



BIG GARY GOES WEST

ANNALS OF JUSTICE

By Steve LaCheen

Big Gary left town just in time. Although only in his fifties, he was an old timer, an associate of long-standing with the Mob. But it was no longer the same Mob. After 20 years of peaceful co-existence under the leadership of the Gentle Don, the Mob was wracked by division and dissension after his death. Hostilities had broken out between the late Don's erstwhile caporegimes, both of whom claimed the right to heirship. Each had allied himself with one of the major New York crime families, and it was obvious to law enforcement officials and mob watchers everywhere that our town would soon see a local rerun of the Castellamarese Mob War of the early 1920s in New York.

Gary was as smart as he was big. Standing 6'4" and weighing 275 pounds, you couldn't miss him. And he knew that. When the war broke out, he knew he would be a standing target, hard to miss and easy to hit; he knew his execution would make a great front-page story for the local papers.

Big Gary spoke the language of the streets, using the emotional shorthand of the uneducated. But he was no fool. He had a mind like a steel trap and had for years been the Don's advisor on financial matters. With the death of the Don, Gary had lost not only his close friend and "rabbi," he had lost his value to anyone except law enforcement officers, because he would not pledge allegiance to either faction. To straddle the fence would be suicide; his only salvation lay in a complete withdrawal from the playing field.

So Big Gary quietly slipped away with his family and surfaced a short time later in a Western city under the protection of the local crime boss there, who vouchsafed to Big Gary's former associates that he had switched leagues for the purpose of attaining independent status, free from entangling alliances. Like Joe Bonnano, he had gone West into the sunset of early retirement.

And he found it. Instead of working for anyone else, Big

Gary simply became an individual sports bettor, supporting himself and his own immediate family by dint of his outstanding ability to handicap sports contests. Although somewhat less profitable than his prior activities, his new life in the clean fresh air of the West had indeed given Gary a new lease on life. Far from the Mob wars, by then raging back home, he and his family

enjoyed the peaceful freedom of the American West.

Gary's only contact with the old days was his continuing friendship with two boyhood pals from the old neighborhood, Jimmy and Bobby, both of whom had avoided involvement with the Mob and had grown to adulthood without the federal convictions which had been the stepping stones in Gary's former career.

Jimmy, known as "Jimmy Eyes" because of his bottle-thick glasses, ran a legitimate retail business in the City, and Bobby, called "Young Mr. Young" because he was the youngest of the trio, rose through the ranks to become music director for one of the casinos at a nearby resort. On virtually every occasion when they were in contact with Gary, both Jimmy and Bobby never failed to remind him how fortunate he was in having escaped the bloodbath and mayhem that had erupted back home. And Big Gary never failed to agree.

And, so it was, for a while. Until someone made Big Gary an offer that was too good to be true.

As is so often the case, what sounds "too good to be true," generally is, as Gary was to learn only too late.

Through a series of events, too long and tangled to be recounted

Since the materials in question were not available to him locally, Gary had to “go back East” to get the raw products he needed, but he could not make the trip himself.

here, Gary was provided with \$40,000 to purchase equipment itemized on a list he was given, which was to be used by others to synthesize a chemical known as P2P—the manufacture, sale, or distribution of which he was assured was not unlawful. The rewards to Gary would be both quick and large.

