mule claims, at the same time taking advantage of the cooperation of these crewmen by delving for more information and leads; leads that often led to the identification and indictment of entire organizations and/or proved deception.

This strict adherence to National Drug Policy and the Search-for-Truth doctrine, during the 1970s and 80s, paid its dividends. It was, for example, the investigation of the *Gran Colombiana Lines* that first led to the identification of the Medellin Cartel and the thorough investigation of countless blind mule claims were important stepping-stones in the first massive, conspiracy indictments of that organization.<sup>10</sup> It was unthinkable then, as it should be now, to, with little or no investigation, simply charge all crewmembers with

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<sup>10</sup> See *Undercover*, by Donald Goddard, those sections devoted to Special Agents Alexander Smith and Pat Shea's investigation of *Gran Colombiana Line*.

knowledgeable participation in drug smuggling on the basis of “expert” testimony that it is “absurd” to believe otherwise.

### **Ship Smuggling Cases—Blind Mules Now**

To contrast the past with the present and illustrate the damage done to both our justice system and the drug war itself, by the “discovery” that the Blind Mule does not exist, I need to look no further than some of the biggest drug seizures in recent history.

In US v Anatoli Zhakarov, (2002) more than 12 metric tons of cocaine (\$400 million in street value) was seized aboard a ship, the Svesda Maru, on the high seas off the coast of Mexico, so well concealed that it took US Customs more than 5 days to find and remove the drugs from the ship’s hull. Crewmembers claimed that they were ignorant of the cargo and were willing to give detailed statements. No such statements were taken. No investigation of their claims was attempted. The entire crew was simply charged in US Federal Court with Conspiracy and Possession with Intent to Distribute. In short, none of the standard Interdiction investigative tactics proven so successful in the past were utilized during the crucial hours immediately following the seizure, nor was there any subsequent conspiracy investigation.

I testified that one of the defendants had identified the ship’s agent in Ecuador who had hired him to crew the ship and that the DEA agent interrogating him had the opportunity, at that moment, (at minimum), to put the defendant on the phone with man who hired him and to tape-record the conversation; that, in my opinion, considering that the unprecedented size of the drug seizure, to spend less than forty-five minutes on the interrogation of a man willing to cooperate and to fail to implement even this most basic and minimal investigative effort was outrageous and inconsistent with National Drug Policy. Within weeks the U.S. Attorneys office indicted the unknown ship’s agent, presumably on the basis of expert opinion that he too “had to know” he was crewing a ship for a drug delivery.

Bottom line: As viewed through the lens of my now 40 years of training and experience, this was only a face saving indictment in direct reaction to my

testimony. The man would never be extradited to the U.S. based on the flimsy evidence against him, nor do I believe that the prosecution truly desired said extradition. Thanks to the current, shortsighted, *they-had-to-know* prosecutorial theory, the opportunity to eradicate the monstrous criminal organization behind this (according to the prosecution) “largest-shipment-of-illegal-drugs-in-history” was lost forever. The loss of the cocaine would be factored into the normal cost of doing business and would have no detectable effect on the availability of cocaine anywhere on earth.

In *US v Barahona, et al.* (2004), more than 4,939 pounds of cocaine were seized from a “go-fast” boat on the high seas. Colombian crew members who lived in stark, poverty conditions, (i.e. dirt floor shacks) claimed to have been coerced into taking part in the trip, by threats against the lives of their families. They were willing to make full statements and to cooperate in any manner. Their attempts to speak to anyone who would listen were ignored for more than seven crucial days after their arrests, destroying any possibility of using them to probe the massive organization that had masterminded this shipment. No investigation of their claims was ever conducted nor even deemed necessary. Expert testimony from the government, after two trials, was enough to convince a jury that they *must* have been willing participants. The organization behind this massive load of cocaine, again, was never touched.

