

# Entrapped

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*Lydia Nelson, une mère célibataire qui a abandonné ses études au secondaire essaie de s'extirper des machination d'une bande de motards. Elle a été trahie et déçue quand elle fut prise dans une opération de drogues. Dans sa quête d'acquittement elle fut marquée profondément par l'injustice du système judiciaire orientée par les hommes.*

"It's multiple transactions, Sabina. Over a period of six months, culminating in a pound of coke." He paused before continuing. "The Court of Appeal precedent of three years remains the yardstick. Even with a guilty plea."

I swallowed hard. My mouth felt dry and I needed to dredge up some saliva in my mouth before responding to Gerald's intractable position. "But my client doesn't even have a criminal record."

"If she did, particularly a prior for drugs, I'd be asking for more time."

I rolled my eyes and sucked in my breath, cast my gaze out my seventh floor office window at the office tower across the street and visualized Gerald, on the other end of the line, on the fourteenth floor of the Federal Crown Prosecutor's

office, just down the street from mine, looking out at the panoramic view of the mountains. "What about my line of questioning at the prelim that Detective Willis had seduced my client into selling him the drugs? That she might have even been falling in love with him?"

"Seduced! Oh, come on, Sabina. You don't really think that Detective Willis acted improperly, do you? And is it even reasonable that your client might have thought she had a chance with Willis?"

Why? I wanted to ask. Because she comes across as trailer trash? All the more reason for Lydia to have been seduced into selling the narc increasingly larger amounts of coke.

I conjured up the image of Judge Stevenson peering up from his notes, shooting me a look of bewilderment before narrowing his eyes and sizing up the detective on the witness stand. Detective Willis was what you would call a heartthrob. When I'd spotted him in the foyer outside courtroom 407—known euphemistically as the drug courtroom—I understood in a flash how his boyish, rugged good looks had pulled at Lydia's heart strings.

*"Detective Willis, do you recall immediately after you'd clinched the last transaction and flashed your Calgary Police Service badge, my client groaning and saying, 'Oh Bill!'?"*

*"Yes. She might have reacted in that way."*

*"And when you called Ms. Nelson on the phone to arrange this last transaction and the previous three, she'd confided in you about her daughter and her financial situation? And you listened and commiserated with her?"*

*"Yes."*

*"Your intent was to instill trust and perhaps even to forge a friendship with my client?"*

*"Yes, that's the nature of undercover work. You try to win the dealer's trust."*

The easygoing yet forthright manner in which Willis had withstood my cross-examination—as though he had nothing to hide and shared in my objective to get to the truth of the matter—solidified for me how easy it would have been for Lydia to have been duped into believing that he was a user who trafficked on the side to subsidize his habit.

"You know, Sabina, that even if your client had been induced to act as a mule, entrapment is not even a

defence in this country.”

“I was thinking about mitigation of sentence, Gerald.” I managed to control the edge that was insinuating itself into my voice, my urge to get back at him for underestimating my knowledge of the law. Although Gerald was correct about the paucity of case law on entrapment, it wasn’t a defence, per se, but an abuse of process that, depending on the circumstances, could warrant the ordering of a stay of proceedings. Five years had lapsed since the entrenchment of our Charter of Rights and Freedoms in the Constitution. Across the country, criminal defence lawyers were growing impatient with anticipation for that seminal court ruling that would clarify what type of undercover law enforcement tactics were so offensive as to bring the administration of justice into disrepute.

“Well you know my position. I’d be willing to drop one of the four charges, but will ask for the standard three years.”

“You won’t object, though, if I put in a request with the criminal trial coordinator for Justice Sileski to preside over the sentencing, would you?”

“No, not at all. You want to plead her out in superior court?”

“Yes, that’s my preference.” Cradling the receiver under my chin, I opened my file, retrieved the psychological report and flipped to the second page. “I have a psych report that I want to tender in the sentencing proceedings.” I zeroed in on Dr. Reynold’s opinion that Lydia suffered from battered wife syndrome, manifested by symptoms of low self-esteem, social withdrawal and generalized anxiety. “I don’t want the report to be read or mentioned in court, though. I was hoping you and I could meet beforehand in Justice Sileski’s chambers to discuss the mitigating factors identified by Dr. Reynolds in his report.”

Surprisingly, Gerald didn’t ask for an explanation.

Hanging up, I ambled over to the window, peered down at the roadway, the bumper to bumper traffic inching its way out of Calgary’s downtown core. Across the street, in the park adjacent to the Nova building, I noticed that the leaves had lost their lime green sheen and had metamorphosed into a deeper verdant hue, which for me, signified the change of season from spring to summer. I thought back to when Lydia had first consulted me in my office, nine months earlier, in the fall, when the leaves had started to turn.

Sliding into the antique leather armchair across the desk from me, she’d pulled a package of cigarettes out of her blue jean jacket breast pocket. “Is it okay if I smoke?” Lydia asked in a raspy voice.

“Go ahead,” I offered. I waited for her to light her cigarette before asking whether she’d brought her paperwork.