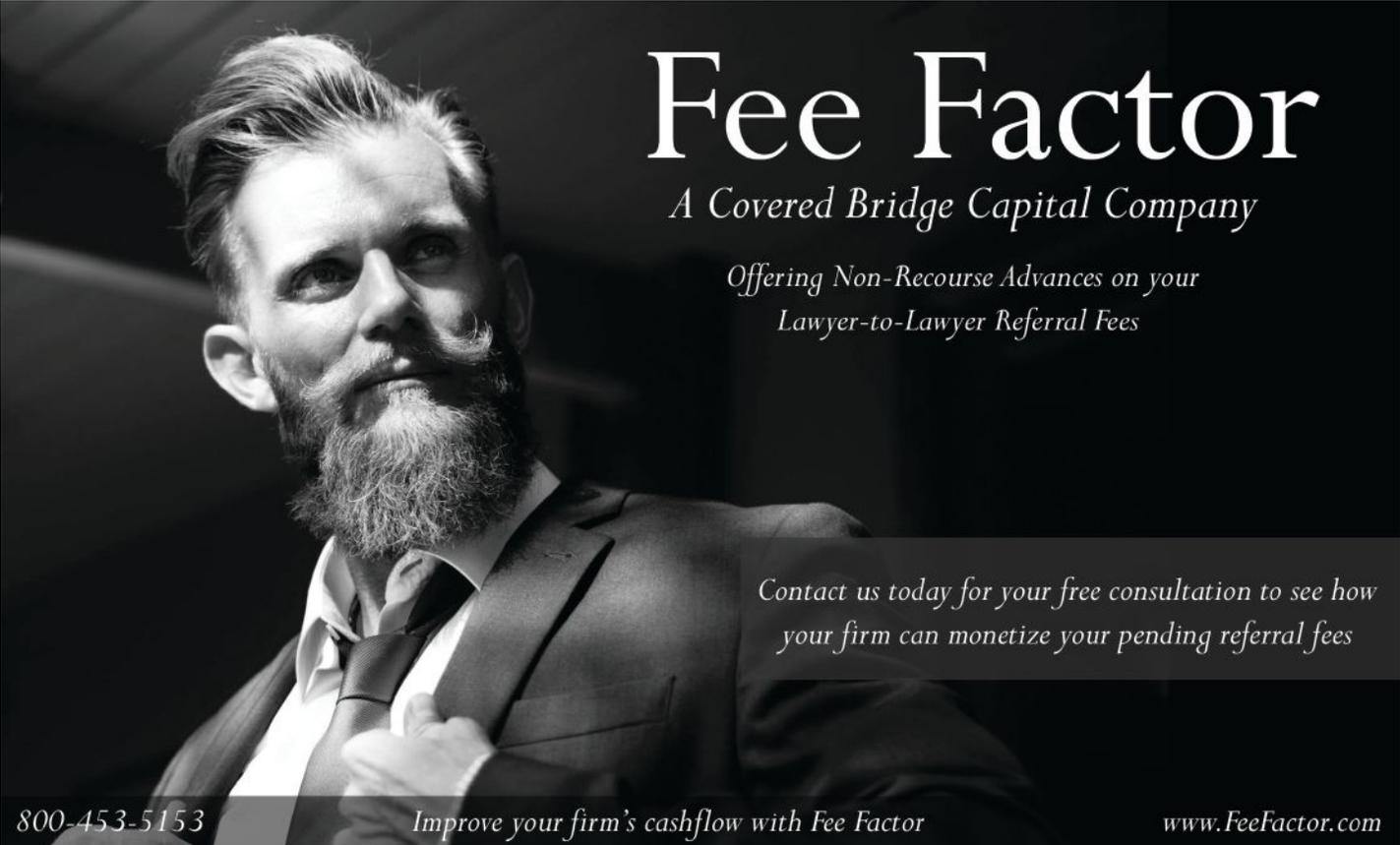
During numerous conversations that Gary thought he was having with friends and friends of friends, and which he later learned to his dismay were being tape-recorded by still other “friends” who were government agents, Gary was assured that, although the product to be developed was a precursor in the manufacture of methamphetamine, an illegal drug, Gary’s role involved only strictly legal acts on his part, and was so far removed from the ultimate product by distance, both temporal and spatial, that he was safely protected from any legal repercussions.

What was missing from those conversations, of course, was any discussion of the elements of the offense of conspiracy, of which a person can be guilty even though he personally commits no unlawful act. And so, Gary took the bait. Since the materials in question were not available to him locally, Gary had to “go

back East” to get the raw products he needed, but he could not make the trip himself. To do so would violate his self-imposed exile and expose him to severe criticism, or worse, at the hands of certain former associates. So Gary enlisted the aid of his two lifelong friends. According to the plan, Jimmy would order the merchandise locally, have it delivered to Bobby, and would then pick it up for redelivery to Gary. The only other person involved in the transaction was their good friend who had put the deal together; he would handle the pick-up and delivery to Bobby.