In 1996, the *Natalie One* was seized in the Pacific with more than 24,000 lbs of cocaine on board. Once again, none of the standard Interdiction tactics were utilized during the crucial hours immediately following the seizure, nor was there any subsequent conspiracy investigation. Only the crew was prosecuted.

In *US v Pedro Pablo Gomez-Trejo et. al.*, on February 1, 2001, more than 8.8 tons of cocaine was seized on board *Forever My Friend*, traveling northbound on the high seas off the coast of Mexico. There was no investigation into the source. None of the standard Interdiction-investigative tactics were utilized during the crucial hours immediately following the seizure, nor was there any subsequent conspiracy investigation. Only the ten crew

members were prosecuted. The source of a shipment of cocaine valued at hundreds of millions of dollars was once again left untouched.

On September 17, 2002, Asa Hutchinson, the DEA chief, testified before congress that in the 20 months prior to his statement, 71 metric tons of cocaine had been seized on the high seas “destined for the United States.” What he failed to include in his statement was that not a single one of these seizures resulted in the identification and prosecution of a source.<sup>11</sup>

In the past decade, hundreds of tons of cocaine worth billions of dollars have been seized from ships traveling the Pacific, yet, since the government’s “discovery” that there was no such thing as a Blind Mule and/or any unwitting or coerced participation in drug trafficking, I can find not a single one of these seizures that resulted in the identification and prosecution of a major source. It’s only the crew members who go to jail. And it bears repeating, that in this time of drug-trafficking support of terrorism, the damage this type of flawed reasoning is doing to both our system of justice and our national security cannot be overstated. Were I either a drug baron or a terrorist whose operations depended on drug money, this kind of enforcement and prosecution is precisely what I would have hoped for.

### **“The Bird in the Mine Scam”**

Years later, (1979) while working undercover in Buenos Aires, Argentina, I would spend a full week in Buenos Aires negotiating a drug smuggling deal with Marcello Ibañez, ex Minister of Agriculture of Bolivia and ruling member of *La Mafía Cruzeña*,—the Roberto Suarez organization.<sup>12</sup> Marcello, like Gary and Mr. Geh nine years earlier in Thailand, thought he was hammering out a drug deal with an American based Mafiosi which, again, afforded me an insight that few of the current crop of government experts ever seem to get. During the

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<sup>11</sup> DEA Congressional testimony of Asa Hutchinson, DEA Administrator, on 9/17/02, before the Senate Committee on Narcotics Control.

<sup>12</sup> US v Roberto Suarez et al – also: *The Big White Lie*, by Michael Levine and Laura Kavanau, Thunders Mouth Press, 1996. Roberto Suarez would be called “the biggest drug trafficker who ever lived,” by convicted Medellin Cartel money launderer, Felix Milian Rodriguez in testimony before the a U.S. Congressional Committee headed by Senator John Kerry.l

average of 10-12 hours of negotiating each day, Marcello laid out every smuggling scheme his organization was then using, which included aircraft, aircraft to ship transfers and the use front organizations. Then he mentioned one I had not heard of before, “the bird in the mine.”

The way it worked was that a “pajaro” ( a dupe—literal translation a “bird”) would be found among the many international wheelers and dealers shopping Bolivia for bulk quantity bargains in sugar, copper or other commercial items. The dupe would be offered a quantity of sugar at a price he couldn’t refuse. He would also be directed to a US Customer (another front company), who would guarantee a price that would result in a significant profit. A deal too good to be true.

Unbeknownst to the bird, a ton of cocaine would be concealed within the load of sugar. The bird was now way out front. It was *his* transaction. His name was on all the paperwork. He actually bought the “sugar” and arranged for its shipping to the US. If Customs somehow found the drugs it was the “bird” alone, like the canaries sent into coalmines, who would die.

The investigation would end with me paying \$8 million in cash to Alfredo “Cutuche” Gutierrez and Jose Roberto Gasser, scion of the Gasser family the richest and most powerful family in Bolivia at the time. I made the payment in a Miami bank vault for the then largest load of cocaine on record. “Do you need help getting the money out of the US?” I asked.

