



©Rery
<http://rery.tumblr.com>

The Birds They Sang at the Break of Day

Steven Semeraro

Erica Lane's boyfriend called Gramchi first. Around 10 the night before, Erica had flounced out the door with Sheila and some girls that Grail didn't know. She did this often; late nights were par for Erica's course. But when 2:30 am came and went, Grail suspected that this wouldn't be a typical night. At 4:50, he heard the phone. He let it ring a little because he didn't want to rush into hearing what he knew would not be good. Erica had been arrested for DUI. Bad as it initially sounded, it only got worse.

Grail never allowed himself to think that he was a loyal boyfriend or anything like that. But he was dutiful. And when the cops call you to pick up your chick at the police station, you call her a lawyer. It's what guys like Grail did. So, he made some calls and was told, for a DUI, Gramchi's your man.

If you've never been arrested for driving under the influence, you probably don't know about Gramchi. Only a year ago, he was quick-stepping, briefcase in hand, through what passed for nippy in the pre-dawn San Diego morning. He'd just graduated from law school and still used its library as his makeshift office, just until he could afford a real one. The doors opened early on weekday mornings, and Gramchi knew that on cool days like this being a step too slow could shape the arc of his entire day. And not in a good way.

The night before, Gramchi had done what he usually did...played the drums for a live Karaoke band. It was a good gig, paid real steady. That came in handy—as much for the distraction as for the money—while he struggled to find gainful employment in a tough legal market.

Gramchi's wife, Shelly, was also a lawyer. She watched him play, but never sang. Afterwards, they often laughed, lightheartedly, at the tipplers who rose to sing but never failed to amuse. The two had met in a law school summer program in China. Although they had attended the same school, their paths had rarely crossed. But by the time they arrived in China, he knew who she was.

While Gramchi wasn't without a certain charm, he knew that half the guys studying in China would be looking for reasons to talk to Shelly. Gramchi wasn't interested in looking for reasons. Making up excuses seemed like the more productive approach. The three-week program was a close-quarters trip, but he didn't get a chance to talk to her until one hot, humid early evening. The group was snacking in a Beijing plaza, and Gramchi was thinking, "could

I possibly sweat more?" when he saw Shelly walking toward him. Gramchi thought to himself, "this is good, at least she won't think I'm sweating because I'm nervous." That initial sense of comfort passed quickly as he realized that he'd have to say something.

"You know I play multiple instruments."

"You know, I can't carry a tune," Shelly said, smiling enough to convince Gramchi that he should take a shot. So, basketball-style, he crumpled the wrapping from his sandwich and shot it at a garbage can some 25 feet across the plaza. As the trash-ball turned in the air, Gramchi thought, "if it goes in..."—you know the way people do. And in it went.

"Nice shot, Gramchi," Shelly said, clapping just a little to suggest that she wasn't being facetious.

"Nothing to it," a smiling Gramchi hoped to say. And although something less emerged from his lips, Gramchi now says that Shelly fell in love with him because he made that basketball shot into a garbage can from 25 feet across the Beijing plaza. Even those who don't know the couple well think it was probably something else that got Gramchi the girl.

Gramchi still gets accused of punching above his weight class. Not because Shelly is prettier than he is, though she certainly is that, but because she was top-of-the-class and worked at a not-exactly-white-shoe-but-close-enough law firm. She reviewed documents, took depositions and worked as part of a trial team. There would be no Gramchi in team.

Or was it team in Gramchi. He couldn't figure out which one sounded better when he responded to questions from his family. "What you gonna do with that law degree now, Greg?" He knew he'd be doing it alone. But the it part, that was harder to figure out.

Still, he made his way to the library every day whether he had paying work or not. "Hey Greg," the student worker at the library circulation desk called. "Hey man," Gramchi shot back as he bee lined for the microfiche room. When he got there first, the room provided a quiet environment away from the din of the students whose cares, or lack thereof, were Gramchi's not long before, but no more.