All went exactly as planned, except for one detail. When Jimmy showed up at Bobby’s house to retrieve the package, he was closely followed by federal agents who surrounded him when he left the house with the package. Jimmy and Bobby were immediately arrested on federal charges in New Jersey. When told what had happened, Gary knew he too would soon be arrested, and prepared himself for the inevitable trip back East; but, to his surprise, he was not arrested.

Several months later, while Jimmy and Bobby were preparing for trial back East, Gary was notified that he had been indicted, not in New Jersey, but in San Francisco, because that was where



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he had had the tape-recorded meetings with his friend, whom Gary now learned had been cooperating with the authorities. The real surprise, however, was that Gary was not indicted alone. The indictment named his wife Libby as a co-conspirator for aiding and abetting him in the commission of his offense by permitting Gary to use her checking account to make various payments in connection with the scheme.

The prosecution had been initiated by federal prosecutors in the San Francisco office of the Department of Justice's Organized Crime Strike Force.

When Gary and Libby showed up for arraignment in San Francisco, Gary was told in his wife's presence that, if he pleaded guilty, the charges against her would be dismissed. Libby immediately told the prosecutor that if Gary pled guilty for her sake, she would divorce him. She knew that she hadn't done anything wrong, and she would use her own funds to retain counsel. Libby said she would go to trial, no matter what, and she expected Gary to be there with her, unless, of course, the government would agree to drop the charges against him as a way of atoning for their outrageous conduct.

At Gary's request, I agreed to represent Libby and to cooperate with the attorney Gary had retained, who had himself been a former member of the Strike Force team in San Francisco. He talked a great game, but within a short time after signing onto the defense team, I realized that Gary's attorney would never go to trial in Gary's defense. He assigned his first-year assistant, fresh out of law school, to review the discovery materials and prepare the pretrial motions, and deigned to spend just enough time with us to discuss how he had engineered a guilty plea on behalf of the large Japanese corporation that had been his first client after he left the Strike Force. He discussed representing "White Collar Defendants," as though they were the beknighted victims of government oppression. It was obvious, however, that he saw people accused of drug crimes, no matter how peripheral their involvement, as disciples of the devil.

"Of course," as he acknowledged, "even the devil is entitled to a fair trial."

A "fair trial" indeed. After months of his lawyer's exhortations as to why he could not, let alone should not, go to trial, Gary was finally convinced to plead guilty. It was only after his guilty plea was entered that Gary admitted to his wife that the attorney had convinced him that if Gary went to trial, he would "take her down" with him, and the Judge would punish him more severely because he had exposed her to a conviction; therefore, he had decided to plead guilty, not only for her sake but for his. So, Gary pled guilty. Libby's case was placed in suspense pending Gary's sentencing, at which time the charges against her would be dismissed. And we shifted our efforts to preparation for sentencing.

In the meantime, back East, Jimmy had pled guilty and had been sentenced to serve 30 months. Bobby had gone to trial and was acquitted for lack of proof that he had any knowledge of the contents of the delivered package.

As Gary's wife's attorney, I participated in preparing him for sentencing; we put together what in those pre-Sentencing Guideline days was generally referred to as a "sentencing package," involving an in-depth analysis of Big Gary's life as well as his crime, concluding with a recommendation for an alternative sentence, one that would not encompass imprisonment.

Gary knew that, based upon his two prior federal convictions, he was not going to be treated lightly by the sentencing Judge, who was known to be both brilliant and unemotional. A background check on the Judge indicated that he had been born in Germany and had come to the United States at an early age, evidently to avoid political or religious persecution, and had compiled an excellent academic record, studded with brilliance. As a judge, however, he was known as much for his lack of emotion as for his intellect.