Gutierrez said: “No we have large interests here in the US. When we move the money back to Bolivia, we simply declare the money as part of our business.” Gasser Industries, among other things, were exporting large amounts of sugar to the US.

**“Bird in the mine scam?—no such thing” – government experts—US  
v David Bensimon,**

Mr. David Bensimon ran into exactly the kind of deal that Marcello Ibañez had described. The Orthodox and highly religious Mr. Bensimon, usually an importer of fish, was doing his customary business in Venezuela.

At the time the fish business was not going too well, so one can only imagine the delight of Mr. Bensimon when an acquaintance offered him a deal that was too good to be true. The man, whom the US government “strangely” seems to have absolutely no interest in locating or indicting, knew of glass construction blocks being offered at a rock bottom price in Venezuela. The acquaintance also happened to know that the price the goods would fetch in California allowed for a substantial profit.

Needless to say, Mr. Bensimon took the bait. On 10/9/96, he imported 1500 cartons of glass blocks from Venezuela. Unbeknownst to him, 51 cartons contained glass blocks, which in turn contained cocaine, totaling 203 kilograms, having a street value of more than \$ 10 million. The cocaine was perfectly concealed within the glass blocks, undetectable to anyone but a professional or a conspirator in the scam.

Since unwitting dupes like Mr. Bensimon, according to the government’s current philosophy, don’t exist, no investigation of his life style, his finances, his contacts, was ever conducted, all of which would have revealed not an iota of evidence that the man had any predisposition and/or ability and/or contacts to buy or distribute this large quantity of illegal drugs. Instead, the shipment was delivered directly into the waiting arms of Mr. Bensimon after which he was almost immediately arrested. His subsequent statements, since he refused to admit guilt, were ignored and he found himself the sitting duck target of the full prosecutorial might of the US Government.

True to current form, a government expert testified that, due to the value of the shipment, Mr. Bensimon *had* to know what he was doing. Mr. Bensimon’s first attorneys saw fit not to seek a contradicting expert opinion and was quickly convicted and sentenced to 20 years in prison. The story doesn’t end here, however.

Due to legal technicalities Mr. B was granted a new trial. The prosecutor, (perhaps in the throes of guilt feelings?) offered Mr. Bensimon the opportunity to plead guilty and spend no more than three years in prison. Mr.



Bensimon's response: "It is against my religion to plead guilty to a crime I did not commit."

The second trial was a replay of the first. Once again his attorneys failed to retain an expert to contradict the government theory. Once again he was convicted. Once again he was sentenced to 20 years in prison.

I was retained by his final attorneys Ephraim Margolin and Gary Dubcoff in San Francisco to review the case. In October, 2002 I filed an Expert Witness affidavit in support of a Habeas Corpus appeal, pointing out all the violations of national investigative standards, the Search-for-Truth doctrine and National Drug Policy, concluding that had I been retained to testify in either of his earlier trials my testimony would have radically contradicted those of the government experts. On June 23, 2005, almost three years after my affidavit and the appeal were filed, 90 year old judge, William Rea, in a twenty-six page ruling rejected the appeal. Mr. Bensimon has thus far served nine years for a crime that, in my opinion, he did not commit and the true smugglers are still in business using the same methodology.

I cannot help but believe that if through some freak time warp, the Hard Narcotics Smuggling Unit of 1970 had fielded the glass block shipment, Mr. Bensimon would be a free man now, a somewhat poorer and very much wiser man, and the real culprits serving his time. And that is not bragging, it is simply a tragic observation of the decline of both our system of justice and the professional abilities of those charged with our protection.

