



A Little Collateral Damage

By Robert B. Nelson

I knew I had to lie to him.
Until now, I had done everything
I could to avoid lying to my son.

Now I had no choice. We were hunting deer on my uncle's property in northern Lower Michigan. It was the first time Chris was able to hunt with a rifle. He barely slept the previous night.

"I got him. I got him," Chris yelled just after I had looked away to watch a hawk glide through the sky above our heads. We raced to a large beast lying in a clearing. As I approached the animal, I knew immediately that I could not tell my son the truth. He had shot an elk.

The permit my son had received was for deer hunted on private property. Elk permits were hard to come by in Michigan and I had never applied for one. If a conservation officer were to find us, we would either be on the short end of a \$1,000 fine or I would be on my way to jail. Having recently lost my job, I knew we couldn't afford either. Even if we could escape prosecution, I could not tell my son that he had killed something illegally. Last year, I had to tell him that his mother was dying. He had stood there for a minute and bitten his lip. After awhile he retrieved his inhaler and stayed in his room for the rest of the day. Although he didn't cry, he went into a long depression, which worsened when his mother died. The prospect of the hunting trip had revived him. He had been talking about it for weeks. His smile was wider now than I had seen it in several years. No, I had to lie.

"Nice shot, son. You've got yourself a deer."

"Is it big enough to mount, Dad?"

"Not quite, son. But we'll have a lot of dinners with this one."

The elk was certainly big enough to mount, but I wasn't going to take the carcass to get it mounted and be turned in to the authorities by a taxidermist. "I'm going to have to gut him." As I gutted the elk, I was careful to preserve the skin. A friend had told me there was a place in Sarnia, Canada, about 85 miles from our home, that bought elk hides. We needed the money.

The next morning, I called the number in Canada my friend had given me.

"Bryson's Hunting Emporium, this is Clyde."

"Yeah, Clyde. My name is Bill Whittier. I live in Pigeon, Michigan. I've got this elk hide I'd like to sell. Do you by any chance purchase elk hides?"

"Elk hide, eh? Sure. We can help you. How many?"

"Ah...just one."

"Why don't you stop by this morning. I'll be out this afternoon."

"All right. Can you give me directions to your place?"

As Clyde gave me directions to the hunting emporium, I noticed Chris leaving for school. Since Chris thought he had killed a deer, he wouldn't understand my trip to Canada. I could drive there and back before he was home from school. I put his asthma medication on the counter in the kitchen, covered up the elk hide in the back of my pickup with a tarpaulin, and headed for Sarnia.

Two hours later, Ben rushed into his boss's office. "Larry, I think I got something."

"This better be good. I've got a meeting with the Director in half an hour."

Three months ago, Ben had been hired by the National Security Agency in Washington to monitor international phone calls for terrorist activity. He listened all day to conversations that were for the most part dull and harmless. This call was different.

"I didn't get to tape the entire call, Larry, but listen to this." Ben played back a conversation recorded on a hand-held machine.

"Al Qaeda? Sure. We can help you. How many?"

"Ah...just one."

"Why don't you stop by this morning. I'll be out this afternoon."

"All right. Can you give me directions to your place?"

Ben stopped the recording. "What do you think, Larry?"

"When was this recorded?"

"About 7:30 this morning."

"Have you traced the call?"

"Sure, it came from an address in Pigeon, Michigan."

"How about the Canadian end of the call?"

"Well, I traced that to an address in Sarnia."

"Were you trolling for suspects at the time?"

"Yeah, just running through a bunch of international calls."

"Ben, you've done good. Let me borrow your machine. I'll take this to the Director. In the meantime, start preparing the request for the FISA order. As long as we get it to them in 72 hours, we'll be fine."

"But what about probable cause? We're going to have to show that we had some reason to monitor this particular call."

"Just make something up. Say that we got a tip that this guy had booked a flight to Baghdad or something. Once they know we're about to capture an Al Qaeda suspect, they'll go along with it."

Larry raced off to the Director's office, well in advance of his scheduled meeting.

He was out of breath when he reached the secretary's desk.

"Beth, I've got to see Mark now."

Elk permits were hard to come by... If a conservation officer were to find us, we would either be on the short end of a \$1,000 fine or I would be on my way to jail.



"But, Larry, you're not supposed to see him for another 15 minutes."

"I know, but this is a matter of great urgency."

"Let me see."

Beth got up from her chair and entered the Director's office, closing the door behind her. After several minutes, Larry was ushered into the Director's office. The framed pictures of the President and Vice President stared down from above the Director's desk. Still huffing and puffing, Larry was able to blurt out his message before the Director looked up.

"Sir, there may be an Al Qaeda operative on his way to Canada."

"What?"

"We've intercepted a call this morning. I can play it for you."

"Go ahead."

Larry played Ben's recording of the conversation between Bill and Clyde.

After the recording was completed, the Director picked up the phone on his desk and dialed his contact in the Attorney General's office.

"Cathie," the Director said, "I think we have something."

