

A REPORTER AT LARGE

IPHIGENIA IN FOREST HILLS

Anatomy of a murder trial.

BY JANET MALCOLM

I
At around three in the afternoon on March 3, 2009, in the fifth week of the trial of Mazoltuv Borukhova—a thirty-five-year-old physician accused of murdering her husband—the judge turned to Borukhova's attorney, Stephen Scaring, and asked a pro-forma question. "Do you have anything else, Mr. Scaring?" The trial was winding down. Two defense witnesses had just testified to Borukhova's good character, and Scaring was expected to rest his case with their modest, believable testimony. Scaring replied, without any special emphasis, "Yes, Your Honor. I think Dr. Borukhova will testify in her own defense."

There was no immediate reaction in the half-filled courtroom on the third floor of Queens Supreme Court, in Kew Gardens. Only after Borukhova had walked to the witness stand and taken the oath did the shock of Scaring's announcement register. The mouth of one of the spectators—that of the victim's younger brother—fell open, as if to mime the astonishment that ran through the room.

Borukhova had sat at the defense table throughout the trial and during the hearings that preceded it, writing on legal pads and occasionally looking up to whisper something in Scaring's ear or to exchange a charged glance with her mother and two sisters, who always sat in the second row of spectator seats. She was a small, thin woman of arresting appearance. Her features were delicate and her skin had a gray pallor. At the hearings, she was dressed in a mannish black jacket and a floor-length black skirt, and she wore her long, dark, tightly curled hair hanging down her back, bound by a red cord. She looked rather like a nineteenth-century woman-student revolutionary. For the trial proper (perhaps on advice), she changed her ap-

pearance. She put her hair up and wore light-colored jackets and patterned long skirts. She looked pretty and charming, if undernourished. When she took the stand, she was wearing a white jacket.

Scaring, a tall, slender man of sixty-eight, is a criminal-defense attorney of renown on Long Island. He has a reputation for taking cases that seem unwinnable—and winning them. But the Borukhova case had special difficulty. For one thing, Borukhova was not the only defendant; she was being tried together with Mikhail Mallayev, the man accused of killing her husband for her. Scaring wasn't defending him, however; a younger lawyer named Michael Siff was Mallayev's court-appointed counsel, and Siff did not have Scaring's capacity for performing impossible feats. Mallayev was likely to be convicted—there was strong forensic and eyewitness evidence against him—in which case Borukhova would have to be convicted, too, because of an unbreakable link to him: cell-phone records had established that in the three weeks preceding the murder there were ninety-one calls between her and Mallayev.

Another obstacle in the way of Scaring's game attempt to rescue Borukhova from life in prison was the lead prosecutor, Brad Leventhal, who does not have Scaring's experience—he is twenty years younger—but is an exceptionally formidable trial lawyer. He is a short, plump man with a mustache, who walks with the darting movements of a bantam cock and has a remarkably high voice, almost like a woman's, which at moments of excitement rises to the falsetto of a phonograph record played at the wrong speed. He uses his hands when he speaks, sometimes rubbing them in anticipation, sometimes throwing them up in gestures of helpless agitation. In his winter outer-



Mazoltuv Borukhova and Mikhail Mallayev in Queens Supreme Court, where they were tried for the murder of Borukhova's husband, Daniel Malakov.



JAMES MESSERSCHWIDT/POLARIS

wear—a black calf-length coat and a black fedora—he could be taken for a Parisian businessman or a Bulgarian psychiatrist. In the courtroom, in his gray suit with an American-flag pin in the lapel, and with his Queens-inflected speech, he plays the role of Assistant District Attorney for Queens (he is also the borough's chief of homicide) to the hilt. The second chair at the prosecution's table was filled by Donna Aldea, an attractive young Assistant D.A. with an incandescent smile and a steely mind, who comes from the appellate division. Leventhal relied on her for producing unanswerable arguments on points of law.

2

In his opening statement, Leventhal, standing directly in front of the jury and speaking without notes, set the scene of the murder—which occurred on October 28, 2007—in the manner of an old-fashioned thriller:

It was a bright, sunny, clear, brisk fall morning, and on that brisk fall morning a young man, a young orthodontist by the name of Daniel Malakov, was walking down 64th Road in the Forest Hills section of Queens county just a few miles from where we are right now. With him was his little girl, his four-year-old daughter, Michelle.

Malakov, Leventhal continued, had left his office, full of waiting patients, to bring the child to a playground, a block away, for a day's visit with her mother, "his estranged wife," Mazoltuv Borukhova. Then, "as Daniel stood outside the entrance to Annandale Playground, just feet from the entrance to that park, just feet from where his little girl stood, this defendant Mikhail Mallayev stepped out as if from nowhere. In his hand he had a loaded and operable pistol." When Leventhal uttered the words "this defendant," he theatrically extended his arm and pointed across the room to a thickset man in his fifties with a gray beard and heavy, dark eyebrows, wearing wire-rimmed eyeglasses and a yarmulke, who sat impassively at the defense table. Leventhal went on to describe how Mallayev shot Malakov in the chest and in the back, and, as the orthodontist "lay on the ground dying, his blood pouring from his wounds, saturating his clothing and seeping onto the cement, this man, the defendant, who ended his life, calmly and coolly took his gun, put it into his jacket,

turned away and headed up 64th Road towards 102nd Street and fled the scene." With agitated, outstretched hands, Leventhal asked the jury:

Why? Why would this defendant lie in wait for an unsuspecting and innocent victim? A man, I will prove to you, he didn't even personally know. Why would he lie in wait with evil in his heart?

Leventhal answered the question:

Because he was hired to do it. He was paid to do it. He's an assassin. A paid assassin. An executioner. A hit man. For who? Who would hire this man, this defendant to murder in cold blood an innocent victim in the presence of his own daughter? Who could have such strong feelings towards Daniel Malakov that they would hire an assassin to end his life? Who?

Leventhal walked toward the defense table and again lifted his arm and pointed—this time at Borukhova. "Her," Leventhal said, his voice rising to its highest pitch. "The defendant Mazoltuv Borukhova, Daniel Malakov's estranged wife. The woman with whom he had been engaged in an ongoing and heated, contentious, acrimonious divorce for years."

Leventhal spoke for fifty minutes more, the spell of his storytelling occasionally broken by objections from the opposing attorneys but always restored by the power of his narration. Most of these objections were overruled by the judge, who repeatedly told the jury, "What they say in their opening statement is not evidence."

What they say in their opening statement is decisive, of course. If we understand that a trial is a contest between competing narratives, we can see the importance of the first appearance of the narrators. The impression they make on the jury is indelible. An attorney who bores and irritates the jury during his opening statement, no matter what evidence he may later produce, has put his case at fatal risk.

Leventhal was followed by Siff, who bored and irritated the jury to the point that a young juror raised his hand and asked to go to the bathroom. Siff, guilelessly, began by complimenting Leventhal on his performance: "Excellent presentation by the lawyer. Excellent advocate for the county." And, "Mr. Leventhal did an awesome job. I'm sitting here now looking at my notes and I was amazed how he could just reel off all that stuff without a

paper." He went on to give a floundering, meandering speech about the "presumption of innocence" in which "my client is cloaked" that only underscored the likelihood of Mallayev's guilt.

Scaring's culminating bad break was to draw Robert Hanophy as his trial judge. Not many acquittals have occurred in Hanophy's courtroom. In a 2005 article, a *Daily News* reporter named Bob Port wrote that Hanophy is known as Hang 'em Hanophy and "is widely believed to have imprisoned more murderers than any sitting judge in the United States." "I don't have anything else but homicides," Hanophy told Port. "That's all I try. I like what I do. I love it."

Hanophy is a man of seventy-four with a small head and a large body and the faux-genial manner that American petty tyrants cultivate. From his dais he looks out over the courtroom, taking in every spectator as well as every actor in the drama being played out under his direction. "You there with the cap," he will raise his voice to say to a spectator. "Take it off. You can't wear that in here." In 1997, Hanophy was censured by the New York State Commission on Judicial Conduct for making "undignified, discourteous and disparaging remarks" and being "mean-spirited" and "vituperative" during a sentencing. But a document of censure has no consequences. Hanophy's absolute power remains unchanged, and he continues to exercise it with evident enjoyment, and without any sign of doubt.

3

Scaring's courtroom manner is low-key and courtly and touched with a certain hauteur. He wears the customary lawyer's pin-striped suit, but when he gets up to examine a witness he does not rebutton the jacket the way lawyers on television do (and the way Siff does). Scaring moves with elegant ease and speaks in a soft, benign voice—until, during a cross-examination, he makes the obligatory accusatory turn. Then he permits his voice to rise and his tone to take on a nasty edge. He has a little gray in his black hair and his swarthy face sometimes looks haggard. He has a sweet smile. His hearing isn't good.

Scaring began his kindly, almost tender examination of Borukhova with a series of biographical inquiries. Her answers

established that she had been born in Uzbekistan, in the former Soviet Union, and had lived in the city of Samarkand, where she went to high school and then to medical school, from which she received a degree in general medicine and surgery at the age of twenty-two. Scaring did not ask Borukhova about her religion. Trial lawyers are storytellers who try to keep the lines of their stories straight and clean. The story of the Bukharan Jewish sect, to which the defendants and the victim and their respective families belonged, is a maddeningly complex and untidy one.

The untidiness begins with their origin. No one really knows how or why or when these mysterious Jews came to Central Asia. Legend has it that they are descendants of the lost tribes of Israel who never returned from Babylonian captivity in the sixth century B.C. Histories of the sect are tangled accounts of stubborn survival over two thousand years under Persian, Mongol, Arab, Imperial Russian, and, finally, Soviet Russian rule. The term “Bukharan Jews” is said to have been coined by European travellers to the region in the sixteenth century. The language, Bukhori, developed as a dialect of the Tajik-Farsi language into a mixture of Farsi, Hebrew, and Russian. In the nineteen-seventies, large numbers of Bukharan Jews immigrated to Israel and the United States, and after the breakup of the Soviet Union nearly all the Bukharan Jews remaining in Central Asia left for these countries. Today, there are a hundred thousand Bukharan Jews in Israel and sixty thousand in the United States—most of them living in the Forest Hills-Rego Park section of Queens.

Under Scaring’s examination, Borukhova related—in accented and slightly imperfect English—that she had come to the United States in 1997, studied English for a year, and then taken her medical boards, followed by a three-year residency at a hospital in Brooklyn; in 2005, she became licensed to practice, and in 2006 she became board-certified. Scaring then turned to Borukhova’s marriage to Daniel Malakov, in 2002. “How did you get along with your in-laws?” he asked.

“There was a problem to begin with,” she replied.

“What was the problem?”

“They never wanted us to get married.”

Earlier, her father-in-law, Khaika

Malakov, had testified for the prosecution. He is a tall, vividly handsome man of sixty-eight who has something of the louche emotionality of a character in an Isaac Bashevis Singer story. Scaring, attempting in his opening statement to discredit the Malakov family’s accusations against Borukhova on the day of the murder, said, “Daniel’s father is an actor in the community. You know what actors do—they make things up.” This is absurd, of course: actors merely speak their lines; they don’t invent them. It was Scaring who was making things up. If any profession (apart from the novelist’s) is in the business of making things up, it is the profession of the trial lawyer. The “evidence” in trials is the thread out of which lawyers spin their tales of guilt or innocence. With his examination of Borukhova, Scaring was offering an alternative to the story that Leventhal had told in his opening and then retold through the testimony of his witnesses. He would take the same evidence that, in Leventhal’s tale, demonstrated Borukhova’s guilt and use it to demonstrate her innocence.

The fourth week of the trial had produced an arresting illustration of the malleability of trial evidence. During a police search of Borukhova’s apartment, an audiotape had been found and seized. It was a garbled, fragmentary, almost inaudible

recording of a conversation between Borukhova and Mallayev, speaking in Bukhori and Russian. The conversation had taken place in May of 2007—five months before the murder. The prosecution had asked an F.B.I. translator named Mansur Alyadinov to make an English translation and called him to the courtroom to read from his text as the tape was played. The conversation had been secretly recorded by Borukhova during a ride in a car. But what was being discussed was not a murder plot. The tape recorded one of those irritatingly banal conversations which we helplessly overhear on trains and in restaurants from people talking on cell phones. The fragments of boring dialogue that came through had no relevance to the case. Why, then, was Leventhal playing the tape to the jury? The reason became apparent in the final two lines. The courtroom suddenly awakened from its torpor as it heard Mallayev say to Borukhova, “Are you going to make me happy?” And Borukhova replied, “Yes.”

One can imagine the translator’s own happiness when he heard these lines—and Leventhal’s when he read them in the transcript. Two interpretations immediately present themselves—both damning. The first is that Mallayev was sleeping with Borukhova and asking about a future encounter. The second is that Mallayev



“Trust me, this place is worth the wait.”

was talking about money—was she going to make him happy by giving him money to murder her husband? In either case, it looked bad for Borukhova. However, when Scaring cross-examined Alyadinov it began to look less bad. This is the idea and the beauty of the cross-examination. A successful cross-examination is like a turn of the roulette wheel that restores a lost fortune. First, citing a translation that Borukhova had made for him, Scaring got the F.B.I. translator to concede that, among other blunders, he had omitted the English words “Mother’s Day” from his text, and that a mystifying discussion of a “crazy house” was actually a discussion of the madhouse that the airport was on the day—Mother’s Day—that Malleyev travelled to New York from his home, in Chamblee, Georgia. Then Scaring took care of “Are you going to make me happy?” In Borukhova’s translation, what Malleyev had said was “Are you getting off?” The car had reached its destination. He had used the word *padayesh*—literally meaning “Are you falling?”—in an idiomatic sense to ask if she was getting out of the car. The translator had heard *padayesh* as *obraduesh* (“Are you going to make me happy?”). The mistake was understandable: on a very hard-to-hear tape the word could easily be misheard. But that the mishearing so favored the prosecution, that it so well advanced the narrative of an unsavory association, suggests that this

was a mishearing by design—unconscious design, perhaps, but design nonetheless. We go through life mishearing and misseeing and misunderstanding so that the stories we tell ourselves will add up. Trial lawyers push this human tendency to a higher level. They are playing for higher stakes than we are playing for when we tinker with actuality in order to transform the tale told by an idiot into an orderly, self-serving narrative.

4

A week before Scaring startled the courtroom by calling Borukhova to the witness stand, he stopped a journalist named William Gorta in the hallway outside the courtroom and said, “What do you think? Should I put her on the stand?”

Gorta replied, “God no!” Scaring looked at him questioningly and Gorta said, “If you put her on the stand, Leventhal will kill her.” Gorta, a former New York City cop, who now covers the Queens courts for the *New York Post*, was one of five journalists who came regularly to the trial and sat in the first row of spectator seats, which bear a sign saying “Attorneys only” but where the press may also sit. The four other journalists were Nicole Bode, of the *Daily News*; Anne Barnard, of the *Times*; Ivan Pereira, of the *Forest Hills Ledger*; and me, representing this

magazine. Hanophy was aware of us—as he was aware of everyone and everything going on in the courtroom, his fiefdom. The other spectator seats were occupied largely by members of the families of the defendants and the victim, who sat on opposite sides of the aisle, as if this were a wedding with a bride’s side and a groom’s side. The groom’s side—behind the prosecution’s table and the jury box—was always well filled. Khaika Malakov never missed a day, and came surrounded by a horde of relatives and friends—mostly men—whose atmosphere of anger and aggression made one want to run from them, as if from a disturbed swarm of hornets. During recesses, this horde would move into the hallway and cluster around Leventhal and, on the days of their testimony, Leventhal’s police witnesses.

The bride’s side was more sparsely filled. The regulars were Borukhova’s mother, Istat, and her sisters Sofya and Natella, who came with prayer books, which they quietly read to themselves. Where the Malakov family liked to talk to the daily press, and were often quoted in it, the Borukhova family refused all overtures from journalists. They sat barricaded by a wall of reticence and an aura of arrogance and disdain. The sisters wore floor-length skirts and wigs of bouffant curly hair. The mother, thin and worn, did not take off a long belted brown overcoat and felt hat. During the year of hearings that preceded the trial, there were incidents of insults hurled across the aisle, but, by the time of the trial proper, the families had been subdued into surly silence by Hanophy’s threats of eviction from the courtroom. A lone young woman sat behind the Borukhova mother and sisters: Malleyev’s daughter, Maya.

