

American Drug War: U.S. Prosecution Tactics Frees Colombian Nationals

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[Stop the Drug War](#)

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There is something rotten in Miami. A federal prosecutor there, Assistant US Attorney Andrea Hoffman, seems to have problems staying within the bounds of the law as she attempts to prosecute major drug cases.

As a result, cases are coming undone, and some Colombians are going home, some who likely were innocent. And Hoffman's pattern of prosecutorial misconduct has so far come without serious professional consequences.



2011 press conference in Bogota announcing the 56 indictments (presidencia.gov.co)

On September 2, 2011, US Attorney for the Southern District of Florida in Miami Wilfredo Ferrer announced the arrest of 56 Colombians in a trio of separate foreign investigations — Operation Seven Trumpets, Operation Under the Sea, and Operation BACRIM (Bandas Criminales). In what was one of America's biggest drug busts, authorities also seized 21 airplanes, 12 submarines, millions of dollars in cash, and more than 20 tons of cocaine and heroin.

"Together with our law enforcement partners in Colombia, we have developed a proactive strategy to combat the rise of narco-trafficking operations to eliminate the threat they pose to the security of the international community," Ferrer crowed at a [press conference](#) with Colombia President Santos and Prosecutor General Viviane Morales in Bogota that day.

But what appeared to a slam-dunk case validating America's never-ending war on drugs soon went sideways, and Hoffman was there. Two Colombian nationals arrested in the case, John Winer and Jose Buitrago, who were looking at life in prison without parole, are now free men after federal District Court Judge Marcia Cooke ruled earlier this year that Hoffman deliberately withheld key evidence from the defense, undermining the defendants' rights to a fair trial.

And that's just for starters.

Winer and Buitrago

On May 21, a jury had already been seated to hear the case against Winer, represented by attorney Jose Quinon, and Buitrago when the latter's defense attorneys, Kashap Patel and Helen Batoff, got DEA agents and a Colombian narcotics officer to acknowledge they knew the DEA was making monthly payments to "vetted units" of the Colombian narcotics police — and that prosecutor Hoffman also knew about those payments.

"Vetted units" are elite anti-drug squads whose members have passed muster as not being corrupt, and are often used by the DEA and other agencies in their overseas investigations. These units are required to file monthly reports on their activities in order to justify incurred expenses paid for by the DEA as part of US foreign assistance to Colombia to wage the drug war.

Hoffman denied any previous knowledge of the payments to the vetted units.

But on the stand that day, Colombian police officer Pacheco blew up Hoffman's denials about the DEA payments. Pacheco said the matter about the money was discussed between him, Hoffman, and DEA agent Guillermo Turke upon arriving in Miami from Bogota on Sunday, May 14th.

Attorneys Patel and Batoff had already been tipped-off about the use of the vetted units in the case against their clients, and prosecutors acknowledged as much, but refused to disclose information about their role in the case unless the defense attorneys could prove they were entitled to it.

Under the Brady rule, the government is required to turn over exculpatory evidence or material information in the government's possession that could be favorable to a defendant.

"The defense sent a written request to get the documents from Hoffman and her co-counsel, Cynthia Wood, on April 3, 2013," Patel told Judge Cooke. Receiving no reply from Hoffman, defense attorneys re-sent the letter and, on May 1, received a reply from Hoffman's office acknowledging that the payment information existed, but demanding that the defense explain how it was entitled to that information.

"Tell me why it's Brady material, or under what theory you are entitled to it," prosecutor Christina Maxwell responded.

"The DEA payments to Colombian officers were disclosable to the defense without them having to file a Brady motion to get them," harrumphed Washington, DC, criminal defense attorney Stephan Leckar in an interview with the Chronicle.



US District Court Judge Marcia Cooke didn't let Hoffman get away with misconduct. (stu.edu)

Judge Cooke suspended the trial to hold a hearing on the matter, and things only got worse for Hoffman. Cook and the defense attorneys grilled a bevy of DEA agents, and they testified that Hoffman had known about the payments at an earlier date.

Bogota DEA Special Agent Guillermo Turke reiterated Pacheco's testimony that the "payments were specifically discussed with Hoffman on May 19th".

Miami DEA Corrine Martin told the frustrated judge "after all of the court motions, we spoke with DEA Special Agent Ed Reed about the payments and we also let Ms. Hoffman know."