Picking up her black vinyl purse from the floor, she deposited it on her lap and unzipped the side pocket. She apologized as she unfolded the crumpled Promise to Appear in Court. “Sorry, I spilled a bit of coffee on it.” Her hand shook as she passed it to me. She was a petite but sturdy woman, with long, dirty-blond hair and eggshell blue eyes. I imagined her in Junior High School qualifying for the 100 meter race in the annual track meet. She’d probably been popular with the boys, not in a loose way, but as a rough and tumble good sport, eager to please but never a push over.

Leaning back in my chair, I quickly perused the particulars—number of charges, section of the *Narcotics Control Act*, dates of the offences—spanning a four month period. I also zeroed in on the upcoming court date and the conditions of her release. “So you were released on a \$10,000 surety?”

“Yeah.”

“Who put it up?”

“My parents.”

“They live in the city?”

“Oh, yeah. They put up their mobile home. I wouldn’t be able to make it without them. They’ve already agreed to act as guardians for Angie when I go to prison.”

I flinched at her enunciation of the word “prison,” the flippant manner in which she pronounced it. Despite the brave face that she projected, I detected a tinge of despair in her voice. “Angie’s your daughter?”

Lydia nodded. “She’s just five years old. We don’t know whether the stress of these charges has affected her progress in kindergarten or whether she has a learning disability. They won’t do the tests until she’s in grade one.”

“Who’s the co-accused?” I read aloud his name as it appeared on the document, but as a party to the office. “Randolph Michaels.”

Lydia leaned her back in the armchair and raised her chin defiantly. “My boyfriend. He’s a member of the Hell’s Angels and was my supplier. He’s threatened me and my parents. He’s even threatened to hurt Angie.” Clawing at a tear that escaped from one of her eyes, she paused before adding, “Whatever happens, it can’t come out in court that I’ve fingered Randy in any way. I have to take this rap even though they were targeting him.”

I was taken aback by Lydia’s willingness to so readily assume responsibility for her actions. I’d become inured to most criminal clients minimizing their culpability, attributing fault to others or their unenviable backgrounds. She looked older than her twenty-two years and based on the information that she’d already given me about the age of her daughter, I concluded that Lydia had likely dropped out of high school. I was loath to inquire about her financial circumstances. She came across as a fiercely proud person. “Who’s acting for Michaels? Do you know?”

“Brian Blake.”

I nodded knowingly. Biker gangs had a reputation for only hiring the best and Blake was considered one of the top guns in the profession, at least a dozen years my senior.

“So Michaels was present when you were busted?”

“Yeah. He was in the car when I exchanged the blow for the money.”

Lydia’s jaw dropped at the rapid fire sequence of my questions. I could see that I’d hit a raw nerve. “It’s okay,” I offered. “We can talk about this next time.”

“No,” Lydia rasped, “I’d like to get it off my chest.”

“So tell me why?” I deliberately softened my tone. “Why would you agree to sell drugs for Randy?”

a couple of lines in his car.”

“And did he snort some too?”

She shook her head. “He said he was already flying high.”

“But you didn’t suspect he was undercover... even when he didn’t use that afternoon?”

Shaking her head, again, she threw me a look of sheepishness.

“Did he seem nervous about pull-

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“Where did the transaction take place?”

“They all took place in the same location. In an alley near the Stampede grounds but Randy was never there except for the last time. It was a pound and he didn’t trust me with that amount of blow.”

I jotted down the date and Lydia’s name at the top of a page of foolscap and quickly summarized what she’d already divulged. “You’re charged with four counts of trafficking. The last transaction consisted of a pound. What were the amounts of the preceding transactions?”

“We started with an ounce, progressed to three and then four before Bill asked whether it would be possible to score a pound.”

I noticed her voice soften when she mentioned the name Bill. “Bill?”

“He was the undercover officer who busted us.”

I dropped my pen onto the paper and leaned back in my chair, crossing one leg over the other. “Tell me about Bill and how this could have happened. You selling blow to an undercover officer over a four month span on four separate occasions without suspecting that he was a cop.”

“I owed him.”

“You owed him for what?”

“He repaired the transmission on my car and when I told him I couldn’t pay him back right away, he said not to worry, that I could make it up to him another way.”

“So you never made any money on these deals?”

Lydia shook her head.

“Whatever moneys Bill paid you, you handed over to Randy.”

“Yeah. And if you can believe it, I would have had my debt paid off after the last score. I’d been planning to end it with Randy after that!”

I knew that the bikers not only kept their women on a tight leash, but treated their wives and girlfriends like chattels. I had a hunch that she’d cultivated her relationship with the undercover officer with the resolve to cut herself loose from Randy’s controlling grasp. In subsequent consultations, Lydia stressed how nice Bill was, how he’d treated her with respect and attentiveness.

“And where you did meet Bill?”

“At the King Eddy on Saturday afternoon during one of the blues jams. I met him out back while having a smoke. He asked if I wanted to do

ing the coke out in broad daylight?”

I noticed her brow furrow as she jogged her memory. “He was a real pro. He looked over his shoulder before opening the door for me. And then in his side-view and rear-view mirrors before pulling it out of his jean pocket.”

