

**Grand Jury Testimony of Max Grabelsky**  
**August 10, 2012**

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The witness first being sworn:

ADA: Mr. Grabelsky, before you testify before this Grand Jury, do you hereby swear to waive immunity from prosecution?

Max Grabelsky (MG): I do.

ADA: And, after consulting with your attorney who is also present here this morning, do you acknowledge that your decision to waive immunity is a knowing, voluntary and intelligent decision?

MG: Yes.

ADA: Do you wish to make a statement before I ask you questions about the homicides that occurred on July 15, 2009 at the OTB parlor at 99 76<sup>th</sup> Street here in Buffalo-Niagara?

MG: Yes. First, I want to express my deepest sorrow on account of the deaths of Luther Bybel and especially Chester Krupczyk who was an innocent victim in this tragic mess. I also regret the fact that Rolo Tomassi and Kyser Sosay got away with these terrible crimes. This would not have happened, however, if Captain Kowalski had dispatched his team to the 76<sup>th</sup> Street OTB branch as I had instructed him to do on the afternoon of July 15<sup>th</sup>. Now, after years of loyal service to my country and to law enforcement, I find myself in this predicament, having to defend my honor and loyalty because the government has decided to take the word of a criminal who cut a deal to save himself from spending the rest of his life in prison.

ADA: I presume you are referring to Lyman Zyrge?

MG: That's exactly who I'm referring to.

ADA: Before asking you specific questions about what happened on July 15th, 2009 at the OTB Parlor, I'd like to cover some background. First of all, you're 47 years old, correct?

MG: Yes. I was born in 1965.

ADA: And could you please tell us your marital status?

MG: I'm single. I've been divorced since 2000.

ADA: Your ex-wife, Tammy Fae Baker-Grabelsky currently lives in Chicago with your son, Max Grabelsky, Jr., correct?

MG: Actually, since the divorce it's just Tammy Fae Baker. And yes she resides in Chicago. After the divorce we had joint custody of Max, Jr. until I moved back to Buffalo-Niagara in 2006. And Max, Jr. lives on campus at the University of Chicago where he is a sophomore.

ADA: And are you required to pay alimony and child support?

1 MG: Yes, I pay both because my ex is not working despite her expensive appetite for clothing,  
2 cosmetics, jewelry, and living the high-life, which I could never really afford. That and the fact  
3 that I spent so much time away from home working undercover caused our break-up. Plus, aside  
4 from what little financial aid Max gets from the University of Chicago, I'm responsible for  
5 covering our end of the bill, which amounts to \$28,000 a year. I have to take a loan to cover it.  
6

7 ADA: And how much is your monthly alimony and child support obligation?  
8 MG: Altogether, I pay \$2,000 a month which I think is excessive, but the judge really stuck it  
9 to me in Family Court after a contentious hearing. That and the attorney's fees really put a drain  
10 on my finances.  
11

12 ADA: And what if any other debts do you have?  
13 MG: I have about \$5,500 due on my MasterCard, which I pay off at a minimum of \$150.00 per  
14 month and \$12,000 on my VISA, which I pay at \$200.00 per month.  
15

16 ADA: What about mortgage or rent?  
17 MG: Since returning to Buffalo-Niagara in 2006, I have been living in my parent's house  
18 which is paid off except for taxes which are about \$2,500 annually. So I've been lucky to be  
19 able to live there rent-free while my brother Ziggy was in jail and my dad was ill. Ziggy and I  
20 both inherited the house after our father died in 2009. Obviously, Ziggy no longer lives there  
21 since his arrest. So, my only obligation with respect to the home is the annual tax bill and  
22 maintenance.  
23

24 ADA: Anything else?  
25 MG: Anything else what?  
26

27 ADA: Do you have any other expenses?  
28 MG: Other than food, clothing and normal expenses, just my car payment to Ford Motor  
29 Credit of \$350.00 per month on my Explorer.  
30

31 ADA: How much do you still owe on the Explorer?  
32 MG: Around \$16,000.

33 ADA: And your annual salary is around \$75,000?  
34 MG: That's right. Can I ask why you're so interested in my finances?  
35

36 ADA: Well, isn't it true that in June, 2011, Rolo Tomassi came up with a plan to steal over two  
37 million dollars from the OTB with the assistance of any inside man, Luther Bybel?  
38 MG: Yes.  
39

40 ADA: And isn't it also true that you had persuaded Rolo Tomassi to believe that you were  
41 working for him as part of his loan sharking operation?  
42 MG: Well, it was originally his idea, but I eventually convinced him that I was for real.  
43

1 ADA: When he told you about this plan, I assume that he offered to share the spoils with his  
2 coconspirators, correct?  
3 MG: Yes he did, but the OCTF plan was for everyone to be arrested and the money seized as  
4 we exited the parlor.  
5  
6 ADA: I understand, but the OCTF agents were nowhere near the ATB parlor on 76<sup>th</sup> Street  
7 when Tomassi walked out with the money, were they?  
8 MG: Unfortunately, Captain Kowalski misread my note and Tomassi and Kyser Sosay got  
9 away.  
10  
11 ADA: We'll talk about your note in a little bit, but getting back to my question, how much was  
12 your cut supposed to be?  
13 MG: According to Tomassi, the total, as told to him by Luther Bybel, was around 5 million  
14 dollars. The split was two mill for Tomassi and one mill each for Sosay, Zyrge, and myself.  
15 Anything over 5 mill we'd split evenly.  
16  
17 ADA: Certainly more than enough to pay off all your bills, wouldn't you agree?  
18 MG: If you think I would jeopardize my career for a half-million dollars or for any amount of  
19 money for that matter, you couldn't be more wrong. You seem to be laboring under the false  
20 assumption that I was really in on this thing when, in fact, I kept my superiors at the OCTF  
21 informed of what was happening with Tomassi right from the day he asked me to come to work  
22 for him right up until an hour before the strike went down on July 15<sup>th</sup>. Besides, if I was in on  
23 this crime, where would I go with the whole world knowing that I got a half-million in a heist  
24 that resulted in the death of two people? It's ludicrous to even think that I was involved in any  
25 way other than an undercover agent doing my job.  
26  
27 ADA: Well, where did Tomassi and Sosay go?  
28 MG: I assume they crossed the river and drove to Toronto. After that, it's anybody's guess.  
29 All Tomassi said was that he was heading to some tropical island somewhere.  
30  
31 ADA: And what about Sosay and Zyrge?  
32 MG: All I know is that after the money was divided, everyone was to go their separate ways.  
33 The less we knew about each other's plans, the better.  
34  
35 ADA: What did you tell them your plans were?  
36 MG: I didn't say anything. As I said, the less we knew about each other's plans the better. If I  
37 had pressed Tomassi about his ultimate destination, I think he would have gotten suspicious of  
38 me.  
39  
40 ADA: Let's talk about your relationship with Tomassi. Your family and his family were quite  
41 close, were you not?  
42 MG: Well, my father and his father both grew up on the east side. Before Zeppo Tomassi  
43 bought his tavern in the late 1950's my father and he worked together at the Buffalo-Niagara  
44 steel plant. After that, my father was a regular at Zeppo's.  
45

1 ADA: By regular, you mean a frequent customer?  
2 MG: Yes.  
3  
4 ADA: Did that include gambling?  
5 MG: My father placed his fair share of bets there on football and basketball games over the  
6 years.  
7  
8 ADA: In fact, he was frequently in debt on account of his gambling, isn't that true?  
9 MG: Let's just say he did not die a wealthy man. At least he kept the house.  
10  
11 ADA: And your brother Ziggy was very close to Tomassi wasn't he?  
12 MG: Yes. Ziggy and Tomassi went to grammar school together at Saint Casimir's and they  
13 both attended high school at Saint Stanislaus where Tomassi was the star quarterback and Ziggy  
14 was his left tackle. Tomassi was "All Buffalo-Niagara" and was being hotly recruited by several  
15 top tier colleges until he wrecked his knee in his senior year in 1980. It was the last game of the  
16 season and he got blindsided playing lacrosse. His father had always told him that playing  
17 lacrosse could jeopardize his football career and it turned out he was right. But Rolo wanted to  
18 letter in three varsity sports. He could have gone on to be a college star, maybe even gone pro, if  
19 not for the injury. Instead he stayed home and went to work for his father at the tavern.  
20  
21 ADA: And Ziggy, what about him?  
22 MG: He followed Tomassi and went to work for him.  
23  
24 ADA: Now, when your brother and Tomassi were seniors at Saint Stan's, you were a freshman,  
25 were you not?  
26 MG: Yes.  
27  
28 ADA: And you were one of the managers of the football team?  
29 MG: True.  
30  
31 ADA: Fair to say you looked up to Rolo and Ziggy?  
32 MG: I don't know if I'd go that far, but Ziggy was my big brother and he was the left tackle  
33 for the best football team in the entire Buffalo-Niagara region. And Tomassi, well, he was the  
34 star quarterback. He had so much potential but that knee injury ended it all. After that,  
35 unfortunately, he followed in his father's footsteps.  
36  
37 ADA: And so did your brother, didn't he?  
38 MG: Well, let's just say that except when he was playing football, Ziggy was always behind  
39 Rolo, and wherever Rolo went, Ziggy followed.  
40  
41 ADA: Despite your father's gambling problems and Ziggy's involvement with Tomassi, you  
42 went in an entirely different direction didn't you?  
43 MG: That's true. I saw what happened to my father. Even though he made a decent living and  
44 had a good pension, he pretty much frittered it all away betting on sports. It broke our late  
45 mother's heart, never really being able to afford the things she wanted. She really held that

1 against him. I guess that's why I was so easy going with my wife's extravagances. As for  
2 Ziggy, he was always a good-hearted guy, but not the brightest person in the world. His options  
3 were limited. And you know what happened to him.  
4

5 ADA: So how did you get involved in law enforcement?

6 MG: When I was a senior in high school in 1984, I knew that I wanted to go away to college  
7 and get a degree. I got a scholarship to Northwestern and go a dual degree in Criminal Justice  
8 and Sociology. After graduating from college in 1988, I joined the Marines and served in the  
9 Middle East. After being discharged from the Marines with a Bronze Star, I applied and was  
10 accepted into the FBI Academy in Quantico Virginia in 1992.  
11

12 ADA: Where were you assigned after you became a special agent?

13 MG: I knew they wouldn't assign me to my hometown so I put in for Chicago since I had gone  
14 to school there and met Denise there as well.  
15

16 ADA: What type of work did you do in Chicago?

17 MG: After several months of narcotics investigations, I was assigned to the Bureau's  
18 Organized Crime Division because there was a strong Eastern European organized crime  
19 presence in the Chicago area in the early 1990's and I was fluent in Russian. I went deep  
20 undercover and was able to infiltrate the EEOC (Eastern European Organized Crime) syndicate,  
21 which led to indictments and convictions of several EEOC kingpins on RICO, Conspiracy,  
22 Racketeering and other felony charges in the late 1990's.  
23

24 ADA: How did you end up back in Buffalo-Niagara?

25 MG: As a result of my work in the EEOC cases, I received a great offer to take on a  
26 supervisory position in the Washington, DC organized crime bureau, but my father took ill in  
27 2004, so I put in for a transfer back home. My request was granted in 2006.  
28

29 ADA: How did you come to work for the OCTF under Captain Kowalski?

30 MG: Shortly after my brother got indicted on Assault and Weapons charges, I got a call from  
31 my superior that I was being transferred to the OCTF under Captain Kowalski. When I got  
32 there, he informed me that he had been after Rolo Tomassi for years and that I could be  
33 instrumental in helping the OCTF bring him down if I could persuade Ziggy to testify against  
34 Tomassi in exchange for a favorable sentence consideration.  
35

36 ADA: How did you respond?

37 MG: To be honest, I felt very uncomfortable seeing how Ziggy is my brother and Rolo  
38 Tomassi is his best friend. Plus, as you pointed out earlier, I looked up to these guys growing up.  
39 But I also realized that Ziggy was facing seious time in jail and I wanted to do whatever I could,  
40 legally speaking, to help him. So I agreed to sit down with him and layout his options as I saw  
41 them.  
42

43 ADA: What did you tell him?

44 MG: I said, "I know that you and Rolo go way back, but now you've got to do what is best for  
45 you." I told him that the OCTF was looking to make an example of him if he didn't play ball. I

1 remember Captain Kowalski was almost maniacal in telling me how important it was to him  
2 personally to get Ziggy to flip on Tomassi. I also told him that our father was so distraught over  
3 the whole situation that he seemed to be throwing in the towel.  
4

5 ADA: How did your brother respond to that?

6 MG: At first, he cried and then he said that he'd rather rot in jail than rat on his best friend. He  
7 then instructed me to convey a certain message to Captain Kowalski in reference to what he  
8 could do to himself. He then asked me to give his love to our father and promise to look after  
9 him as he had done. As I left him, he said, "family first, little brother".

10  
11 ADA: What does that mean to you, "family first"?

12 MG: It's our family motto, something our parents taught us. It means that family is the most  
13 important thing in the world and that family must be your first consideration above everyone and  
14 everything else.

15  
16 ADA: And I take it that's something you believe as you sit here now?

17 MG: Of course I do.

18  
19 ADA: After your brother was convicted, he got 15 years in prison, didn't he?

20 MG: Yes, he did.

21  
22 ADA: And you felt that that was excessive, didn't you?

23 MG: I'll put it this way. As a member of law enforcement, I stand for what is right and for  
24 people paying for their crimes. But I also feel that the punishment should be proportionate to the  
25 crime. I have never heard of anyone with no prior felony convictions getting 15 years for  
26 Assault. I know that Ziggy got the long ride because Captain Kowalski persuaded the DA to  
27 push for the maximum because Kowalski was angry and frustrated over Ziggy's refusal to turn  
28 state's evidence against Tomassi. It was also clear to me that Captain Kowalski was obsessed  
29 with bringing down Tomassi. I remember when he asked me to work on Ziggy he said, "Your  
30 brother holds the key to Tomassi. If I get Tomassi, I'll be the next director of the State OCTF".  
31 So it was obvious that this was more about Captain Kowalski's career than doing the right thing  
32 for law enforcement. I also think Captain Kowalski was more than a little jealous of my success  
33 in Chicago. Truth be told, I didn't have a lot of respect for Captain Kowalski or for the OCTF  
34 under his leadership.