Gary, of course, was an emotional volcano at the best of times, and facing ten years or more of imprisonment did nothing to calm him down. As he prepared for his sentencing, he became more convinced that he had been a victim of governmental overreaching—that he would never have committed the offense if he had not been "set up" to do so by the government.

I spent endless hours with Gary and Libby explaining, discussing, and, eventually, defending the legal distinction between being "trapped" and being "entrapped." The distinction, as far as Gary was concerned, was one of degree only. It was only because he knew he would face a much harsher sentence if convicted after trial that he convinced himself that it would be poor judgment on his part to attempt to withdraw his guilty plea and go to trial. And so, we continued slouching toward judgment.

As the day of Gary's sentencing approached, it became increasingly clear to me that there was a widening gulf between what should be done on his behalf and what was being done on his behalf, due in no small part to an almost total lack of communication between Gary and his lawyer. They just didn't speak the same language. Gary was a person who, without the benefit of a formal education, had such "street smarts" that at various times in his life he had been called "The Professor," or "The Wizard," or some other sobriquet which reflected the respect with which his cognitive abilities were held by his peers on both sides of the law. The lawyer was, to quote Gary, "as white bread as his name," and had no concept of how to talk to his client, let alone establish any kind of relationship with him.

The gap between them was nowhere more evident than in the most crucial aspect of sentencing preparation: how it was that Gary would address the Court with regard to the offense to which he had pleaded guilty. The lawyer, sounding to Gary more and more like a prosecutor every time they met, continued to insist that Gary indulge in a "mea culpa" breast-beating, accept full responsibility for his offense, without even hinting at any justification or excuse, and throw himself on the mercy of the Court. He had even hinted, early on, that Gary, whom he knew would never testify for the government, might nonetheless provide some "intelligence information," which would go a long way toward having the prosecutor look favorably upon Gary at sentencing.

The withering response the lawyer received from Gary to that suggestion made him realize that even limited cooperation was out of the question; therefore, he tempered his desire to get along with the prosecution, at least to the extent of suggesting to Gary that "since cooperation is out of the question, you could at least tell them you're sorry." To Gary, steeped in the tradition of *omertà*, even that was too bitter a pill to swallow.

In addition to his innate distaste for toadying to authority, Gary truly believed that he had been the victim of improper conduct and targeting by the government. He accepted what he

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had done, but that didn’t change his belief that the government was at least partly responsible for the offense he had committed. And his attitude toward the entire proceeding, including his upcoming sentencing, was reflected in his inability to accept full responsibility for an offense in the commission of which he believed in his heart the government shared culpability.

So, Gary was not about to write the kind of breast-beating confession for which his lawyer continued to importune him. The wider the gulf between Gary and his lawyer, the more Gary turned to me for advice. I tried as hard as I could to help him draft a letter to the Judge that would at least acknowledge his own wrongdoing, without excusing the government agents’ conduct on the one hand or blaming them for his wrongdoing on the other.

“If this Judge is as smart as you say,” Gary said, “he’ll understand what happened here. Besides, the more the government talks about my ‘connections,’ the more my lawyer gotta explain that was my old life; that was then, this is now. Whatever punishment I get should be for this, not for that. The trouble is, me and this lawyer don’t connect. You gotta do something to help.” Then, looking directly into my eyes, he said for the first of many times that I would hear the expression, “Obi Wan Kenobi, you’re my only hope.”

In response, I assured him, as I had done many times before, that I would continue to work with his lawyer and help him develop a sentencing presentation that would be as effective as possible, doing as little violence as possible to either of their strongly held, widely divergent beliefs as to the substance of the sentencing submission that should be made on Gary’s behalf.

But my efforts toward that end were not successful, to say the least. As we drew closer to sentencing, the gap between Gary and his counsel widened.

We all met at the lawyer’s office in San Francisco two days before sentencing, for final preparation. During the meeting, it became obvious that the antagonism between Gary and his lawyer had so deepened that they were barely civil to each other. Even the lawyer’s young associate, who had virtually no prior experience in federal criminal cases, knew that we were in for trouble at sentencing, and tried to help bridge the gap between them.

