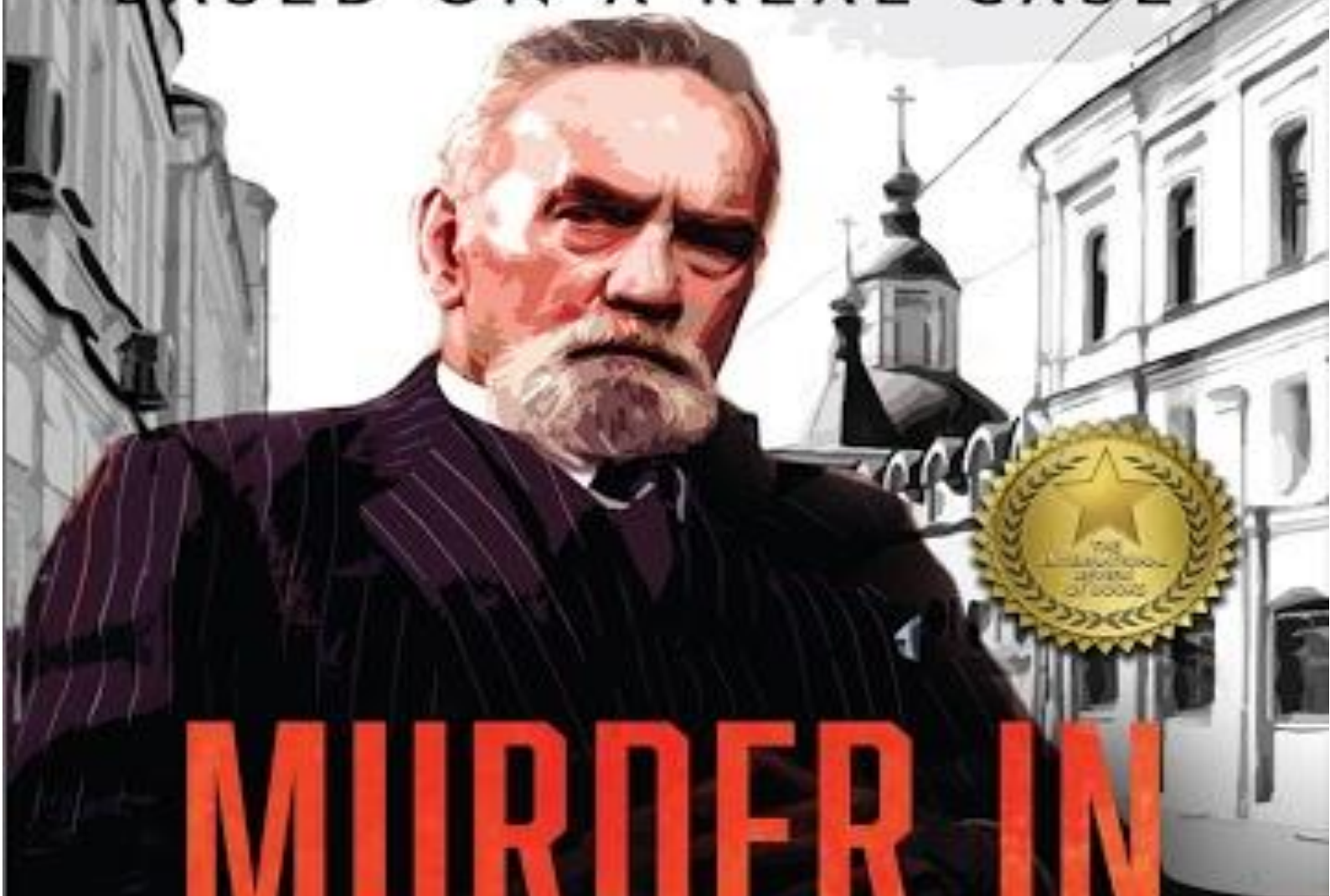


BASED ON A REAL CASE



MURDER IN MOSCOW

THE OBLAST COURT TRIAL

FRANK DALEY

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MURDER IN MOSCOW: THE OBLAST COURT TRIAL

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Frank



MURDER IN MOSCOW

The Oblast Court Trial

PROLOGUE

THE KILLING

A body thumps to earth and mischief becomes murder.