35  
36 ADA: Do you believe that Ziggy's situation caused your father to take his own life?

37 MG: It's hard for me to think otherwise.

38  
39 ADA: I'm now showing you Grand Jury Exhibit Three: this is your father's suicide note, is it  
40 not?

41 MG: (Pausing to wipe away tears) Yes, it is.

42  
43 ADA: It says, "The pain over what has happened to Zygmunt is more than I can take. I cannot  
44 go on fighting the cancer knowing that my oldest son is rotting in jail. Forgive me. Your loving  
45 father."

1 MG: Pretty much speaks for itself, doesn't it?  
2  
3 ADA: It's fair to say then that you believed that your brother got more than he deserved for this  
4 conviction?  
5 MG: Yes.  
6  
7 ADA: So 15 years is too much time for a loanshark who pistol whips an old guy who can't pay  
8 back his debts. And by the way, you do know that the guy he beat up ended up with fractures of  
9 the eye sockets, cheek bones and nose, don't you?  
10 MG: Yes, of course. I'm not saying that Ziggy should have been treated leniently for what he  
11 did. All I'm saying is that he got a lot more time because he was a stand-up guy and refused to  
12 roll over on Tomassi.  
13  
14 ADA: And you think he should be proud of that?  
15 MG: Look, I've worked with informants for years. They are nothing more than criminals who  
16 rat on their own to save their own skin. I realize it's what makes prosecutions in these kinds of  
17 cases, but I have to say that I have more respect for the ones who keep their mouths shut and take  
18 their medicine rather than the self-serving rats who roll over on their families or friends. Ziggy  
19 refused to talk and he'll be paying for it for the next several years.  
20  
21 ADA: Sounds like you're bitter?  
22 MG: Look at me. After serving my country and working in law enforcement putting my life  
23 on the line against the worst criminals, my brother's in jail, my father is dead, and I'm being  
24 accused of double crossing my fellow officers in a case where two people are dead, two major  
25 criminals have disappeared, and another crook has a sweetheart deal for saying whatever Captain  
26 Kowalski needed to hear so that they can make a case against me and make me take the fall for  
27 his colossal incompetence. It's enough to make your head spin, wouldn't you say?  
28  
29 ADA: So, to get back on track here, you were angry about your brother?  
30 MG: Yes.  
31  
32 ADA: And you were obviously upset if not devastated by what happened to your father?  
33 MG: Of course I was.  
34  
35 ADA: Bottom line, you blame Captain Kowalski for what happened to both of them?  
36 MG: I'll say this. People are ultimately responsible for their own actions. Ziggy chose a life  
37 of crime. He got caught and convicted and he's now paying the price in spades. My father  
38 chose to take his own life by overdosing on pain pills. As painful as that all is, that's what  
39 happened. But to answer your question, I'd have to say that Captain Kowalski pushed the first  
40 domino, so to speak.  
41  
42 ADA: Isn't it true that your brother told you that he felt your father killed himself because he  
43 was in jail?  
44 MG: Something like that.  
45

1 ADA: And you knew that he stayed in jail from the day of his arrest because he was being held  
2 without bail on the DA's recommendation?  
3 MG: Yes.  
4  
5 ADA: And you knew that Captain Kowalski urged the DA to recommend a no-bail status for  
6 your brother?  
7 MG: Yes, I did.  
8  
9 ADA: So, in your mind, Captain Kowalski had a direct hand in your brother's not seeing the  
10 light of day, true?  
11 MG: Yes.  
12  
13 ADA: And Ziggy told you that "somebody's gotta pay" for what happened to him and your  
14 father, didn't he?  
15 MG: He did say that, but we were talking about paying for the costs of the funeral, which were  
16 upwards of ten thousand dollars.  
17  
18 ADA: Your father had a pension, didn't he?  
19 MG: Yes, but he had no will and he set no money aside for his burial expenses. Plus, what he  
20 did have he squandered on gambling until he got too sick to get around.  
21  
22 ADA: So you claim that you and Ziggy were talking about covering funeral expenses and not  
23 making Captain Kowalski pay for what he did to your family?  
24 MG: Absolutely.  
25  
26 ADA: Let's talk about how you came to work undercover with Tomassi. Whose idea was it for  
27 you to try and get in with Rolo Tomassi after your father's unfortunate death?  
28 MG: Well, the opportunity just kind of presented itself one night while I was having a beer and  
29 watching Monday Night Football at Zeppo's Tavern.  
30  
31 ADA: Why on earth would you, as law enforcement agent, set foot in that place?  
32 MG: For one thing, I was off duty. For another, I grew up in that neighborhood and Zeppo's  
33 has always been a popular watering hole. Plus, Rolo Tomassi approached me at the funeral and  
34 suggested that I stop by some time to catch up on old times, so I took him up on his offer. By the  
35 way, I had informed Captain Kowalski of Tomassi's invitation and when he heard that, he lit up  
36 like a Christmas tree.  
37  
38 ADA: So how did the opportunity present itself?  
39 MG: As I was sitting at the bar talking to Tomassi, this guy who said he was Wally  
40 Kantorski's son staggers up to us and starts in on Tomassi about the beating his father took for  
41 not paying off his gambling debts. He kept saying, "Why didn't you call me, I would have taken  
42 care of it." Then all of a sudden he pulls out a knife and lunges at Tomassi. Fortunately, the guy  
43 was drunk, off balance and not very agile, so I was able to grab his forearm and twist his hand  
44 behind his back. I quickly hustled him outside and said, "What the hell is wrong with you, man,



1 are you out of your mind?" The guy started crying and I put him in my car and drove him home.  
2 I told him to stay the heck away from Tomassi if he wanted to stay in one piece.

3

4 ADA: What did you do then?

5 MG: I returned to Zeppo's to check in on Rolo. He was physically unhurt but still a bit shaken  
6 up. He invited me into the backroom and thanked me for saving his life. He then pulled out a  
7 bottle of vodka from his desk drawer and poured us a couple of shots. We started reminiscing  
8 about the old days and several shots later, after commiserating about my brother and father, he  
9 half-seriously suggested that I fake over Ziggy's spot in the business.

10

11 ADA: How did you respond?

12 MG: I laughed and said that I had this little problem with a job in law enforcement. Then he  
13 said, "It's perfect, you tell your bosses that you're working undercover and that you convinced  
14 me that you want to pay them back for what they did to your family". I had to admit to myself  
15 that he had a point, but I also realized that he was a criminal and that this would be a perfect  
16 opportunity to get in on the inside and help the OCTF finally make a case against Tomassi.

17

18 ADA: And you weren't the least bit conflicted about doing this given your family's history with  
19 Tomassi?

20 MG: Of course I was conflicted. I was also upset about being asked to put the heat on my  
21 brother and I was devastated by what happened to my father. But I had taken an oath to uphold  
22 the law and I knew that Tomassi was a criminal who needed to be taken down and I was in a  
23 position to help make that happen.

24

25 ADA: So what did you do?

26 MG: I informed Captain Kowalski and it was like the clouds had parted. He instructed me to  
27 tell Tomassi that I was all in and that I would be ready, willing, and able to oversee his  
28 collections operation.

29

30 ADA: Did Captain Kowalski express any reservations or concerns about your allegiances or  
31 ability to go undercover against a longtime family friend?

32 MG: If he did, he never said a word to me about it. I think he was so thrilled over the prospect  
33 of finally getting close to Tomassi that he didn't want to discourage me in any way.

34

35 ADA: How did Tomassi respond to your willingness to accept his offer?

36 MG: He also seemed thrilled but he was also very cautious. When I told him I was in, he had  
37 two of his top men, Kyser Sosay and Lyman Zyrga, frisk me like a teenager in the back seat of a  
38 car at a drive-in movie. He apologized and said that he needed to make sure that my heart was in  
39 the right place. He then said that he had a collection matter that required my immediate  
40 attention.

41

42 ADA: Tell us about that.

43 MG: He explained that one Chester Krupczyk, whom he described as a "horse-ball from way  
44 back", was long overdue on a \$5,000.00 debt that he owed. Tomassi instructed me to pay Mr.  
45 Krupczyk a visit and "make an impression" on him. He told me that he was a regular at the ATB

1 Parlor on 76<sup>th</sup> Street on the eastside of Buffalo-Niagara. Tomassi also mentioned that Lyman  
2 Zyrga would accompany me on this assignment.

3

4 ADA: So what happened?

5 MG: A few days later, Zyrga drove me in his Towne Car over to the ATB Parlor at 99 76<sup>th</sup>  
6 Street and sure enough, Chester was there. We waited for awhile until he came out and started  
7 walking toward his vehicle. Before I exited our vehicle, Zyrga put his hand on my chest. I said,  
8 “Lyman, I didn’t think you cared”, and he said, “just making sure wiseass”.

9

10 ADA: What did you do then?

11 MG: I exited the vehicle and walked up behind Krupczyk. I grabbed him firmly by the arm  
12 and said, “Walk with me”. Zyrga was following closely behind me. I escorted Krupczyk to an  
13 alleyway between two garages and I knew I had to be convincing with Zyrga looking over my  
14 shoulder. So I pushed him up against the garage wall and put the muzzle of my .38 in his mouth  
15 and said, “Mr. Tomassi tells me you owe him five grand. If it’s not paid in three days, the next  
16 time I pull the trigger”.

17

18 ADA: How did Krupczyk respond?

19 MG: After I pulled the gun out of his mouth, the poor guy started bawling and dry-heaving.  
20 He fell to his knees and said, “I swear I’ll take care of it. Please don’t hurt me, I got a family”.

21

22 ADA: What happened after that?

23 MG: Zyrga and I returned to his car. As we drove back to Zeppo’s, Zyrga started laughing and  
24 said, “I hope that bastard had a clean pair of shorts in his car”.

25

26 ADA: What, if any, arrangements did you make with the OCTF about pyment of Krupczyk’s  
27 debt?

28 MG: Well, I figured that Krupczyk wouldn’t be able to come up with that kind of money in so  
29 short a time and I also knew that if the money wasn’t paid, I would be the one who would have  
30 to “make him pay” for not paying, if you know what I mean. So Captain Kowalski authorized  
31 the release of \$5,000.00 in cash from the OCTF’s asset forfeiture fund. I then took the money to  
32 Tomassi and told him that Krupczyk was now squared up.

33

34 ADA: Did you tell Tomassi that you paid off Krupczyk’s debt with OCTF funds?

35 MG: Of course not. I was working for the OCTF, not Tomassi. Besides, I knew that Tomassi  
36 wouldn’t let Krupczyk off the hook without paying off his own debt.

37

38 ADA: Did you ever tell Krupczyk that his debt had been paid?

39 MG: I never got the chance. Unfortunately, he disappeared for awhile and just happened to  
40 resurface at the time and place of the OTB theft on July 15, 2011.

41

42 ADA: All right, let’s talk about that OTB theft. As I understand, Tomassi came up with the idea  
43 to “rob” the OTB?

44 MG: Yes. In June, 2011, he explained to me that there was this manager at the 19<sup>th</sup> Street  
45 OTB Parlor, Luther Bybel, who owed him hundreds of thousands of dollars. Bybel was not able

1 to repay the debt, but told Tomassi that he could make the money “available for the taking” from  
2 the OTB Parlor. Bybel said that if Tomassi made it look like a robbery, he would come off as an  
3 innocent victim rather than an inside thief.

4  
5 ADA: How did Tomassi say he responded to that offer?

6 MG: Tomassi said he agreed but told us that we weren’t going in simply to recoup what Bybel  
7 owed. Tomassi went on to explain that he had recently been to the doctor who informed him that  
8 he had developed Type 2 diabetes, the same medical condition that had killed his father. He  
9 said, “I’m in for one big strike and it’s off to the tropics for me”.

10  
11 ADA: Who was present when he made this statement?

12 MG: Well, I was, along with Lyman Zyrga and Kyser Sosay.

13  
14 ADA: How did Zyrga and Sosay respond?

15 MG: They were stunned. They said, “What’s going to happen to us”? Tomassi said, “After  
16 we make this strike, you’ll each get a half a million to help you figure out what to do with the  
17 rest of your lives. As for me, I’m getting out of Dodge”.

18  
19 ADA: So, what was the plan for this heist?

20 MG: Tomassi explained that we, meaning Kyser Sosay, Lyman Zyrga, and I would drive to the  
21 OTB Parlor at 111 19<sup>th</sup> Street on Friday, July 15 at 4:35 p.m. Bybel had told Tomassi that his  
22 clerk, Barbara, left every Friday at 4:30 p.m. to take her mother out for a fish fry. So, Bybel  
23 would be the only employee in the parlor at that time. We would go in, Tomassi would escort  
24 Bybel at gun point to the vault in the back room while Zyrga and I kept an eye on an customers  
25 who might be in the scene. Tomassi said that he would knock Bybel out to make it look like a  
26 robbery. After he got the money and put it in a duffel bag, he’d walk out, we would follow and  
27 then we’d all join Sosay who would be waiting down the block in his Towne Car. We would  
28 then drive to the Painted Bird Marina where we’d split up the money. Tomassi’s friend Jerry  
29 Kosinsky would then take us across the Buffalo-Niagara river in his boat, “Jerry’s Girl”, and  
30 we’d then take a car from Fort Erie to Toronto. After that, we’d split up and go our own ways.

31  
32 ADA: Did you share this information with Captain Kowalski?

33 MG: Of course I did, chapter and verse.

34  
35 ADA: What was the OCTF’s counter plan?