Scaring asked his careful, kind questions and Borukhova told of her separation from Daniel Malakov some months after the birth of Michelle, in 2003, followed by two attempts at reconciliation, and by a final separation, in April, 2005. He asked her about her “custody dispute” with Malakov and about the “transfer of custody” that had taken place six days before the murder.

The dispute over the child had given Leventhal his motive for the crime. On October 3rd, three and a half weeks before the murder, a State Supreme Court judge named Sidney Strauss issued a decision that—in Leventhal’s words—



“Excuse me, sir—care to take a moment to check out my new clipboard? Ma’am? I just got a new clipboard. New clipboard, anyone? Anyone?”

"unknowingly and unwittingly would result in Daniel's murder." Strauss ruled that four-year-old Michelle—who had lived all her life with her mother—must now go and live with her father. A stunned Borukhova appealed the decision, and was turned down; nineteen days later, the "transfer" of a hysterically screaming child from the arms of her mother to those of her father took place. "If Daniel's fate had not been sealed when Judge Strauss issued that ruling on October 3 of 2007, it was most certainly sealed on the evening of October 22 of 2007," Leventhal said, in his opening. His narrative now had its mythic underpinning. It was as inevitable that Borukhova—"her"—would revenge herself on Daniel for the loss of Michelle as that Clytemnestra would revenge herself on Agamemnon for the loss of Iphigenia.

By putting Borukhova on the stand, Scaring hoped to dismantle that story. He would convince the jury that the young physician who answered his questions with such modesty and sincerity could not possibly be a murderer. Yes, there was evidence against her—the ninety-one cell-phone calls could not be got around—but everything one knew about life and about people cried out against the notion that this gentle, cultivated woman was the mastermind of a criminal plot. Through his examination, Scaring proposed to transform Leventhal's archetypal avenging murderess into an ordinary beleaguered working mom. The phone calls would be explained. The "rush to judgment" by the police would be exposed for the mistake it was.

Under Scaring's questioning, Borukhova outlined her arduous schedule at three hospitals: Westchester Square, White Plains, and Forest Hills North Shore. She related that, at eight o'clock on the night before the murder, she began a twenty-four-hour shift at White Plains Hospital, but, because of a special circumstance, she had arranged for a colleague to relieve her after twelve hours. The special circumstance was a visit with Michelle that Malakov had granted her. After she returned from her night at the hospital, she would meet him at the Annandale Playground and he would deliver Michelle to her for an all-day visit. A plan for activities with cousins—the children of Borukhova's sisters Ludmila and Sofya—was in place. But no time had been set for



"It's your third and final wish—are you sure you just want more money?"

the meeting in the playground. "My husband wasn't the person who would limit himself into the time," Borukhova said, and cited the four or five cell-phone calls between herself and Malakov that were made in the hour before the meeting in the playground, culminating in a call in which he says, "Marina, I see you," as he walks toward her on the street. (Marina was the name that family members used, rather than Mazoltuv.)

When Borukhova reached this point in her narrative, she broke down. "Take your time, Marina," Scaring said.

"I'm so sorry," Borukhova said. She composed herself and went on, "I kneeled and I opened my arms and Michelle start running." She went on:

I picked her up and I swung. I did like two swings or maybe three and by the time I was finished we all were laughing. We all were so happy and Daniel also. He was—he was very happy with his—with his—I don't know—bright smile. And he approached and now he was holding her buttocks and legs and I was holding her upper body and the arms and neck and we were together now swinging her. . . . And we were swinging and Michelle likes the wind. We were blowing the wind like whoo to her face and we all were happy and we were laughing.

Scaring asked, "What were you saying, if anything, while you were doing that?"

Borukhova said, "We were not saying anything, we were just laughing and we all were happy."

"And then something happened?"

"After a long time I felt like a family again. And we were swinging and she was very happy. We were happy. We were all laughing. And all of the sudden I felt heavy. I felt I can't hold her." Malakov had dropped Michelle's legs and buttocks, said a few words in Russian (when Borukhova began to quote him, Leventhal objected and was sustained), and run into the street. "He's looking at me and I look at him," she went on. "His face is pale and I see his face is like torturing, like twitched in pain. I was looking at him and he's holding his chest. . . . I see the blood."

What is most remarkable about Borukhova's account of the shooting of her husband is its soundlessness. Her first awareness that something was wrong was not the sound of gunfire but the unsupported weight of the child. Her account is like a silent film. It immediately aroused the suspicion of the police. When a detective "asked me if I heard something or if I see somebody running, I said I didn't hear anything, I didn't see anybody. And he said people heard the shots three blocks away and you were right there and you didn't hear. You have to come up with a better story." Borukhova never changed her strange story. She always insisted that she never heard the shots.

On the stand, Borukhova continued her account: "I don't remember all my

actions, but I remember taking Michelle and running but when I was running I was still looking at him." She saw Daniel fall to the ground. She found herself on a bench in the playground, near the swings, where she held the child in her arms. "I was screaming and crying but I remember my daughter, she hold my hand like this and she said, 'Mommy, don't cry.'" Borukhova left the child in the playground with a woman she knew and ran back to the street to try to revive the man whose life was ebbing from him. She did chest compressions and mouth-to-mouth resuscitation. When an emergency medical squad arrived, the medical workers pushed her away. She watched helplessly as they struggled and failed to intubate Malakov. "Let me do it, let me do it. I do it on a daily basis," she said to them. Finally, they allowed her to perform the intubation. But Malakov did not respond to the intervention, and was put on a stretcher and taken in an ambulance to the nearby North Shore Hospital, where he died. Then Borukhova began to feel chest pains and nausea, and was taken to North Shore in another ambulance. She thought she was having a heart attack. Some of her in-laws were already at the hospital. "They were screaming and blaming me. 'You killed him, you killed him, you killed him.'" Borukhova was taken to another room, where a detective named Ismet Hoxha interviewed her.

"He accused you of killing your husband?" Scaring said.

"Yes, he did."

"What did he say?"

Borukhova answered that Hoxha said that "they found the guy who killed my husband," and that "I should help myself." She added, "He promised me that if I cooperate that he's gonna talk to the D.A. and he's gonna give me good deal."

Hoxha was lying. The guy who killed the orthodontist and coolly put the gun in his pocket had not yet been found. He had disappeared—though not quite without a trace. He had left behind a silencer made out of a bleach bottle, which had been taped to the gun and had fallen off, dislodged by the first shot. The police matched fingerprints on the tape with fingerprints of Mikhail Mallayev that had been on file with the New York City police since 1994, when he was arrested at a Manhattan subway station for fare-beating. But the fingerprint match only

confirmed what the police already had on Mallayev: the record of his cell-phone calls with Borukhova. Through them, he was traced to his house, in Chamblee, where he was arrested and extradited to Queens. To clinch the matter, an eyewitness to the shooting identified him in a lineup. But it was months before these triumphs of police detection would occur.

When I wrote that Hoxha was lying when he said that the killer had been found, I did so on the assumption that Borukhova was telling the truth when she quoted him to that effect. Of course, this is an assumption I should not have made. Hoxha may never have uttered those words—Borukhova may have invented them. If witnesses abided by the oath to "tell the truth, the whole truth, and nothing but the truth," there wouldn't be the contradictions between testimonies that give a trial its tense plot and the jury its task of deciding whom to believe. In his cross-examination of Hoxha, who testified at length for the prosecution, Scaring said harshly, "At the hospital, you accused her of killing her husband, didn't you?" and Hoxha said, "No." Scaring went on, "You said, 'If you admit you killed your husband it will go easy for you,' didn't you?" and Hoxha again made a denial. Whom to believe, Hoxha or Borukhova? *Padayesh* or *obraduesh*?

5

During the voir dire, to illustrate the problem of bias Scaring held up an example from baseball: the close call. "Let's say that you're rooting for the Yankees or you're rooting for the Mets and they are playing in the World Series," he said. "It's the ninth inning and it looks like it could be a home run, but it hits very close to the foul/fair line. You might see it as fair or you might see it as foul—not because you want to lie but because it's what you want." Jurors are not supposed to want anything. They are supposed to follow the match of the opposing attorneys in a state of dumb desirelessness. No rooting in the courtroom, please. But rooting is in our blood; we take sides as we take breaths. The voir dire is nothing if not a recognition of the unattainability of the ideal of neutrality and the inescapability of bias. It's a guessing game—each attorney, as he questions a prospective

juror, tries to sniff out his inclinations. A juror who wants to be picked knows better than to reveal them. He has been admonished by the judge to be open-minded and fair and objective, and he keeps his mouth shut lest he betray that he is none of those things. In the Mallayev-Borukhova voir dire, the jurors who were picked were the most laconic ones—the ones who said almost nothing. The first juror chosen—who thus became the jury foreman—was a young man named Christopher Fleming, who had just graduated from Siena College as a major in finance. His answers to the judge's, Leventhal's, Scaring's, and Siff's questions were exemplary. He was like a discreet secretary to a politician, veiled but polite, reserved but respectful. Each side accepted him without demurral and each evidently had high hopes for his predisposition toward itself.

Each side receives a certain number of peremptory challenges, whereby it can dismiss prospective jurors without giving a reason. There are also challenges for cause. Here reasons for dismissal are given: the prospective juror said that he couldn't be neutral after reading about the case in the newspapers, or he replied yes to the question "Do you think police officers are more believable than ordinary citizens?" If the judge grants the challenge for cause, the challenging attorney does not use up one of his peremptory challenges. In 1986, the peremptory challenge was itself challenged, in a case called *Batson v. Kentucky*. In the voir dire for the trial of a black man named James Kirkland Batson, accused of burglary, the prosecutor had used his peremptory challenges to dismiss four black prospective jurors; an all-white jury was seated, and the defendant was convicted. The case came before the Supreme Court, which ruled that the peremptory challenge could not be used if the reason not given was manifestly a reason of race. In subsequent decisions, the ruling was extended to gender, ethnicity, and religion.

In the Mallayev-Borukhova voir dire, the Batson decision was invoked three times by Scaring and twice by Leventhal. Scaring's first two attempts to convince the judge that the prosecution was "trying to knock out as many women as they possibly can" were rebuffed, but his third succeeded. Hanophy conceded that Leventhal's peremptory strike against a young

woman named Laurie Rosen did reveal a pattern of discrimination against women and Rosen was seated as a juror, to Leventhal's fury and Scaring's satisfaction—which, however, was short-lived. Rosen, who worked with disabled children (and had replied, when asked to name her hobbies, "sports, cooking and autism awareness"), came back after a break and tearfully begged to be let off; she hadn't realized what sequestration would mean for her night work with autistic children. Leventhal and Scaring locked horns again and now Hanophy sided with Leventhal and let Rosen go. "This is a voir dire out of hell," the court clerk was heard saying to a court officer.

It was the fifth day of jury selection, and several places in the jury box remained unfilled. Hundreds of potential jurors had entered the courtroom, and the majority of them had exited it after Hanophy announced that this would be a five-week trial, and asked if that would be a hardship for anyone. It was a hardship for almost everyone, and Hanophy was lenient with all but a few supplicants. Among those whose excuses were found wanting was a young high-school teacher who felt that his presence at the school was urgently needed. His direct plea to the judge failing, the teacher resorted to the subterfuge of answering the attorneys' questions with such flagrant intelligence and subtlety that there was no chance of his being selected. Leventhal challenged him for cause and neither Scaring nor Siff objected.

When Scaring used his last peremptory against a man named Walter Stein, Leventhal riposted with a Batson challenge—he said that Scaring was systematically knocking off men. Scaring argued that he had challenged Stein—a stout, older white man from Floral Park who worked for the New York City Department of Transportation—not because he was a male but because he was "Mr. Prosecution Juror." Just look at him: "His hair is cropped just perfect, mustache, comes from a conservative town, works for the City of New York." But the judge upheld Leventhal, and Stein was seated as the second alternate juror. The next morning, at sidebar, Scaring made a last desperate stand against Stein. He said he had spoken with a jury consulting firm

to advise me as to what some of the issues might be concerning jury selection given the fact that my client is a Russian immigrant,

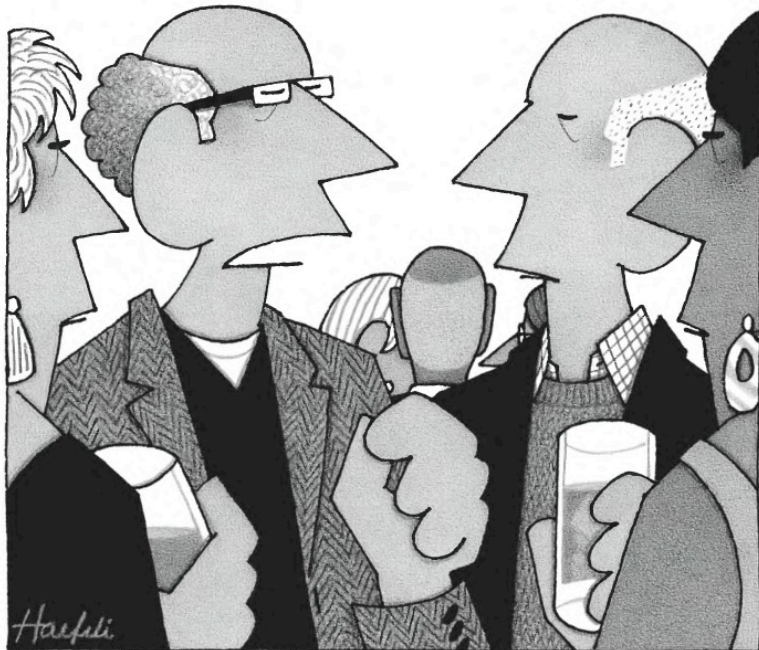
Jewish Russian immigrant, that my client dresses differently than most. Her clothes, her dress. Long dresses which go right down to her feet. She has her hair which she's got in a bun now but it's very long. Her sisters who likely will testify wear wigs because they're married and they're pretty ugly wigs. I mean, they stand out. They also wear the long dresses. So this is a unique Jewish community from Russia. My consulting firm said that I should be very cautious of Germans.

During the long colloquy between Scaring and Hanophy that followed (with sparring about whether the fact that Floral Park had a large German population and a famous German restaurant named Koenig's proved that Stein was a German), the unsaid got said. "We make judgments based upon people's appearances," Scaring said. And "the reason a defendant has an experienced lawyer is because an experienced lawyer has insight with regard to the kind of jurors that will be more favorable to her than to the prosecution or more favorable to the prosecution." A few days earlier, Leventhal, referring to Borukhova, had asked a panel of prospective jurors, "Does anybody here feel that because she holds a medical degree, because she's an educated woman, because she went and advanced herself in education, does anybody here feel that that's going to impact upon your ability to evaluate the evidence in this case?" There

was no response. If I had been on that panel, I would, in all honesty, have had to raise my hand. But, if I had concealed my sisterly bias, Leventhal—after looking at me and hearing me speak—would nevertheless have recognized me as Ms. Defense Juror and kicked me off the jury panel as fast as he could.

6

My fellow-journalists were made of sterner stuff. Ivan Pereira, a very young man, of slight build and terse speech, was a fervid rooter for the home team. He had been one of the first journalists at the crime scene, and had reported on the case in the *Ledger* for the next twenty-two months. He had an understandable proprietary feeling about the murder. He had watched the police build their case, and there was no doubt in his mind of the defendants' guilt and despicableness. Gorta, a bearded man in his fifties, who plays the role of the hard-bitten journalist whom nothing can surprise, and who is extremely kind, was a more circumspect prosecution fan. During the proceedings, he chewed gum and, when he wasn't taking notes, worked on cross-word puzzles. Nicole Bode, a willowy, blond, very pretty, and also very kind



"Obama has the potential to get a whole new generation disillusioned."

woman in her late twenties, read *Granta* when she wasn't taking notes, and also quietly favored the prosecution. She and Gorta filed pithy stories for their respective tabloids under raffish headlines ("HE DRILLS DENTIST: SLAY CASE"). The courthouse was their beat, and sometimes they would have to dash off to a newsworthy trial on another floor.