It is midnight, late August 1958. The sky is overcast, no moon. There is no wind, little air movement at all, and it is stiflingly hot just outside the town of Nordalak in Penza Oblast, in the USSR.

A man sits on a birch bench holding a shotgun. He rubs his eyes and heaves a weary sigh that lifts his substantial stomach, which then drops like his weighty eyelids. He almost wakes, shudders, stiffens, listens, raises his head and looks around.

Silence. His eyes close and he dozes off again.

He slumps just outside his three-room wooden house, his back leaning up against the lower planks of the wall of the house, which rise to a wooden flower box just below a little window above his head. The building is small but in good repair.

He looks about 50. He is heavy-set with large scarred hands from years of carpentry work in a factory. He is not a master carpenter he tells others; he doesn't do finishing work or furniture or fine windows. But he can build uncomplicated things such as the bench he is sitting on and his kitchen table and bed frame.

He was hired as a handyman after the war, in 1946, and has never risen above that status, but he is an excellent helper with wood. He is diligent and thorough. The factory has no need of superior carpentry services. He makes skids, crates, and boxes and he repairs windows, floors, and doors and does

whatever other odd carpentry work they want him to do in the factory. He always has work to do.

He wears wide cotton pants, a long-sleeved shirt with the sleeves rolled up. He's tired. He slumps. He's been there for only two hours since the light faded around 10 p.m., but he has been doing this every night for three or four hours for several weeks now. He gets up and goes to the factory for his morning call at six a.m.

His head bounces on his chest several times. Periodically he jump-starts awake and immediately his head falls to his chest again. Suddenly, his head jolts up and sits still on his neck. He is so immobile that his head looks like the knob on a staircase railing. He hears something, and he waits, eyes peering but in that way that doesn't imply focus, but attentiveness. He is trying to identify the sound he has been anticipating and thinks he has just heard. But he has been wrong often before. Is it a bird, a squirrel, a rabbit?

He doesn't believe so because the sound is too substantial. He is alert now but not rising, not daring to move, lest the rustle of his clothing or body or a creak of the bench disguises the expected noise if it comes again.

It comes again. He lifts his head higher and his buttocks pinch as his upper body rises. Re-gripping his shotgun, he raises it to his chest from his knees. The noise is somewhat clearer now. It is---as he had anticipated---human voices, not an animal scurrying.

There are several voices, male and female, and a lot of smothered laughing betrayed by the high pitch of a girl's tones. There is no attempt by the people to be quiet. They are not yelling but talking normally as they walk along the road that passes his house. He strains to hear what they are saying, but the voices have been lowered now as they approach his

property. They are coming down the road, beside the recently erected wooden fence that borders his property.

He is sitting guard over his small apple orchard, which lies directly but now invisibly in front of his eyes, stretching to his left, along the road. His 13 apple trees cover about 70 meters.

He waits, his hands on the shotgun. He turns towards the voices but does not rise from the bench. Along the road, on the other side of his fence, he hears no footsteps. The road is not dirt but not paved either; it is a mixture of earth, pebbles, and broken blacktop. A job he calls half-assed. They would not tolerate that in the factory. We are not a priority here, on this road so far from the town center, he thinks to himself, not for the first time.

He can't see well because of the darkness but also because several of his apple trees are blocking his view. In any case, it's not as if the people are going to come in the gate, he thinks. He talks to himself about this silently as he has done for weeks, sitting outside, night after night, hoping to catch, or at least scare the youths who have been stealing apples from his small orchard. He keeps talking to himself thinking maybe as he ruminates some good idea will come to him. A solution, he hopes.