36 MG: We all agreed that we wanted to catch Tomassi and his crew after the theft was complete.  
37 So our plan was that OCTF agents would be stationed at various locations in adjoining and  
38 nearby stores, in cars and posing as civilians on the street. The SWAT team would be positioned  
39 on rooftops across the street. As soon as we emerged from the parlor, a team of agents would  
40 come down on us while others would surround Sosay in the getaway vehicle.

41  
42 ADA: What was the plan if they got away?

43 MG: We had agents in place at the Painted Bird, but we didn’t expect anyone to get that far.

44  
45 ADA: Were you wired for this crime?

1 MG: No. Captain Kowalski broached the idea with me and I said, "Look, we're this close to  
2 taking down Tomassi. If he frisks me again and finds a wire, everything you've been working  
3 for all these years goes out the window and I go to an early grave".  
4

5 ADA: Directing your attention to the morning of July 15, 2011, where were you and what was  
6 going on?

7 MG: The four of us were all hanging out in the back office of Zeppo's. At about 9:00 a.m.,  
8 Tomassi got a call on his cell phone from Bybel. I heard Tomassi say, "You've got to be  
9 kidding, what do we do now"? After several minutes of conversation, Tomassi hung up and  
10 said, "change of plans". He explained that Bybel had gotten a call from the OTB personnel  
11 department that the manager of the OTB branch on 76<sup>th</sup> Street had called in sick that morning  
12 and that he would have to fill in at that location. He said this actually would look better for him  
13 because it would look less like an inside job at a branch that he was asked to cover unexpectedly  
14 at the last minute. He said, "money's money, right"? So Tomassi said, "same plan, different  
15 location".  
16

17 ADA: So I imagine you took it upon yourself to notify Captain Kowalski immediately of this  
18 unexpected change in circumstances?

19 MG: If only it was that simple. First of all, Tomassi was unusually jumpy. He said he wanted  
20 us all together until it was time to head over to do the job.  
21

22 ADA: Didn't you have a cell phone on you?

23 MG: Yes.  
24

25 ADA: You could have slipped away for a moment and made a quick call or left a message  
26 couldn't you?

27 MG: Once again, given how nervous Tomassi was acting, I didn't want to do anything that  
28 would arouse his suspicion and scuttle the plan.  
29

30 ADA: You said earlier that Tomassi had suggested that you lead the OCTF to believe that you  
31 had gotten in undercover with him. So what did you tell him you were telling your superiors at  
32 OCTF?

33 MG: I simply told him to let me worry about that part and he accepted that. As far as the OTB  
34 job went, I told him that if things went as we had planned, the less the OCTF knew the better  
35 because if Bybel kept his mouth shut, no one would be the wiser.  
36

37 ADA: So what did you do to get word to Captain Kowalski about the change of plans?

38 MG: After lunch, I told Tomassi that I was really concerned about Bybel's last-minute change  
39 of plans. I said it was a little suspicious that on the very day the theft is supposed to go down, he  
40 just happens to be called to another location. I said I wanted to go over there ahead of time just  
41 to make sure that Bybel was there and everything was on the up and up.  
42

43 ADA: How did Tomassi respond?

44 MG: He said, "All right, but get back here ASAP".  
45

1 ADA: So what did you do?  
2 MG: I drove by the OTB parlor on 76<sup>th</sup> Street and observed Bybel inside through the window.  
3 Then I was about to call Captain Kowalski on my cell phone when I realized that I had left the  
4 phone in Tomassi's office. So I drove over to the OCTF office. It was around 3:45 p.m. and I  
5 was concerned about the time so I ran over to Captain Kowalski's office. He was not at his desk,  
6 and his secretary was nowhere in sight. In fact, nobody was around that I could see. I didn't  
7 want to keep Tomassi waiting any longer so I wrote out his note in a hurry, stuffed it in an  
8 envelope marked "urgent" to Captain Kowalski and left it on his desk. I then ran out and hussled  
9 it back over to Zeppo's.  
10  
11 ADA: I'm showing you Grand Jury Exhibit One, that's the envelope you left on Captain  
12 Kowalski's desk, isn't it?  
13 MG: That's correct.  
14  
15 ADA: And that's your handwriting on the envelope?  
16 MG: Yes.  
17  
18 ADA: To be more precise, you printed the words "CAPTAIN KOWALSKI" and "URGENT"?  
19 MG: Correct.  
20  
21 ADA: And you would agree that you made a point of printing these words legibly, true?  
22 MG: I don't know that I consciously thought about that but yes, the letters are printed and they  
23 are legible.  
24  
25 ADA: No mistaking what it says, is there?  
26 MG: Not as far as I'm concerned, no.  
27  
28 ADA: And again, you were in a hurry?  
29 MG: That's what I said.  
30  
31 ADA: Now, turning your attention to Grand Jury Exhibit Two, that's the note you wrote to  
32 Captain Kowalski, isn't it?  
33 MG: Yes, it is.  
34  
35 ADA: And unlike the envelope, you did not print the message on the note but instead you wrote  
36 it, didn't you?  
37 MG: Yes. Now that I look at it yes, I did write it out.  
38  
39 ADA: And do you contend that this is a true and accurate representation of your handwriting?  
40 MG: Keeping in mind that I dashed it off in a hurry, yes, that's what my writing looks like.  
41  
42 ADA: And this first word is what?  
43 MG: It's an acronym for "change of plans".  
44  
45 ADA: So that's not an abbreviation for "captain"?

1 MG: No. The abbreviation for “captain” is “c”, “a”, “p”, “t”, period.  
2  
3 ADA: And do you claim that “COP” is a common abbreviation for “change of plans”?  
4 MG: I don’t know how common it is but that is what I intended.  
5  
6 ADA: And you felt that Captain Kowalski would interpret that the same way?  
7 MG: I assumed that he would.  
8  
9 ADA: You could have simply written out the words, “change of plans”, couldn’t you?  
10 MG: I suppose so, yes, but I was pressed for time, so I didn’t give it much thought.  
11  
12 ADA: You would agree, wouldn’t you, that this was a very important message?  
13 MG: Of course.  
14  
15 ADA: I mean, you were supposedly advising your superior office of a last-minute change of  
16 plans on a big heist involving major organized crime figures, weren’t you?  
17 MG: Yes.  
18  
19 ADA: Under the circumstances, it was important to be crystal clear, wasn’t it?  
20 MG: Yes.  
21  
22 ADA: The success of the OCTF’s efforts in counteracting this crime depended on Captain  
23 Kowalski understanding your message, didn’t it?  
24 MG: And responding appropriately, yes.  
25  
26 ADA: And by “appropriately”, you mean going to the correct location and intercepting all of  
27 you as you exited the OTB parlor, hopefully without violence or bloodshed?  
28 MG: Yes, that’s true.  
29  
30 ADA: By the way, you didn’t put a period after each of the letters, “COP”, did you?  
31 MG: No, I did not.  
32  
33 ADA: And you claim that the second letter is an “o” and not an “a”?  
34 MG: Correct.  
35  
36 ADA: I see. Now, the first line of the message reads, “Strike now”. Wouldn’t you agree that  
37 the phrase “strike now” means “attack or respond immediately” as opposed to later?  
38 MG: I suppose it could mean that in a certain context, but that’s not how I intended it. What I  
39 meant was that our OTB strike is now at a different location.  
40  
41 ADA: But you didn’t say that, did you?  
42 MG: I did, but in truncated or telegraphic language.  
43  
44 ADA: Don’t you mean, “telepathic”?  
45 MG: I beg your pardon?

1  
2 ADA: Well, did you really expect Captain Kowalski to understand that the “strike”, whatever  
3 that means, “is” now someplace else when all you wrote was “strike now”?  
4 MG: In hindsight, I guess I could have been more clear by inserting “is” between “strike” and  
5 “now” but, again, I was in a hurry to get back before Tomassi got suspicious and either called it  
6 all off or got violent. And the word “strike” in my experience both in the military and in law  
7 enforcement means a coordinated hit by a group of people, in this case, by Tomassi and his crew.  
8  
9 ADA: But can’t you understand how Captain Kowalski could have interpreted your instructions  
10 as meaning that the OCTF should take action sooner than later?  
11 MG: Viewing these two words in isolation, perhaps yes. But you have to read the entire  
12 message, which says, “strike now at 76<sup>th</sup> Street branch!”  
13  
14 ADA: Wait a minute. Are you saying that the number representing the OTB address is a 76?  
15 MG: Yes, I am.  
16  
17 ADA: Now, the original location was the OTB branch at 111 19<sup>th</sup> Street, correct?  
18 MG: Yes.  
19  
20 ADA: Are you telling us that the location just happened to be changed that very day to the  
21 branch at 99 76<sup>th</sup> Street?  
22 MG: Didn’t we already talk about this? It didn’t “just happen” to be changed. Luther Bybel  
23 called that morning and informed Tomassi that he had to cover the 76<sup>th</sup> Street branch because the  
24 manager there had called in sick.  
25  
26 ADA: Quite a coincidence, wouldn’t you say?  
27 MG: Call it what you will, I’m not quite sure how it’s a coincidence.  
28  
29 ADA: Anyway, so by this note, you’re telling us that you were informing Captain Kowalski that  
30 the OTB strike by Tomassi and company was now going to take place at the 76<sup>th</sup> Street branch?  
31 MG: Yes.  
32  
33 ADA: Pretty significant change of plans, wouldn’t you agree?  
34 MG: Of course.  
35  
36 ADA: It was critical that you conveyed that information not only as soon as possible but in clear  
37 and unambiguous terms, correct?  
38 MG: As for the timing, I informed the Captain as soon as I could.  
39  
40 ADA: Well, you didn’t call him on your cell from Zeppo’s right after Tomassi informed you of  
41 Bybel’s message, did you?  
42 MG: I couldn’t. After the call, we had a long meeting and Tomassi was very nervous. I didn’t  
43 want to take the chance.  
44  
45 ADA: And is it your testimony that the number I’m now pointing to is a 76?

1 MG: Yes.  
2  
3 ADA: Do you think this is clear and unambiguous?  
4 MG: To my eyes, yes, but again, I was writing in a hurry, almost scribbling.  
5  
6 ADA: But the printing on the envelope is hardly scribbled, is it?  
7 MG: Again, after I wrote the note and put it in the envelope, I wanted to envelope to catch the  
8 captain's eye so that he got the message and read it immediately.  
9  
10 ADA: Can you understand how the captain could have interpreted this number as a 19?  
11 MG: Possibly, I guess, but what you say is a one, to me, is clearly a seven and the second  
12 number is a six and not a nine. Furthermore, I wasn't aware that poor penmanship was a crime.  
13  
14 ADA: Mr. Grabelsky, isn't it a fact that you all knew weeks before July 15<sup>th</sup> that Bybel would  
15 be at the 76<sup>th</sup> Street branch on that day and that you concocted this last-minute "change of plans"  
16 story to cover your tracks?  
17 MG: No.  
18  
19 ADA: Isn't it a fact that you were present with Lyman Zyrga and Kyser Sosay in the latter part  
20 of June when Tomassi informed you all that Bybel would be covering for the 76<sup>th</sup> Street manager  
21 who had plans to be out of town on July 15<sup>th</sup>?  
22 MG: I don't know what you're talking about. The first time Tomassi mentioned 76<sup>th</sup> Street  
23 was on the morning of July 15<sup>th</sup>.  
24  
25 ADA: Let's talk now about what happened inside the OTB on 76<sup>th</sup> Street. When you entered,  
26 you noticed that Chester Krupczyk was there, didn't you?  
27 MG: Yes.  
28  
29 ADA: Didn't it occur to you that if you paid off his debt without telling him, the debt might be  
30 paid twice if he came up with the money?  
31 MG: Well, we never got the chance to tell Krupczyk because he disappeared and I seriously  
32 doubted that he could have been able to come up with that kind of money anyway unless he hit  
33 the jackpot which, to my knowledge, he never did. But as luck would have it, the day he decided  
34 to resurface is the same day we walked into that OTB parlor where he was at the window placing  
35 a bet.  
36  
37 ADA: Another curious coincidence?  
38 MG: It is what it is.  
39  
40 ADA: So what happened when you all walked in?  
41 MG: Krupczyk looked at me and must have thought I was after him again because he got all  
42 upset and said, "please, don't hurt me. I swear I'll have the money in just a few more days", at  
43 which point Zyrga said, "what the hell is he talking about"?  
44  
45 ADA: And what did you say?