Anne Barnard, a handsome young brunette, was the queen of the reporters' cohort. While Gorta's and Bode's stories had to take their modest place among the axe-murder and sex-scandal stories of the *News* and the *Post*, and Pereira's among the rezoning reports of the *Ledger*, Barnard's articles had little if any competition in the *Times*. Most enviably, Barnard was given the space that the others frustratingly lacked for conveying a sense of the small movements by which the trial was propelled. The *Times* had started to cover the case more than a year before Barnard's assignment to it; the Jewish Bukharan connection evidently distinguished it from the ordinary sordid murder that the *Times* leaves to the tabloids. In her story of February 9, 2009, Barnard, who speaks Russian, mined the Bukharan vein ("As One of Their Own Is Tried for Murder, Bukharans Debate Loss of Old Ways"), but, as the trial wore on, her attention began to shift from the yentas on 108th Street in Forest Hills to the characters in the courtroom. Whether to reflect the grandness of the *Times* or in accordance with a personal code, Barnard dressed differently from the rest of us. She wore interesting, beautiful dresses and skirts in contrast to the uninteresting jeans and corduroys and sweaters that Gorta and Bode and Pereira and I wore. Her sharp-eyed stories about the trial were as pleasing as her elegant clothes; not the least of the pleasure we took in them was the knowledge that Judge Hanophy would be irked by them.

Journalists are thought to be competitive, and sometimes they are, but their main feeling about one another is fraternal. Journalists love one another the way members of a family—in their case, a kind of crime family—do. In "Democracy in America," Alexis de Tocqueville wrote of American journalists as persons of "low social status, [whose] ed-

ucation is only sketchy, and [whose] thoughts are often vulgarly expressed." He went on to note that "the hallmark of the American journalist is a direct and coarse attack, without any subtleties, on the passions of his readers; he disregards principles to seize on people, following them into their private lives and laying bare their weaknesses and their vices." Over the years, the social status and the education level of journalists have risen, and some journalists write extremely well. But the profession retains its transgressiveness. Human frailty continues to be the currency in which it trades. Malice remains its animating impulse. A trial offers unique opportunities for journalistic heartlessness. When the malignant, often libellous words of battling attorneys are lifted out of the heated context of the trial and set in cold type, a new, more exquisite torture is suffered by the object of their abuse—who now stands exposed to the world's abuse. Journalists attending a long trial together develop a special camaraderie born of a shared good mood: their stories are writing themselves; they have only to pluck the low-hanging fruit of the attorneys' dire narratives. They can sit back and enjoy the show.



At the genial invitation of Gorta and

GOAT

Goat gone feral comes in where the fence is open comes in and makes hay and nips the tree seedlings and climbs the granite and bleats, through its line-through-the-bubble-of-a-spirit-level eyes it tracks our progress and bleats again. Its Boer heritage is scripted in its brown head, floppy basset-hound ears, and wind-tunnelled horns, curved back for swiftness. Boer goats merged prosaically into the feral population to increase carcass quality. To make wild meat. Purity cult of culling made vastly more profitable. It's a narrative. Goat has one hoof missing—just a stump where it kicks and scratches its chin, back left leg hobbling, counter-balanced on rocks. Clots of hair hang like extra legs off its flanks. It is beast to those who'd make devil out of it, conjure it as Pan in the frolicking growth of the rural, an easer of their psyches when drink and blood flow in their mouths. To us, it is Goat who deserves to live and its "wanton destruction"

Bode, I sometimes joined them for lunch in the press office on the first floor of the courthouse, from which they filed their stories, a place of appealing scruffiness—it could have been a set for a nineteen-thirties comedy about newspaper reporters—furnished with beat-up unmatched office furniture and rusted metal file cabinets and strewn with newspapers and paper cups and the debris of years of transient occupation. Bode and Gorta would eat side by side at a pair of anachronistic computers, chatting as they typed, and I would clear a space for my sandwich at an unused desk covered with yellowed copies of the *Post* and the *News*.

As time went on, though, when lunchtime came I found myself gravitating toward a bench in a corridor off the courthouse lobby, where I waited for a woman named Alla Lupyan-Grafman. She was the Russian-speaker who sat at the defense table throughout the trial as a court-appointed interpreter for the defendants. Both defendants spoke English—Borukhova in particular had no need of an interpreter—but the court had made the appointment to be on the safe side, to insure that no issue of language interfered with the smooth whirring of the wheels of justice. Alla was a slender, stylishly dressed, exceptionally friendly woman in her late forties, with a mane of curly platinum-blond hair, with whom,

the ranger cites as reason for shooting on sight looks laughable as new houses go up, as dozers push through the bush, as goats in their pens bred for fibre and milk and meat nibble forage down to the roots. Goat can live and we *don't know* its whereabouts. It can live outside nationalist tropes. Its hobble is powerful as it mounts the outcrop and peers down the hill. Pathetic not to know that it thinks as hard as we do, that it can loathe and empathize. Goat tells me so. I am being literal. It speaks to me and I am learning to hear it speak. It knows where to find water when there's no water to be found—it has learned to read the land in its own lifetime and will breed and pass its learning on and on if it can. Goat comes down and watches us over its shoulder, shits on the wall of the rainwater tank—our lifeline—and hobbles off to where it prays, where it makes art.

—John Kinsella

by the end of the trial, every lawyer, court officer, journalist, and even some spectators were on ecstatic hugging terms. She, too, was an immigrant from the former Soviet Union, but not a Bukharan; she was an Ashkenazi Jew from Minsk.

Over lunch, Alla spoke of the xenophobia of the earlier Russian-Jewish immigrants toward the newcomers from Central Asia and cited some of the more extravagantly stereotypic characterizations: the Bukharans were alien and not altogether civilized—savage, tribal people, capable of violence, even of murder. They were Jews but not proper Jews, more like Muslims than like Jews. They had dirty living habits—things were strewn about in their front yards. On the other hand, some of them were mysteriously, sinisterly rich, and built showy McMansions that had no place in haimish Forest Hills.

Alla had a complaint of her own about the Bukharans—a linguistic one. She said that the older generation had never learned proper Russian, even though it was an official language under the Soviets. When Khaika Malakov testified—with an interpreter simultaneously translating—she was highly critical of his Russian. She was uncritical of Borukhova's Russian—and she was sympathetic to Borukhova herself. She and I offered each other tastes of the sandwiches and fruit we had brought

from home, and struggled with the enigma of the case: she couldn't have done it and she must have done it.

7

Courtrooms are temples of waiting. Those of us who came daily to the theatre of the Mallyayev-Borukhova trial learned that the curtain time of 9:30 A.M. meant nothing and preceded a wait of at least an hour. The entire cast of characters—the attorneys, the defendants, the witnesses, the court stenographer, the interpreter, and the judge—never contrived to assemble at the designated hour. Only the house factotums—the courtroom clerk, the judge's clerk, and five or six armed officers—came on time and calmly occupied the stage; the clerks fussed with papers on their desks and took telephone calls, and the court officers lounged against walls, drinking bottled water and kidding one another. The spectators who had not yet learned to gauge how late they could be without forfeiting a desirable seat, and who regretted their punctuality, watched them closely for signs of heightened alertness.

An attorney was sometimes the cause of the delay, but more often than not it was the late arrival of one or both of the defendants, who were being held in separate prisons on Rikers Island and were driven to the courthouse in separate vans.

When news of the defendants' arrival was somehow communicated—I never was quick enough to see how—the focus of the spectators' attention became a locked wooden door at the left of the defense table. Officers and attorneys went in and out of it—to an elaborate ritual of unlocking and locking. Finally, after the attorneys came out through the door for the last time and took their places at the defense table, and the judge mounted his dais, the defendants arrived in the courtroom. There was always something shocking about this entrance. I never got used to it. The wooden door would suddenly open and Mallyayev and Borukhova, handcuffed behind their backs, and flanked by armed officers who held them by the arm, would march four abreast into the courtroom. It looked as if the defendants were being dragged, though this may have been an illusion produced by their handcuffed state. The sense of brutality would subside only after the officers removed the handcuffs and the defendants took their seats at the defense table. During the unshackling, Borukhova always looked over her right shoulder; Mallyayev looked straight ahead. The officers removed prayer books that both defendants held in their handcuffed hands, unlocked and removed the handcuffs, and then returned the books to their respective owners. In the brief interval between the removal of her handcuffs and the restoration of her prayer book, Borukhova would make the small, economical gesture of kissing her hand to her sisters and mother.

8

Borukhova took the stand in midafternoon, and, after examining her for two and a half hours, Scaring looked up at Hanophy and said, "Judge, would this be an appropriate time for a recess?"

"Nah," the judge said.

Scaring persisted. "I'm a little tired and I'm afraid the jury might be a little tired, too. It's an important witness for me."

"They're doing fine," Hanophy said.

"I'm sorry?"

"They're doing fine. They usually raise their hand if they want something."

"If they raise their hand then we could quit?"

"No, no. Come on. Let's continue."

I was sitting next to Billy Gorta, and

I asked him why the judge would not grant Scaring's request. "The judge is sulking," Gorta said. "He thought summations would be tomorrow. Now this could take days." The pace of the trial had accelerated. Lunch hours and breaks were shorter, the wait at the beginning of the day was less interminable, and, most conspicuously and significantly, the attorneys' requests for sidebar conferences, which had almost invariably been granted in the early days of the trial, were now routinely rebuffed.

"Sidebar" refers to the area beneath and to the side of the judge's bench—the side farthest from the jury box—where the attorneys of both sides gather after one of them receives a yes to the question "May I approach, Your Honor?" The sidebar conference is a form of *pas devant les enfants*. The children (the jurors and the spectators) are put out of earshot so that the grownups (the attorneys and the judge) can talk about things their charges shouldn't hear. The attorneys' sotto-voce words, however, are not lost to posterity but become a part—often an arrestingly interesting part—of the trial transcript. At sidebar, attorneys step out of the roles they have been playing in open court and become like actors going over the particulars of a night's performance with the director, pointing out each other's lapses, asking for better direction, and sometimes even proposing that the play be closed down—i.e., that a mistrial be called.

On February 17th, for example, during a long sidebar preceding the testimony of the prosecution's fingerprint expert, William Bieniek, Siff complained almost to the point of tears about the judge's treatment of him during his cross-examination of a prosecution witness the previous day. The transcript reads:

MR. SIFF: . . . There was an unfortunate series of colloquy between yourself and myself which—in front of the jury which I believe was extremely prejudicial and highly damaging to the defense. The jury, as we have all seen, admires and respects Your Honor. When you talk to them—

THE COURT: Rightly so.

MR. SIFF: Absolutely. They smile, they're forthcoming with you. We have seen their faces and their reactions when you address them, and so now there's this danger that has resulted in the fact that you are berating me in front of the jury.

THE COURT: I never berated you. I didn't berate you.

MR. SIFF: Well, that's why—

THE COURT: If somebody objects to it and I sustain it that's hardly berating.

MR. SIFF: I believe it went further than that. It got to the point where Mr. Scaring had to ask for a sidebar.

During Siff's cross-examination of the fingerprint expert, Scaring again asked for a sidebar. The judge was still putting Siff in his place. When the sidebar was granted, Scaring said, "Mr. Siff is asking questions repeatedly that Your Honor is sustaining the objections to. The jury is getting very upset. I'm watching the jury." However, Scaring's concern was not so much for the susceptibilities of his humiliated colleague as for the likelihood that "the jury is going to blend the two of us together." He went on, a bit incoherently, though his meaning was perfectly clear:

I find it difficult myself to even raise issues with regard to this witness because I don't want to be lumped together with the dissatisfaction that the jury is viewing of the defense lawyer. . . . I don't want to be seen by the jury as part of what appears to be obstructionist conduct by Mr. Siff in front of the jury. I would respectfully, Your Honor, ask to have a mistrial so that I can try my own case.

Of course, nothing came of Scaring's request for a mistrial; the judge simply denied it. In his cross-examination of Bieniek, Siff actually performed better than he ever had before in the trial. Much was at stake here. If the expert convinced the jury that the fingerprints on the silencer were indisputably Mallayev's, then there was no hope for Siff's client—or, by extension, for Borukhova. It was Siff's job to try to discredit Bieniek and he worked manfully to do so—by challenging his credentials, casting doubt on his objectivity, and, most interestingly, attacking the whole "science" of fingerprint analysis. He is not the only one to do so; throughout the history of this forensic technique there have been cases of misidentification and, in the light of them, criticisms of its claim of infallibility. In the past few years, following the outrageous case of an Oregon lawyer named Brandon Mayfield, who was arrested for involvement in the Madrid terrorist bombing of 2004 because his fingerprints appeared to match the latent prints found on a bag of detonators near the attack—and in the end didn't match them at all—these criticisms have increased and were recently recapitulated in a report by the National Research Council that characterized all forensic techniques (except DNA analysis) as lacking in scientific rigor.

Siff thus had some excellent cards to play in his cross-examination of Bieniek—except that he wasn't able to play them. Whenever he asked Bieniek a question about the Mayfield case or other recorded cases of misidentification, Leventhal would object and Hanophy would sustain the objection. It reached the point where Siff said "Have you heard about the case—" and Leventhal objected before the name of the case was cited. When Siff protested ("I haven't even mentioned anything about the question, Judge"), Hanophy said, "Is it going to be Curtis Mayfield or whatever the guy's name is?" "Brandon Mayfield," Siff said with dignity. "Was that going to be the name?" "No, it wasn't," Siff said and cited another case of misidentification, which he wasn't allowed to pursue, either.

When Scaring took over the interrogation of the fingerprint expert, it was like the turn in a master class, when the master shows how it should be done. Bieniek frequently testified at trials, and someone had taught him the technique of looking at the jury when he answered questions. He had conspicuously done so under Leventhal's and Siff's questioning. But when Scaring questioned him he looked at Scaring like a mouse looking at a cobra. Scaring riveted not only the witness's attention but that of the jurors as well, who went from staring torpidly ahead of them to looking alive and interested. Bieniek (with the help of the judge) had blown Siff off. Now he bowed to Scaring's mastery. His truculence turned to obedience. He made concession after concession. He said what Scaring wanted him to say. "Would you agree that when you do a latent print examination you should do it without any preconceived notion as to who the person is who allegedly committed the crime?" Scaring asked. "Oh, of course," Bieniek answered. Scaring then confronted him with an earlier admission that he had overheard conversations about the case in his office and knew that cell-phone towers were involved:

Q: There is no report or note that you made that says when you received that information, correct?

A: I never received the information, sir.

Q: Well, you just told us you did. . . .

A: I overheard the information.

Q: Well, if you overheard it you received it, right?

A: No.



Q: Well, if you overheard it you were aware of it, right? Yes?

A: Vaguely.

Q: And if the information would contaminate your identification that would be important to note, correct? Yes? Yes?

A: It wouldn't contaminate my examination.

Q: It won't?

A: No, because I didn't know what it was about.

Q: Well, this case was all over the newspapers, wasn't it?

A: It was in the newspapers, yes.

Q: I mean, here you were working on a case that is all over the television, all over the newspapers—that's true, isn't it? Right?

MR. LEVENTHAL: Judge, I'm gonna object to this.

Evidently no less mesmerized by Scaring than Bieniek, Hanophy overruled the objection.

However, even when Scaring had cornered Bieniek into admitting that, yes, he knew about the cell towers and, yes, had read about the case and seen reports of it on television, Scaring must have been aware of the countervailing riptide taking Mallayev out to sea, and Borukhova with him. If an expert says that the prints match, who will dare to say that they don't, even if the chart purporting to show points of matching between a latent and an inked

fingerprint—such as the one shown to the jury at the Mallayev and Borukhova trial—shows the untrained eye nothing at all. Bieniek's composure had been ruffled by Scaring, but the authority of his boring and incomprehensible testimony remained intact as he left the stand and, passing the jury box, waved goodbye.