He strains to hear, leaning forward, head down, arms away from his body, hands holding the shotgun slightly away from his hips. He has not broken it. It is ready to fire. He once thought of breaking it but then thought that that would take more time if it came down to a question of urgency, he'd have to snap it back, so it is ready now. What's the point of getting the gun if you are not prepared to use it? His wife told him not to do that in case the thing went off accidentally, and he shot himself in the foot, but he said he was in the war for years as a rifleman. he knows how to handle a gun, for God's sake.

He hears voices again. Quieter now, not a whisper exactly, but lower than regular speaking volume, and they seem like the voices, and therefore he knows the people are close.

He hears them trying to be quiet, and he allows himself a stifled laugh. Kids. He has none of his own, but he sees the new hires at the factory, and they are all the same—not yet “cooked” he says. Their voices keep rising and falling as they try to control them. And the laughter continues. They are trying to be quiet, but their voices rise in anticipation, enough for him to make out some words now. The voices betray, youth, yes, but also excitement and, not an argument exactly, but a difference of opinion.

The voices are approaching the fence he has erected over the past few weeks. It is made of wood, of course, is about four feet high and runs the length of his orchard.

The voices belong to several teenaged boys and girls returning from a public dance at a local community center. They had been boisterous but lowered the volume as they neared the orchard. The tone was now quieter, conspiratorial.

Alexandr Ivanovich Bazenov is the man’s name, and he knows what the voices want: his apples. They will climb the fence to get them tonight. They never had to trouble themselves with that effort until recently—they just crossed the ditch and walked into the orchard for years-- but now the fence is an impediment. Not, however, a satisfactory one; the number of thefts has not diminished since he built it. It seems to him like it was more of a challenge for them— jumping the fence made the endeavor more exciting and fun. Now, they quietly climbed the short fence to steal apples as they and many other young people had done so many times before. He once thought he should have made it taller, but that would have taken more money for the wood. He already resented the loss the income from his stolen apples and the cost of the fence. And he had to buy the shotgun. You could never win in this damn country, he thinks. Well, if the state or the

police wouldn't protect him, he would do it himself. Now he had his shotgun.

Bazenov has suffered these losses for years. At first, he thought, what's a few apples? But a few became many, and many became more and then the thefts were affecting his small orchard income, which he needed to supplement his meager factory salary. This year, this past summer, the damage has been mounting. The crazy thing was, the apples weren't even ripe yet, it was only August—most of the time he found the apples the next day strewn all over the road. The stupid kids didn't even know that. He saw from signs on the road that they didn't eat most of them anyway; they threw them at trees and fence posts. He could understand if they were hungry, but it was wasteful. All in what they considered fun.

He could not afford the continuing loss of apples and income, paltry as it was, so this summer he decided to take some action. That's when he built the fence and bought the shotgun.

Well, that, and the fact that a few weeks earlier when he challenged a thief, he was beaten with a fallen branch. He almost lost an eye, and his face still bears the scars.

He rubs his stubby face and listens more intently. As he did in the war.

The kids had been joking and laughing, but now they were quiet and furtive. They had all climbed the fence. It wasn't difficult; Bazenov had thoughtfully placed a board parallel to the road two feet off the ground so they found they could "get a leg up."

He put it there to stabilize the fence, but it had the added advantage for the thieves to boost themselves up. Now, although he couldn't see them, he hears them dropping to the ground. All

they had to do was step up two boards, swing their legs over the top, and drop down into the grass of the orchard.

The boys and girls had landed safely. The boys had hoisted one girl up and over because she was wearing a dress. They laughed lightly only when her skirt got caught briefly on the top board.

Bazenov later learned that one of the boys had not been keen on going over the fence—he said the man clearly was tired of the thefts and the fence made it obvious that they were stealing, not just innocently grabbing a piece of fruit at the side of a road.

The voice that was balking said, “The man never wanted us there. Do you blame him?” he asked the others. “It’s a few apples,” one replied, “what’s the problem? He can’t eat them all.”

“That’s not the point,” replied the youth whose name was Vladimir. “He sells them at the farmer’s market. I’ve seen him there on Sundays. When my mother sends me.”