1 MG: I said, "I have no idea", whereupon I walked up to Krupczyk, put my gun in his face and  
2 said, "One more word and this time I will pull the trigger".  
3  
4 ADA: Where was Tomassi while this was taking place?  
5 MG: He had met Bybel at the window and they walked into the back room.  
6  
7 ADA: What were you doing in the meantime?  
8 MG: I stood next to Krupczyk with my gun in his ribs while Zyriga stood between me and the  
9 backroom. He kept looking at me with this quizzical expression on his face.  
10  
11 ADA: Did Tomassi eventually return from the back room?  
12 MG: Yes. He came out with a large duffle bag strapped over his shoulder. It was obviously  
13 full. He walked out very quickly and said, "Let's go". As he passed by Krupczyk, he pulled out  
14 his handgun and very matter-of-factly shot him in the abdomen, saying, "No witnesses".  
15  
16 ADA: What did you do?  
17 MG: I was in shock because in our discussions about the theft, Tomassi made it very clear that  
18 it would be "in and out" without any violence or drama. So, realizing that there were two of  
19 them and one of me, I figured we'd all walk out into a swarm of OCTF agents. Unfortunately,  
20 no one was there.  
21  
22 ADA: That's because they had gone to the branch on 19<sup>th</sup> Street, isn't it?  
23 MG: Yes.  
24  
25 ADA: And you still claim that the address you wrote in Grand Jury Exhibit Two is a 76 and not  
26 a 19?  
27 MG: Yes.  
28  
29 ADA: Yes another strange coincidence?  
30 MG: You certainly use the word "coincidence" differently than I do, but I am sorry that  
31 Captain Kowalski misread my note.  
32  
33 ADA: So after Tomassi exited, you followed him?  
34 MG: Yes.  
35  
36 ADA: But you didn't draw your gun at him and say, "Stop, police"? I mean he just shot a man  
37 right in front of you.  
38 MG: The problem was that Zyriga was behind me with a gun. If I drew my gun on Tomassi,  
39 Zyriga would have shot me in the back. In fact, when I heard the shot, I figured it was all over.  
40 Instead, I turned around and there was Zyriga on the sidewalk with a bullet wound in his  
41 backside.  
42  
43 ADA: Where was Tomassi at this point?  
44 MG: He got into Sosay's car and they took off like thieves in the night.  
45

1 ADA: What about Krupczyk?  
2 MG: He was lying on the floor of the OTB barely conscious with a gun in his hand.  
3  
4 ADA: What did you do?  
5 MG: I re-entered the parlor with my gun drawn and said, "Don't shoot, I'm a cop". Then I ran  
6 up to him, removed his handgun and said, "Man, I am so sorry, hang on, help is on the way".  
7  
8 ADA: Did he say anything?  
9 MG: He said, "I figured it was only a matter of time before you guys found me, so I got a  
10 gun". He then said, "Tell my wife I love her and I'm sorry for gambling our life away". He then  
11 fell unconscious and, unfortunately, he never came to.  
12  
13 ADA: What happened then?  
14 MG: I ran back outside to deal with Zyrga but by the time I came out, Captain Kowalski and  
15 his crew had surrounded him and secured his weapon.  
16  
17 ADA: What did Captain Kowalski say?  
18 MG: The first thing he said was, "Where's Tomassi"? I pointed down the street and said that  
19 he and Sosay had taken off in a black Towne Car a few minutes earlier. I then told him that  
20 Chester Krupczyk of all people was inside shot and bleeding and that Bybel was somewhere in  
21 the back room.  
22  
23 ADA: How did he respond?  
24 MG: He directed his crew to go inside. Krupczyk, as it turned out, was dead. Shortly after  
25 that several officers came out and said, "Captain, you've got to see this". Captain Kowalski  
26 headed inside and I started to follow and he said, "No, you stay here". He then directed other  
27 officers to take my weapon and keep me under guard.  
28  
29 ADA: What happened next?  
30 MG: A few minutes later, Captain Kowalski came out and said, "We've got a double  
31 homicide". He then turned to me with a look that could kill and said, "What the F\*\*\* just  
32 happened here", and "Why the F\*\*\* were you here on 76<sup>th</sup> Street while we were at the 19<sup>th</sup> Street  
33 branch?  
34  
35 ADA: How did you respond?  
36 MG: I was incredulous. I said, "What are you talking about? I told you in my note that the  
37 location had been changed. Didn't you read it"?  
38  
39 ADA: What did he say?  
40 MG: He said, "I read it all right. I did exactly what you told me to do and look what  
41 happened". He then said, "It's all over". He turned to me and said, "I should have known better.  
42 You're going to pay for what you did to me". He then saw that Zyrga was being lifted onto the  
43 gurney and said to the ambulance crew, "You'd better make sure he stays alive".  
44  
45 ADA: What happened then?

1 MG: I was escorted back to headquarters and while I wasn't put in a jail cell, it was clear that I  
2 wasn't free to leave. Sometime after midnight the next morning, Captain Kowalski escorted me  
3 into our conference room where he started interrogating me like a suspect. Finally, I got tired of  
4 all the accusations and asked for a lawyer.

5

6 ADA: What happened then?

7 MG: Captain Kowalski said, "This isn't over by a long shot". I said, "Unless you plan to  
8 charge me with something, I'm out of here". He then said, "Get out of my sight", at which point  
9 I got up and went home.

10

11 ADA: How did the investigation proceed from that point forward?

12 MG: A few days later, I appeared in court expecting to testify against Lyman Zyrga at the  
13 preliminary hearing but as soon as I saw the assistant D.A. and defense counsel huddling at the  
14 bench I figured something was up. Next thing I know, Zyrga waives the hearing and is escorted  
15 out of the courtroom. I heard the D.A. say to Zyrga's lawyer "I'll see you and your client in my  
16 office". I knew then that Zyrga had cut a deal to make up a story against me.

17

18 ADA: Agent Grabelsky, do you find it at all strange that Tomassi and Sosay never went to the  
19 Painted Bird Marina if, in fact, that was the plan?

20 MG: That was the plan. All I can say is that Tomassi probably figured that things weren't  
21 right with me when Krupczyk started carrying on about not paying off his debt.

22

23 ADA: Didn't you say that Tomassi was in the back room at that point?

24 MG: He and Bybel were heading that way but I wasn't paying close attention to them when  
25 Krupczyk started talking.

26

27 ADA: Mr. Grabelsky, you've been in law enforcement for many years, true?

28 MG: Yes.

29

30 ADA: If you had to make a choice between doing something illegal for your family or doing  
31 what the law required even if it hurts your family, I take it, you would break the law for your  
32 family, wouldn't you?

33 MG: Absolutely not. Family or not, I swore to uphold and enforce the law when I became an  
34 FBI agent.

35

36 ADA: True. And showing you again, Grand Jury Exhibit Three, your father's suicide note,  
37 would you please read the post script?

38 MG: It says, "As your mother and I taught you as a boy, "family first"".

39

40 ADA: Thank you. I have no further questions.

41

1  
2 Grand Jury Testimony of Captain Karl Kowalski

3 August 5, 2011

4  
5 The Witness first being sworn.

6  
7 ADA: Captain Kowalski, by whom are you employed?

8 Karl Kowalski (KK): The Buffalo-Niagara Police Department.

9  
10 ADA: What is your position in the Department?

11 KK: I am the chief of the Department's Organized Crime Task Force (OCTF).

12  
13 ADA: Please describe your duties and responsibilities.

14 KK: I supervise a team of undercover field detectives who work in conjunction with agents  
15 from the FBI, DEA and ATF investigating a wide variety of organized crime related activities.

16  
17 ADA: What types of activities?

18 KK: You name it: drug trafficking, illegal gun sales, loansharking, child pornography, robbery  
19 and homicides.

20  
21 ADA: What do you mean when you say organized crime?

22 KK: It generally refers to criminal activity that, instead of being isolated in occurrence or  
23 limited to random conduct by individuals, is part of a larger pattern of on-going criminal conduct  
24 carried out by members of a criminal group, gang or organization whose ultimate purpose is to  
25 generate revenue. There's usually some type of hierarchy or packing order of authority from the  
26 street level soldiers leading up through the ranks to captains and generals.

27  
28 ADA: Do you mean like the mafia?

29 KK: Well, that's the traditional or stereotypical model but it also includes different groups  
30 who typically share a common ethnic or racial background and who band together to one degree  
31 or another for common goals.

32  
33 ADA: And what would those goals be?

34 KK: Committing crimes and making money!

35  
36 ADA: I see. And how long have you been chief of the OCTF?

37 KK: I'm in my twelfth year as chief but I've been with the OCTF for 16 years. I was an  
38 undercover OCTF detective for four years before being promoted to chief in 1999. I was in line  
39 to be appointed to the State OCTF until this OTB case went haywire and gave our entire bureau a  
40 huge black eye.

41  
42 ADA: We'll talk about that shortly but right now, tell us about your background in the department.

43 KK: I was a precinct patrol officer for ten years.

1 ADA: So you joined the force in 1986?  
2 KK: Yes. After I graduated from Widener University with a dual degree in Criminal Justice  
3 and Psychology in 1982, I enrolled in the police academy and became a patrol officer in 1986.  
4  
5 ADA: How did you get involved in organized crime investigations?  
6 KK: I've always been intrigued with "OC", by that I mean organized crime. I got hooked  
7 when I saw the "Godfather One" in 1972 and then "Two" in 1974. Forget "Three," that was a  
8 bust. Anyway, I was always fascinated by the duality of the OC character type, you know, the  
9 loving family man who can kill without hesitation but acts like he can't believe it when  
10 someone in his family gets whacked. Anyway, as soon as I became eligible for detective rank in  
11 1990, I put in for the OCTF but didn't get in until 1996. So from 1990 to 1996 I did regular  
12 detective work. Then one of the OCTF detectives retired and I got promoted into the OCTF.  
13  
14 ADA: Did you receive any special training for this assignment?  
15 KK: Yes. The department sent me to the FBI's organized crime investigation training  
16 program for six months. I also attended seminars sponsored by DEA, ATF and the State OCTF.  
17  
18 ADA: How do "OC" undercover investigations differ from, say, regular street-crime  
19 investigations?  
20 KK: Well, the OC investigations are much more involved in terms of time, manpower, and  
21 complexity. They usually involve months of surveillance, use of undercover informants, or  
22 having our detectives infiltrate the target organization in an undercover capacity. And because  
23 the criminal activity is ongoing, the investigations go on for months and sometimes even years so  
24 that we can make the best cases against the largest number of targets.  
25  
26 ADA: What does that mean?  
27 KK: Our detectives sometimes play the role of drug dealers or buyers and in some cases they  
28 even become members of the gang or organization under investigation. Obviously, they have to  
29 be skilled at gaining the trust of the targets and, of course, if their cover is blown, it can become  
30 hazardous to their health.  
31  
32 ADA: Are you familiar with an individual by the name of Rolo Tomassi?  
33 KK: Yes, I am. He's the head of a local Eastern European gang called the White Russians.  
34  
35 ADA: But, isn't Tomasi an Italian name?  
36 KK: Yes, but his mother, Wanda Ignatowsky was Russian.  
37 ADA: How long have you had Tomassi under investigation?  
38  
39 KK: We've had him in our crosshairs for ten years off and on. We would have had him dead  
40 to rights on Felony Murder and Burglary charges had it not been for one of our detectives, Max  
41 Grabelsky, double crossing the department and disgracing his badge by purposely giving us bad  
42 information about the location of the OTB heist. Because of him, any hopes of my advancing  
43 through the OCTF ranks are gone. In fact, I'm lucky I still have a job in law enforcement.  
44

1 ADA: I'd like to ask you some questions about your department's investigation of Rolo  
2 Tomassi. First of all, how did he become a target of an investigation?  
3 KK: Well, it actually goes back to his father, Zeppo Tomassi who ran a very lucrative sports  
4 gambling business and loan sharking operation out of his bar, Zeppos Tavern over on the east  
5 side of the city. He'd been arrested a few times in the early 1980's on charges of Promoting  
6 Gambling, but he was acquitted every time he went to trial. He got sick in the late 1980's and  
7 died from complications due to diabetes. That's when Rolo, his only son, took over the  
8 operation.  
9  
10 ADA: What kind of activity was he involved in?  
11 KK: Rolo took over where his father left off and took the business to a much higher level.  
12  
13 ADA: How do you mean?  
14 KK: His father was never really into drug dealing except for a little marijuana and cocaine  
15 here and there, but nothing substantial as far as we could tell. But Rolo had his people moving  
16 significant amounts of cocaine in the streets. He also stepped up the loan sharking activity.  
17  
18 ADA: In what way?  
19 KK: Putting a lot more money out on the street and coming down on the dead beats a lot  
20 swifter and harder than his father ever did. I mean there were guys beaten to within an inch of  
21 their lives because they couldn't pay what they owed. The problem was, they were all too  
22 frightened to identify their assailants or cooperate with the DA.  
23  
24 ADA: Were you ever able to make any cases of substance against Tomassi or any of his people?  
25 KK: Yes we did. In 2006, we were able to bring felony Assault and Weapons charges against  
26 Tomassi's right hand man and chief enforcer, Ziggy Grabelsky. As luck would have it, an  
27 eyewitness observed Grabelsky and another one of the White Russians pistol whipping this guy,  
28 Wally Kantorsky, who had failed to pay an \$8,000.00 debt. The witness was a single guy with  
29 no family who was willing to testify as long as we promised to provide him with protection and  
30 relocate him after the trial which we did. He testified and Ziggy got convicted of both counts.  
31  
32 ADA: Did you attempt to use this case as leverage against Grabelsky to persuade him to roll  
33 over on Tomassi?  
34 KK: Before the trial, the DA told him and his lawyer that if he got convicted of Assault we  
35 would press the judge to give him the maximum of 25 years in jail. If he agreed to cooperate, the  
36 offer was to a misdemeanor with a minimum sentence recommendation of two years.  
37  
38 ADA: How did he reply?  
39 KK: He pretty much told us to shove it. I wasn't all that surprised since he and Tomassi grew  
40 up together. They went to the same high school, played sports together and have always been  
41 like brothers. If it wasn't for Tomassi, Grabelsky probably would've been permanently  
42 unemployed.  
43  
44 ADA: So what happened with Grabelsky?