The Director summarized the contents of the recording. After a 10-minute discussion, he hung up the phone. "Larry, make a transcript of the recording and send it to my secretary. We're going to alert the Canadian authorities and send the FBI out to this guy's house. Let's hope we're not too late."

I was stuck in a three-mile line of cars trying to cross the Blue Water Bridge from Sarnia to Port Huron, Michigan. The trip into Canada earlier in the day had been no problem. But this traffic was unbearable. Something must be going on for them to hold us up this long. The elk skin had sold for \$282 in Canadian money. If there was enough time, I could exchange it for American money at the border, but it was already getting late. I would

not get home before Chris. I wanted to remind him to take the asthma medication that was on the counter, but we had given up our cell phone three months ago because we couldn't afford it.

Assistant U.S. Attorney Cathie Andrews was relishing the excitement. Her normal workday was consumed by drafting search warrants for drug busts and reviewing complaints about illegal immigration. Today, she was making calls to Canadian security officials and talking to the FBI and NSA about tracking down an Al Qaeda terrorist. She had questioned the NSA Director about the basis for the FISA request that had to be filed and still had some doubts, but she agreed with him that the FISA court would not refuse to authorize the monitoring of an associate of Al Qaeda. As she was preparing a memo on her morning activities, the phone rang. The voice on the other end of the line was not familiar.

"Cathie, this is Bob Martin at the Vice President's office."

"Yes."

"I understand you've been working on the intercept on this Al Qaeda suspect in Michigan."

"Yeah. We're not sure he's in Michigan, sir. He could be in Canada."

"Have you tracked down the parties to the call?"

"Not yet. We've sent the FBI out to the house where the call was made from in Michigan and we've alerted the Canadian authorities."

"Are the Canadians playing ball?"

"They seem to be. They responded to the address we gave them, couldn't find the caller, but are searching for him now."

"Okay, Cathie. The reason I called. This case is very important to the Vice President. If we ever catch one of these guys on American soil, we'd like to know how the interrogation is going. Is that clear?"

"Well, I'll talk to my boss..."

"You go ahead. Tell Byron that Bob Martin wants a running report on the interrogation. No, tell him that the Vice President does. You got it?"

"Yes. I got it."

Chris Whittier got off the school bus at 3:45 p.m. FBI agents Medford and Childs were parked some 500 feet away. They had already made sure that no one was in the house and reported that fact back to Washington. Now they waited until the bus was out of sight and then walked to the Whittier house. They rang the door bell and waited. Chris opened the door within seconds.

"Chris Whittier?"

"Ye-eah."

"I'm agent Medford, this is agent Childs. We're with the FBI. Can we come in?"

Chris ushered the men in. The Whittier house was small, with a living room, a kitchen, a bathroom, and two bedrooms. "What's this all about?"

Childs sat down on a sofa. "Sit down. We have a few questions for you."

"Okay." Chris sat in a lounge chair.

"When did you last see your dad?"



My pickup was within 100 yards of the customs checkpoint. I noticed that there were more than the usual number of agents standing by each car that was waved through.

"This morning when I left for school."

"Do you know where he went?"

"No."

Medford, still standing, moved to within inches of Chris. "What time did you leave the house this morning?"

"About 7:30."

"Your dad was on the phone at that time. Who was he talking to?"

"I don't know."

"What was he talking about?"

"I don't know."

"Look, kid. We know he was talking to some very dangerous people. These people may want to cause great harm to this country. If you have any idea where he is, we need to know."

"I'm sorry. I just don't know." Chris was breathing heavily now. "He's usually home when I get back from school."

Medford and Childs continued to question Chris for another 20 minutes. They were unable to learn anything about where Bill Whittier was or who he was with. Medford turned away from Chris, who began biting his lip.

"I'll call Reese and see where we go from here."

My pickup was within 100 yards of the customs checkpoint. I noticed that there were more than the usual number of agents standing by each car that was waved through. They seemed to be checking the trunk of every car. I was glad that they weren't being this thorough when I went through with the elk skin. Chris would be worried. I had to call him and let him know when I would be home. I could see that the driver of the car ahead of me was using a cell phone. As soon as his call was completed, I'd have to get out of the pickup and ask to borrow it.

"Yessir. We will do so."

Dan Medford hung up the phone and went back to the living room. "Alex, I need to talk to you privately."

"All right. Chris, we'll be right back."

Medford and Childs went into the kitchen. "They want us to water board him."

"What? Are they crazy?"

"No, the order is from the Attorney General's office. They believe we've got to find his father before Al Qaeda strikes. Who knows what Al Qaeda may be up to."

"But isn't it against the law to torture an American citizen, especially one who can't be more than 12 years old?"

"The Attorney General doesn't think water boarding is torture."

"Oh, man. I don't think I can do this."

"Look, we have no choice."

"But..."

"For us, Alex, the Attorney General is the law."

The phone rang. "Kid, don't pick it up" Medford ordered.

"But it could be my dad."

"He can leave a message."