“Who cares,” said one girl, whose name was Katrina. “It’s apples, for god’s sake!”

“Well, I’m not going,” said Vladimir.

“Katrina is coming,” said Mikhail, “are you chicken?” “Oh, Jesus, you are juvenile.”

“Come on,” said Nesta, “It’ll be five minutes and ten apples.”

“You are like Eve in the Garden of Eden,” said Mikhail, laughing.

Bazenov heard only snatches of this and wasn’t paying attention to the discussion but rather the nearness of the voices.

Vladimir was lured over.

They land with the sound of flat feet hitting flat ground.

The landings focus Bazenov's attention.

He strains to see the invaders, but the dark, the distance, and the trees conspire to give him only auditory evidence of the trespassing.

Then things start happening fast. Bazenov hears clear voices now: giggling and shushing each other.

Bazenov whistles a warning. Nesta hears it and looks around.

"What's that?" said Mikhail.

"What?"

"A whistle," said Nesta.

"Ignore it. It's probably a bird."

Bazenov hears none of this. He's agitated, nervous.

He raises his shotgun and fires into the air to his left, above the heads of the thieves on the ground.

He's thinking fast now, maybe not clearly, but fast.

That should do it, he thinks. They'll be scared—they'll drop the apples, drop the whole idea and go back over that fence like rabbits. That'll teach them. They won't be back. Not those guys, anyway. And they'll tell others. This shotgun idea was the answer.

He thought that fast but faster than that came a scream and another thud. What the hell, he thinks, another kid coming over the fence and he screams? When he falls a couple of feet onto grass? It's less than two meters! What the hell's the matter with him?

"Oh, no!"

"What was that noise?"

"A gunshot."

"Vladimir!"

"Where is he?"

"Here, over here," said Mikhail. "Vladimir, are you all right? I can't see anything!"

The youth's feet hit something. He trips. He's on the ground. He puts his hands out and feels his friend's form. There's liquid. It's sticky.

"Oh, my God! Vladimir, are you OK? I think it's blood! My god, Vladimir has been shot!"

"Go, go, we'll all be killed!" said Katrina.

"He's shooting! He's shooting at us!" said Mikhail. "He's after me."

"Why is he after you?" screamed Nesta.

Mikhail didn't reply, and in any case, the shooting had stopped. Bazenov fired only once. Anyway, the teenagers weren't sticking around. What happened next was also fast.

The youths, terrified, scramble over the fence and run off down the road.

Anna Bazenov, the orchard owner's wife, runs out of the house where she had been sleeping and rushed to her husband. "What happened, Alexei? Are you hurt? Oh, my god, what happened? Is anyone hurt? You are all right?"

Bazenov does not reply. He has rushed to the fence. She is shouting at his back. Bazenov trips over the boy on the ground, finds the body and drops to his knees. It is so dark he can't see clearly. But he had been in the war. He found the boy's neck and felt it. No pulse.

He screams into the night.

The other thieves, terrified, had fled. A torn piece of a girl's skirt, which the militia discovered in the morning, was on a nail at the top of the fence.

Anna Bazenov runs back into the house, returning momentarily with a kerosene lamp. She holds it while her husband checks the boy's body again. No mistake, the boy is dead, his face obliterated, his chest and shirt full of blood.

Bazenov slumps down on the ground next to the body and looks around uncomprehendingly.

The police arrive an hour later and take Bazenov into custody without incident. He was still sitting next to the body, staring into space, rocking back and forth.



1

THE OBLAST COURT

I have come to a courtroom in Moscow for a murder trial.

My name is Michael Streeter. I'm 26, an American exchange student studying Russian society at Moscow University. I'm not a lawyer, or even a law student. I'm here in the Soviet Union to learn about USSR society in in general but I was intrigued by this trial.