1 KK: After he was convicted, we went back to him and his lawyer and said if he agreed to  
2 cooperate against Tomassi, we would ask the DA to recommend a sentence of no more than  
3 seven years in jail. We even had his brother, Max Grabelsky, who had just gotten transferred  
4 and assigned to our bureau from Chicago, speak to him but it was no use. Ziggy just wouldn't  
5 budge.  
6  
7 ADA: So how did you respond?  
8 KK: I told the prosecutor that this was our first major conviction against the White Russians and  
9 we needed to make a strong statement. So, the DA recommended the maximum of twenty-five  
10 years.  
11  
12 ADA: What sentence did he receive?  
13 KK: The judge did not impose the maximum since he did not have any prior felony conviction.  
14 But he did give him 15 years which is still a pretty big hit for a non-homicide offense.  
15  
16 ADA: You said that Max Grabelsky was transferred to your unit?  
17 KK: Yew. He came on board in 2006 after serving as an undercover agent in Chicago for  
18 several years. He had put in for the transfer because his father, Edward Grabelsky, was stricken  
19 with lung cancer in late 2004 and he had no one to take care of him after Ziggy went to prison.  
20 The DA was able at my urging to persuade the judge to remand him without bail with the result  
21 that he sat in jail from the day he was arrested.  
22  
23 ADA: How well did you know Agent Grabelsky when he came over to your unit?  
24 KK: I had met him after he graduated from the FBI Academy and just before he was assigned  
25 to Chicago. He wanted in the worst way to work in Buffalo-Niagara, but the bureau doesn't  
26 assign their new agents to work in their home towns right out of the academy. From what I  
27 heard, he had been involved in a long-term undercover investigation of Eastern European  
28 Organized Crime (EEOC) in the Chicago area that resulted in several of EEOC's main players  
29 getting convicted of Racketeering and Extortion charges. As I understand, the bureau offered  
30 him a big promotion with a transfer to Washington, D.C., but he chose to come to Buffalo  
31 because of his father's condition.  
32  
33 ADA: How did Agent Grabelsky get assigned to your OCTF?  
34 KK: When he returned to Buffalo, the bureau detailed him to my unit as part of our joint task  
35 force with the FBI, DEA, and ATF.  
36  
37 ADA: And how did he get in with Rolo Tomassi?  
38 KK: As I said earlier, we had been trying for years to make a case against Tomassi but aside  
39 from a few nickel and dime busts against some of his street guys, we were never able to get to  
40 him. Then, when Ziggy Grabelsky got busted, I thought we might be able to make some  
41 headway by putting the squeeze on him. I thought that Agent Grabelsky would be the perfect  
42 person to talk some sense into his brother but Ziggy wanted no part of it. Then, not long after  
43 Ziggy was sentenced in 2007, Agent Grabelsky told me that he believed that he had a way to get  
44 inside the White Russians' organization.  
45

1 ADA: Did he explain what he meant?  
2 KK: Yes. He told me that he had stopped in Zeppo's Tavern when this drunk guy who  
3 claimed to be Wally Kantorski, Jr. came in and pulled a knife on Tomassi. Agent Grabelsky  
4 disarmed the guy and took him outside. He then drove the guy home and told him to stay away  
5 from Tomassi unless he wanted to end up like his father.  
6  
7 ADA: So how did this lead to Agent Grabelsky's going to work for Tomassi?  
8 KK: Grabelsky stated that Tomassi expressed his gratitude by saying that he wanted to repay  
9 him for saving his life. At that point Grabelsky said that a light had gone off in his head and he  
10 saw this as the perfect opportunity to get in with Tomassi.  
11  
12 ADA: Did he explain how?  
13 KK: Yes. He said he and Tomassi went into the back room and started doing shots of Stoli  
14 and reminiscing about the old days in the neighborhood. He told Tomassi that he and his older  
15 brother Ziggy were his heroes when they played football and lacrosse for Saint Stanislaus High  
16 School. He then told Tomassi how angry he was with the OCTF for sticking it to his brother.  
17 He told him he didn't appreciate being put in the middle of the whole thing when he was asked  
18 to lean on his brother to roll over on Rolo. He also told Tomassi that his brother's going to jail  
19 for fifteen years on an Assault charge had put their father in an early grave. As it happened, after  
20 Ziggy was sentenced, his father killed himself by overdosing on pain pills. The guy had terminal  
21 cancer as it was.  
22  
23 ADA: How did Tomassi respond to Agent Grabelsky's remarks?  
24 DD: According to Grabelsky, Tomassi half-jokingly said, "Why don't you work for me?"  
25 When Grabelsky reminded him that he worked for OCTF, Tomassi replied "It's the perfect  
26 cover. You tell them you're working undercover trying to get to me and meanwhile you'll keep  
27 me one step ahead of the law." Grabelsky said he'd bet back to him.  
28  
29 ADA: How did you respond to this information?  
30 KK: Quite honestly, I saw it as our first real opportunity to get close to Tomassi. I instructed  
31 Agent Grabelsky to tell Tomassi that he was on board and that he should offer to supervise his  
32 loan sharking operation and see to it that the authorities never got too close like they did with  
33 Ziggy.  
34  
35 ADA: After Agent Grabelsky got inside, how did things develop?  
36 KK: Well, Agent Grabelsky informed me that Tomassi first had his henchmen frisk him for a  
37 wire. He then informed him that he had a collection job to do for him as a sign of good faith. He  
38 explained that this deadbeat gambler, Chester Krupczyk was long overdue in repaying a  
39 \$5,000.00 debt.  
40  
41 ADA: How did the OCTF handle this situation?  
42 KK: After Agent Grabelsky filled me in on the particulars, I arranged for him to take  
43 \$5,000.00 in cash from our asset forfeiture fund and to bring it to Tomassi as proof that the  
44 collection had been made.  
45



1 ADA: And how did that work out?  
2 KK: Agent Grabelsky informed me that he had to make it look real when he confronted  
3 Krupczyk about his past due balance. He also said that after he gave Tomassi the \$5,000.00, he  
4 felt a little more confident that Tomassi trusted him.  
5  
6 ADA: Was this or any other transaction involving Agent Grabelsky recorded?  
7 KK: No. Agent Grabelsky made it very clear that wearing a wire would be too dangerous.  
8 When I asked him to consider it, he said "He frisked me once, he could do it again."  
9  
10 ADA: Let's turn now to the OTB homicide. How did that whole thing come about?  
11 KK: It galls me just to think about it. In early June of 2011, Agent Grabelsky reported that  
12 Rolo Tomassi had learned that he had contracted type two diabetes just as his father had. He  
13 said that he'd be damned if he was going to die in Buffalo-Niagara like his father did so he  
14 decided he wanted to hit one big score and retire to the Islands.  
15  
16 ADA: Did Tomassi ever say what "Islands" he was talking about?  
17 KK: No.  
18  
19 ADA: Did Grabelsky tell you what "big score" Tomassi had in mind?  
20 KK: Yes. Grabelsky explained that one Luther Bybel, the manager of the OTB branch parlor  
21 on 19<sup>th</sup> Street, had agreed to make the safe at his branch "accessible" to Tomassi to satisfy a  
22 significant gambling debt that Bybel could not repay. Bybel informed Tomassi that it would be  
23 better for him if the heist looked like a robbery rather than an inside job.  
24  
25 ADA: So what was the plan as explained by Agent Grabelsky?  
26 KK: Tomassi, Grabelsky and Lyman Zyrga, another one of Tomassi's people, would enter the  
27 OTB parlor at 111 19<sup>th</sup> Street in Buffalo-Niagara at 4:35 p.m. on Friday July 15, 2011 while  
28 Luther Bybel was on duty and just after the clerk, Barbara Ganoush, left as she always does on  
29 Fridays to take her elderly mother out for a fish fry. Another Tomassi gang member, Kyser  
30 Sosay, would be waiting in the getaway car a few parking spaces away from the entrance to the  
31 OTB parlor. Once inside, Tomassi would escort Bybel at gunpoint into the back office where the  
32 safe was located. Then, after Bybel opened the safe, Tomassi would hit him over the back of the  
33 head hard enough to knock him out and "cloud" his memory and make it look like a robbery.  
34 Zyrga and Grabelsky were supposed to cover any customer who might also be inside the parlor.  
35 After the theft, they were going to drive to the Painted Bird Marina, which is owned by  
36 Tomassi's friend Jerry Kosinski. They would divide up the money and Kosinsky would then  
37 transport them across the Buffalo-Niagara River on his boat. Once they got across to Fort Eric,  
38 Canada, they would then drive to Toronto and then split up from there and go their separate  
39 ways.  
40  
41 ADA: What was the OCTF plan for apprehending Tomassi and his cohorts?  
42 KK: Since it was an inside job, we were confident that there would not be any violence, at  
43 least not inside the OTB Parlor itself. So our plan was to have several of our undercover officers  
44 who would be waiting in vehicles and in nearby stores swoop in on the defendants just as they  
45 exited the parlor. At the same time, other officers would block in Sosay's vehicle and converge

1 on him with weapons drawn from both sides. We also had a team of agents stationed at the  
2 Painted Bird marina just in case they got away. I figured that after we arrested Tomassi, Zyrga  
3 and Sosay, we would nip Bybel as soon as he learned that our agent was aware of his  
4 involvement right from the starting gate, no pun intended. Unfortunately, as it turned out, it was  
5 Tomassi who was playing Grabelsky while Grabelsky was playing us.  
6

7 ADA: How do you mean?

8 KK: Well, Tomassi and Sosay got away and disappeared with about two and a quarter million  
9 dollars in cash, two people are dead and Agent Grabelsky has the satisfaction of knowing that he  
10 made it all happen so he could get back at me and the OCTF for going hard after his brother  
11 which he believes caused his father to take his own life.  
12

13 ADA: Please explain to the Grand Jury what you mean when you say that Agent Grabelsky  
14 “made it all happen.”

15 KK: As I stated earlier, Grabelsky had informed us all along that the theft was going to take  
16 place on Friday July 15, 2011 at 4:35 p.m. at the OTB Parlor located at 111 19<sup>th</sup> Street in  
17 Buffalo-Niagara. At about 3:50 p.m. on that day, out of the blue, I saw this note on my desk  
18 addressed to my attention.  
19

20 ADA: What do you mean, “out of the blue”?

21 KK: Well, I had gone to the lavatory to deal with an irritable bowel situation which I  
22 attributed to nerves. It gets to be a real problem whenever I get nervous, like just before an  
23 arrest, or when I have to testify in court. Like today, I was getting ready to come in here, when .  
24 . .  
25

26 ADA: Captain Kowalski, can we just stick to what happened on July 15<sup>th</sup>?

27 KK: Oh, yeah, sure. I was exiting the lavatory which is next to my office and was headed for  
28 our briefing room on the second floor where my OCTF agents were waiting for my final  
29 instructions before we hit the street. As I passed by my office, I noticed on my desk this  
30 envelope that wasn't there when I left my office ten minutes earlier. I picked it up and saw that  
31 it was addressed to my attention.  
32

33 ADA: I'm showing you Grand Jury Exhibit One for identification. Can you identify it?

34 KK: Yes. That's the envelope that was on my desk.  
35

36 ADA: I'm now showing out Grand Jury Exhibit Two for identification. Can you identify it?

37 KK: That's the note that was inside the envelope.  
38

39 ADA: What does it say on the envelope?

40 KK: It says, “Captain Kowalski, Urgent.”  
41

42 ADA: Do you recognize the handwriting?

43 KK: Yes. It's Agent Grabelsky's.  
44

45 ADA: How do you know?

1 KK: I've seen his handwriting many times on his signed police reports and on memos to  
2 myself or to other detectives.  
3  
4 ADA: I'm again showing you Grand Jury Exhibit Two. Do you recognize the handwriting on  
5 this document?  
6 KK: Yes. It's Agent Grabelsky's.  
7  
8 ADA: Would you read it for the Grand Jury?  
9 KK: Yes. It says "Cap-Strike now at 19<sup>th</sup> Street Branch!". His initials, "MG" are at the  
10 bottom.  
11  
12 ADA: Do you know what "Cap" means?  
13 KK: Yes. It's an abbreviation for Captain. My detectives frequently call me "Cap". When I  
14 was lieutenant, they called me "Lou" as is short for lieutenant.  
15  
16 ADA: How did you interpret the message, "Strike now at 19<sup>th</sup> Street Branch?"  
17 KK: I took it to mean that, for whatever reason, the heist had been pushed back in time so we  
18 need to get over to the OTB Parlor right away instead of later.  
19  
20 ADA: Did you consider the possibility that the message was that the location of the heist had  
21 been switched to the 76<sup>th</sup> Street branch of the OTB?  
22 KK: No. If you look at the numbers, the first number is a one and the second number is a  
23 nine.  
24  
25 ADA: What about the first letters, did you consider the possibility that they could stand for  
26 "change of plans"?  
27 KK: First of all, the second letter is an "a", not an "o". Secondly, I don't know anyone who  
28 abbreviates "change of plans" as COP or any other way, for that matter. How would I know  
29 what that means? Besides, even if it was short for "change of plans", the change, as far as I  
30 could tell, was to the time, not the location.  
31  
32 ADA: So the number, in your view, is "19" not "76"?  
33 KK: I don't see how that number can be anything other than "19".  
34  
35 ADA: Did you consider the possibility that the number is "76"?  
36 KK: No. The thought never crossed my mind.  
37  
38 ADA: But there is an OTB Parlor on 76<sup>th</sup> Street, isn't there?  
39 KK: Of course there is. As we all know, this theft went down at the OTB Parlor at 99 76<sup>th</sup>  
40 Street while we were picking our noses outside the 19<sup>th</sup> Street Parlor. Just as Agent Grabelsky  
41 obviously intended.  
42  
43 ADA: Well, Agent Grabelsky's intentions are for the Jury to determine.  
44 KK: I'm sorry. I just get so upset when I think about what happened. Two people are dead.  
45 Tomassi got away with murder and all because one of our detectives sent us on a wild goose