9

The appearance on the stand of a trim, youngish lawyer named David Schnall marked a turn in the prosecution's narrative; up to this point, it had revolved around Mallayev. Leventhal's witnesses had been police officers, eye-witnesses to the shooting, and criminologists whose collective testimony established the Georgia hit man's guilt. Now Leventhal could attend to the evil woman who had hired him. Through Schnall, who identified himself as the court-appointed law guardian of Michelle Malakov, he would return to the navel of the case—the decision by Judge Sidney Strauss that had driven Borukhova to her terrible expedient—and provide an an-

swer to the question of why the judge had taken the child away from the mother and given her to the father. Schnall would introduce and read into the record the remarks that Strauss had made in justification of his ruling.

In a sidebar, Scaring fought hard to prevent this reading from taking place. He said that the prosecutors "want to show that somebody else made a determination that she's a bad person." Hanophy ruled against him. But, when Schnall read aloud Strauss's remarks, they did not make Borukhova seem like a bad person at all. They made Strauss seem petulant and irrational. Courts routinely remove children from homes where they are neglected, abused, malnourished, traumatized. I know of no other case where a well-cared-for child is taken from its mother because it sits on her lap during supervised visits with an absent father and refuses to "bond" with him. Yes! The whole of Strauss's reason for his radical ruling was his irritation with Borukhova for "prevent[ing] Michelle from bonding and further strengthening her relationship with her father" during court-ordered visits at a private agency called Visitation Alternatives, run by social workers. "It was anticipated that through the good offices of Visitation Alternatives perhaps an atmosphere could be created whereby Mr. Malakov could begin to spend some quality time with his four-year-old daughter without any interference or overbearing or for lack of a better word smothering of this child by her mother," Strauss said, and went on to quote from the most recent Visitation Alternatives report on how the visits were going:

Mr. Malakov constantly greets Michelle with upbeat tone and voice, a smile, and is attempting to hug her. Michelle is not responding to Mr. Malakov's intent to communicate. Michelle does not speak to Mr. Malakov or make eye contact with him. Michelle will cling to her mother who is always carrying Michelle into the visitation. Michelle often buries her head in the mother's shoulder and will turn her body away from Mr. Malakov as he attempts to engage her. . . . She clings to her mother at the onset of the visitation and all attempts to separate her have failed. Michelle will cry hysterically on her mother and becomes incapable of being consoled.

"If there was ever a situation in the mind of this particular Court that cries out for immediate action, it is this, and that which I have just described," Strauss

said in conclusion. "Therefore, the Court today without a hearing . . . is directing that the custody of Michelle be immediately turned over to her father, Daniel Malakov, forthwith, if possible." In other words, the solution to the problem of a child who cries hysterically when threatened with separation from her mother while in the presence of her absent father—is to take the child away from the mother and send her to live with the father. Borukhova's shock at the ruling may be imagined. Her matrimonial lawyer, Florence Fass, immediately appealed, but the appeals court upheld Strauss. Borukhova was not the only person shocked by the decision. The social workers had recommended that Borukhova absent herself from the visits so that Malakov could "rebuild his relationship with Michelle." They had not proposed a transfer of custody. Neither had Daniel or his family. But on October 23rd the transfer actually took place, in Khaika Malakov's front yard, where Michelle was pried loose from her mother's arms and carried sobbing into the house.

How had this nightmare—every mother's nightmare—become a reality? What malevolent fairy had written its surreal script? At another court proceeding, Borukhova identified herself as "a refugee in the United States. I came for freedom of speech and freedom of religion and civil rights as well." What missteps had she made to place herself under state control as powerful and arbitrary as that of the old Soviet regime? What had she misunderstood about her new country that set her on her blundering course toward Strauss and his fateful fit of pique?

At the criminal trial, Borukhova's turbulent marriage to Daniel Malakov was sketched in with the lightest of pencils. Neither side ventured into the minefield of accusations that Borukhova had made against Malakov of physical violence and child sexual abuse. He was not on trial—she was. He was dead and she was accused of killing him. But from court documents we can follow the itinerary of Borukhova's journey out of the merciful messiness of private life into the pitiless orderliness of the legal system.

Borukhova and Malakov were married in November of 2001, produced Michelle in February, 2003, and separated in November of 2003, after he told her—as she reported in several court filings—to

get out of the house or "clean the apartment with my tongue." She took the child and went to live with her mother, returning to Malakov a few times, but finally moving out permanently, after "I saw the plaintiff kissing Michelle's genitalia in front of me on two separate occasions." On the first occasion, when she confronted him, "he apologized, told me it was his way of showing affection, and promised never to do it again." The second time, Borukhova went on, Malakov "became physically abusive, punching me in and about the head and chest and telling me that, if I called the police, I would be sorry and would never see our daughter again." In her first tentative step into the court system that would swallow her, Borukhova did call the police, but stepped back after Malakov was arrested; like many battered women, she did not press charges. However, on June 24, 2005, citing further abuse, she requested and received a temporary order of protection from the Queens Family Court, whereby Malakov was ordered to stay away from her and Michelle or be liable to criminal prosecution. Now she had crossed the line between the private and the public. She had asked the state for help and the state had given it, but, in exchange for its protection, had exacted control over a part of her life—her motherhood—that was as firm in its way as the "stay away" directive to Malakov. Henceforth, Michelle would be under the eye of the court; her relations with her absent father would be monitored by it. Borukhova was ordered to bring Michelle to visits with Malakov, supervised by social workers who, in turn, were required to send reports to the court on the conduct of the visits.

The court documents do not reveal what was actually going on between Borukhova and Malakov during the disintegration of their marriage. They are a crude allegory of ill will peopled by garishly drawn, one-dimensional characters. But some truth leaks out of every court document, as it does out of everything written or said. A document that tells a disconcerting truth about Borukhova is her "counterclaim" to the suit for divorce, on the ground of abandonment, filed by Malakov, in April of 2005. In the coun-

terclaim, Borukhova demands child support and spousal maintenance, medical insurance, life insurance, occupancy of the "marital apartment," return of wedding gifts and pieces of furniture, and payment of court costs. These demands diminish her; they put her autonomy in question. She was a practicing physician. She could have done what other able-bodied women do who divorce and wish to avoid entanglement with a troublesome mate. They walk away with nothing. But something impelled Borukhova—perhaps her early experience of authoritarianism—to remain in the dangerous game that she could have chosen not to play.

She made another unwise move in 2005. She submitted affidavits to the Family Court from two people who said that they had seen Malakov sexually molesting Michelle in the basement of her apartment building. In the stately words of the Family Court judge, Charles J. Heffernan, Jr., on whose desk the complaints landed, "Both affidavits state that the affiant saw Daniel Malakov, the Respondent in the above matter, perform or about to perform grave misconduct directed at the vagina of his young daughter." But at the hearing called to establish the truth of the matter—Daniel Malakov denied the allegations—both witnesses recanted their statements. They said that Borukhova's sister Natella had written the affidavits and had bullied them into signing them. Heffernan found the recanting witnesses "credible," and ruled against Borukhova.

Perhaps the most unfortunate consequence for Borukhova of her application to the Family Court—though it didn't seem ominous at the time—was the appointment of a law guardian for Michelle. In 1962, the New York State Legislature passed a Family Court Act giving children the right to be represented by counsel, and by 2005 it was routine for family courts to assign law guardians to the children of the warring couples who came before them. The law guardian assigned to look after "the best interests" of Michelle was David Schnall—who almost immediately took against Borukhova and, in effect, acted as a powerful second lawyer for Daniel Malakov



in the proceedings now before Sidney Strauss. (Strauss had taken over the case from Heffernan in the spring of 2006.) Schnall fed and fanned Strauss's fury at Borukhova. After the murder, he vehemently opposed her attempt to regain custody of Michelle.

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When Schnall testified at the criminal trial, I was not yet acquainted with his role as Borukhova's nemesis. Under Leventhal's questioning, he emerged as an intelligent and well-spoken representative of a manifestly worthy field of law. During the long sidebar in which Scaring fought to keep Schnall from reading Strauss's "prejudicial" remarks about Borukhova's behavior during the visits, the courtroom was cleared, and, as I hovered outside with my fellow evicted spectators, I noticed Schnall sitting on one of the chairs that lined the corridor. I went up to him and asked if Anna Freud's project in the nineteen-sixties with Yale law professors and child psychiatrists concerning "the best interests of the child" had been an influence on his work as a law guardian. He said that he didn't know of the project, but was interested in hearing about it. I told him that I was writing about the trial and asked if he would be available for an interview.

Journalists request interviews the way beggars ask for alms, reflexively and nervously. Like beggars, journalists must always be prepared for a rebuff, and cannot afford to let pride prevent them from making the pitch. But it isn't pleasant for a grown man or woman to put himself or herself in the way of refusal. In my many years of doing journalism, I have never come to terms with this part of the work. I hate to ask. I hate it when they say no. And I love it when they say yes. Schnall said yes. He said there were things he could tell me about the law-guardian field that would amaze me—dark, bad things—and gave me his phone number. When we were finally readmitted to the courtroom, Leventhal continued his examination of Schnall, who now had permission to read Strauss's remarks, and who continued to appear plausible and neutral.

Scaring's cross-examination followed and Schnall emerged from it looking less plausible and neutral. Scaring quickly confronted him with a bill he had sent to

Borukhova charging her for seven telephone conferences with him that had never taken place—they had been with Malakov. She questioned the bill—but then abjectly paid it, "because you were in a very important position with regard to what occurred to her child; isn't that true?" Scaring next skewered Schnall on the fact that he had never spoken with the child whose interests he was supposed to be representing. Schnall squirmed and pleaded her youth—he said that she was "nonverbal." "Nonverbal when she's four years old? Nonverbal?" Scaring witheringly said. I have since learned that not speaking to their clients is almost a badge of honor among law guardians. In a 1982 study by the New York State Bar Association, this practice was found to be ubiquitous. Recently, in a rare ruling, an appellate judge removed a law guardian from a custody case in Rensselaer County on learning that "he had neither met nor spoken with the child." But judges continue to turn a blind eye to the phenomenon of what the Bar Association study called the "phantom" attorney.

Another revelation came out of Scaring's cross-examination. It seemed that the proceeding of October 3rd took place only because Schnall insisted that it do so. Both Malakov's attorney, Nathan Pinkhasov, and Borukhova's attorney, Florence Fass, had wanted an adjournment. But, as Schnall testified, "I told the judge . . . I would not consent to [the adjournment] because I was very disturbed by the report from Visitation Alternatives describing Miss Borukhova's behavior during the visitation." Scaring bore down:

Q: And in spite of Daniel Malakov's lawyer saying to you he wanted—didn't want to go to court, wanted to adjourn it, you insisted on going forward, yes?

A: That's correct.

When I expressed my bafflement about Strauss's ruling to Florence Fass, she nodded and said, "Perhaps we caught the judge on a bad day." I wanted to ask Strauss if he regretted his decision, but he didn't consent to an interview.

II

Ezra Malakov is two years older than his brother Khaika, and an entirely different physical type; he is short and chunky, with an outthrust lower lip that gives his face a pugnacious expression.

When he testified for the prosecution, Leventhal asked him what his occupation had been in Uzbekistan and he replied that he had been a dentist for twenty years and then, after winning a singing contest, became a state-employed soloist on radio and television. "And since coming to the United States of America what do you do?" Leventhal asked, in his high voice. "I'm a hazan. I'm a singer in a synagogue. A cantor." Although Ezra has lived in the United States for eighteen years, he has never learned English, so an interpreter relayed Leventhal's questions to him in Russian and then translated his Russian answers into English. In his testimony, Khaika had reported a threat made by Borukhova's sister Sofya three days before the murder. According to Khaika, Sofya had said to him and his wife, "Do you know what you've done? You took a child from a mother, and you're going to have a big problem. If you don't give back the child, you are going to lose your child on this Sunday."

Ezra was put on the stand to report another threat—this one from Borukhova. Leventhal rubbed his hands as he drew Ezra's account from him: One morning, two or three days before the murder, on the street near his house, Ezra saw a distraught Borukhova, who was talking on a cell phone. He approached her and asked what was troubling her. "What's going on? Maybe I can help you in some way." She put down the phone and said, "Donik took away my child." "If he took away, he will give her back to you," Ezra said soothingly. "No, he will not give the child back to me." "I will help," Ezra said. "I don't need any help," Borukhova said. "His days are numbered. Everything is decided about them."

When Scaring cross-examined Khaika, he subdued him with his usual practiced badgering. In Ezra he encountered a baffling new creature. There was an amazing moment during Scaring's attempt to corner Ezra over his failure to report Borukhova's threat to the police:

Q: So we are crystal clear, you never reported this conversation to the police, true?

A: No, no.

Q: You did report it to the police?

A: I did not report to the police. How many times can he say that? I'm a person. I'm a human being, I'm not a child. He asked me this question three times. I'm not a child here. He should ask me in an intelligent, gentle way.

You don't often hear speech like this in a courtroom. Witnesses are willing, sometimes even eager, to play the game of matching wits with an adversary who is sure to defeat them because he is a professional and they are amateurs. Ezra's refusal to play—his continued protests against being questioned in a way that people aren't questioned in life outside the courtroom—brought into sharp relief the artificial and, you might even say, inhuman character of courtroom discourse.

12

Borukhova began losing the game very early in her cross-examination by Leventhal. Clearly, nobody had told her not to spar with him. Scaring should have warned her away from exchanges like this one:

Q: Your husband, Mr. Daniel Malakov, he sued you for divorce, didn't he?

A: He applied for divorce.

Q: He sued you for divorce, correct? He filed an action suing you for divorce, correct?

A: He applied for the divorce, yes.

Q: Did you understand my question, ma'am?

A: If you are asking if he applied for divorce, yes, he did.

Q: He brought the action for divorce against you, correct?

A: Correct.

Q: You didn't bring an action for divorce against him, did you?

A: No.

Q: After Daniel sued you for divorce or applied for divorce—to use your term—that was after your daughter had been born, correct?

A: Correct.

Q: And Daniel applied for divorce when your daughter was still an infant, correct?

A: No.

Q: She wasn't an infant?

A: No. It was April '05.

Q: How old was she?

A: She was almost two and a half years old.

Q: That's when he sued for divorce?

A: That's when he applied for divorce, yes.

Leventhal moved on, letting Borukhova have the last word in the “sued” vs. “applied for” debate—and leaving her looking stubborn and evasive. The exchange could be taught in a course on trial technique: it illustrates the way a good cross-examiner, like a good chess player, will inflect long-term strategy with short-term opportunism. Like his quick, darting tread, Leventhal's quick, darting mind instantly grasped the misstep that Borukhova had made when she corrected his “sued” with “applied for.” He saw the vulnerable pawn that would be his

in two or three moves and played them.

Another problem with Borukhova's courtroom performance (during the direct as well as the cross-examination) was her relationship—or non-relationship—to the jury. Borukhova behaved as if the jury didn't exist—speaking only to her interlocutors—and the jurors, in turn, behaved as if she didn't exist. I watched them not watching her. The whole purpose of putting a defendant on the stand is to influence the jury in his favor. Out in the hallway, during a break in Leventhal's cross-examination, a spectator said to Scaring, “For God's sake, tell her to look at the jury.” Scaring replied, “I think that's so phony when they do that.” Yes, it looked phony when the fingerprint expert elaborately turned to the jury to answer Leventhal's questions, like an actor addressing the audience over the heads of his fellow-actors. The defendant's task is to address the jury over the head of his interrogator without seeming to be doing so. The task is difficult but can be achieved. The model might be a person at a party standing in a group and talking to one person but in such a way as to make the

others feel that they are part of the conversation. Borukhova acted as if no one were in the room but the person asking her questions.

Leventhal, normally a pleasant person, transformed himself into a deeply unpleasant one for his cross-examination of Borukhova. He was aggressive and accusatory. He could barely conceal his contempt and dislike. He called her Miss Borukhova rather than Dr. Borukhova. Borukhova was sometimes very good at standing up to him. But as Leventhal relentlessly bore down on her—he interrogated her for two days—she looked increasingly defensive, rigid, stubborn, willful, devious. Leventhal grew harsher and harsher. “Are you making this stuff up as you go along?” he once permitted himself to say. Scaring objected and the judge murmured a reproof, but it was too late: it had been said. Borukhova wore her white jacket of innocence and kept her head high. She looked regal. She looked like a captive barbarian princess in a Roman triumphal procession. And the jury kept not looking at her.