“We’ve got to get on the same page,” he kept suggesting. “We have to come to an understanding as to how the hearing should proceed so the Judge doesn’t get the idea that we’re at odds with each other.”

Everyone agreed with the principle, but the odds against putting it into practice were enormous.

“Ten to one,” offered Gary later, “my mouthpiece dummies up on me. What do I do then, Obi Wan?”

“Gary, that’ll never happen; whatever else you can say about him, the guy’s a professional; he knows what he has to do, and when the bell rings, he’ll do what he’s gotta do.”

As usual, Gary was right on the money. Late in the afternoon

on the day before sentencing, Gary’s lawyer called to tell me that he “couldn’t stand” Gary; that he was a “low life, not worth the time and effort I’ve given him.” Continuing in an almost hysterical vein, he added, “I just can’t go to court for this guy; I can’t stand up there and say things I don’t believe.” And then he informed me, just before hanging up, that his young associate would represent Gary at sentencing. I was astounded, but when I broke the news to Gary, he wasn’t the least bit upset.

“Obi Wan,” he said, “I’d rather have a kid with little or no experience who can at least stand up there with me, shoulder-to-shoulder, and let the Judge know I’m worth his time and effort, than stand there with somebody who don’t convey nothing but bad vibes and treats me like if he gets too close he’s gonna catch something.” Don’t worry, Obi Wan, we’ll be ten times better off without White Bread there.”

I couldn’t help but respect Gary for the way he rolled with the punches, but, I didn’t need 20/20 vision to see the knockout that was coming. And I didn’t get much sleep that night.

Judgment day, we had another surprise. Not only was there a substitution of defense counsel, the government also made a last-minute switch. Instead of the Assistant U.S. Attorney who had handled all of the pretrial motions and negotiations, the head of the Strike Force Division showed up to personally handle the sentencing. Everyone knew the message that conveyed: that this was an important case to the government, one in which a heavy sentence would be demanded of the Court.

The Judge called us all to the bar, government counsel on one side, me and Libby on the other, and Gary in the middle next to his lawyer, who was so nervous that he was visibly shaking. After some preliminary questions to elicit any objections to the Presentence Report, the Judge called upon counsel for the government to make his sentencing presentation.

In response to the Judge’s invitation, the prosecutor delivered what amounted to a demonic diatribe against Gary, denouncing him as a person and denigrating the entire history of his life. Then, instead of asking the court to regard the defendant’s guilty plea as a step toward rehabilitation, he took the position that it was simply one more effort on Gary’s part to cheat the system out of its due in a desperate attempt to avoid the punishment he so richly deserved; and so on and so forth.

I had been trying cases for almost twenty years at that time, and I had never before, outside of cases involving serious physical harm and/or death, heard any prosecutor spill such vitriol, especially when the defendant had pleaded guilty. I was shocked, to say the least.

The prosecutor’s most memorable comment was that Gary was a degenerate dope dealer, all too willing to spread death and destruction for the sake of dirty money, who richly deserved the ten-year maximum penalty the law could impose for his offense.

As shocked as I was, Gary’s lawyer had been struck dumb. When called upon by the Court for his sentencing remarks, he was absolutely incapable of putting together enough words to

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make a single coherent sentence. He started and stopped, several times, but the sum total of his fits and starts failed to include a single reference to mitigating factors in either his client’s life or offense. Within two minutes he had run out of steam and stood there, transfixed, as though waiting for the axe to fall on him and not his client. The silence was deafening.

Suddenly, I heard another voice, and realized it was mine.

“Your Honor,” I heard myself say, “as you know, the charges against my client are to be dismissed at this hearing, but I would appreciate the opportunity to say something on behalf of my client’s husband. The prosecutor spoke about his life of crime, and the fact that he had been associated with a Philadelphia crime family; but the record of his life, which is spread out before Your Honor in the presentence report, clearly indicates that his last arrest was 15 years ago, for *gambling*, and, further, that he has long since left Philadelphia and disassociated himself from his former life.