1 chase. In hindsight, I should have seen the signs but it never occurred to me that an officer of the  
2 law would betray the badge like this.  
3  
4 ADA: What signs are you talking about?  
5 KK: For starters, when I first approached Agent Grabelsky about persuading his brother to  
6 give up Tomassi, he said that the whole thing made him very uncomfortable because Ziggy was  
7 family and Tomassi had always looked out for him. But I reminded him that since Ziggy had  
8 already been convicted, he was looking at significant jail time. So, his cooperation could only  
9 serve to help him by reducing his exposure.  
10  
11 ADA: How did he respond to that?  
12 KK: He said, "I understand but you've got to appreciate the awkward position that I'm in."  
13 Nevertheless, he assured me that he knew what he had to do and later on when he talked about  
14 how he could turn the lifesaving incident into an opportunity to get close to Tomassi, I believed  
15 him. Or I should say I wanted to believe him because I saw it as my first real opportunity in such  
16 a long time to bring Tomassi down.  
17  
18 ADA: What other signs of his betrayal were there?  
19 KK: Well, even after he proved his mettle with Tomassi with the \$5,000 "collection" from  
20 Krupczyk, Agent Grabelsky still refused to even consider wearing a wire. If he had been wired  
21 on July 15<sup>th</sup>, we would've known that morning that the OTB site had been changed. Instead, he  
22 leaves me this cryptic note at the last minute which obviously he had to do otherwise he would  
23 have had no explanation for leaving us in the dark. Of course, we now know that they were  
24 planning to hit the 76<sup>th</sup> Street Parlor for weeks.  
25  
26 ADA: Anything else that, in retrospect, should have warned you about Agent Grabelsky?  
27 KK: The coup de grace was his father. After he killed himself in 2009, I attended the funeral  
28 and overheard Agent Grabelsky talking to his brother Ziggy who had obtained court permission  
29 to attend the service under police guard. When Agent Grabelsky asked me to intercede and  
30 obtain the DA's consent to his brother's release under guard, I relented in the faint hope that he  
31 still might persuade his brother to give up Tomassi. Anyway, I was standing in the crowd  
32 outside Saint Casimir's Church behind the Grabelsky brothers as their father's casket was lifted  
33 into the back of the hearse. Once the back door was closed, Ziggy turned to his brother and said,  
34 "Max, this would never have happened if I'd have been home. Somebody's gotta pay and you  
35 know what I'm talking about."  
36  
37 ADA: What, if anything, did Agent Grabelsky say in reply?  
38 KK: I heard him whisper back, "Don't worry, I'll take care of it."  
39  
40 ADA: Did you confront Agent Grabelsky about this?  
41 KK: As we left the funeral, I kind of off-handedly asked him what his brother was carrying on  
42 about. He said that Ziggy was worried about the costs of the funeral because their father had no  
43 burial funds set aside and he was in no position to do anything because he was in jail. Foolishly,  
44 I accepted his explanation at face value.  
45

1 ADA: Now, turning your attention to July 15<sup>th</sup>, after reading the note from Agent Grabelsky  
2 what did you do?  
3 KK: I rushed to the briefing room and immediately advised our team of detectives and agents  
4 of the time change and told them to get over to the 19<sup>th</sup> Street branch immediately. I arrived on  
5 site about 4:10 p.m. We all took our positions outside the parlor and waited.  
6  
7 ADA: What happened then?  
8 KK: Well, nothing. After about 25 minutes with no sign of the vehicle that Agent Grabelsky  
9 told us to be on the lookout for, I started to get a bad feeling. Then I got a transmission from  
10 dispatch that 911 had just received a call from an unknown caller about people with guns at the  
11 OTB Parlor on 76<sup>th</sup> Street. Apparently, someone had walked up to the front door and looked  
12 inside the parlor and turned away when he saw Agent Grabelsky and Lyman Zyriga inside with  
13 weapons.  
14  
15 ADA: What did you do then?  
16 KK: I immediately got on the police radio and advised my team to abort this stakeout and  
17 high-tail it over to the 76<sup>th</sup> Street branch.  
18  
19 ADA: How long did it take to get there?  
20 KK: About 10 to 15 minutes.  
21  
22 ADA: What did you observe when you arrived?  
23 KK: Several officers who had arrived just before me were converging with guns drawn on  
24 Lyman Zyriga who was lying face down on the sidewalk just outside the front entrance of the  
25 OTB Parlor. One of our officers picked up a pistol that was lying on the sidewalk in front of  
26 Zyriga just out of his reach. As I got closer to him, I could see a lot of blood on the seat of his  
27 pants. He was moaning and complaining “he shot me in the ass.”  
28  
29 ADA: What about Agent Grabelsky, where was he?  
30 KK: He was inside the parlor kneeling down next to a man who was lying down on the floor  
31 motionless in a fetal position with blood on his abdomen. I noticed there was a revolver on the  
32 floor next to him.  
33  
34 ADA: Did you come to learn the identity of that man?  
35 KK: Yes. It was Chester Krupczyk of all people. Apparently, he was there placing a bet when  
36 the heist went down. I guess old habits die hard.  
37  
38 ADA: What did you do when you entered the parlor?  
39 KK: I shouted to Agent Grabelsky, “what the hell is happening here?” and he said, “call an  
40 ambulance.” He also said, “the manager’s in the back room.”  
41  
42 ADA: What did you do at that point?  
43 KK: It was chaotic. I wasn’t sure what to think but out of caution, I instructed my detectives  
44 to call an ambulance while I collected the gun and to kept a close watch on Agent Grabelsky.  
45

1 ADA: Why did you tell them that?  
2 KK: Because while part of me wanted to believe that this was all a big mistake, another part of  
3 me suspected that somehow Grabelsky was in on it.  
4  
5 ADA: Did you go into the back room?  
6 KK: First I picked up the gun that was on the floor next to Krupczyk and tagged it.  
7  
8 ADA: What do you mean when you say you “tagged it”.  
9 KK: Well, I put a tag with my initials on it so that I would know that it was the gun that I  
10 picked up off the floor. I kept it with me until I got back to the precinct. When I got back, I put  
11 it into the evidence locker.  
12  
13 ADA: I’m showing you what has been marked as Exhibit 3. Do you recognize this?  
14 KK: Yes, it’s the gun that I picked up off the floor in the OTB on June 15<sup>th</sup>.  
15  
16 ADA: How do you know it’s the same gun?  
17 KK: Because it’s still got my tag on it.  
18  
19 ADA: O.K., let’s go back to the day of the robbery. After picking up the gun, what did you do?  
20 KK: I and several officers went into the back room and just inside the vault we found the  
21 manager, Luther Bybel lying face down on the floor with his head and neck twisted at a very  
22 unnatural angle.  
23  
24 ADA: Was he alive or dead?  
25 KK: He had no pulse. He wasn’t breathing.  
26  
27 ADA: So what happened then?  
28 KK: The ambulance personnel and crime scene investigators arrived on the scene and I went  
29 out front to have a few words with Agent Grabelsky.  
30  
31 ADA: What did you say to him?  
32 KK: I said, “What the hell just went down? Why were we on 19<sup>th</sup> Street while you were here,  
33 and where the hell is Tomassi?”  
34  
35 ADA: What did he say?  
36 KK: He said, “What are you talking about, I told you that the plans had been changed.” I  
37 replied, “You didn’t say anything about a change in locations.” And he said, “The hell I didn’t.”  
38  
39 ADA: Do you know where Tomassi and Sosay were at that point?  
40 KK: I sure as hell do not. I radioed the OCTF team that was at the painted Bird Marina but  
41 they saw no signs of them. It was like they disappeared into thin air.  
42  
43 ADA: And where was Zyrge when you had this confrontation with Agent Grabelsky?  
44 KK: At the curb on a gurney getting lifted into the back of an ambulance.  
45

1 ADA: Did you speak with him after he was taken to the hospital?  
2 KK: Yes. Later that evening after he underwent surgery to remove the bullet from his  
3 posterior. I approached him in his hospital room and told him that he was going down for two  
4 counts of Felony Murder and he should tell us where to find Tomassi and Sosay if he wanted any  
5 hope of not going to jail for the rest of his life.  
6  
7 ADA: How did he respond?  
8 KK: He said, "I don't know a damn thing. I want to talk to my lawyer."  
9  
10 ADA: Did you talk to Agent Grabelsky again after you left the scene of the crime?  
11 KK: Yes. Later that evening, I interviewed him in the presence of several other OCTF agents.  
12  
13 ADA: What did he say?  
14 KK: He kept insisting that he had informed me of the last-minute change of location and that I  
15 must have misread his note.  
16  
17 ADA: Did you believe that you misread the note?  
18 KK: There's no way I misread that note.  
19  
20 ADA: Did you ask Agent Grabelsky what happened when he and the others went into the OTB?  
21 KK: Yes. He said that Tomassi walked up to Bybel with a gun pointed and said, "show me  
22 your safe." Agent Grabelsky and Zyrnga covered a customer who happened to be Chet Krupczyk.  
23 As soon as Krupczyk saw Agent Grabelsky, he started apologizing frantically for not being able  
24 to pay back the \$5,000.00 that he owed. Before he could finish, Agent Grabelsky told him to  
25 shut his mouth or he'd blow his head off. A few minutes later, Tomassi returned with a duffle  
26 bag and said, "let's get out of here." As Tomassi headed for the door, he shot Krupczyk in the  
27 abdomen saying, "we don't need any eyewitnesses." At that point, Agent Grabelsky headed out  
28 the door followed by Zyrnga. Grabelsky said he expected the OCTF to be all over them but they  
29 were nowhere in sight as Tomassi was getting into the waiting car occupied by Sosay. Then, as  
30 Zyrnga was leaving the OTB parlor, a shot rang out from inside and Zyrnga fell to the ground,  
31 dropping his gun. Agent Grabelsky ran back inside to find Krupczyk laying there bleeding and  
32 nearly unconscious with a gun in his hand. Ever since Grabelsky braced him over the \$5,000.00,  
33 he had taken to carrying a gun for protection. Before expiring, Krupczyk said, "He didn't have  
34 to shoot me, I just needed a little more time." By that point, OCTF arrived on the scene and  
35 converged on Zyrnga. Tomassi and Sosay were nowhere in sight.  
36  
37 ADA: Did you believe Agent Grabelsky's story?  
38 KK: I believe that things probably went down in that parlor more or less as he described but I  
39 wasn't sure what to believe about why things went so wrong that day. At least not until I got the  
40 full story from Lyman Zyrnga.  
41  
42 ADA: How did that come about?  
43 KK: We had filed a felony complaint charging Zyrnga with Felony murder, Burglary and Theft.  
44 Several days later, just before the preliminary hearing, the ADA informed me that Zyrnga's

1 attorney had approached her and said that Zyrga had some very interesting information about  
2 Agent Grabelsky that he would provide if the right deal could be reached.

3  
4 ADA: So what happened?

5 KK: We all went to the DA's office where Zyrga's attorney made a proffer of information and  
6 then an agreement was reached whereby Zyrga would waive his preliminary hearing, waive  
7 immunity and testify in the grand jury against Agent Grabelsky, Kyser Sosay and Rolo Tomassi  
8 in exchange for which he would be allowed to plead guilty pursuant to a Common Pleas Court  
9 Complaint to First Degree Burglary and receive a sentence of 10 years in jail instead of being  
10 indicted for Felony Murder and facing a sentence of up to 25 years to life. Of course, he would  
11 have to testify against Grabelsky at trial and against Tomassi and Sosay if they were ever  
12 apprehended.

13  
14 ADA: So what did Zyrga say about Agent Grabelsky's involvement in the OTB theft?

15 KK: He said that Agent Grabelsky had made it very clear that he believed that his father killed  
16 himself because he was so distraught over his oldest son Ziggy's being sentenced to 15 years in  
17 jail. Grabelsky also said that the OCTF never should have forced him to squeeze his own brother  
18 whom he felt had gotten a much longer ride than he should have because he was a stand-up guy.  
19 So when Rolo came up with the plan to do an inside job at the OTB, Agent Grabelsky said he  
20 would do his part to make sure that they got away with it and that Captain Kowalski and the  
21 OCTF ended up with egg on their face.

22  
23 ADA: What was it about Zyrga's information that convinced you that Agent Grabelsky had  
24 double-crossed the OCTF?

25 KK: Zyrga informed me that, in late June 2011, Tomassi had informed all of them, including  
26 Agent Grabelsky, that Luther Bybel would be at the 76<sup>th</sup> St. OTB branch to cover for another  
27 employee who was planning to take the day off. Instead of telling me right away of this change  
28 in location, Grabelsky waited to the last minute to leave me this note. It was just a cover he used  
29 to make it look like he was keeping us informed. Plus, the D.A. subpoenaed records from  
30 JetBlue Airlines and the Golden Nugget Hotel in Las Vegas that corroborated Zyrga's  
31 information about Bybel's planning back in June 2005 to cover for the 76<sup>th</sup> Street OTB manager  
32 on July 15, 2011.

33  
34 ADA: Were you expecting to hear from Agent Grabelsky at some point on July 15<sup>th</sup>?

35 KK: Yes. Since he refused to wear a wire, I told him to call me that day as early as possible to  
36 verify that everything was still on for later that afternoon. When I didn't hear from him by mid-  
37 afternoon, I started to get worried. Then, of course, I got that note and shot right over to 19<sup>th</sup>  
38 Street.

39  
40 ADA: When you interviewed Agent Grabelsky, what did he tell you about what happened on  
41 July 15, 2011 regarding the location of the robbery?

42 KK: He said that Bybel had called Tomassi on the morning of July 15<sup>th</sup> to inform him that the  
43 76<sup>th</sup> Street had called in sick and that he had to cover for him. Bybel said there would be a lot of  
44 money there in the vault so they could go ahead with the plan. Tomassi was concerned about the  
45 last-minute change so he directed everyone to stay together, just in case.