Replying to a question from Judge Cook, Miami DEA Special Agent Mike Torbert concurred.

"I discovered there was a \$200 operational expense given to SIU (special investigation units)," he told the court. "I passed the information to Ms. Hoffman."

Although her office had responded to defense letters about the payments on May 1, acknowledging they had occurred, Hoffman insisted to Judge Cooke that she had first found out about them on May 20, on the eve of the trial. But when Cooke pressed, Hoffman revised.

"Your honor, I found out about the payments at noon on May 21," she then replied.

But after hearing the defense evidence that Hoffman in fact knew about the money paid to the Colombian sources before the trial started, [Judge Cooke accused Hoffman of prosecutorial misconduct](#), or intentionally engaging in inappropriate or illegal behavior by withholding evidence or knowingly permitting false testimony and tampering with witnesses. Hoffman had violated the Brady rule by not automatically turning over materially important evidence to the defense prior to trial and when the trial started.

Had defense attorneys been given the information by Hoffman about the DEA payoffs, the wiretaps in the Winer-Buitrago case could have been challenged and used to impeach witnesses, the attorneys argued. "The scope of the defense would've been different," Patel explained to the judge.

Hoffman apologized to the court, blaming her misconduct on miscommunications due to language barriers, but Judge Cooke wasn't buying it.

"I think the US government was aware of Colombian police officers receiving payments and did not disclose it to the defense," an angry Cooke replied. "The prosecutor was ethically and legally bound to turn the information over. This does not make sense to me. This is all you do. Answer this: Why does the government get a pass?"

Defense attorneys moved to have the case dismissed because of Hoffman's misbehavior.

"The government's conduct deprived the defendants of their constitutional rights to due process," the attorneys wrote. "Such flagrant disregard for the rule of law and brazen dishonesty to the court and to opposing counsel should 'shock' the court's conscience."

Judge Cooke denied the motion to dismiss but a deal was struck. Winer and Buitrago both pleaded guilty to a lesser charge of conspiracy to transport cocaine and were sentenced to 36 months, with credit for the two years they had already been behind bars pending trial. Both men were subsequently released from custody.

Winer and Buitrago and the Practice of Information Buying and Selling

The little matter of the Brady rule violation in the area of the vetted units wasn't Hoffman's only problem in the Winer-Buitrago case. Defense attorneys also accused her of failing to disclose a letter indicating that another Colombian, Daniel Bustos, who was facing years in prison on a cocaine conspiracy charge, had paid money to another drug defendant, Fabian Cruz, so that Cruz would use his informant connection with prosecutors or outsiders to obtain "inside information" about evidence in the Winer-Buitrago case and feed it to Bustos. Then, Bustos and other defendants could use that information to testify falsely for the prosecution against the Operation Seven defendants in exchange for leniency.

But Assistant US Attorney Hoffman rejected a defense request to obtain the whistleblower letter exposing the dealings between Bustos and Cruz. In the courtroom, Hoffman confirmed that the letter existed, and Judge Cooke gruffly ordered her to produce it for the defense, again citing the Brady rule. At the time, Bustos and Cruz were already on the prosecutors' witness list.

This underground scheme is called "buying and selling" evidence (fake or real) for a defendant to get on the bus with the Feds and ride all the way home to freedom. In a December 2012 story in [USA Today](#), reporter Brad Heath exposed the inner workings of the practice, illustrating how prisoners game the system by buying and selling evidence against other defendants with pending drug cases, then using that bought information to testify for the prosecution in exchange for sentence cuts and early freedom.

That report found that "one out of eight" federal drug convicts had their sentences reduced for helping prosecutors. Similarly, the [Houston Chronicle](#) reported that federal judges last year "resentenced 1,738 inmates nationwide after they provided substantial assistance" to investigators and prosecutors.

The corrupt scheme works like this: An inmate with outside connections (or already an informant) will have relatives and friends collect information on the street about a drug dealer's operation, or have operatives to dig up additional information about a dealer awaiting trial. Then the inmate will sell the collected information to prisoners who have

money but are short on facts or criminal contacts to cooperate with the government on their own.

Daniel Bustos was hoping to lessen his sentence by paying Cruz to get information on Winer and Buitrago and then using that information to testify against them. And Hoffman was prepared to let him until defense attorneys blew the whistle.