As he approached the microfiche room door, he saw it swing open revealing his competition for that prized spot, the homeless Victor Loquoti. The incredible Mr. Loquoti had been a counselor of sorts, even sitting in on law school classes now and then, though never actually paying any tuition, enrolling in school, or anything like that. The sort of guy who gives practicing without a license the respectability that most are surprised it can have. Vic's clients, such as they were, appreciated his good counsel none the less for its non-degreed status.

In recent times, Loquoti focused on solo intellectual pursuits, which involved mostly reading the great justices of the twentieth century. He still loved the way the old reporters stuck, just a little, to the tips of his fingers as he

touched the covers. And the old paper's brittleness comforted him. When he found a Frankfurter concurrence that he'd never read before, he may as well have won the lottery.

The drinking and whatever had taken their toll on the once impressive street lawyer. But the law school library remained a special place for Vic. He felt most at home in this place that he could never really call home. Now, it was all he had left, and if he could catch a few zees in the quiet microfiche room on a chilly morning post-Brandeis/pre-Holmes, well, so much the better.

Spying Gramchi, the startled Loquoti moved his lips and produced something along the lines of "It's the bird that catches the early worm, eh?"

"You beat me to the microfiche room again, Vic," Gramchi said, "Hey, I got you some breakfast." As the young squire and the grizzled governor munched coffee and donuts, Gramchi posed what he perceived as a most important question: "What am I going to do with my life, Vic."

"Well," Vic said while appearing to think deeply, but of course he was acting, "can you work for the man?"

"Could you?"

Still sharp enough to know a rhetorical question when he heard one, Vic began, "OK, then pick something, anything, but do only that. Now, here's the secret of our little world. Make yourself the very best at doing that one thing."

Loquoti's advice struck a chord in Gramchi. He was an accomplished musician able to play most anything. People like that usually enjoyed showing off their virtuosity, knowing that your average Joe watching the show wouldn't know good music from a bad joke. But Gramchi refused to play any instrument in public, except the drums on which he was the most proficient. As a lawyer, he had the brains and skills to litigate all sorts of cases. But that would leave him just another guy with a law degree doing a job. "Make yourself the very best." The old homeless guy was onto something, Gramchi knew without needing to convince himself.

That night, Gramchi played a Karaoke show with the band. "Two-three-four," he counted, "I was stranded in Havana, I took a little risk." (Yes, the singer screwed up the Warren Zevon lyric even though the band had one of those machines that showed the words as you sing.) Gramchi noticed the mistake as he always did, smiling just enough to hide his bemusement. He remembered how Zevon's deep voice sounded strangely confident when he had sung the lyric that the thin-tenored bar patron was now belting out—"I'm an innocent bystander, but somehow I got stuck, between a rock and hard place, and I'm down on my luck..."

After the show, a beer and a ride home led Gramchi to an easy sleep, only to rise fully awake at four am with absolutely no clue as to what he would do with this life that was too rapidly stretching itself out before him. Gramchi had been dreaming that he was on stage with the band and the crowd was looking for him to sing. But what were the lyrics? He searched for the machine only to

find a blank screen. He looked to the crowd and shouted, "I've got nothing." He said those words out loud as he sat in the kitchen, though no one was listening.

During the ensuing hours, Gramchi dispiritedly tried to think of a niche in the legal world that he could fill better than anyone else. The music business seemed like a natural fit. But he couldn't see how writing contracts for other players could be satisfying. Maybe it was Shelly's influence, but he wanted to help people who were desperate. So he thought. "Maybe he could be a divorce lawyer for gay men under 35, was anybody doing that yet?; maybe the 35 and older guys were more desperate," he didn't know, and anyway, neither seemed quite right. As Gramchi turned on the coffee maker, a Leonard Cohen song that he was learning for the band appeared in his head. "There's a crack, a crack in everything...that's how the light gets in." "Find the crack," Gramchi repeated over and over in his mind, "then I'll be able to see it."