1  
2 ADA: So how did Grabelsky say he was able to get away later in the day?  
3 KK: He said he told Tomassi that he was concerned based on Bybel's sudden change of plans  
4 that Bybel was getting cold feet or maybe was setting them up so he wanted to go over to the 76<sup>th</sup>  
5 Street OTB Branch ahead of time to make sure that he would actually be there. Tomassi bought  
6 the story and Agent Grabelsky said he used that opportunity to drop off the note.  
7  
8 ADA: At the time, did you believe that part of his story?  
9 KK: I believed that he dropped off the note, but I couldn't understand why he didn't call me  
10 and inform me of the change. Of course, after Zyrge came clean, it became clear that this was all  
11 part of his plan to mislead us while appearing to keep us informed.  
12  
13 ADA: Speaking of Zyrge, after he provided this information, what investigative steps did you  
14 take?  
15 KK: The next day we executed a search warrant for Agent Grabelsky's apartment.  
16  
17 ADA: What, if anything, did you find there?  
18 KK: In the top drawer of his bedroom nightstand we found a note to Agent Grabelsky from his  
19 father. We also found some old photographs with handwritten captions on a page that appeared  
20 to have been removed from a photo album.  
21  
22 ADA: Showing you Grand Jury exhibit three, can you identify this?  
23 KK: Yes. That's the note that we found in the drawer. (whereupon the note was read to the  
24 Grand Jury).  
25  
26 ADA: Showing you Grand Jury exhibit four, can you identify these items?  
27 KK: Yes. These are the photos that were on the page that we found in Agent Grabelsky's  
28 dresser drawer. (Whereupon the page of photographs was shown and the captions were read to  
29 the Grand Jury).  
30  
31 ADA: Do you recognize the handwriting under the photos?  
32 KK: Yes. It's Agent Grabelsky's. (Whereupon the page of photographs was shown and the  
33 captions were read to the Grand Jury).  
34  
35 ADA: Getting back for a moment to July 15, 2011, what investigative steps did you take to  
36 ascertain the movements and whereabouts of Tomassi and Sosay after the theft?  
37 KK: We went to the Painted Bird Marina and interviewed Jerzy Kosinski and we checked with  
38 Canadian authorities in Fort Erie and Toronto to see if anyone had spotted them or the vehicle.  
39 Unfortunately, Kosinski acted like he didn't know what we were talking about and there were no  
40 reports of any Tomassi or Sosay sightings on either side of the Buffalo-Niagara river.  
41  
42 ADA: But didn't Agent Grabelsky tell you that their plan was to leave the country by crossing  
43 the Buffalo-Niagara River in Kosinski's boat?  
44 KK: That's what he told us but I suspect that this was just more misdirection on his part.  
45

1 ADA: All right captain. Those are all the questions I have. At this time, I'm going to excuse  
2 the witness and read excerpts from Grand Jury exhibits five and six to the Grand Jury. Starting  
3 with exhibit five which is a certified copy of the autopsy report of the Buffalo Niagara Medical  
4 Examiner Isadore Fershiznik who states that the cause of death of Luther Bybel was asphyxiation  
5 due to fracture of the hyoid bone. Grand Jury exhibit six is a certified copy of an autopsy report  
6 of Dr. Fershiznik pertaining to Chester Krupczyk. The report lists Mr. Krupczyk's cause of  
7 death as internal hemorrhaging secondary to gunshot wound of the abdomen. That will conclude  
8 the proceedings for today.

9  
10  
11  
12  
13  
14  
15 **Grand Jury Testimony of Lyman Zyrga**  
16 **August 8, 2011**

17  
18  
19 The witness first being duly sworn:

20  
21 ADA: Mr. Zyrga, do you swear before this Grand Jury and in the presence of your attorney to  
22 waive immunity from prosecution in this investigation into the deaths of Chester Krupczyk and  
23 Luther Bybel in connection with the theft of in excess of two million dollars from the 76<sup>th</sup> Street  
24 OTB Parlor on July 15, 2011?

25 Lyman Zyrga (LZ): Yes, I do.

26  
27 ADA: And are you testifying in exchange for any benefit to yourself, either received or  
28 promised to you by the prosecution in this case?

29 LZ: Yes. In exchange for my cooperation and truthful testimony against Agent Max Grabelsky  
30 and against Kyser Sosay and Rollo Tomassi if they are ever apprehended, I have been allowed to  
31 plead guilty to Burglary in the First Degree instead of Felony Murder. The District Attorney's  
32 Office has also promised me that they will recommend and the judge has agreed that I will  
33 receive a sentence of ten years in prison instead of the maximum possible sentence of twenty-  
34 five years to life that I could have gotten if I had been convicted of Felony Murder.

35  
36 ADA: Other than this conviction, do you have a criminal record?

37 LZ: How far back do you want to go?

38  
39 ADA: Let's start at the beginning. First of all, how old are you?

40 LZ: I'm 49 years old.

41  
42 ADA: When was your first run-in with the law?

43 LZ: When I was 13, I was adjudicated a juvenile delinquent in Family Court. I had dropped  
44 out of school and run away from home. I was then arrested for Drug possession. Then, when I  
45 was 15, I got arrested and was charged as a juvenile offender with Robbery. A few friends and

1 me beat up this kid and stole his bike. My case got transferred to Family Court and I was sent to  
2 juvenile detention for a few months followed by 18 months probation. Then, when I was 16, I  
3 got arrested for Unauthorized Use of a Motor Vehicle but I got youthful offender status for that  
4 and six months in jail.

5

6 ADA: Sounds like a pretty eventful childhood.

7 LZ: Well, I never met my father. And my mother, God rest her soul, was an alcoholic and a  
8 prostitute. So I didn't have a lot of adult supervision. Unless of course, you consider Zeppo  
9 Tomassi a father figure.

10

11 ADA: How do you mean?

12 LZ: As you can see, I was going nowhere fast when I was a teenager. I happened to know his  
13 son Rolo Tomassi from the old neighborhood on the East side and he introduced me to his father.  
14 Zeppo offered me a job as a barback at his tavern. One thing led to another and after a couple of  
15 years, I took on other responsibilities.

16

17 ADA: Such as?

18 LZ: I went from barback to short order cook to bartender and when I got a little older I  
19 became one of his debt collectors.

20

21 ADA: Meaning what?

22 LZ: If someone owed Zeppo money and was behind in his payments, I was one of the guys  
23 who applied the muscle to make sure the guy paid up.

24

25 ADA: And if he didn't?

26 LZ: We'd make them regret they ever borrowed money from Mr. Tomassi. More often than  
27 not, they paid up eventually.

28

29 ADA: How many people did you beat up over unpaid debts over the years?

30 LZ: Let's just say if I were one to keep notches on my belt for every no-load I roughed up, I'd  
31 have gone through quite a few belts.

32

33 ADA: What kind of business did Zeppo Tomassi run, exactly?

34 LZ: Big time sports betting including horse racing, college and professional football,  
35 basketball, boxing, you name it. And because he made so much money, he became a well-  
36 known loan shark on the East side of Buffalo-Niagara.

37

38 ADA: How well did you know Rolo Tomassi?

39 LZ: Pretty well. As I said, he was the one who introduced me to his father. But Rolo didn't  
40 get into his father's line of work until quite sometime after I did. Rolo was a great three-sport  
41 athlete in high school. Football was his best sport. He had all kinds of big name schools after  
42 him until he blew out is knee at the end of his senior year. He tried rehab for awhile, but that  
43 didn't work out so instead of becoming a football star, he eventually came to work for his father.

44

45 ADA: What did Rolo do for his father?

1 LZ: A little bit of everything. You could see that he was bitter over missing his big  
2 opportunity in sports but he made the most of his opportunities in the world of sports betting and  
3 loan sharking.

4

5 ADA: How do you mean?

6 LZ: He was very eager to learn all about the business but he was impetuous and  
7 unpredictable. While his father was much more laid back and low key, Rolo was less patient  
8 with the deadbeat debtors and far more aggressive and violent than his father would have liked.

9

10 ADA: Can you give an example?

11 LZ: Well there was this guy whose father used to work with Zeppo back in the day before he  
12 opened the tavern. The buy was behind in repaying a significant debt and he pleaded with Zeppo  
13 for more time pointing out how his father and he had been friends. Zeppo gave him an extension  
14 but the next day Rolo caught up to him and beat the living daylights out of the guy, saying,  
15 “Don’t you ever take advantage of my father’s good nature again. If you don’t pay up, I’ll kill  
16 you and your old man.” Needless to say, the guy found the money and paid up sooner than  
17 Zeppo had expected.

18

19 ADA: What about Ziggy Grabelsky, Did you know him?

20 LZ: Oh yeah. He was Rolo’s sidekick since they were kids. They were classmates in  
21 grammar school and in high school and they played together on the football, wrestling and  
22 lacrosse teams. I think Rolo’s knee injury was the best thing that ever happened to Ziggy  
23 because it forced Rolo to stay in town and Ziggy sure wasn’t going anywhere on his own. He  
24 was a decent athlete but he wasn’t in Rolo’s league by a long shot. So, when Rolo went to work  
25 for his father, Ziggy was right there with him. Always the wing man.

26

27 ADA: What kind of work did Ziggy do for Zeppo?

28 LZ: Mostly debt collection.

29

30 ADA: How did Rolo come to take over his father’s business?

31 LZ: Zeppo had always been sickly with diabetes. His drinking didn’t do much to help his  
32 condition either. In the late 1980’s, he got progressively worse. First he had his right leg  
33 amputated below the knee. Then he lost his vision and eventually his vital organs just shut  
34 down. Rolo was just devastated. His father was his biggest fan and he wanted in the worst way  
35 for his son to find success as an athlete. Unfortunately, fate stepped in and Rolo had to take over  
36 for his father. I remember Rolo saying at Zeppo’s funeral that he was going to step up the  
37 business, make a fortune and get out of town. He said, “I missed my chance after high school  
38 but I’ll be damned if I spend the rest of my life in the bar business here in Buffalo-Niagara.” So  
39 we all figured he was a short timer and we were all surprised that he stayed as long as he did.

40

41 ADA: So what did he do with the business?

42 LZ: He just made it more active, more professional and much more lucrative than his father  
43 ever did. It was just a much tighter ship.

44

45 ADA: How so?

1 LZ: As we made more and more money in the sports betting operation, he amped up the loan  
2 sharking end of things and made sure we got the word out that “no unpaid debt would go  
3 unpunished.” That was how we rolled. If somebody was a day late, we’d pay a visit and make  
4 him regret it big time. Eventually, almost everybody found a way to pay up on time and the  
5 business grew by leaps and bounds. Plus, we also ratcheted up the drug dealing end of the  
6 business. Where Zeppo was always uncomfortable with the drugs, Rolo had no qualms about it  
7 whatsoever. Consequently, we were rolling in it hand over fist.

8  
9 ADA: Did you or anyone in the White Russians organization ever get arrested for your  
10 activities?

11 LZ: First of all, that term “White Russians” is what you guys in law enforcement called us.  
12 Not all of us are White, and not many of us are Russian. But yes, occasionally people would get  
13 pinched on drug weapons charges but nothing of any real significance until “Dim Ziggy” as I  
14 like to call him got busted for Assault.

15  
16 ADA: What about you, did you ever get busted?

17 LZ: Not for anything like that. I got arrested for felony drug possession in 1999. I remember  
18 “Captain Kowalski and the Keystone Kops” as we used to call the OCTF police, squeezed me  
19 real hard to roll over on Rolo Tomassi but I had no part of it. As it turned out, my lawyer got the  
20 evidence suppressed and the case got dismissed anyway.

21  
22 ADA: Had you informed Tomassi about Captain Kowalski’s attempts to flip you against him?

23 LZ: Of course I did. If he had found out from some other source and I hadn’t come clean, I  
24 would’ve been making collections at the bottom of the Buffalo-Niagara River.

25  
26 ADA: How did Tomassi treat you after that?

27 LZ: I remember while my case was still pending, he had Kyser Sosay frisk me a few times to  
28 make sure I wasn’t wearing a wire. Of course, I wasn’t. After that, he was very cautious but  
29 eventually things got back to normal, as best as I could tell.

30  
31 ADA: What do you remember about what happened with Ziggy Grabelsky’s case?

32 LZ: I think it was in 2003. There was this deadbeat gambler, Wally Kantorski who owed  
33 Rolo just under \$10,000. He was a friend of Zeppo’s who played that card one too many times  
34 with Rolo. Finally, Rolo said, “enough’s enough, old Walter needs to get the message that I’m  
35 not playing anymore.” So, Ziggy and I confronted him one night and gave him a beating like  
36 you wouldn’t believe. I punched him hard in the stomach and Ziggy started pistol whipping him  
37 until he looked like Rocky after the tenth round with Apollo Creed. But there was no reason to  
38 use a handgun because there were two of us and Wally was an old-timer anyway.

39  
40 ADA: So how did Ziggy get caught?

41 LZ: As Ziggy was laying into Wally, I hear this guy’s voice saying, “Hey, what are you  
42 doing? Leave him alone!” Ziggy ran after the guy and I went for the car to pick up Ziggy after  
43 he took care of the witness. Unfortunately, the eyewitness got away and later picked Ziggy out  
44 of a photo array and Ziggy got busted. Using the handgun really made matters that much worse

1 for him, I think. But that was Ziggy. Always trying to show off for Rolo. In my opinion, Ziggy  
2 got what he deserved for being so stupid and for not being able to catch the witness.  
3

4 ADA: After Ziggy got busted, was Tomassi aware that Captain Kowalski was trying to put the  
5 squeeze on Ziggy to get to Tomassi?