The most painful part of Leventhal's interrogation had to do with electrocar-



“Can't we talk about something other than money?”

diagrams that had been seized from Borukhova's office after Mallayev's arrest. Mallayev had explained to the police that the ninety-one telephone calls between him and Borukhova between October 3 and October 26, 2007, were doctor-patient calls. He had said that Borukhova was his family doctor and was treating his wife for various ailments—which prompted the Queens District Attorney, Richard A. Brown, to remark, "I don't call my doctor ninety times in the course of the two weeks before I see him." (When the police questioned Mallayev about the phone calls, he is reported to have said, "Is there any amount of calls too many to make when it comes to your health?")

In the direct examination, Scaring produced records of Borukhova's treatment of the Mallayevs—in particular, that of Mrs. Mallayev, who suffered from a heart condition—to demonstrate that the telephone calls were about medical rather than murderous matters. Leventhal hastened to block this escape route. During Scaring's examination, Borukhova had noted in passing that the dates on the Mallayevs' EKGs were incorrect because the time-and-date stamp on her electrocardiogram apparatus was not set up. Out of this apparently negligible detail Leventhal fashioned a hideous instrument of torture. One by one he presented Borukhova with thirty-six other of her patients' EKGs, and in each case forced her to concede that the time and date were correct. Only the Mallayevs' EKGs were stamped with the wrong

time and date. The torture went on for almost two hours. "I will do this all day," Leventhal said at one point, like a Victorian schoolmaster caning a child until he admits his wrongdoing. "So I will give you the opportunity again, Miss Borukhova, would you like to change your testimony concerning whether or not the date and time stamp on your EKG machine was never set up in your office?" Borukhova stubbornly refused to yield. "Never set up by me," she kept pointlessly equivocating. In the press room, during a break, I overheard Billy Gorta on the phone telling his editor, "The lies are mounting. There was no knockout blow. But she's been cut. She's bleeding."

During his redirect examination, Scaring did what he could to stem the flow. There was an explanation for the Mallayevs' fishy EKGs. The Mallayevs, unlike Borukhova's other patients, were not insured, so Borukhova did their EKGs herself in order to avoid the expense of the technician who did the insured patients' EKGs and didn't forget to set the time-and-date stamp. All sort of plausible, but too late.

In a sidebar during the redirect, Scaring lost another battle with Leventhal. He wanted to question Borukhova about a psychologist named Igor Davidson, who had been treating Michelle during the year before the murder. When Scaring asked Borukhova, "What was Dr. Davidson treating your daughter for?" Leventhal objected, and when Hanophy overruled the objection he asked for and

was granted a sidebar. Davidson had been treating Michelle for symptoms associated with the supervised visits. The child was afraid of her father, and Davidson attributed her fear to the memory of seeing him beat up her mother. Leventhal didn't want the jury to hear this. "Counsel is just merely looking to inflame this jury and to try and prejudice the memory of the victim and to try to paint him into a bad person," Leventhal argued. Scaring retorted, "He painted my client as the villain in this marriage throughout. He painted [her] as . . . a bad mother. She wouldn't allow any overnight visits. There were reasons why she didn't allow overnight visits." But Hanophy ruled for Leventhal, and the jury never heard Davidson's explanation for why Michelle didn't bond with her nice dad.

Davidson has himself been painted in unfavorable colors—at best as a fool and dupe of Borukhova, at worst as an artful accomplice in her lies. He was not a witness at the criminal trial, but he did testify in the Family Court hearing held after the murder to determine whether the child should go back to Borukhova. His testimony was measured and grave. He spoke of his belief in Borukhova's truthfulness—he did not doubt her accounts of Daniel Malakov's abusiveness—and of the progress he felt that he had been making with the child in overcoming her fear of her father. He was the one person who actually knew Michelle and could speak from her point of view, but he was disregarded. He is the Kent of this tragedy, in the sense that he may be its most humane spirit—and most helpless bystander.

It has never been clear what, exactly, happened to Michelle after the murder. We know that Borukhova left her with a woman in the playground before going to perform CPR on Malakov, but we hear nothing about her until the evening, when Borukhova's interrogation at the precinct station is over, and she and her sisters are desperately trying to locate the child in the building. The sisters had taken Michelle from the woman in the playground and brought her to the precinct—where she was removed from them by representatives of a city agency called Emergency Children's Services, an arm of the Administration for Children's Services, known as A.C.S. Borukhova and her sisters never found the child and left the precinct late at night without



A PRELUDE

Matthew Arnold, looking over
 The Channel from the cliffs of Dover,
 Scanned with his telescope almost
 The whole French coast
 As far as Étretat,
 And was upon the point of saying "Ah,"
 When he perceived, not far from the great Aiguille,
 A lobster led on a leash beside the sea.
 It was Nerval, enjoying his *vacances!*
 Alas for gravitas! *Hélas for France!*
 Having of late been panicky
 About culture and anarchy,
 Arnold now left in a hurry,
 Foreseeing a night of worry.

—Richard Wilbur

being able to obtain information about her whereabouts.

An A.C.S. report, written by two social workers, Martha Martinez and Rashedah L. Goodwine, traces the child's journey into nightmare. Michelle was taken from the precinct and deposited at the house of a paternal relative named Tamara Eliasahuilli. When Martinez made a "home assessment" visit to Eliasahuilli the next day, Eliasahuilli told her that "she did not wish to keep the child," because "her presence in her home posed a potential threat to her own safety, as it remained undetermined who was responsible for the death of Michelle's father." Eliasahuilli proposed that Michelle go to her paternal grandparents, Khaika Malakov and Malka Mushivea, and the proposal was adopted; Michelle was packed off to the paternal grandparents. On November 1st, Rashedah Goodwine came out to the Malakov-Mushivea house for another home assessment. When she asked why a police car was parked outside the house, she was told that the family was afraid of "the possibility of retaliation by unknown parties." Another Malakov brother, Joseph, who was at the house, "insinuated that child's birth mother Mrs. Borukhova lived less than two blocks away and the proximity was unsettling." The report continues:

Mrs. Mushivea then began to remark on her presumptions regarding how her son was murdered. [Goodwine] cautioned the paternal grandmother from making disparaging re-

marks with the child Michelle present and suggested that Michelle be taken into another area of the residence. Ms. Mushivea replied that it was "Okay" as Michelle "only spoke Russian." (We know from our interactions with Michelle that she understands a significant amount of English.)

The grandparents proposed that a relative named Ludmila Ford take the child off their hands ("They did not wish to have Michelle reside with them for a long period of time"), and Goodwine left, saying that she would convey the proposal to her supervisors. Martha Martinez came the next day and reported that "the paternal grandmother wanted to know if the child could be placed with Mrs. Ford 'this evening.'" Meanwhile, something happened that solved the grandmother's problem. Michelle had been taken to an A.C.S. office for a visit with her mother. When Borukhova asked her about a bruise on her cheek, the child replied that " 'Dani's mom' hit her." Michelle was then taken to another agency, for a "trauma assessment," and, after telling the trauma assessor that she was "not happy where she is staying," she was removed from the grandparents' house and sent into foster care.

While Michelle was undergoing this Dickensian ordeal, the Family Court hearing on which her fate hinged was in session. If Borukhova prevailed—if the judge found that there was no "imminent risk" in her being returned to Borukhova's care—the ordeal would be over, and Michelle would be sleeping in her own bed

again. But, after six days of testimony, the judge, Linda Tally, ruled that there was imminent risk—that the charge of "emotional neglect" was substantiated—and that the child should remain in foster care. Borukhova, who had cried throughout the hearing, left the courthouse empty-handed. If she had ordered her husband's execution to get her daughter back, she had done so in vain.

13

Florence Fass, an attractive, spirited, and talkative woman in her early sixties, represented Borukhova at the Tally hearing. "Here's what I think was really going on," she told me in her law office, in Garden City, a few days after the end of the criminal trial. "I think that the police suspected Mazoltuv. They assumed she would disappear if she was the murderer. 'So how are we going to keep her here? We'll just take the child. The mother's not going anywhere. The mother won't leave her child.' And she didn't. That's what I think was going on. So between October and February, when the police are putting the case together, the kid is spending her time in foster care." She went on, "I think it was such a travesty of justice. It almost makes you look at the profession in a different way. The way a litigant might. This case was so screwed up. Everything you did was twisted. The law didn't apply to you, somehow. And even today, with this latest motion on Schnall. This motion in any other context would have been a home run. It would have been the judge calling us into chambers and going, 'Look, David, you know I think you ought to step down.' It's not going to happen, and I'm probably going to lose the motion."

What motion? I have let Fass run on too long, and have got ahead of my story. Let me go back to my talk in the hallway with the law guardian, who had said yes to an interview. I called him a few days later, and he agreed to meet with me on Sunday, March 1st, at three in the afternoon. But on Friday, February 27th, I found a message from him on my answering machine saying that he was cancelling the interview "for the time being," because he was "not comfortable talking about the case while it's still in court." He added that he might be willing to talk after the trial

was over, and left two telephone numbers. Taking the proviso and the phone numbers as a door left ajar, I called one of the numbers and left a message asking him to call me. At eleven o'clock the next morning, Schnall returned my call. I said I understood his reluctance to talk with me while the trial was going on and looked forward to speaking with him when it was over. Schnall said that talking later would depend on the verdict. If Borukhova wasn't convicted, he wasn't sure about an interview.

I expected the conversation to end there, but instead Schnall began to talk about the case that he said he wouldn't talk about and I began to take notes. He said, "I'm hoping for a guilty verdict," and added that Leventhal "had mentioned that their case is tough." He spoke of other court hearings at which he had seen "what this woman would do." He talked about his work as a law guardian—"I take the job relatively seriously"—and about the problem of payments. He explained that both parents in custody battles are required to pay the law guardian, but that only one side actually does. "The side I'm disparaging doesn't pay." He added that in the Borukhova case "they tried to get me removed" and made "personal attacks on me." But, he went on, in a new tone of voice, "my real passion isn't family law."

Then he spoke for almost an hour, almost without pause, about the world as a place of hidden evil under the control of "a Communist-like system." "Everything we know to be true isn't true," he said. In a torrent of words, he revealed the truths he had become privy to since "I started this alternate path seven years ago." I reproduce below some of what I scribbled in my notebook from his monologue:

Banks do not lend money. They have no money.
All of the banks are zombie banks.
The system is run by useful idiots.
We need enemies.
There will be genocidal austerity.
There is no energy crisis. There is plenty of oil.
Joseph McCarthy was right.
We've been living under the ten planks of the Communist Manifesto. We're a Communist country.
Orwell's father was a big technocrat.
The powers that be are on a roll.
The phony global-warming agenda.
Polio vaccine doesn't cure polio.
The male sperm gene is down seventy-five per cent. We're almost completely sterile.

Everything I've said is not opinion, it's fact. THEY control the world.

If I went public they'd come after me. The I.R.S. came to my apartment with summonses three times. The problem is they have guns.

Same thing with 9/11, same thing with Katrina.

"It was known ahead of time?" I interrupted.

"Of course," he replied. "I could talk about this for twenty minutes. I could give you so much more on it. Supposedly FEMA was incompetent. They did what they had planned to do."

We funded the Soviets.

It's laughable. Once you see it, it's so predictable.

I'm fascinated by how stupid people are. We could talk about Freud, Einstein. There's always a story behind a story. Nobody wants to talk about it. It's time now.

Sacred mysteries of Egypt.

Earth worship. Al Gore quackery.

There's a control grid in place. We're completely monitored. We're contributing to our own demise. Because we're so stupid.

The police—a private army for a private company called the City of New York. That's not hyperbole. That's fact. It's amazing and brilliantly done.

I brought the call to an end after fifty minutes—Schnall had by no means exhausted his esoteric knowledge, but I had heard enough—and sat and thought. Then I did something I have never done before as a journalist. I meddled with the story I was reporting. I entered it as a character who could affect its plot. I picked up the phone and called Stephen Scaring's office.

Scaring called back an hour later (I had left a message with his secretary saying that I had information about a witness). I told him about Schnall's call, and he asked me to fax him my notes. The following Monday, when the judge entered the courtroom, the attorneys clustered around him, each holding a copy of a document. The document was a motion that Scaring had drafted after receiving my fax. It asked "for leave to recall the prosecution witness David Schnall for further cross-examination, and to question Mr. Schnall concerning his mental health, and in particular whether he suffers from paranoid and/or delusional beliefs or perceptions which may affect his reliability and credibility as a witness." The motion quoted from my notes recording Schnall's "beliefs in various strange and ominous conspiracy theories," and cited legal precedents for impeaching the testimony of witnesses

who are nuts. "Keep it low," the spectators heard the judge say to Leventhal, who was speaking excitedly in his high voice and making his characteristic agitated gestures. Leventhal, we learn from the transcript, was beside himself over the motion. "Mr. Scaring's motion is absurd," he said to Hanophy. "To suggest that Mr. Schnall because he has certain opinions or possesses certain opinions or beliefs regarding history or regarding the world and its current affairs or any of the beliefs that are illustrated or set forth in Mr. Scaring's motion that he should then be permitted to recall him for purposes of cross-examining him about possible psychiatric issues is—it's just—it's absurd. It's absurd."

Scaring said, "I'm surprised that the prosecution dismisses this so quickly. There is no question when you read that that you realize Mr. Schnall is delusional. Now, nobody holds the beliefs that—" Hanophy cut in, "What, that there really is no energy shortage, there's millions of gallons—" The colloquy continues:

MR. SCARING: That the government planned or was aware of 9/11.

THE COURT: How about the one about there's no energy shortage, there's gas and there's oil?

MR. SCARING: Do you believe, Your Honor, that there's any evidence to suggest that the government was aware of 9/11?

THE COURT: Do you think that there is a shortage of oil in this world?

MR. SCARING: Judge, that is one of his statements. There are numerous statements that are clearly delusional. . . . The things that he says make no sense. They're bizarre, they're absurd. And so for the prosecution to quickly assign an absurd word for my motion—the term absurd—

THE COURT: Right. Your motion is denied.

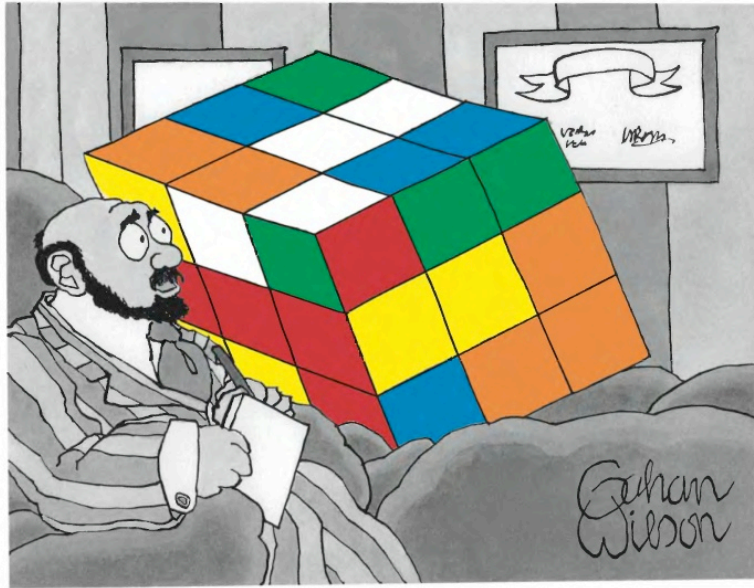
The jury was brought in and Leventhal produced a few more witnesses, among them the F.B.I. language specialist who translated the *padayesh* phrase as "Are you going to make me happy?" At the end of the afternoon, after a forensic pathologist had testified about his postmortem examination of Daniel Malakov, while Leventhal showed the jury gruesome pictures of the corpse, the judge turned expectantly to him and Leventhal said, "People rest." The next day, Scaring put on four defense witnesses, and made his shocking midafternoon announcement that Borukhova would testify. He examined her for the rest of the day. The next two

days, Wednesday and Thursday, were occupied by Leventhal's brutal cross-examination, and when it was over the jury was dismissed, and the judge made an announcement as shocking as Scaring's. He said, "We should be able to get two summations in tomorrow."