Deep in thought, Gramchi didn't see Shelly walk into the kitchen still in her pajamas. On autopilot, she ignored Gramchi and turned on the radio. He leaned across the table to turn it off, and pausing for just a moment, he noticed a ray from the just rising sun reflecting off a crack in the radio's face. And as his hand touched the dial, he heard it. "The DUI capital of the nation," the announcer said, more pleased than she should have sounded, "is none other than San Diego, California." The woman's voice read on, "More men and women are arrested for driving under the influence of alcohol in San Diego County than in any other." And Gramchi decided then, "Shelly," he announced with true pride, "I will become the DUI man."

Still half asleep, she responded with all the perplexed incredulity she could muster, "DY-huh? Which Batman villain is that again? Halloween's over, Gramchi." After a slight pause, she added, "You know what, I'm going back to bed." As she headed up the stairs, the letters "DUI" finally came into focus before her. She turned her head back toward Gramchi and asked, "Wouldn't you rather be Batman?" as she continued up the stairs.

Gramchi smiled, whispering to himself, "I will be."

How one becomes the best DUI criminal defense lawyer is not commonly known. Arvand, Gramchi's classmate in law school, suggested two criteria—"look good on TV and come up with a catchy ad." Arvand's ad read "Got Caught? Call Me" in a large simple font. He pasted that ad all over LA and never wanted for clients. Gramchi didn't think The Arvand Method™ would work for him.

So, Gramchi started taking chemistry classes, and working the circuit of the known DUI defense lawyers. These boys, and yes there were some women too, were fraternal. As long as you didn't ask them for a job, you could pick their brains for hours. Buy one a beer, and you had a courthouse buddy for life. Gramchi listened; Gramchi learned. Did you know that one's blood alcohol level continues to rise for hours after a human being stops consuming?

Gramchi does. A blood test a few hours after a suspect is observed driving may be worthless in a court of law.

Soon, Gramchi had clients. One day, early on, he was already standing behind counsel table when he saw the prosecutor cross the bar. Gramchi didn't sit because he didn't want anyone, his client in particular, to think that he was more nervous than he actually was. That level of self-consciousness is rare for Gramchi, and it had passed by the time he caught sight of the prosecutor. He knew that the apparently just short of middle-aged ADA was Kenneth Beal, the office's current hot-shot on a string of twenty-one jury verdicts—"count 'em," he'd say to anyone listening or not.

Gramchi considered greeting Beal by name, but as a newbie he rejected it as presumptuous. Extending a hand, he said,

"My name is Greg Gramchi."

"Of course it is," Beal chortled.

Something closer to perturbed than pleased, Gramchi smiled respectfully, a tactic—but not a strategy—that served him well in the courthouse. From the security guards at the metal detectors in the entry to the ladies in the clerks' office, Gramchi won them over, not with charm, though he could have, but with sincerity that didn't need to be labeled genuine. He respected them for contributing to the system of which he was a part. They respected him for recognizing their professionalism. Objectively, kissing ass and respecting the job that working folks do look pretty much the same. But on the inside, the subjective side, everyone knows the difference. And Gramchi kept on the right side of the divide. Not because he knew it would pay dividends (though he did), but because that was the way that he was.

The clients came steadily and Gramchi's reputation grew. Farnshoe fell asleep at the wheel and hit a tree. The airbag woke him up and he stumbled 10 feet from the car. The prosecutor couldn't prove he was ever driving. The cops found McMann sitting in a car by the roadside. He said that his designated driver went off, ostensibly to pee—McMann said, "take a whiz"—and never returned. That McMann could never explain how he ended up in the driver's seat hurt his case. But Gramchi still managed a directed verdict. Buckman claimed that someone spiked his O'Doul's, and Tagliani wanted to testify that he only looked drunk and had naturally occurring alcohol molecules in his blood. He actually brought in three bartenders, all of whom swore that they'd refused to serve him before he'd had a single drink because he just looked so drunk. Gramchi pled that one. Adkins said his wife (or girlfriend) (or gay partner) was supposed to drive him home but left with another guy (or woman), whichever Gramchi thought would sound better to the jury. That one pled too.