6 LZ: Of course he was. In fact, I went to visit Ziggy at the Holding Center several times while  
7 his case was pending. Rolo couldn't go because it wasn't safe for him to be seen meeting with  
8 Ziggy directly. So I went and Kyser went on his behalf. Anyway, Ziggy told me that Kowalski  
9 was all over him like a pit bull on a hambone and that he told him to go take a piss up a drain  
10 pipe. I wasn't surprised to hear him say that because everybody knew that he wouldn't ever  
11 rollover on Rolo.  
12

13 ADA: How's that?

14 LZ: Loyalty. Ziggy may not have been the brightest bulb in the box but he treated Rolo like  
15 his big brother. I suspect he would've taken a bullet for him rather than give him up. But I'm  
16 not so sure Rolo would've done the same.  
17

18 ADA: Why do you say that?

19 LZ: Because although Rolo loved Ziggy like a brother, in the end, Rolo was for Rolo. He was  
20 always the star and it was always about him. Look what he did to me. When I got shot, he never  
21 even looked back. He just jumped into that car and he and Sosay took off like a couple of bats  
22 out of hell.  
23

24 ADA: Do you know where they ended up?

25 LZ: No I don't. Someplace tropical and warm was all I could gather from our discussions  
26 about the ATB deal.  
27

28 ADA: What about you, where were you headed had you not been rear-ended, so to speak?

29 LZ: Real funny. My plan was to go to Toronto and lie low there for awhile at the home of my  
30 twin brother, Hyman and eventually catch a flight under an assumed identity to our family's  
31 home town in the old country. Unfortunately, that no-account, deadbeat Krupczyk shot me before  
32 he bought the farm.  
33

34 ADA: Speaking of Krupczyk, were you present when Max Grabelsky pressed him for the money  
35 he owed Tomassi?

36 LZ: Yes I was. It was Grabelsky's first assignment for Tomassi. Kind of a "prove you're for  
37 real" thing. And I have to say, Max made his brother look like an amateur.  
38

39 ADA: How do you mean?

40 LZ: Ziggy was all about putting the hurt on the deadbeats and leaving the scars to prove he  
41 meant business. Max could get his point across without leaving a scratch. When we caught up  
42 with Krupczyk, Grabelsky grabbed him very forcefully and calmly put the muzzle of his gun into  
43 his mouth and said, "if the money's not paid in three days, the next time, I pull the trigger."  
44 Krupczyk fell to his knees and started bawling like a baby.  
45

1 ADA: How did Grabelsky react to what he had just done?  
2 LZ: He acted like he enjoyed it. As we were driving back to the tavern we were laughing and  
3 joking about how Krupczyk's eyes popped when Grabelsky stuck the gun barrel in his mouth.  
4  
5 ADA: Let's talk about Max Grabelsky's first conversation with Rolo Tomassi about going to  
6 work for Tomassi. How did that come about?  
7 LZ: It was a Monday night in the fall of 2007 as I recall. We were hanging out at the bar  
8 watching football when out of the blue, in walks Agent Grabelsky. I remember commenting to  
9 Kyser Sosay at the time, "What's this, a one man raid"? Anyway, he sits down at the bar, orders  
10 a beer and he and Rolo started talking. Sometime later, this drunk guy who identified himself as  
11 Wally Kantorski, Jr. comes in and starts in on Tomassi about his father being put in the hospital  
12 over his overdue debt. He kept saying, "You could've called me. I would've taken care of it.  
13 Now my father's blind in one eye". He then pulled a knife out of his jacket. Sosay and I ran  
14 toward him but we were at the other end of the bar. The guy lunged at Rolo but all of a sudden,  
15 quick as lightening, Max Grabelsky grabbed the guy's arm and twisted it behind his back until he  
16 dropped the knife.  
17  
18 ADA: What happened then?  
19 LZ: Grabelsky escorted the buy outside, still holding him in a hammer lock and Sosay and I  
20 followed.  
21  
22 ADA: What did you do?  
23 LZ: We weren't quite sure exactly what to do, with Grabelsky being a cop and all. Anyway,  
24 he says, "I'll take care of this", and then he put the guy in his car and drove away. As he pulled  
25 off he said, "I'll be back".  
26  
27 ADA: When did you see him again?  
28 LZ: Later that night. He returned to the bar to check in on Tomassi who was a little stressed  
29 over the whole thing. One thing about Rolo, he was real tough when he had a weapon or was  
30 surrounded by his entourage, but when he got caught unawares, he was a real coward. Needless  
31 to say, he really ripped into Sosay and me over this whole incident.  
32  
33 ADA: So what happened when Grabelsky came back?  
34 LZ: It was like a scene from the Prodigal Son. Grabelsky said, "I don't think he'll be coming  
35 back", and Tomassi gave him a big hug and took him into the back office. He told Kyser to grab  
36 a bottle of vodka and bring it over. He then poured shots for all of us and said, "Here's to Max  
37 for saving my life". As we got near the bottom of the bottle, Tomassi said, "If only your big  
38 brother could have run that kind of interference for me when we were playing football". We all  
39 started to laugh because that's what we did when Rolo said something that he thought was funny.  
40 The problem was, Max wasn't laughing at that point.  
41  
42 ADA: What was he doing?  
43 LZ: He said, "Sorry, Rolo, but after what they did to my brother, I don't see anything to laugh  
44 about as far as Ziggy and my father are concerned". That kind of put a damper on all the laughs.  
45 Anyway, Rolo said, "I'm sorry Max. I'm just grateful for what you did out there for me. It just

1 reminded me of how your big brother always had my back”. That pissed me off to no end  
2 because Rolo always gave that moron Ziggy far more credit than he ever deserved. Damn  
3 Grabelskys. After all, it was his own stupidity that landed him in jail. But all Max wanted to talk  
4 about was how the OCTF had stuck it to Ziggy for refusing to roll over on Tomassi.  
5  
6 ADA: And how did Tomassi respond to that?  
7 LZ: He said, “Well, maybe we can make them pay for what they did to your family”.  
8  
9 ADA: What did Grabelsky say in response?  
10 LZ: He said, “What have you got in mind”? Tomassi then said, “You take your brother’s  
11 place in our operation and you tell those lame brains at OCTF that you’ve gotten inside”.  
12 Tomassi said it was the perfect set-up. Grabelsky would feed them bullshit information while  
13 “running interference” for him.  
14  
15 ADA: How did Grabelsky respond?  
16 LZ: He didn’t say much. He just looked very serious and said, “Let me think this thing  
17 through when my head is clear and I’ll get back to you”.  
18  
19 ADA: And did he get back to him?  
20 LZ: A couple of days later he came back and told Tomassi that he was in. Tomassi said,  
21 “Great, you’ll start right away. I’ve got a little collection job that needs your immediate  
22 attention”. He was referring to the Krupczyk matter we already talked about.  
23  
24 ADA: Did Tomassi have you or Sosay frisk Grabelsky before you and he went off on this  
25 assignment?  
26 LZ: No he didn’t. In fact, one time I asked him if he really trusted Grabelsky and he said,  
27 “He may be a cop, but the OCTF destroyed his family and where we come from, family always  
28 comes first”.  
29  
30 ADA: You said earlier that the plan was for Grabelsky to give the OCTF bogus information  
31 while running interference for Tomassi, what kind of information did he give them?  
32 LZ: Well for one thing, during our early discussions, Grabelsky said that his captain would  
33 expect him to wear a wire and Tomassi told him, “Tell him that I had you frisked and that it was  
34 too dangerous”. For another, the information about the OTB job going down at the 19<sup>th</sup> Street  
35 branch was changed to the 76<sup>th</sup> Street branch, but Grabelsky never passed that on to his bosses at  
36 the OCTF.  
37  
38 ADA: When was the location changed?  
39 LZ: I remember it was right around the last week of June. Tomassi told us that Luther Bybel  
40 had just informed him that the manager of the 76<sup>th</sup> Street OTB branch, Harry Gondorff, told him  
41 (Bybel) that he (Gondorff) would need coverage at his branch on Friday, July 15, 2011 because  
42 he had airline tickets and reservations in Las Vegas for a weekend gambling junket at the Golden  
43 Nugget Hotel. Bybel said that he expected to be assigned to the 76<sup>th</sup> Street branch because OTB  
44 had sent him there in the past whenever Gondorff was off.  
45



1 ADA: How did this affect the plans regarding the heist?  
2 LZ: Other than the change in location, not at all, really. Tomassi said that Bybel assured him  
3 that there would be several million in the vault on 76<sup>th</sup> Street because that branch did just about  
4 the same amount of business as the 19<sup>th</sup> Street location.  
5  
6 ADA: Who was present when Tomassi relayed this information from Bybel?  
7 LZ: Me, Kyser Sosay, and Max Grabelsky.  
8  
9 ADA: Is there any doubt in your mind that Grabelsky was present for this conversation?  
10 LZ: None whatsoever. In fact, I remember him asking Rolo how this affected our plans and  
11 Tomassi related Bybel's assurances about the money in the 76<sup>th</sup> Street vault.  
12  
13 ADA: So what was Grabelsky's plan with respect to his superiors at OCTF?  
14 LZ: He said that in order to carry this thin off while appearing to keep the OCTF in the loop,  
15 he would wait as long as possible and then give them some bullshit information about the details  
16 of the theft.  
17  
18 ADA: What details was he talking about?  
19 LZ: He was a little cagey about that. All he said was that he would take care of it so that we  
20 would have enough time to get in and get out and disappear before the OCTF realized that they  
21 were at the wrong place. It would've worked if Krupczyk hadn't shot me.  
22  
23 ADA: At any time between late June when Tomassi informed you all about the change in  
24 location and July 15, 2009, did Tomassi ever indicate that the plans to hit the 76<sup>th</sup> Street branch  
25 on July 15<sup>th</sup> were uncertain or subject to confirmation by Bybel?  
26 LZ: No.  
27  
28 ADA: And, focusing specifically on July 15, 2011, do you have any knowledge of Luther  
29 Bybel's calling Rolo Tomassi that morning to report a last minute change in location from 19<sup>th</sup>  
30 Street to 76<sup>th</sup> Street?  
31 LZ: No. Like I said, that change had been made a couple of weeks earlier.  
32  
33 ADA: So there were no meetings on the morning of July 15<sup>th</sup> where Tomassi informed you all of  
34 the change in location?  
35 LZ: No.  
36  
37 ADA: So then, what was the plan for the OTB theft?  
38 LZ: The plan was that Sosay would wait for us in the car a few doors away and we would all  
39 walk in the 76<sup>th</sup> Street branch at around 4:35 p.m. which, according to Bybel, would be a quiet  
40 time because it was coming up on the dinner hour. Tomassi would escort Bybel in the back  
41 room where the vault was located, go inside and load up a duffle bag that Bybel made available.  
42 Grabelsky and I would watch any customers and cover the door while Tomassi was collecting  
43 the loot.  
44  
45 ADA: So what happened when you entered the OTB?

1 LZ: Bybel was at the window waiting on a customer who turned out to be Chester Krupczyk  
2 of all people. Tomassi pointed a gun at Bybel and said, “Let’s go to the back room”. As they  
3 headed toward the back room, Krupczyk looks at us and starts babbling on about not being able  
4 to get the money he owed. I asked Grabelsky, “What the hell is he talking about”? Grabelsky  
5 just put the gun in his face and said, “One more word and I’ll pull the trigger”. It was déjà vu all  
6 over again.

7  
8 ADA: By the way, was there any discussion in your planning of this heist that anyone would be  
9 killed?

10 LZ: The only violence that was part of the plan was that Tomassi would “knock out” Bybel to  
11 make it look like a robbery, but Bybel knew that was coming. He said, “With all the money I  
12 owe you guys, I’d rather wake up with a bad headache than not at all”. So, the guns we all had  
13 were for show to make it look like a robbery and Tomassi told us, “No gunfire unless it’s  
14 absolutely necessary”. Little did I know that Tomassi didn’t trust Bybel to keep his mouth shut.  
15 And as for Krupczyk, he was in the wrong place at the wrong time. I, for one, was shocked  
16 when Tomassi pulled the trigger and shot Krupczyk because he was the one who had said, “No  
17 violence unless it’s absolutely necessary”.

18  
19 ADA: What happened after Tomassi shot Krupczyk?

20 LZ: He headed out the door with the duffle bag over his shoulder and Grabelsky followed  
21 right behind him. I then walked out behind Grabelsky and just as I passed through the open  
22 door, I heard a gunshot followed by this tremendous burning sensation in my left buttock. I fell  
23 forward to the ground and dropped my gun out in front of me.

24  
25 ADA: Where was Tomassi at that point?

26 LZ: He was getting into the passenger side door of Sosay’s car. I called out, “I’m hit”, but he  
27 didn’t so much as turn around. That just confirmed what I’ve always believed about Tomassi.  
28 Rolo was all about Rolo.

29  
30 ADA: And you don’t know where he went?

31 LZ: Well, the plan was for all of us to go to the Painted Bird Marina boathouse, which is  
32 owned by Tomassi’s friend, Jerry Kosinski, down along the Buffalo-Niagara River. We were  
33 supposed to divide up the money and then Jerry was going to drive us on his boat across the river  
34 just past Raspberry Island over to Fort Erie, Canada.

35  
36 ADA: What about customs?

37 LZ: If you drive by car across the War and Peace Bridge, you have to pay a toll and go  
38 through customs. But if you cross the river by boat, like a lot of fishermen do, you’re supposed  
39 to call customs on your radio and they send a border patrol officer to meet you at whatever dock  
40 you land at. It’s an honor system but a lot of boaters don’t do it. Of course, we weren’t going to  
41 call customs.

42  
43 ADA: So what was the plan once you got to the other side?

44 LZ: We were going to drive to Toronto in a car that Jerry had already lined up for us in Fort  
45 Erie. Once we got to Toronto, it was everyone for himself. As for Rolo, all he said was that he

1 was going to the islands. Sosay said nothing about his plans and I already told you where I was  
2 headed.

3

4 ADA: What about Grabelsky?

5 LZ: He said he was going to meet up with some woman named Phyllis in Toronto and then  
6 work his way back to the states through Michigan and eventually find his way over to Chicago.  
7 He said something about having a son there that he hadn't seen in quite awhile.

8

9 ADA: Did he express any reservations about the idea of living life on the lam as a wanted  
10 criminal?

11 LZ: He didn't like it at all but he said that after what they did to his family he was completely  
12 disillusioned. As for not getting caught, he said that no one knew more about blending in than he  
13 did.

14

15 ADA: Did Tomassi say why he was willing to leave behind his life in Buffalo-Niagara? After  
16 all, by all accounts it was pretty lucrative, wasn't it?

17 LZ: Like I said, he had always carried on about missed opportunities on account of his knee  
18 injury. He really believed that he could've become a major college football player and then a  
19 star in the NFL. He saw it as his ticket out of Buffalo-Niagara. Then, when he got injured, those  
20 dreams went down the drain. But what really got him going was when he found out that he had  
21 diabetes. That's when he decided he needed to hit a big score and leave town.

22

23 ADA: What about Zeppos Tavern?

24 LZ: In early June, 2011, he transferred the business to his uncle who also happened to be his  
25 namesake. That way, anyone checking the records of the business would still see the name "Rolo  
26 Tomassi" as owner and operator.

27

28 ADA: Okay. Thank you, that's all I have.

29 LZ: Not a problem.

30