14

It is time to introduce a subject known as The Judge's Vacation. Billy Gorta's comment that the judge was sulking because Scaring put Borukhova on the stand was part of a discourse with which our journalists' cohort had entertained itself for several weeks. We talked a lot about a comment the judge had made before the trial began to the effect that it would have to end by St. Patrick's Day, March 17th—because that was the day he was going on vacation. As February turned into March, the vacation began to hover over the proceedings. The rumor that the vacation would be in the Caribbean was ascertained to be hard fact. Scaring recalled the judge saying, "This trial is going to be over on March 17th because I'm going to be sipping piña coladas on the beach in St. Martin." This agreeable prospect was evidently on Hanophy's mind when he chastised attorneys for latenesses that had previously gone unremarked, and kept the court in session long past the usual 5 P.M. ending hour.

Summations had been expected to begin Monday, March 9th, which left eight days until the vacation. But on March 5th the judge ordered Scaring and Siff to deliver their summations the next day, a Friday. (The order of the opening statements had been Leventhal, Siff, and Scaring; the order of the summations was Scaring, Siff, and Leventhal.) "We are on a very tight schedule," Hanophy said twice. Because both Borukhova and Mallayev were Orthodox Jews, who could not travel after sundown on Friday, Fridays had never before been trial days. It was winter and the sun went down early. However, now that time was of the essence, Friday, March 6th, became a trial day; the defense summations would start at nine in the morning and end well in time for the defendants' return by daylight to Rikers Island. The prosecution would sum up on Monday. Scaring expressed



"Don't worry, we'll soon have you all sorted out."

his outrage. He said that he could not possibly prepare his summation in the few evening hours that remained after a long drive to his home, in Huntington, Long Island. "Very nice homes out there," the judge said. "I can't do it," Scaring said. "I am not physically able to put this summation together in this long case now. It's going to be five before we get out of here. It's not fair to my client. I can't do a proper job by tomorrow morning." "Sure you can," the judge said. "I cannot." "Come on, you've been in this business thirty years, you can do it."

Scaring pleaded with Hanophy. He asked for Sunday as a trial day. The judge said no. Scaring proposed that "if the jury deliberation goes beyond the time that Your Honor is here, I believe we consent to having another judge sit in on it." But Hanophy did not want to be sipping piña coladas while another judge sat in his chair and held out his hand for the jury's verdict. He was determined that summations begin the next day. Scaring then argued that, if he and Siff had to sum up on Friday, so should Leventhal: it would be the height of unfairness to give Leventhal the whole weekend to prepare while he and Siff had only a few hours. Whether

Leventhal summed up on Friday hinged on whether Mallayev and Borukhova could be persuaded to violate their religious laws and stay past sundown on Friday. At first, Borukhova demurred, saying she would stay only if she could spend Friday night in the courthouse. When the judge said that was impossible, she agreed to stay if she could be back at Rikers Island by midnight. Mallayev agreed to the same arrangement. The judge asked each of them to say aloud what their attorneys had said for them, and they did. "All right, then," he said, "everybody can sum up tomorrow." However, everybody did not sum up on Friday. On Friday morning, Hanophy murmured something about being "overly cautious," because "appellate issues" could arise if the defendants were allowed to break the Sabbath—and only Scaring and Siff summed up that day. Leventhal got the weekend to prepare.

During Thursday's tense colloquy, the spectators who lingered in the courtroom saw, for the first time in the entire trial, Borukhova and Mallayev speaking to each other. They had never before made the slightest acknowledgment of each other's presence. Now they were heatedly (though inaudibly)

arguing. Alla Lupyan-Grafman later told me that Borukhova had “cut her own throat and her attorney’s” in the backstage drama that developed during the onstage agon between Scaring and Hanophy. The judge had offered Scaring and Siff a way out. If Borukhova and Mallayev would agree to break the Sabbath the following Friday—in the event that the jury had not yet reached a verdict—he would defer defense summations until Monday the ninth. “Mallayev said yes, right away,” Alla said. “But Borukhova said no. She said, ‘I’d rather die.’ She said to Mallayev, ‘Misha, don’t you understand that it’s a test?’ Meaning that God is testing them. And then I said—I know it was not my place to get involved—but I said, ‘Marina, if this is not a life-and-death situation, then what is?’ And Steve told her, ‘I need the time, I can’t close tomorrow, it won’t be the quality that I need to deliver, not the quality you expect from me. We’re finishing late today. I have just one night, there’s no way. And the prosecution will close on Monday. They get that advantage.’ So he put all the cards in front of her. And she said, ‘No, I’d rather die.’ Then all of a sudden she agrees to stay late the next day. It was so illogical. She was so irrational. Why would you agree to break the Shabbat for sure when the following weekend is hypothetical—

ninety-nine per cent it won’t happen? And to put your attorney in such a terrible position, basically signing your death warrant?”

15

When Alla said this, I had a feeling of déjà vu. I recognized a tone I had heard in the voices of the therapists, police officers, social workers, lawyers, and relatives who testified against Borukhova. The tone was a mixture of disbelief and disapproval. How can she be this way? She shouldn’t be this way. Borukhova’s otherness was her defining characteristic. With the exception of Igor Davidson, at the Family Court hearing, and two hospital colleagues, at the criminal trial, everyone questioned about Borukhova expressed a primal unease that often had nowhere to go except into hostility. Sidney Strauss was not alone in his preternatural anger and impatience. David Schnall seemed to fear and hate her from the start of his guardianship. When Jolie Rothschild, a social worker who became the proprietor of Visitation Alternatives in May of 2007, testified at the Family Court hearing, she couldn’t disguise her antipathy. Borukhova’s way of getting under people’s skin and setting off serious allergic reactions was illustrated with special viv-

idness by the testimony, also at the Family Court hearing, of a court-appointed clinical psychologist named Paul Hymowitz.

Hymowitz’s testimony, perhaps more than that of any other witness, buttressed the A.C.S.’s charge of “emotional neglect,” whereby a child may be removed from its mother by the state. He began his psychological evaluations of the mother, father, and child in August, 2007, seeing Borukhova and Malakov separately, in alternating sessions, and then seeing Michelle and Borukhova together. His first interview with Borukhova made him immediately suspicious of her. The things she told him were “kind of hard to believe,” he testified, under questioning by the A.C.S. lawyer, Eric Perlmutter. Borukhova told Hymowitz that Malakov was violent toward her and sexually molested Michelle, and, hardest of all for him to credit, “she recalled strange ideas [Malakov] had such as when she was attempting to breastfeed and then bottle-feed the child in the first year when they were living together, he would insist on withholding nurturance, nourishment for eight to ten hours at a time to train the child.” Borukhova’s account of “the amount of hours that he would go without wanting to feed the child seemed to strain logic,” Hymowitz said, and added, “The description of the molestation of the child, again, seemed kind of gruesome and outlandish.”

Malakov’s interview went better. Hymowitz characterized him as “a gentle, sensitive father who seemed to be very distressed and genuinely emotionally pained about the loss of unencumbered contact with the child.” Malakov described Borukhova, Hymowitz said, as “a very irrational, unstable, violently inclined woman.” When Perlmutter asked Hymowitz if he had spoken to Malakov about “the concerns raised by the respondent mother,” Hymowitz replied that Malakov “was very dismissive of the concerns,” and told him that after an investigation by a state agency “the results had come back unfounded.”

When Borukhova brought Michelle to Hymowitz’s office in mid-October, the encounter further hardened Hymowitz against Borukhova. The four-and-a-half-



“I hope this isn’t another one of your experiments in limited government.”

year-old child wanted nothing to do with the good doctor:

The child was barely looking at me, non-responsive verbally to anything I said. She was whispering to the mother, most of that communication in Russian, and sitting rather rigidly in the room without approaching the toys or the activities. . . . Once we suggested that mom would leave the room, the child was whining, grabbing the mother, and it just didn't sound like it was going to fly. . . . I can't think of any other case where I could not get the child to stay with me in the office alone.

Schnall, who appeared at the hearing as law guardian, evidently didn't think that Perlmutter had pushed Hymowitz hard enough on Borukhova's unfitness as a mother. When his turn came to question the psychologist, he was almost gleeful in his acrimony. "Would it be fair to say," he asked Hymowitz, "that she exhibited sociopathic qualities and traits?" Hymowitz replied at first that he wasn't sure "whether we're talking about someone who was delusional, namely out of touch with reality at least in selected areas concerning the child and the father, or whether it was sociopathic and therefore more premeditated and manipulated." After further sharp prodding by Schnall, Hymowitz said, "Having met with her by now well into late October, I began to feel that it was more likely that the behavior was premeditated, manipulative, and with callous disregard not only for the rights of the co-parent but the well-being of the child. . . . It began to seem more premeditated, more coherent in its fabric and less delusional." Schnall wanted still more. "So essentially the mother was lying without conscience?" he said. After a volley of objections by Fass and reformulations by Schnall, the judge allowed this exchange:

SCHNALL: So it would be fair to say the mother has been lying without conscience with respect to the ramifications to the father and his relationship with the child?

DR. HYMOWITZ: Yes.

When examining Borukhova later that day, Fass asked her, "Now, Dr. Borukhova, you've heard Dr. Hymowitz describe Daniel as a gentle man. Do you recall that testimony?"

DR. BORUKHOVA: This is what everybody said. That he was gentle and, you know, I mean, he was charming and he helped patients. He didn't get money from patients. . . .

But, when he used to come home, I mean, he was a totally different person and nobody would believe that somebody could be so different.

"Daniel appeared to be this wonderful person in the community—and apparently he was," Fass told me in her office. "And when he came home he was not. It was like Dr. Jekyll and Mr. Hyde."

Fass's only other witness at the Family Court hearing was Igor Davidson, whose testimony Schnall fought fiercely to discredit. Davidson introduced an element into the hearing that had been entirely absent from it: ambiguity. Alone among the participants, Davidson spoke as if he were in touch with life as it exists outside the courtroom, where everything isn't always this or that, but can be both. When Fass asked him whether he approved of Michelle's placement with the elder Malakovs after the murder, he said, "I didn't believe it was the optimal placement for the child. No." And went on:

This was really a time where she needed those people and places that were familiar to her and that she could rely on, that she has sought out in the past for comfort and reassurance. And I was concerned that those were not available to her.

My heart broke for the Malakov family when I heard that this happened. However, I understood that they were grieving, that they were mourning, and in terms of Michelle, I didn't know how many resources they would have available to nurture her or to coddle her, to provide all that attention and all that nurturing that she needed at a time like this.

Davidson's expression of compassion for the elder Malakovs coupled with his imaginative grasp of their conflicted feelings toward Michelle was a remarkable moment in a proceeding dominated by finger-pointing and blaming and punctuated by irritable sparring over evidentiary issues. Another display of Davidson's fine-mindedness came when Schnall confronted him with an affidavit he had written in April, 2007, recommending the temporary cessation of Michelle's visits with the father, after an incident in which the child was forcibly removed from the arms of her mother by Malakov and a Visitation Alternatives caseworker and taken into Malakov's house for a supervised visit. She cried hysterically for twenty minutes, and eventually subsided and played with her father and seemed happy to be with him. Schnall triumphantly cited the Visitation Alternatives report: "Michelle and

her father were smiling and laughing. Michelle engaged verbally with her father. They played with various toys. When Mr. Malakov went into the kitchen, Michelle followed him. She held his hand. Gave him a hug." (Schnall invented the hug, but gave an otherwise accurate account of the Visitation Alternatives report.) Davidson commented, "Twenty minutes of tantrumming seemed excessive to me." Schnall said, "Doesn't it seem odd that she would have such a tantrum and then engage with the father like they never lost any time?" Davidson replied, "It didn't seem odd. No. No." How, then, Schnall persisted, would Davidson account for the disparity between "her initial discomfort" and the laughter and smiles? Davidson replied:

It's not a disparity at all. I think that you can get used to any situation. It doesn't necessarily mean that it's a healthy and good situation for you to be in.

Schnall dropped the subject. Davidson, in his testimony, said that when Borukhova told him that Daniel had physically abused her and sexually abused Michelle he believed her, but he made an important distinction: he was treating the child not for sexual abuse but for the trauma of witnessing domestic violence. He acted on the assumption that the child feared her father because she had seen him hit her mother. This was why she shrank from him during the visits and was producing symptoms (such as bed-wetting and fear of leaving the house) connected with the visits. Davidson said that he was working with the child, using behavioral techniques, to dispel her fear and make a relationship with her father possible.

Here we come to another of the questions about Borukhova that blur her portrait and give it its strange tinge. Why did she keep harping on the sexual abuse? If Daniel's "grave misconduct directed at the vagina of his young daughter" (or what Fass called "inappropriate touching") actually occurred, it surely wasn't the cause of the child's fear of him—it was merely kinky. It would have served Borukhova better—it would have been rational and logical—to connect Michelle's fearful, clinging behavior during the visits to scary





"I've decided to leave the company. Could I have my soul back?"

scenes of domestic violence. If she had made these scenes vivid for the social workers and the judge, they might not have been so quick to blame her for the failure of the visits. If Strauss's imagination had been stirred by the image of a woman being beaten as a frightened child watches, he might have found an explanation other than maternal "smothering" for Michelle's behavior during the visits.

16

On Friday morning, after a night of almost no sleep, Scaring started his summation bravely, but his tiredness soon showed. He fumbled and couldn't find documents. He lost the thread of his argument. The transcript records the cruel effects of his sleep deprivation:

She says that—one point—excuse me. Now, moving to the CPR. She says that she sees Dr. Borukhova—I know it's long but I'm going to be a little while so bear with me. You know, I don't mind if you nod off but not for the whole thing, okay? Lost my train—forgot what I was talking about. I think I was talking about Ortiz. In any event—oh, the CPR. Thank you very much. Didn't get a lot of sleep last.

Scaring roused himself and the courtroom when he banged loudly on a table and said "Can you hear that?" and banged again, and again said, "Can you hear

that?" He was mimicking a piece of theatre that Leventhal had performed during his cross-examination of Borukhova to emphasize the suspiciousness of her statement to the police that she had not heard the shots that killed Malakov. Scaring went on to argue that this statement (comparable in its strangeness to Borukhova's accusation against Malakov of withholding milk from the infant) was true precisely because it was so incredible. "If she was guilty, why would she say that?" Scaring said. "She's got to be stupid and she isn't stupid. Why do I want to make myself look suspicious if I'm guilty of this conspiracy? I know he's gonna be shot. . . . It's actually the strongest evidence of her truthfulness, because if she was a liar she would say something that made more sense. I mean, it makes no sense."

But Scaring's exhaustion kept interfering with his attempt to persuade the jury to acquit Borukhova. "I lost my train on that." "I'm sorry. Organization is not my strongest suit." "I'm losing my voice so soon I'm going to sit down." His summation was a short, tattered, sad affair. Siff followed with a very long speech. He did not seem the worse for his sleepless night—he is twenty years younger than Scaring—but his summation was as ineffectual as his opening statement had

been. Some compelling points he made—that the case against Mallayev started with the cell-phone records and not with the fingerprints, for example—sank into the morass of his long-windedness.

On Monday morning, the benches on the Malakov side of the aisle were overflowing with members of the clan, who had come to hear their well-rested white knight's summation. Leventhal and Aldea, both dressed in dark suits, sat side by side at their table, like a pair of crows imperturbably looking down on carrion. Orderly piles of transcripts and four bottles of water were precisely lined up in front of them. Leventhal's summation was two hours long and even more artful than his opening statement. He began with the words "He took my child. It's already been decided. His days are numbered." After a pause for effect, he repeated Ezra Malakov's words. The summation was a rousing reprise of the prosecution's case, like the parade of the animals and performers at the end of the circus. Leventhal displayed his witnesses against Mallayev, among them "brave, alert, conscientious and focused" Cheryl Springsteen, who had seen the shooting and identified Mallayev in a police lineup; Marisol Ortiz, who had been in Malakov's dental office with her daughter, and had seen him walk toward the playground with Michelle; Bieniek, the fingerprint expert; Rafael Musheyev, a butcher from Samarkand, at whose Flushing apartment Mallayev unexpectedly appeared with his son Boris three days before the murder and from which the two disappeared on the day of the murder. "The evidence against Mikhail Mallayev," Leventhal said, "is overwhelming."