Unsurprisingly, Gramchi's former clients were unable to hide their trouble from the public view. And they came back to Gramchi because they knew—even though most had been convicted—that he had done right by them. If he was the best, or even close, they'd never know. But they wanted him to be their

lawyer. Gramchi could have taken all the business, but he didn't. He referred the non-DUI cases to one of the many defense lawyers who had helped him learn the ropes. And soon, they began referring DUI cases to Gramchi. "He's the best," they'd tell the poor sap facing prosecution. And each one believed it; the clients were satisfied; and Gramchi's practice grew. If he wasn't the best, he didn't know who was. And isn't that the same thing, pretty much?

And that's how Grail—whose own tax evasion charges made him no stranger to the legal system—ended up calling Gramchi when Erica had her run-in with the law. Grail's tax lawyer knew a guy who knew a guy who Gramchi had gotten off.

Erica and Grail had been dating for eight months, and she now lived at his penthouse downtown, more or less. Although she still had her place in National City, she was pretty sure the fish were all dead by now.

Grail was handsome in a he's-got-money sort of way that appealed to Erica. Although he looked nothing like George Clooney, there was something about the way that the expensive clothes hung from his body that created a sublime resemblance. Grail's attraction to Erica was less considered. She passed his only criteria: is she good looking enough to be seen with. Still, she grew accustomed to his life style, and he grew surprisingly accustomed to having her around.

The night before, they'd been at the House of Blues drinking lemon infused vodkas when Erica ran excitedly toward the bar shouting "Grail, it's a karaoke band!" Rolling his eyes as they met the bartenders', Grail pretended to ignore her as she climbed on stage.

"Hey, you guys know anything off Jagged Little Pill?" Somehow knowing this wouldn't be the last time he'd see this woman, Gramchi shook his head as the guys tore into it. "I'm not quite as well, I thought you should know," Erica belted, "I hate to bug you in the middle of dinner." She wasn't bad, all things considered.

Just over 24 hours later, though, she was in pretty bad shape. Erica sped over the rise down the 163 through the park like a madwoman. No, not like a madwoman but actually in a state properly described as mad-womanly. She was all over the place. Hit an opossum at one point and nearly went off the road. A sensible person would have pulled over or at least slowed down. It had been a long time since anyone had mistaken Erica for a sensible person.

Tom Foley, a young patrolman at the end of a long nightshift, pulled her over and saw an open bottle of vodka on the front seat. He asked her to get out of the car, and after a short pause her mid-thigh-high boots reached tentatively for what she hoped would be the ground. She couldn't walk a straight line. Hell, she couldn't walk a curved line. She could barely walk at all. Repeatedly, she screamed at Foley calling him a "Yogi-bear cop" whose ass her boyfriend would undoubtedly kick or something to that effect. Foley looked more like Booboo than Yogi, but you had to forgive her for the mistake. Most everyone made it.

Unluckily for Erica, a new ADA was riding along with the patrolman, and he witnessed her shenanigans. It wouldn't be her word against Yogi's, but she couldn't appreciate that at the time. Foley, a born-again Christian in the best possible sense, treated Erica with respect, even when she refused to blow into the Breathalyzer. No one would have questioned him had he locked her up. But he let her call her boyfriend.

Grail strode purposefully up to the glass doors at the police station and grabbed Erica by the arm. He hustled her into his black Mercedes, pushing his hand into her back just a little, but just hard enough to worry Foley. "I hope he doesn't beat her up," Foley said to the ADA, meaning it.

When the case came up on the court calendar, the prosecutors were out for blood. It's one thing to act like a horse's ass when you get busted for DUI, or even to be an honest to goodness horse's ass when you've really tied one on. But it's another thing entirely when you have an open container on the front seat at three in the morning and you refuse to blow. Erica added insult to injury by calling Yogi a "Yogi-bear cop." The ADAs could call Foley Yogi, but God damn it, no stinkin' DUI with an open container was going to get away with it.