I was alerted to the trial by a sign in the law building and by what appeared to be a pointed off-hand remark, if such a thing exists, by a professor of law in a class I was auditing, not for credit. Another student accompanied me to the trial. He is Yuri Krasov, a Russian student of law from Ukraine. We are in the law class together (he's taking it for credit) and he came with me partly because he'd know more about what was going on, partly because I was interested in the legal system and we were getting along, but mainly because he was instructed to come. It was mandatory for the class. Yuri said law students were often told to go to various kinds of trials, civil, family, and criminal but by that, the instructors meant go on your own time to trials of such and such a nature, not to any specific trials.

Not this time. So here we are.

The court is a handsome red brick building. It has three stories in a symmetrical design with the main floor entrance area holding three tall, slender windows, flanked by brick extension wings with three more horizontal windows on either side.

There's a second floor of some prominence also with three narrow windows above the entrance, above which were two small windows on either side. The third floor was attic-like, indicating rooms which were probably used for old records and court files. The basement was stone as were the steps to the large, imposing, and double front doors. The basement windows were barred. The cells were there.

A ten-foot high statue of Lenin stands on a patch of grass in front of the circular drive to the wide steps of the court building. The structure is substantial but not particularly threatening unless you were on trial, in which case it must appear as though it was a place only for sentencing, not discussion. It was all business. It must seem to a prisoner as if his case had been decided already and this was just the way the state made it penetratingly official to you.

NOTE TO READERS

I am going to give my best remembrance of the dialogue from the trial. I'll try to do it in the present tense as I was hearing the dialogue in the courtroom. But I had no recording device so I was forced to use scribbled notes and my memory when I went to my room to attempt to reconstruct this case. So, some of it will be in past tense as I remember it and most will be in the dialogue by the participants as well as I can reconstruct it. I had no access to a transcript. And my request to the court was denied. Actually, it was ignored.

The sign on the door of our courtroom near the main entrance hall to the building, which was on a side street in Moscow, not far from the center, revealed the following:

Trial: # 36890 Penza Oblast (Moscow)

Penza Oblast

November: 16, 1958

On Trial: A. Bazenov

Judge: Ivan Sergeyevich Shepilov

The trial was to have taken place in Penza province where the crime took place, about an eight-hour drive from Moscow, but it had been moved to a courtroom in the capital.

The court clerk later told me the venue was changed because of a backlog in Penza Oblast (District). It was a common enough occurrence apparently. No one took any notice of it except it caused more expense for the state because the witnesses had to be bussed in. No one here cared anything about that, said Yuri. On the other hand, there weren't many witnesses on the roster. Yuri said they probably wanted to reduce any other input. He said the few witnesses would have been put up in cheap hotels.

The courtroom itself was large with only necessary furniture: the jury benches, the judge's bench raised on a dais, tables for the prosecutor and defense lawyers in front of the court clerk and stenographer. No jury was to be used so those benches remained empty. Police, armed with rifles, stood around the room, which had a capacity of about 150.

The focal point of the room was the Judge's raised oversized bench behind which was the flag of the USSR and, on one side, Penza District's official flag. It was much smaller. No doubt who was in charge.

There were three chairs on the dais, customary for these trials: three judges were assigned but usually only the chief judge spoke. His chair was much larger than the other two which were over-sized to begin with.

Directly in front of the bench was the desk of the recording secretary and the Court Clerk. The clerk was sixtyish, balding and corpulent and his black jacket had dandruff. I don't remember much about the secretary. She was heavy, wore a flowered print dress and sat at a small desk.

Naum Viktorovich Bykovsky, who turned out to be the Defense Attorney, entered, followed by the accused, Aleksandr Ivanovich Bazenov, who was 38, but looked older partly because of his clothes, which were cheap and too large for him, and partly because his face reflected bewilderment and fear. It also betrayed a healing facial jury. He was showing the effects what must have been long periods of interrogation. Two guards walked in with Bazenov, holding his elbows.

Bykovsky appeared to be about 60, six feet tall, lean, with penetrating eyes and a fervent expression. He moved quickly to his table, sat down and opened an ancient briefcase that had clearly seen many trials.