But Mallayev wasn't interesting to Leventhal. He dropped the unappetizing hit man from his maw and loped toward his more delectable prey:

Standing alone he has no motive to murder Daniel Malakov. But, ladies and gentlemen, he doesn't stand alone, he stands with her, the woman who mysteriously tapes their meeting in May of 2007, the woman whom each time, ladies and gentlemen, I submit to you we prove that they are together both in May and again in November, right after they meet, this defendant Mikhail Mallayev deposits almost \$20,000 in cash into multiple bank accounts.

Leventhal's wobbly syntax reflects the instability of the pillar on which this element of his case against Borukhova was poised. He had no proof that the deposits

of twenty thousand dollars came from her. All there was to suggest that the “paid assassin” had been paid by her was, in the case of the deposit in May, the mysterious tape, and, in the case of the November deposit, Mallayev’s name on a calendar that the police had seized from Borukhova’s medical office. Of course, the ninety-one cell-phone calls, coupled with motive, were enough to convict Borukhova. But Leventhal was letting no opportunity go by to buttress his case. He knew that juries want more than evidence to convict; they want to be certain that the person they are sending to prison or to another world is an evil creature as well as an evildoer. So Leventhal worked to blacken the image of Borukhova to the point where the jury could feel good about a conviction. He repeated Strauss’s angry words—“If there was ever a situation in the mind of this particular Court that cries out for immediate action it is this and that which I have just described”—and went on to draw this portrait of her:

A woman who threatened to sue the social workers at Visitation Alternatives. A woman who had problems with David Schnall. A woman, I submit to you, who had problems with anybody that didn’t see it her way. A woman who had problems with anybody who didn’t agree with her. But I submit to you, ladies and gentlemen, that David Schnall saw her for who she was, the same person—

Scaring objected here and was sustained. But there was plenty of blacking paste left. Leventhal went on to mock the fishy EKGs. He did not scruple to quote (several times) the “Are you going to make me happy?” version of the *padayesh* quotation. He scored a delicious triumph when he showed (with records from Delta Airlines) that Mallayev was in Israel when Borukhova said that he and his wife came to her office in the summer of 2007. “If she’s lying about that, what else is she lying about?” Leventhal said. He returned to the afternoon, nineteen days earlier, when a stunned courtroom had watched a videotape documenting the transfer of Michelle from her mother’s custody to her father’s.

The film was horrifying. For almost an hour, we heard the child scream until she was hoarse, as she was carried for several blocks down a street and, finally, pulled out of her mother’s arms by Daniel and taken into Khaika Malakov’s house. Tears came to many eyes. Some of the jurors

cringed. Borukhova had commissioned it after seeing a public-relations consultant and presenting to him her ideas for protesting the Strauss decision—she would write to Hillary Clinton, for example, or go to Washington with Michelle and sit on the White House lawn. The consultant didn’t think much of these frail schemes, but he approved the idea of documenting the transfer and gave her the name of a filmmaker. Borukhova said she wanted to show that “there was a lot of discrepancy between what Visitation Alternatives is writing and the actual things which is going on.” The film showed, with unsparing force, the misery of a child being taken away from her mother against her will. It should have been Borukhova’s ace in the hole for gaining sympathy from the jury. But, incredibly, Leventhal was able to turn the film against her. He made it seem as if the child had been traumatized not by the transfer itself but by the mother’s callous filming of it. The pain that the jurors had felt while watching the film—and I watched them looking afflicted; they weren’t playing with their hair or staring into the middle distance—was turned against Borukhova rather than against the judge who had caused it. She would have done better to write to Hillary and sit on the White House lawn.

Leventhal saved for last an ingenious plot twist. He came back to Borukhova’s insistence that she didn’t hear the shots:

Mr. Scaring asked you about why would she lie about not hearing those shots. Why would she lie about that? . . . Ladies and gentlemen, she didn’t hear the shots because she wasn’t there.

According to Leventhal’s theory, Borukhova was late for the meeting in the playground, because she was fussing with a button spy camera she had bought the day before (to document the killing and use the film against Mallayev “in case he double-crossed her”), trying to follow the instructions to make it work but unable to do so, and finally abandoning the camera and rushing to the playground—only to find that Malakov had already been shot. And here is Leventhal’s cleverest stroke: “She said she didn’t hear the shots because she didn’t expect to hear any shots. I’ll say that again. She said that she didn’t hear any shots because she never expected to hear any shots because she knew he was going to use a silencer.”

17

The jury began its deliberations on the afternoon of Leventhal’s summation, was sequestered overnight, and came back with a verdict the next day, after lunch. During the six hours of deliberating, the jurors sent six or seven notes asking for documents (and coffee in one case). The courtroom was packed. Our little press contingent had been booted out of the front-row seats to



“Jack, we’re going all the way to Abilene. Must you ride so close?”

make way for police detectives and functionaries from the D.A.'s office. The Malakov side of the aisle was filled with a crush of relatives and friends. On the Borukhova side, to which some of the Malakovs had been obliged to overflow, the mother and sisters were reading aloud from their prayer books in fervent whispers; Mallayev's daughter was davening. The news that the jury had a verdict had come, but the judge did not send for the jurors. He sat serenely surveying the scene. He was waiting for the father. "Tell him I want him in here now," Hanophy finally said. Khaika entered, and the jury was summoned.

The foreman announced a verdict of guilty for both defendants on all counts of murder in the first and second degrees. The defendants listened expressionlessly. Borukhova said something to Scaring. The jubilant Malakovs filed out of the courtroom. In the hall, they hugged Leventhal and the police officers. "God bless America," and "Thank you, America," they said on the courthouse steps. Khaika told newspaper and television reporters, "Before, I thought the system of justice was not so good. Now I understand the system is high class." The jury had been spirited out of the courthouse—but reporters were able to stake out a few jurors at their homes, and quotes from them appeared in the next day's *Post* and *Daily News*. "She didn't show any emotion," a twenty-five-year-old juror named Oscarina Aguirre told Bode and a colleague, Dave Goldiner. "That's kind of what did her in." A juror who didn't want her name used told Gorta, "There was nothing believable that she said at all. It just didn't make sense." There had evidently been no disagreement among the jurors; they had all accepted Leventhal's narrative. "I don't think anyone thought they didn't do it," the anonymous juror said.

In the first round of voting, however, one juror had written "undecided" on her ballot. I learned of her several months after the verdict, from two young jurors who consented to speak with me on the condition of anonymity. (Five other jurors I reached declined to be interviewed on any terms.) I met with the two separately—I'll call them Tim Smith and Karen Jones—but their accounts were markedly similar. Both reported that the undecided juror had "a personal reason"

for her demurral: she was a mother who couldn't bring herself to send another mother to prison and separate her from her child. But, as Smith reported, "we talked to her" and she came around. Smith believed that if Borukhova hadn't testified the undecided juror—he called her "the Spanish lady"—might have held out longer, if not to the end. He thought that Borukhova's appearance on the stand "put the nail in the coffin."

Both jurors called Strauss's decision to change custody a good decision. His scathing words from the bench—which Scaring had fought so hard to suppress and Leventhal equally hard to admit—seemed entirely reasonable to them. "Why would a judge take such a drastic step if there wasn't a good reason for it?" Jones said. "Why would so many people be against her?" "That lawyer for child aid who painted a portrait of her as overbearing—why would he lie?" Smith said.

Both accepted the F.B.I. translator's version of the disputed line in Borukhova's taped conversation with Mallayev—"Are you going to make me happy?"—as correct. "Why would he be working for the F.B.I. if he didn't know what he was doing?" Jones said. And she went on to make the inference that Leventhal intended her to make: "She had led Mallayev to believe there would be some other payoff in addition to money. She had given him hope." The defense's translation—"Are you getting off?"—seemed unworthy of consideration. "They were grasping at straws," Jones said.

For Jones, the film of the traumatic transfer of custody was conclusive evidence of Borukhova's monstrousness: "She was cold and unconcerned. She didn't try to comfort her daughter. Wouldn't you want the child to be calm? But she just wanted to show on tape how upset the child was. I don't know what her motivation could have been, except selfish. I saw that she was willing to sacrifice the well-being of her daughter to get her way. This made me believe she would kill her husband to keep the daughter."

Both jurors were sure of Mallayev's guilt, though Smith had noticed—and thought unfair—Hanophy's suppression of Siff's attempt to challenge the fingerprinting field. Jones thought otherwise: "He was trying to say fingerprinting is not a science. That's ridiculous.

It was such a crazy argument, such a desperate thing to do. They've been using fingerprinting for so many years. Why would they use it if it wasn't accurate?"

One of the jurors who turned me down had written in an e-mail, "I don't think I could do the interview without getting very upset about it. It still feels too recent for me to talk about it." I imagine that she was the Spanish lady on whose thread of maternal feeling Borukhova's fate briefly hung.

18

On a Sunday afternoon a few days after the verdict, Alla Lupyan-Grafman took me on a tour of the Bukharan neighborhood in Forest Hills, a district of pleasant houses on side streets—with the gilded McMansions rising strangely among them—that flank an avenue, called 108th Street, lined with well-maintained red brick apartment buildings. After about eight blocks, a few synagogues appear, and the avenue becomes shabbier. It then turns into a Main Street stretch of food markets and small clothing and electronics stores and storefront offices, among them the medical office where Borukhova practiced. The Annandale Playground, nearby, was our final stop. At the trial, when the prosecution showed charts on which eyewitnesses to the shooting made marks to indicate where they had stood when they saw what they saw, I had had trouble imagining the scene, and now that I was on the spot it was not much clearer. The place was just another of the city's grudging concessions to the claims of innocuous childhood pleasure. No trace of violence appeared among its banal swings and slides. But, a block away, on Sixty-fourth Road, a trace of the victim remained. As Alla and I passed a red brick apartment building, she pointed to a red canopy over a white door on which the words "Orthodontist/Physical Therapist" were printed. "This was Daniel's office," Alla said. Disconcertingly, the name of the man who had been dead for seventeen months still appeared on a sign hanging beside the door from a metal pole: "Daniel Malakov, D.D.S. P.C. Orthodontist," with a Russian translation below it, followed by "Gavriel Malakov, P.T. Physical Therapist,"



"Some hacker from an obscure university in China ate my homework."

also with Cyrillic writing below. Gavriel, Daniel's brother, had shared the office with him and evidently still practiced there.

The following Sunday, I returned to Forest Hills, impelled by an inexplicable urge to retrace the steps I had taken with Alla. On Sixty-fourth Road, I took out my notebook, to write down the words on the sign in front of Daniel's dental office. As I stood writing, a tall, older man in a yarmulke suddenly appeared, whom I immediately recognized as Khaika Malakov. He looked at me without surprise or even interest, as characters in dreams do. I, too, felt no surprise. I introduced myself as a journalist—perhaps he remembered seeing me in the courtroom?—and asked if we could talk. Khaika silently took out a key and opened the white door. I followed him into a waiting room in which everything was black: the high receptionist's counter, the linoleum floor, the chairs in a row along a wall. Khaika motioned me to one of the chairs and seated himself in the next one. "Everybody congratulate me," he said. "You win case. Justice is done. But in this case nobody win. Especially Michelle. I lost my son. My lovely, lovely son. He

had high education. Everybody need him. Very high-class specialist, very important. My family lost him. Everybody lost. Nobody wins. All the families suffer. Killer family suffer now. This case, it is not sport, it is not business transaction. It is very stupid case. A lot of people congratulate me. I don't know what to say."

He proposed that an electrode be placed in Borukhova's brain so that "every time she touched her head she would remember what she did." He went on, "American jail system is not like Russian system. They have TV, they don't work, they can go to school. They can just exercise. Too easy. In Russian jail it is very hard."

I said—falling into Khaika's associative style of conversing—that in "Crime and Punishment" Raskolnikov got only eight years in Siberia.

"Eight years in Siberia is like eighty years here," Khaika said. "It's very cold in Siberia. They work underground in mines. After three years, everyone is sick."

I asked him where I could get a recording of Ezra Malakov singing Bukharan *Shash maqâm*, a classical Central Asian musical genre. I had learned that

Ezra is a distinguished disseminator and performer of this repertoire and that he had made a number of CD recordings. Khaika said he had a collection of Ezra's recordings at home and invited me to come pick one up. As we walked to his house, we passed an apartment building that Khaika identified as the building where Borukhova's mother and sisters live. On 108th Street, we passed Borukhova's storefront office, and I saw that her sign, like Daniel's, was still in place. Khaika's house, a few blocks away, on Sixty-sixth Avenue, is a brick house of pleasant, undistinguished character. The living room had a stilted orderliness. There was a large polished table in the middle surrounded by large chairs, a huge credenza with china and crystal, tea sets, and bibelots behind its glass front, a large painting in a gold frame of the Wailing Wall in Jerusalem, a black upright piano, Persian rugs, leather sofas, and, in the window, a vase of gladiolus and hydrangeas.

At home, I played Ezra's recording; I had never heard songs like that. Over instrumentation that, in its circular, teasing rhythms and vibrant twangings, evoked harem dancers, the words *baruch*

atab adonai rang out in Ezra's vigorous, harsh voice. After I played the CD a few times, I began to like it.

19

The sentencing hearing, on April 21st, had the atmosphere of a public execution. The jury box was filled with cameramen, who stood in a row and thrust their heavy cameras outward, as if they were rifles. Every seat was filled. The front row had again been reserved for police detectives and functionaries from the D.A.'s office, and the horde of Malakovs seemed even larger than the one that came to hear the verdict. Judge Hanophy arrived in a Sunday-best gray suit; he put on his robe only at the end of the obligatory waiting period. Borukhova and Mallayev were led in but not immediately freed from their handcuffs; Scaring had to ask Hanophy that this be done. Borukhova wore a turban of patterned ivory fabric, a long black-and-white skirt, and her white jacket. Mallayev was in a dark suit. Throughout the hearing, Borukhova wrote on a yellow legal pad. Scaring and Siff had submitted motions "to vacate the conviction" and Donna Aldea stood up to give the prosecution's argument against them. As she neatly struck down Scaring's and Siff's complaints of judicial error and bias, I thought of Billy Gorta's admiring characterization of her as head girl at a British school. Before he denied their motions, the judge admonished Scaring

and Siff: "This is nothing different than any other murder case I've tried. You seem to think that this is so extraordinary. It's not. Somebody's life was taken, somebody's arrested, they're indicted, they're tried and they're convicted. That's all this is."

The sentencing hearing proper began with a series of "victim impact" statements. The first statement was read aloud by Khaika Malakov, in Russian, with Alla translating. He spoke of Daniel's professional merits and personal virtues. He expressed his gratitude to the police and to the D.A.'s office. "We know how difficult it would be to find the killer and how difficult it is especially under democratic system to prove the guilt." He concluded by saying, "Like it says in the old book, eye for eye, death for death, but fortunately for the killers who commit such a crime there is no such penalty in the United States today." He asked for life imprisonment without parole.

Leventhal, in his statement, called Mallayev a predator and schemer and a paid assassin and evil accomplice. He castigated Borukhova—his voice rising and his hands feverishly gesturing—for her "sheer arrogance" in believing that she could get away with the crime and for her violation of the Hippocratic oath (though he continued, insultingly, to call her "Miss," rather than "Dr."—as did the judge) "when she hired a paid assassin to murder in cold blood the man who had once shared her bed." Borukhova listened impassively, and continued to

write on her legal pad. Leventhal characterized the crime as "one of the most coldhearted and cold-blooded murders that I have had the opportunity to investigate and to prosecute." He said, "These defendants are a true danger to society," and asked for the maximum sentence. "It is only these sentences, Your Honor, that will protect society from criminals such as these."

Siff pleaded for the minimum sentence for Mallayev, and then Hanophy asked Mallayev if he had anything to say before being sentenced. The man who had sat in silence during the whole trial now rose and spoke at length. He spoke in bad but fairly comprehensible English, in a rambling, confusing, entirely unpersuasive, but strangely dignified way about how he had been railroaded. "I didn't kill nobody in my life," he said, and went on:

I cannot blame the jury for the verdict because they hear what they have to hear and what they supposed to hear to bring that judgment because Mr. Prosecutor make everything to make that happen. For holding the media, the news channel, all advertisement, and go over and over with lie statements in the newspapers, to putting the media. Is like hey, we got the killer, this is the killer, and make believe to whatever he's talking with no proof.