“The prosecutor called him a dope dealer, but, as the record in this case clearly demonstrates, the only dope dealers in this room are seated at the prosecution table. It was *they* who met at night, in secret, and planned a drug operation, not my client’s husband. It was *they* who took \$40,000 and dangled it in front of a man who was in dire financial straits. It was *their* agents who conveyed to him that the contemplated offense wasn’t so bad because it wasn’t *really* a drug offense, because they weren’t going to manufacture drugs; they were only going to make a legal substance which would later be used as a precursor in the manufacture of an illegal substance. In other words, they led him to believe that it wasn’t so bad.

“I would suggest to Your Honor that you might want to play the tapes, which I have heard during the course of my representation of my client, of the government agents, soliciting, importuning, exhorting, and bribing that man into committing a drug offense which, as Your Honor can see from his prior criminal history, he never, in his 50-plus years of life on this earth, had ever become involved in.

“They,” I said, shaking a finger at the prosecutors, “*they* are the drug dealers in this Courtroom and it is *they* who should receive the punishment fit for drug dealers. My client, I’m sorry, I mean my client’s husband, should be punished for the offense he thought he was committing, which was the offense they described to him back then when they weren’t sitting there in their suits and ties, looking smug, and acting like they’re doing God’s work. It wasn’t God’s work they were doing when they were in that dark room planning the destruction of the lives of people who had no thought in the world of committing this particular offense until it was put in their heads by government agents. It seems to me that ...”

For a second, I lost my train of thought, and then inspiration hit. “They always believe the end justifies the means, and that the rules that apply to everyone else don’t apply to them. That’s what happened in Nazi Germany. They said they were doing God’s work too...”

At that moment, the Judge held up his hand. I thought I had

gone too far, until I noticed that his hard stare wasn’t directed at me but at the prosecutors. “What do you have to say about that?”

The prosecutor stood up and blurted out, “Judge, he’s not even talking about his client. He represents the wife...”

“Are you suggesting, therefore, that I should ignore the truth of what he said? I hardly think that’s possible.”

Then, the Judge turned to Big Gary and asked if he had anything to say before sentence was imposed.

Gary just stood there, shaking his head slowly from side to side. And then, he looked at me, his eyes glistening, and said, “Thank you, Obi Wan.”

The Judge then said that, considering Gary’s past record and his two prior federal convictions, he deserved a ten-year sentence for almost any violation of federal law. However, the only way, said the Judge, that he could express his disgust and dissatisfaction with the actions of the government agents in this case, was to reduce that sentence to something so far below what Gary deserved that the reason for leniency could not be misunderstood or misrepresented by the U.S. Attorney’s office. He then pronounced sentence upon Gary: One year. No probation. No parole. No fine. Thirty days to surrender to the designated institution.

With one last glare at the prosecutors, the Judge turned to me and said, “Thank you counselor. It was a pleasure to have you in my courtroom.”

I was grabbed from both sides, by Gary and by Libby. She was crying, he was laughing, and we all sailed out of that courtroom on a carpet of air.

After a celebratory lunch, they drove me to the airport, and I was home by midnight.

A few days later, I received in the mail from Gary a copy of the San Francisco paper from the day following his sentencing. The headline read:

“JUDGE SENTENCES DRUG DEFENDANT, BLASTS PROSECUTORS.”

That was more than two dozen years ago. Big Gary still lives out West in a place where professional gambling is a legitimate occupation, and has never been in trouble with the law since. I hear from him with a Christmas card and one or two phone calls a year, every one of which starts with the greeting, “Obi Wan Kenobi; you’re my only hope.”

Most times, Gary just sends a card or a note wishing me happy holidays. One year, however, the envelope contained a small, gift-wrapped package. When I took the paper off, the logo on the box read “Bay City Antiques.” Inside was an old belt buckle, emblazoned with an eagle and a swastika and the words, “Gott mit uns.” ■

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