The prisoner was escorted to the table by the guards. He shuffled, ankle chains restricting him.

The Prosecutor appeared. She was Valentina A. Zuraskin, about 30, 5'6," blonde hair pulled back severely. She did not wear a wedding ring. Neither did Bykovsky, for that matter. Just things you notice.

Two lay jurists, added to assist the head judge in the case, entered from behind the dais and sat on chairs on either side of the head judge's chair. They were apparently there for decoration or intimidation because they said nothing aloud during the entire trial. They did nod sagely from time to time and occasionally they leaned over and said something to the judge, but that was it.

The courtroom audience was sparse, maybe forty or so people, most of whom were poorly dressed except for some middle-aged people in business suits and several young people I later learned were law students in Yuri's class. We heard a voice.

"Come to order. All stand please. Peoples' Judge Ivan Sergeyevich Shepilov."

The Peoples' Judge, Ivan Sergeyevich Shepilov, moved swiftly into the room. He was about fifty, portly, had a red face and a substantial belly. But he was energetic. He sat quickly, nodded cursorily at the room, and made a pretense of organizing his papers. They were already in perfect order. He said, "The accused will stand."

Bazenov rose.

"Clerk read the charge" said the judge.

“Case number 36890,” said the clerk. “The Peoples' Court vs. Aleksandr Ivanovich Bazenov. The accused is charged under Article 136A of the Criminal Code of the Russian Republics, premeditated murder from base motives.

“That on the night of August 9, 1958, he did wantonly and with foreknowledge of the consequences of his act, shoot and kill one Vladimir Silkin, aged 16, who, along with three other companions, was, at the time of the murder, on the property of the accused and in the act of stealing apples belonging to the accused.”

Defense lawyer Bykovsky did not object, all this information clearly having been confirmed and attested to previously.

But not exactly, it turned out.

The words “wantonly and with foreknowledge” bothered me. I could see “with foreknowledge” because it implies premeditation, but “wantonly” suggested something un-legal or extra-legal. And I had never heard the term “base motives.” It, like “wantonly” suggested a moral causation rather than a criminal one.

When I thought about it, I considered it closest to language they might have been used in the Nazi war crimes tribunal in 1945. Or when they were considering War Crimes against the Geneva Convention. Those terms didn't seem appropriate in this case but then I wasn't a law student, and this was the USSR. Yuri advised me to hold my tongue.

Judge: “Call the accused to the stand. “

The police grabbed Bazenov and walked him to the stand to the right of the Judge.

Judge: Name?

Bazenov: Aleksandr Ivanovich Bazenov.

Judge: Nationality?

Bazenov: Russian. Citizen of USSR.

Judge: Date of Birth?

Bazenov: July 29, 1920

Judge: Place of birth? (He looks at the papers on his desk determinedly. Was he watching for any discrepancies?) He was aware of the expected response. Doing what lawyers always try to do: Never ask a question to which you do not already know the answer.

Bazenov: Nordalak, in Penza district—province.

Judge: The charge then is as follows: ‘That, you, Aleksandr Ivanovich Bazenov, on the night of August 9, 1958, at approximately midnight –or between midnight and one a.m. -- did wantonly and with foreknowledge of the consequences if the act, namely that you would inflict injuries serious enough to cause death, shoot and kill one Vladimir Silkin, aged 16, who, along with three other companions, was, at the time of the murder, on your property, with the intention of stealing apples belonging to yourself; that you did shoot to kill with evil intent...’

Bazenov: NO!

Judge: ‘...that is, to kill, and did actually inflict the number of 78 wounds to the chest and face of

Vladimir Silkin with a shotgun, those wounds rendering the boy's body in such a condition that identification was extremely difficult; that you did act with full knowledge that your shot would kill, in fact that you intended to kill.

Bazenov: No!

Judge: No?

Bazenov: I had no evil intent! That part is not right. And I did not intend to kill—that part is not right either!