Hoffman has not been officially sanctioned by the court for her misconduct in the Winer-Buitrago case. A court worker told the Chronicle recently that while the matter was under consideration, no ruling had been issued, and Hoffman was still assigned to Cooke's courtroom.

A Miami public affairs spokesman for US Attorney's Office for Florida Southern District declined to comment.

That's not the end of the trouble in Miami. Operation Seven Trumpets and its prosecutors have taken more hits, with other Colombians who had been indicted in the operation and extradited to the US being released and sent home after the charges turned out to have been unfounded.

Carlos Ortega Bonilla



Carlos Ortega Bonilla hugs his son as he is released. (seitleslaw.com)

Carlos Ortega Bonilla and William "Willy" Gil-Perenguez, both Colombian nationals, were arrested and extradited to the US as part of operations Seven Trumpets and BANCRRIM. Both were thrown into the Miami Federal Detention Center to await trial on cocaine charges, and both faced up to life in prison if convicted.

Ortega Bonilla, the former head of Colombia's Flight Security (the equivalent to the Federal Aviation Administration), was enjoying his retirement in Bogota when agents armed with paramilitary-style weapons swarmed his home and arrested him.

"You have been indicted for supplying airplanes to traffickers to ship tons of cocaine to other Latin countries and the US," one of the drug agents told him. The agent explained that Ortega Bonilla's voice had been heard on wiretaps selling planes to drug dealers, in particular one Alvaro Suarez, a veteran trafficker who had once worked as a pilot for legendary Medellin Cartel capo Pablo Escobar.

Protesting his innocence all the while, Ortega Bonilla was imprisoned in Bogota while he unsuccessfully fought extradition to the US. He was eventually transferred to Miami, where he languished in jail as he sought to prove his innocence, but that was an extremely hard sell for Assistant US Attorney Hoffman.

"I never worked harder in my life," Miami criminal defense attorney [Mark Seitles](#) told the [Daily Business Review](#) about his attempts to convince Hoffman to drop the charges.

Seitles immediately hired Ed Kacerosky as an investigator. Kacerosky is a highly decorated former US Customs Agent credited with helping the Feds dismantle the infamous Cali Cartel. Ironically as an agent, Kacerosky had worked closely on previous major drug cases with Hoffman.

Authorities targeted Ortega Bonilla, tapping his phone, but failed to provide evidence that any airplanes he sold were linked to drug trafficking. The key to his freedom would lie in the wiretaps.

"Kacerosky realized after hearing the wiretaps that there was a gross misidentification, and they indicted my client Ortega for acts of another guy named Carlos," Seitles explained.

At an August 14, 2012, hearing in the courtroom of Judge Cooke, Seitles explained that his client had been wrongfully indicted on drug crimes and that his own investigation discovered irrefutable evidence the feds had misidentified his client's voice on the wiretaps.

As a plane broker, Ortega Bonilla sold or leased aircraft, and someone had convinced the feds that he was dirty. But they were wrong.

"Ortega Bonilla's voice was on the wiretaps in one plane deal where he determined that the men who sought the aircraft were drug dealers," Seitles explained. "And he refused to do the deal. No plane was ever sold and emails sent by Ortega Bonilla to the men showed he refused to do business with drug traffickers. There are even recorded calls with Ortega Bonilla attempting to contact the FBI to tell them about this. And the affidavit in support of extraditing Mr. Ortega Bonilla mentioned seven planes and no mention of that airplane, which was an E-90."

The seven planes in question actually belonged to another Carlos, Honduran drug dealer Carlos Litona, Seitles explained.

But Hoffman was having none of it. She argued to Judge Cooke that she had a witness, a co-defendant willing to testify that Carlos Ortega Bonilla was the right guy. Seitles countered in a separate hearing, putting Kacerosky on the stand with the wiretap tapes to explain how he had uncovered evidence that the feds had fingered the wrong man.

"The real guy is Carlos Litona," Kacerosky told the judge.

Without calling her secret witness, Hoffman dropped the charges on August 31.

When Ortega's family arrived at the airport in the Colombian capitol, hundreds of supporters surrounded them, hugging him with teary eyes and wishing him well. But his problems aren't over.

"Ortega Bonilla's US visa has been revoked, and he's having a hard time accepting that he

was in custody for a crime he did not commit,” Seitles told the Chronicle.