If Gramchi had any thought of trying the case, it ended when Erica walked into the interview room spewing: "This stinks. I wasn't drinking. That bottle was Sheila's. Yogi-bear cop kept lookin' up my ass."

Gramchi thought, "where I have seen this woman before?" but didn't say a word. Well, he said one. "Really, now." OK, two.

Erica settled down after a few minutes. And then Gramchi started in. "Ms. Lane, here's how it is going to go down. You are going to write a nice letter to the arresting officer apologizing for your smart-alecky attitude. I want you to use that word, 'smart-alecky,' and work in 'apologize' too. Then, I want you to break out the most conservative get-up in your closet for when we go before the judge. And be ready to say you're sorry. The prosecutor will agree to a plea that keeps you out of jail, but I don't know if the judge will. Now, here's the most important part—before the judge sentences you, he's going to ask if you have anything to say. Do you understand that?"

"I'm gonna tell him—"

"Ut, ut, I didn't ask what you would say, I asked if you understood what will happen in court."

"I get it, and I can't wait to say—"

"Ut, ut. OK, so you understand what the judge will say to you. Now let me tell you what's going to happen after the judge asks if you have anything to say. Do you know what's going to happen?"

"Yes, I'm gonna spill the beans on that Yogi-bear jack-ass of a cop." Gramchi let her go this time. "I'm going to say how he kept looking up my ass, and he had this creepy guy there with him in a suit and tie, not saying shit. The whole thing freaked me out. I'm going to tell him."

Gramchi then asked Erica, “And what do you think will happen after you say that.”

“You going to kiss my ass?” Erica shot back with a smile that said nothing worth interpreting.

“Sure, if you want,” Gramchi said with no hint of sarcasm. “And then the marshal will take you to jail.” Gramchi let her think—or what passed for thinking in Erica’s world—for a few minutes. Then he said, “OK, here’s what’s really going to happen when the judge asks if you have anything to say. Three words are going to come out of your mouth. Do you know what they are?”

“No, but I’m paying you to tell me.”

Well, her boyfriend was anyway.

“You’re going to say three words: ‘No your honor.’ That’s it. Nothing more, nothing less. ‘No, your honor.’ Can you handle that?”

“No...your honor,” she said, wisecracking a grin. Gramchi knew he’d done all he could, but not what would happen when Erica had her moment.

Erica showed up in court wearing a tight fitting but otherwise unrevealing white dress. Gramchi believed it was the most conservative outfit she had. The now curiously, yet decidedly (when standing next to Erica), middle-aged ADA Beal smiled as Gramchi’s latest client said, “I’m sorry” with a tone that gave away that she’d had to use those words before, more than a few times. The prosecutor immediately agreed to a no-jail deal.

“Of course you will,” Gramchi said to himself, recognizing how far he’d come since he’d first introduced himself to ADA Beal six months before.

By the time they were all seated at counsel table, Gramchi realized how far he still had to go. “Please rise,” the bailiff said, and Gramchi and Erica stood at counsel’s table. In time, he’d learn to read clients better. He wasn’t there yet. But he knew he’d used the tools that you don’t sharpen in the chemistry classes to put her in the best position possible. As a lawyer you always wish that it could be all up to you. But it never is. Your client has an individual existence that no attorney can subsume. And this was a case, perhaps more than most that would be won or lost by the counselor rather than the advocate. And won or lost are the right terms. If Erica went off and then got taken off, Gramchi would know that he had lost. A lawyer like Gramchi can’t just do the job and be satisfied. He had to deliver satisfaction to take it home.

“Ms. Lane,” the judge began, “do you have anything to say before I impose your sentence.”

Stepping forward without moving, a palpable assertiveness jumped off Erica’s skin. “Yes, I do,” she announced—pausing slightly but surely with no cognizance of its effect—“but I’m going to keep it to myself.”

That night it was “two-three-four,” and eventually, the hapless singer worked his way around to it: “Send lawyers, guns, and money, the shit has hit the fan.” Gramchi smiled just enough as he counted off the next number, knowing that he had won.