"We don't have an answering machine." Chris ran toward the phone on the wall between the kitchen and the living room. Medford stopped him before he could get there. "Now, just take it easy. You will see your dad soon enough. We want you to go lie down on your bed. Childs, get some pillows from the other bedroom and prop his feet up."

I returned the cell phone to the driver of the car in front of me. Then they approached my car. Three Canadian customs agents.

"Bill Whittier?"

"Yes."

"We need to ask you some questions. Pull your car over to the side of that gray building there."

I pulled my car over as directed. Before I could get out of the car, I was surrounded by the three agents and six Royal Canadian Mounted Policemen.

"Put your hands out in front of you," one of the policemen, Al Franover, barked.

I was marched into a dimly lit room in the customs office.

"Have a seat, Mr. Whittier. This is going to take a while." Franover turned to one of the customs agents. "I almost forgot. John, call the FBI and tell them we've got this guy. They're probably still trying to chase him down in Michigan."

Maybe someone saw me with the elk hide this morning and tipped them off, but why would they involve the FBI? And what about Chris?



"Can I call my son? He needs to know that I'm all right."

"In due time, Mr. Whittier. Where have you been today?"

Telling these guys about Bryson's Hunting Emporium would allow them to trace the elk hide back to me and I would eventually get reported to the Michigan authorities.

"I was visiting a friend."

"And who might that friend be?"

"Ben Nielson," I said, recalling the name of a deceased handyman from Pigeon.

"And where did you visit him?"

"Gee, I forget the name of the street, but it's in downtown Sarnia."

"I see. Now you wouldn't have visited Bryson's Hunting Emporium, would you?"

The jig was up. "Yeah, I guess I did."

"And did you meet with Clyde Bryson?"

Maybe if I played dumb about Bryson they wouldn't be able to pin the elk hunting charge on me.

"No. If I did, I didn't know his name."

"Mr. Bryson wasn't there when we stopped by there this afternoon, but one of his clerks recognized a picture of you and said you spent about 10 minutes with Mr. Bryson."

"I did talk to someone there, but I didn't get his name."

"All right, Mr. Whittier. You say you don't know a Clyde Bryson. Do you know anyone from Al Qaeda?"

"Al Qaeda? Of course not."

"Mr. Whittier, I'm going to play a recording for you now."

Franover opened an e-mail he had received from the FBI, which contained a copy of the conversation earlier in the day. "Listen to this." Franover clicked on the message and played the digitized recording.

"Elk hide, eh?"

Franover pressed the pause button. "We have been able to verify that this call came from your phone and that it went to Bryson's Hunting Emporium. Are you still saying you don't know anyone from Al Qaeda?"

"No, sir. He was saying 'elk hide, eh'; not 'Al Qaeda.'"

Franover hit the rewind button on the box on his computer screen that contained the recording. "Elk hide, eh?" Bryson's voice echoed again.

"Well I'll be damned."

"Doris," Franover yelled into the hall, "Get me Bellman from the FBI."

Medford and Childs looked down at the body of Chris Whittier. The cellophane that had covered his face, now thoroughly wet, was lying on the floor.

"Well, we've done it now." Childs's voice was barely more than a whisper. He stared at the boy's face.

"You know," Medford said, "I think this kid may have had asthma."

"We should never have done this."

Chris had started hyperventilating as soon as they had started to drip the water on his face. He gasped and wheezed, but never fully caught his breath again.

Medford's cell phone rang.



"Agent Medford.

"Yeah, yeah. Oh that's great," Medford said.

Medford put his hand over the receiver and whispered to Childs, "They've found his father.

"Well, we had a little problem here, sir.

"No, I don't think anyone saw us.

"All right. No reports. Right."

Medford hung up his phone. "We've got to get out of here."

"And just leave him here like this?"

"Hell, yes. We can't do anything for him now."

Medford and Childs picked up the cellophane, cleaned up the water on the floor and left the house. As they closed the front door behind them, the phone rang.

I had been allowed to call home before I left the customs office, but there was no answer. I returned to the house around 6 p.m. "Chris," I yelled as I opened the front door.

"Chris."

As I made my way to Chris's bedroom, I could see his feet propped up on a stack of pillows.

"Chris."

His skin was white and he had a look of stark terror on his face. I grabbed his wrist to get a pulse. As soon as I touched him, I knew. I took my poor defenseless son into my arms and cried.

Cathie dialed Bob Martin's number at the Vice President's office. "Bob, I want the Vice President to know that we lost the kid."

"Cathie, please don't call here again."

"But, Bob you told me..."

"Goodbye, Cathie."

The line went dead. ■



Robert B. Nelson is a former commissioner of the Michigan Public Service Commission and a former president of the Michigan Electric and Gas Association. He is currently of counsel with Fraser, Trebilcock, Davis and Dunlap in Lansing. Mr. Nelson previously served as chairman of the State Bar Administrative Law Section and chairman of the Telecommunications Committee of the National Association of Regulatory Utility Commissioners.

Beginning October 1, he will serve as lieutenant governor-elect of Michigan Division 16 of Kiwanis International.