Ortega Bonilla has hired a Colombian attorney to file a lawsuit there and is currently searching for legal representation in the US to file a lawsuit here.

William “Willy” Gil-Perenguez

In June 2006, DEA and Colombian National Police jointly investigated a widespread conspiracy among multiple defendants importing cocaine and heroin on cargo planes traveling from Colombia and landing at Miami International Airport. DEA picked up the name of a cargo worker named “Willy” who supposedly was part of the conspiracy. An informant even identified “Willy” ‘s voice on wiretaps.

Willy Gil-Perenguez was living the good life at the time in Cali. He had a beloved girlfriend and a decent job, working for the Girag cargo air freight company. But in June 2007, his good life came to a screeching halt, when Colombian drug agents arrested him, believing he was the “Willy” overheard on the drug investigation wiretaps.

He was taken to a DEA office in Colombia, where agents threatened him, telling him to cooperate with them or they could make a phone call and have him sent to prison for 30 years. Gil-Perenguez maintained his innocence, saying he had no idea what they were talking about. In September 2008, he was extradited to Miami to face assorted drug charges that potentially carried a maximum penalty of life in prison.

Facing the wrath and the resources of the US government, Gil-Perenguez caught a lucky break while sitting at the Miami Federal Detention Center awaiting trial. He encountered another detainee, Neixi Garcia Lamela, a major target of Operation Seven Trumpets, who had agreed to cooperate with the feds. But he had bombshell news for Gil-Perenguez.

“DEA agents and Hoffman tried to pressure me to implicate you but I refused, because I knew I would be fabricating testimony to implicate an innocent person,” Garcia Lamela told Gil-Perenguez, according to a lawsuit he later filed.

Gil-Perenguez immediately contacted his attorney, Luis Guerra. Guerra relayed to Hoffman the information about Garcia Lamela’s admission that his client was innocent.

“I went to Hoffman and said, ‘You have the wrong guy. My guy is innocent,’” Guerra told [Law.com](#). “She said she had other witnesses. Turns out the witnesses never existed,” Guerra recounted.

After serving 19 months behind bars, which included one year in Colombia’s Combita lockup, a place described by human rights activists as one of the most oppressive and notorious prisons in the world, US District Judge Donald Graham freed Gil-Perenguez in February 2009, finding that his voice had been wrongfully identified on the wiretaps.

Gil-Perenguez returned to Colombia wearing a “bad jacket.” His fellow countrymen think he snitched on others to be released so early. He filed a \$10 million wrongful arrest lawsuit against the US government, charging that he had been left jobless and in pain and suffering. But [the US 11th Circuit Court of Appeals threw out the lawsuit](#), ruling that the US lacked jurisdiction and that it couldn’t be sanctioned for “any claims arising in a foreign country.”

“Our country is not supposed to be making these kinds of mistakes,” Florida attorney

Richard Diaz, who represented Gil-Perenguez in the civil suit, told [Law.com](#).

Hoffman and her colleagues have managed to win some convictions in these high-profile drug conspiracy cases, and given her hardball attitude and willingness to skirt — if not cross over completely — the bounds of prosecutorial misconduct, that comes as no surprise. But other Colombian defendants continue to be exonerated, with two more of them, Luis Alfonso Rubiano Ramos and Jose Norberto Mejia Cortez having their cases dismissed and going home in June.

Dr. Ali Shaygan

Dr. Ali Shaygan has nothing to do with Colombian drug trafficking conspiracies, but his case is yet another example of Hoffman's prosecutorial overreach. As [previously reported in the Chronicle](#), Shaygan was charged with overprescribing narcotics as part of the federal government's campaign against prescription drug abuse, but later acquitted.

After his acquittal, Shaygan won a \$600,000 judgment against Hoffman and another federal prosecutor, with the judge in the case finding their conduct in attempting to influence witnesses and deny potentially exculpatory evidence to the defense so "profoundly disturbing that it raises troubling issues about the integrity of those who wield enormous power over the people they prosecute."

That judgment was overturned by the 11th US Circuit Court of Appeals. Shaygan and his supporters sought review at the US Supreme Court, but were turned down. In the meantime, Hoffman is still on the job in Miami and, if her work on the big drug investigations is any indication, still bumping up against the rules without serious professional consequence. Prosecutorial misconduct still seems to be a bridge too far for the American criminal justice system to address.

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