“And so how was it that your relationship developed into you becoming his supplier?”

“He said that this was the last of it and asked whether I knew where he could score some more?”

“And you gave him your number?”

She nodded.

“And at that time you already owed Michaels for repairing your car?”

“Yeah.”

I surreptitiously checked my wristwatch for the time. I’d scheduled another client for a consultation at five o’clock. “I’ll give Blake a call and find out what his client is planning to do. I imagine there’s wiretap evidence.”

A look of bewilderment washed over Lydia’s face.

After she confirmed that arrangements for each of the transactions had been made over the phone, I explained that the police had to apply for a warrant to intercept telephone

communications. "At the preliminary hearing the Crown will bear the burden of establishing that the police had reasonable and probable grounds to believe that a criminal offence was being committed. Mere suspicion is not enough to render wiretap evidence admissible."

"But I just want to get this over as quickly as possible," Lydia objected, her mouth tightening into a grimace.

I held up my hand like I was directing traffic. "There's the matter of your parents applying for guardianship of Angie. That will take some time." I also explained that a preliminary hearing afforded defence an opportunity to discover the Crown's case without having to lead any evidence. "We whittle away at the Crown's case like a sculptor methodically chisels a human form out of a slab of marble."

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"Order in court, all rise."

I turned my head toward the prisoner's box to ensure that Lydia had risen to her feet. She'd taken great pains with her appearance, had curled her hair and was dressed in a black skirt, white blouse and eggshell blue cardigan that underscored the colour of her eyes.

"You may be seated," Justice Sileski commanded. Peering over his eyeglasses at Lydia, he asked her whether she had anything to say before he proceeded to deliver his sentence.

Lydia stood up. She looked so small and fragile in the imposing polished wood confines of the prisoner's box. I could tell by how she grasped the front railing of the box that she was trying to stop herself from shaking. In her characteristically raspy voice, she replied, "No, Your Honour."

Catching the sound of the courtroom door open, I glimpsed Michaels entering, taking a seat in the last row of benches in the public galley. Lydia's father, who was seated beside his wife on the front bench, directly behind Lydia, shot Michaels a scornful glance.

At the preliminary hearing, Blake had masterfully framed his questions on cross-examination of the undercover officer so as to cast doubt about Willis's knowledge of the relationship between Lydia and Michaels. Mere presence at the scene of the crime was insufficient to render a co-accused an accessory to an offence and while Lydia, following her arrest, hadn't buckled under the pressure tactics of police interrogation to leak Michaels' name, the wiretap evidence had proved inconclusive in establishing that Lydia had acted as Michaels' agent.

Justice Sileski waited until he had everyone's undivided attention. "I am mindful of the Court of Appeal precedent of three years for a charge of trafficking in cocaine, particularly multiple transactions and the substantial quantity of drugs trafficked by the accused in this case. But having read the psychological report tendered by the defence in these sentencing proceedings which Madam Clerk, I ask, that you enter and mark as Exhibit 'A'... and in view of the guilty plea, and remorse which has been exhibited by the accused..."

I was gratified to catch Justice Sileski, at this juncture in his judgement, scanning the public galley and zeroing in on Michaels who, in the psychological report, had been described by Dr. Reynolds as a bully and a misogynist. I also called to mind the Justice, in his private chambers, asking Gerald whether he thought Detective Willis had gone too far in winning Lydia's trust.

"And taking into consideration submissions by the defence that the accused is a single mother to a five-year-old daughter over whom the accused's parents have been granted guardianship and that the accused will serve out her sentence at Fort Saskatchewan Correctional Institute and that exercising access to her daughter will prove a hardship, I find that there

are sufficient mitigating circumstances that both the specific and general deterrent factors in sentencing will be served by a two and one half year sentence, followed by the imposition of a term of probation of one year."

My heart resumed its regular beat. I'd managed to shave six months off the mandated three years. I'd hoped to set a precedent for the sentencing of women drug offenders, particularly single mothers like Lydia, whose time in prison, by virtue of their separation from their children, was hard time.

I watched Mr. and Mrs. Nelson rush toward the prisoner's box at the same time as the guard approached Lydia to escort her out of the courtroom and into the holding cells. Stowing my file, Criminal Code, pad of paper and pen into my briefcase, I looked past their tearful embraces, and noticed that Michaels had already exited the courtroom.

I sensed Gerald's eyes fixed on me.

"Congratulations, Sabina. That was a clever move on your part. To keep the contents of the psych report off the record."

"Didn't you notice Michaels sitting at the back of the courtroom?" I felt dismayed that Gerald would diminish the gravity of the sentencing proceedings by treating it like a contest, a game.

Nodding lamely, he extended his hand for me shake. I grasped his hand and thanked him, as was customary. Picking up my briefcase, from counsel's table, I turned on my heels and headed for the door.

*Author of the novel, Mirrored in the Caves, published by Inanna Publications, Barbara D. Janusz is a graduate from the University of Alberta with Bachelor degrees in Arts and Laws. She has published editorials, short stories, poetry and articles in literary journals, newspapers, magazines and anthologies across Canada.*