### **US v John Edward Davidson-The Rest of the Story**

US v John Edward Davidson, Liang Sae Tiew, et al, ended with arrests of Gary and Mr. Geh as they delivered the first kilo of heroin to me at the Siam Intercontinental Hotel in Bangkok in 1971. Also arrested was the head of the false-bottom suitcase operation. I was told that this was the first "round-the-world" undercover investigation in which a heroin smuggler, financier, source (and the manufacturer of false-bottom suitcases) were arrested emanating from a blind mule claim. I was given a U.S Treasury Special Act Award for the case.

What is most important about this for both defense attorneys and juries to realize is that, since the government's "discovery" that the claim of blind mule is "ludicrous," freeing many agents of the duty to investigate not only blind mule claims, but all claims of innocence based on unwitting and/or coerced participation, these kinds of cases just don't happen any longer, to the great detriment of both the war on drugs and the war on terror.

### **Gloria Cespedes-Cano Trial – The Rest of the Story**

Two years after her arrest, Gloria Cespedes-Cano, sat in a courtroom in the Eastern Judicial District Federal Court, Brooklyn, New York, facing more than 20 years in prison should she be convicted. It was a courthouse in which I had testified on numerous occasions as a government expert. This would be the first time I would be testifying there for the defense, and I had never in my life felt more certain about the rightness and urgency of what I was doing.

Under the expert direction of a fine defense attorney, Michael Hammerman, I was able, through a storm of prosecution objections, to testify as to the radical violations of investigative process, the Search-for-Truth Doctrine and National Drug Policy; that, no effort whatsoever had been made to identify the source of the drugs, which, in my opinion would have revealed information supportive of Gloria's claim that she was a Blind Mule; and that the agents and prosecutors had based their theories of guilt on the erroneous belief that Gloria Cespedes-Cano, alleged to be in a business devoid of trust, *had* to be trusted. I testified that the Customs agents had conducted a "pin-the-tail-on-the-donkey investigation, as opposed to a search for truth. I was able to conclude my testimony by looking at the jury and telling them that in this time in our history when it is mandatory to leave our checked baggage unlocked, "This could have happened to any one of you."

After a whole day of deliberations, the jury found Gloria "not guilty" on all counts. I want to emphasize here that this is not chest thumping on my part. I have learned through hard experience that an expert witness is like a single musician in an orchestra. No matter how well he can play without a good

conductor his “music” is lost in a cacophonous mess of sound. This victory for justice could not have happened without a defense attorney who understood the problem, knew how to effectively cross-examine the government agents to set up expert testimony and then wage courtroom war to ensure that his expert’s testimony was admitted. Mike Hammerman was such an attorney or Gloria Cespedes-Cano would be spending the rest of her adult life behind bars.

### **Conclusion**

The article stating the current government position on Blind Mules and unwitting participants in drug trafficking, concludes with the words:

*“Remember that going the extra mile at the time of the arrest may save hours or days of courtroom battling of the blind mule defense.”<sup>13</sup>*

The author in this single sentence has summarized the real difference between *then* and *now*. The current crop of law enforcement officers and prosecutors who have sworn oaths to protect the people who hired them and our constitution are too often not willing to go that extra mile, or I would not be writing this article. Too many seem quite happy to make the arrests of whoever walks into their outstretched arms without conducting a due diligence investigation, add up the seizures to be paraded before congress, submit themselves for cash awards for “excellence” of performance and then rely on the word of government “experts” for conviction. Adherence to the Search-for-Truth Doctrine and National Drug Policy are things of the past.

I cannot be certain precisely when or how this change in prosecutorial and investigative practices occurred or whether or not it came as a result of a deterioration of professionalism on the part of

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<sup>13</sup> “BLIND MULES- FACT OR FICTION?” By Special Agent Jim Delaney Drug Enforcement Administration, Sacramento District Office

investigative agencies of the type that led to the 9-11 tragedy. What I am certain of is that the price America now pays for this change can be felt in the deterioration of our system of justice and gangs of international drug traffickers and terrorist sharks that can safely operate with impunity while the American justice system targets the minnows. What criminal defense attorneys must understand is that turning this dangerous tide must begin in the courtroom.