And:

What they try to accomplish is to satisfy the people of New York hey, we got the killer. Don't worry. You can go to the playground. Nothing is gonna happen.

Scaring then stood up to argue for a lenient sentence for Borukhova. He said, as he had said to reporters many times before, that the case against her was based on "guesswork and speculation." He said that, like Daniel, she was respected in the community for being a good doctor and a good person. "It's easy for the prosecution to stand up and wave his hands and say this is the worst case he's ever seen, but he doesn't know her, either. She is a good person. I'm asking Your Honor not to impose such a Draconian sentence on this good person."

The judge said, "Miss Borukhova, do you want to say anything before I sentence you?"

Borukhova made the briefest of statements: "I would just repeat myself again and again as I mentioned at the time when my husband was killed, I had nothing to do with this murder. I didn't kill



anybody. I have nothing to do with it. That's all, Your Honor."

Hanophy gave both defendants the maximum sentence of life in prison without parole:

Mr. Mallayev, you took the 20,000 pieces of silver to murder Dr. Malakov. You say you're a religious man. There is a man in the New Testament that says: "What does it profit a man if he gain the wealth of the world and suffer the loss of his immortal soul." Greed led you to this downfall and you are going to pay dearly.

That the man in the New Testament does not figure in Mallayev's religion was evidently of no concern to the judge, who was in his element as he delivered the homily. He then turned to Borukhova, and said:

Miss Borukhova, you set out on a journey of revenge because a judge had the temerity to give the custody of your daughter to your estranged husband. Another quote, Confucius this time, said: "A person who sets out on a path of revenge should first dig two graves." Your husband lies in his natural grave and you are about to enter your 8x8 above-ground internment where you will spend the rest of your natural life.

20

On Saturday, May 10th, at 5:30 P.M., I rang the bell of Khaika Malakov's house. When he came to the door, he was dressed in a white shirt and navy sweatpants and sandals, and looked as if he had forgotten the appointment we had made a few days earlier. But he motioned me toward a wicker chair in a corner of the front garden and then went back into the house. The garden was a small flagstone square, bordered by beds of plantings, on which a long white plastic table had been set. Khaika reappeared with a folded white cloth. I watched him remove a bunch of wilted mint cuttings from the table, hose it down, and tilt it so the water ran off. Then he partially unfolded the cloth and laid it across one end of the wet table. He motioned for me to pull up my chair and set my tape recorder on the cloth. He sat down opposite me, and, as we began to talk, Ezra Malakov arrived. He was dressed up (as he had not been on the stand), in a gray suit, blue shirt, white silk tie with a black scroll design, and a porkpie hat, which he took off, to reveal a pompadour of gray hair and a yarmulke. He seated himself at the table, and I asked Khaika to tell him that I had admired his recording.

Ezra nodded and picked up the Bukharan newspaper he had brought. Khaika intermittently translated our conversation for him.

Ezra said something in Bukhori to Khaika, and Khaika said that Ezra was offering to write an account of Daniel's life and marriage for me. He would send it and I could have it translated. I made a counter-proposal: why didn't he speak his account into my tape recorder? Ezra agreed and this is what he said (in Alla Lupyman-Grafman's translation):

"The trouble between Marina and Daniel started when the girl was born. They were both working and somebody had to raise the child. Daniel wanted to hire a babysitter, but Marina said, 'No, my mother will raise the child.' And Dani said, 'But why, we have the money, we have the possibility, so why make Mom work, why make her suffer when we can hire a babysitter?' But Marina said, 'No, the baby gonna be only with my mother. I trust only my mother.' And the mother had these stupid principles. She started fighting with Daniel: 'Don't do this. Don't do that. Don't give this. She's not supposed to have that.'

"The baby got sick. She had pneumonia. Daniel took the child to the doctor. The doctor was a Bukharan. And the doctor looked at the child and she said the child should be given water. You shouldn't give her milk. So Dani came back home and told his mother-in-law, 'The girl is ill, don't give her milk, just give her water.' And that woman, Marina's mother, said, 'Bastard, do you know how to raise children? I raised five kids. I know how to raise them. How do you know what to do?' Then Marina came home and saw there was a scandal between Daniel and Istat, and that night he was arrested.

"Then Dani couldn't take any more and he applied for divorce, but she didn't want to have a normal divorce on good terms. She didn't want to be divorced. She wanted to stay in control like the sisters. The sisters don't respect their husbands. The husbands for them are like dogs. The husbands are afraid of them. She wanted to keep him under her control and do whatever she wanted. So when Daniel applied for divorce they came up with new

lies, and one of them was that he raped his daughter. He was tortured. He never told us what was going on in his family. He was very private about it. And he lost so much weight. He became a skeleton. He forgot about everything in the world. He was completely pushed to the wall."

Toward the end of Ezra's speech, a man, two women, and three little girls came into the garden. They were Joseph

Malakov, the elder of Khaika's surviving children; his wife, Nalia; their children Sharona and Julie; and Nalia's sister-in-law Roza Younatanov and her daughter, Adina. The adults sat down at the table and the children flitted about the garden. Joseph is a squarely built, darkly handsome man in his early forties. He is a pharmacist. I found him the most sympathetic of the Malakovs. He is the most assimilated. His near-

perfect English is colloquial and his manner is pleasant and natural. He began to talk about an obscure feeling of guilt that he had about Daniel's death and then asked me not to record our conversation because it was the Sabbath.

Nalia, a slender, dark-haired woman of forty-one, talked about the murder without inhibition: "I saw her at the hospital and I attacked her. I knew a hundred per cent it was her. I said, 'Stupid, stupid girl, what did you do? You'll never see Michelle again.'" Nalia wore a long skirt, but looked like an American woman who has chosen to wear a long skirt, rather than like a Bukharan in her obligatory religious garb. As she talked, I became aware—as one becomes aware of the twittering of sparrows—of soft children's voices. The little girls were hovering around my chair, and one of them, seven-year-old Sharona, was talking about another child. "She is so joyful," she said. "She is always playing." My half listening turned to full listening when I realized that she was talking about Michelle and wanted me to hear what she was saying. Michelle now lived with Gavriel Malakov and was often at Joseph's house. I asked Sharona, "What do you mean, she is always playing?" and the child explained that Michelle would go on with games long after the other children had tired of them. She was tireless. And "so joyful," Sharona kept repeating. Sharona was a wiry, vivacious



little kid, with dancing dark eyes. She was a messenger from the world of children who was trusting me—a stranger from a distant grownup world—to decode the message of her orphaned cousin's "joy."

I said my goodbyes and left Khaika's garden. As I walked toward 108th Street, I met Gavriel, a lanky young man whose bright-colored clothes had an air of costume, wheeling a stroller with a boy in it, and his wife, Zlata, a thin, very young-looking woman with gold-rimmed glasses, holding a baby. A child on a tricycle, pedalling vigorously and laughing in a forced and exaggerated manner, preceded them. It was Michelle. Gavriel recognized me from the courtroom, and paused to exchange a few words. Walking to the subway, I swore at myself. Had I stayed in Khaika's garden another minute, I would have had the chance to observe Michelle in the heart of her feared father's family. But perhaps my glimpse of her face distorted by mirthless laughter sufficed for my journalist's purpose. I thought I got the message.

21

Eight days later, on a Sunday evening, I called on Joseph and Nalia at their brick house, on tree-lined Sixty-eighth Road. We sat talking at a table in the spacious, modern kitchen, looking out on a garden with a large blue swimming pool in the middle of it, as their four children—Sharona, six-year-old Julie, fifteen-year-old Simona, and seventeen-year-old Ariel—came in and out of the room, and then disappeared upstairs. The couple offered fruit and tea in small glasses and scenes from the marriage of Daniel and Marina. Joseph said, "When they first got married, they would walk on 108th Street hand in hand. My friends would say, 'What's the matter with them? They're not young kids. Why do they walk hand in hand?' I said, 'Listen, they're happy, who cares?'"

"We don't show affection outside," Nalia said. "We show it inside. It's not customary to show it outside." She went on, "He was very romantic. After weddings, we do *sheva brachot* for the girls, we do parties where people daven for you and wish you happiness. And every night Daniel would make a speech about how he loved her and how she was the woman

of his dreams. And it was not appropriate. We do not speak about love. But he would say whatever was in his mind, without thinking what people will say. If I made a speech, I would always have the consideration that I have to say something appropriate to the society."

Joseph and Nalia evidently felt no impropriety in speaking unguardedly to a journalist. Murder violates the social contract—and makes a mockery of privacy. As they had eagerly cooperated with the prosecution, so they eagerly told me their stories—as they had been telling them to other journalists—in the perhaps not so far-fetched belief that journalists are part of the criminal-justice system: small but necessary cogs in its machinery of retribution. As losing defense lawyers are wont to do, Scaring had spoken bitterly of the role of the press in his defeat. He suggested that the defendants had been tried and convicted in the press, and it is true that the press had made the prosecution's narrative its own. Journalism is an enterprise of reassurance. We do not wring our hands and rend our clothes over the senseless crimes and disasters that give us our subject. We explain and blame. We are connoisseurs of certainty: "Hey, we got the killer. Don't worry. You can go to the playground. Nothing is gonna happen."

Joseph now said, "Before the child was born, when Daniel and Marina were first married, he gave himself utterly. When she was in residency in Brooklyn, he would be in his office in Queens accepting patients and all of a sudden she calls and says, 'Daniel, I'm hungry, can you bring me something?' I was there once when this happened. He has an office full of patients. But he leaves, gets her a kosher meal, drives all the way to Brooklyn, gives her the food, comes all the way back. The patients waited for two hours."

Joseph told another version of the story about the withholding of milk from the baby. "The baby is crying and Daniel tells them that they are feeding the baby improperly. But he's not a pediatrician, he doesn't take that upon himself. He says, let's go to the doctor. So they go to the doctor, the doctor examines the baby, and gives them directions what they have to do: eliminate the food they're giving and give water on a schedule. So he's there, the wife is there, the mother-in-law is there. Everybody hears what the doctor's recommendations are. They come home and

they go back to the same way they were doing before. Now Daniel turns around and says, 'Guys. We just went to the doctor. O.K., you didn't take my word. But the doctor gave specific instructions.' So now they say, 'You know what, you shut up.' I don't know the exact words, but they disregard whatever he says. Now he starts waking up. He starts seeing that the demands are unreasonable." Joseph's cell phone rang, and he left the table to talk to the caller. When he returned, he said he had to leave—to get a drug from his pharmacy for a sick relative.

Nalia refilled my glass and said, "We had a thirty-fifth-birthday party for my husband. Daniel and Marina came, and when the dancing started everyone was staring at them. She had long hair and she was dancing provocatively. She had one leg on top of his and she would twist her head so her hair was all over him and he's bending her down and she's doing all those hand movements. It wasn't a dance you would do in front of people. You could do it in a night club in Manhattan. You just don't dance like that here. It wasn't appropriate. If I showed you the video—I have it—you'd be shocked." She said that she would look for the video.

Ariel had reappeared and was listening to the conversation from the doorway. I invited him to join us at the table and he came over and sat in his father's place. He spoke admiringly of the house Daniel bought after he moved out of the apartment he shared with Borukhova. "He had a big back yard, grass and trees everywhere. And inside—it wasn't like the house of a billionaire. He made it very simple, elegant, humble, nice. A nice couch, a nice piano, a guitar sitting over there, nice curtains. He knew how to dress. Like his closet. We were at his house after the funeral. We went into his closet. When he was around us in the neighborhood, he always dressed simply, like Marshalls or Sears kind of clothing. But when you went inside his closet you saw that he had Prada, Armani, Hugo Boss, all those designers." I thought, Dr. Jekyll in his Sears khakis and Mr. Hyde in his Armani? And, How does this boy from a religious home and a closed immigrant community know from Prada and Hugo Boss?

Joseph came back from his errand of mercy and took his seat at the table, as

Ariel slipped away. Nalia talked about her anxiety after the Strauss decision: "I called Daniel and said, 'You have to give her the baby. You know she's not a normal person. She's very obsessive over the child. When I'm away from my children for two days—and I'm a normal person—I go crazy. I call them every day. She's not a normal person. You have to give her the baby.' He said, 'Of course I'm going to give her the baby. I never wanted to take the baby away from her. I didn't know they were going to give me the child. I only want to see the child once or twice a week. That's it. I don't need custody.'"

Walking me to the subway, Joseph and Nalia made a small detour to point out Daniel's house, a tall, stately brick house, now rented. I thought of him living there alone, like Rochester. Nalia recalled that on the Friday before the murder Daniel had telephoned to ask her to come over and give Michelle a shower. "I couldn't come because I had to cook for my family. So he got Zlata to come." She went on, "Michelle was with us for a few days after the murder, and I tried to give her a shower, but she wouldn't let me. She's, like, 'No, no, no, I'm not going into the shower, no way.' Zlata said it was torture for her to shower her. My theory is that Marina told her, 'Never get undressed.' You know she accused him of sexually molesting the child."

"And you feel he couldn't possibly have done that?"

"He used to watch my kids. I trusted him a hundred per cent," Nalia said.

We reached the subway and I asked Nalia if she would mail me the video of the dance when she found it. She promised she would, but hasn't done so yet.

22

When I interviewed Gavriel Malakov in the waiting room of the office on Sixty-fourth Road, a week later, he told some of the same stories about Marina and Daniel that his father and uncle and brother had told, but, again, with variations. For example, in his version of the lunch story, Marina would drive from Brooklyn to bring Daniel his midday meal as often as he drove to Brooklyn to bring her hers. What was this about? What erotic ritual were Daniel and Marina enacting as they sped along the Brooklyn-Queens Expressway bearing their be-



"My epithets to the chef."

loved's kosher lunch? I would like to ask Borukhova, but I can't. Nathan Dershowitz, who is preparing Borukhova's appeal, does not want her to speak to journalists before there is a ruling. She is in the Bedford Hills maximum-security prison for women and "adjusting well," Dershowitz says. Michelle visits her once a month.

On September 16th, Borukhova was brought to a hearing in Family Court presided over by Linda Tally, who characterized her as an "abusive parent," and granted David Schnall's request that Michelle's visits to her maternal relatives be reduced from three a month to two. Sofya and Istat as well as Khaika and Gavriel were in attendance. Schnall, who had grown a scant beard, said he had visited Michelle twice and found that "she's adjusted fabulously." However, he said, after she visits with her maternal aunts and grandmother she "acts out" and "expresses confusion about where her home is and where it is going to be." Therefore, he argued, there should be fewer visits. Florence Fass vigorously protested, but Schnall prevailed.

During our meeting, Fass had described Michelle's visits with her maternal aunts and cousins in heartbreaking detail: "The little girl doesn't want to leave. She's hugging and kissing them. 'Take me home,' she says. She uses excuses to come back. I forgot my coat, I forgot my book,

I forgot this, I forgot that." She added, "My mission is to reunite Michelle with her mother's family—the family she grew up with." But now Fass told the judge that her representation of Borukhova was at an end—Borukhova's money had run out—and she requested court-appointed counsel for her client.

Schnall, astonishingly, objected. His spite toward Borukhova knows no bounds. He said that she owned property and therefore was not entitled to counsel at taxpayers' expense. Tally turned to Borukhova, who was wearing her turban and looking thin and gray, and asked if she owned property. Borukhova said no. Gavriel and Khaika said something to Schnall, who triumphantly announced that Borukhova owns a co-op apartment. The judge again questioned Borukhova, and Borukhova tearfully confirmed that she does. The judge asked Schnall if he wanted a hearing on the matter, and Schnall said no. The judge picked up a phone, and, in a few minutes, a gray-haired, heavyset man, with an irked expression on his face, shambled into the courtroom, wheeling a lawyer's suitcase. Tally named him Borukhova's lawyer and set a date for the next hearing, at which the process of permanently stripping Borukhova of custody of Michelle would reach its next stage. ♦