Judge: I am not asking you to confess to evil intent. I am not asking you to confess to anything. I am asking for recognition of the substance of the charge. We will determine later if there was evil intent and all other aspects of the charge. Do you understand?

Bazenov: I think so.

Bazenov was trembling. Yuri and I watched stupefied. Well, I did, anyway. Yuri, being from Ukraine was more sanguine about it. I looked at him and said, "What the hell! Evil intent? Is that a legitimate charge?" Yuri stilled me.

Judge: Speak up! You are mumbling. Where were you born?

Bazenov: Nordalak, in Penza province.

Judge: Where do you live now?

Bazenov: I still live in Nordalak.

- Judge: What does your father do?
- Bazenov: He is dead. He died about ten years ago in a factory accident.
- Judge: Humpf. Did you serve in the army?
- Bazenov: Yes, I proudly served.
- Judge: How long?
- Bazenov: Nine years. I served in...
- Judge: Just answer the question I ask. Nothing else.
- Bazenov: Yes, judge.

Bazenov appeared nervous; he had clearly never been in court before, but he knew the answers to these questions. He might have been be gaining a little confidence. His body relaxed somewhat from a stiff, upright position.

The judge resumed. So far, except for the 'evil intent' and the force with which the judge expressed the charge, things seem to be moving much as they would in the U.S., Canada, or Britain. But the terminology of the charge and the judge's comments were troubling.

- Judge: When did you serve?
- Bazenov: I served with the 107th regiment...
- Judge: Stop! I did not ask you that. I asked you WHEN you served.

- Bazenov: Yes, sir, sorry sir. I served from 1939. I started in May –until 1947, when my unit was demobilized... after the war.
- Judge: I know when the war ended. (He shakes his head irritably.)
- Bazenov: Yes, sir. Sorry, sir.
- Judge: What rank?
- Bazenov: I was a corporal, sir.
- Judge: From start to finish?
- Bazenov: Yes, sir.
- Judge: No improvement---no promotion?
- Bazenov: No sir.
- Judge: I see you have little formal education. That might explain it. Where did you serve?
- Bazenov: Eastern Front, sir.
- Judge: Difficult, was it?
- Bazenov: Horrible sir. Harsh and freezing cold—it was a terrible winter—many friends died. We had no clothing, no food. The Germans...
- Judge: I know of the conditions and the enemy. You did exemplary work for the motherland.... Good work.
- Bazenov: Thank you, sir.

Judge: Prior to your arrest had you ever been arrested for a crime against Soviet Law?

Bazenov: No, sir.

Bazenov appeared shocked by the question. But the judge had swiftly moved from an aggressive and impatient tone to one of a quiet respect for the man's service. He was not to do this frequently. Yuri and I thought he was either upset at having to ask this line of questioning because he was giving the accused a chance to be seen as virtuous, or he was just bad-tempered in general.

He had seemed to grimace when he used the word 'exemplary' and see Bazenov's mystified expression (although his tone told the prisoner that it was a compliment). But he changed his wording immediately and I'm sure Bazenov did not pick up on Shepilov's negative facial expression since it was covered immediately by his use of the word 'good.'

Judge: Are you a member of the Party?

Bazenov: No sir.

Judge: Your Defense Counsel has been appointed. He is Counselor Bykovsky. Over there. Look, there, I am pointing him out to you. Do you have any objections to placing your case in the hands of this man?

Bazenov: No, sir.

Judge: I should hope not. Before we proceed, I will ask the court if there are any questions. (He looked around.) None? Good. Read the penalty for perjury, clerk.

Shepilov's first words were a turnaround from his previously adversarial and somewhat contemptuous attitude. He nodded impatiently to the clerk, who stood and read:

"The penalty for a conviction of the offence of perjury carries with it a sentence of from 10 to 20 years hard labor."

Judge: Clerk will now call the first witness: the accused, Citizen Bazenov. (The clerk repeats the name. Bazenov was ushered to the stand by two armed guards.)

This was the second thing that made me sit up. Yuri had told me that the usual first witness was the lead investigator, from the militia, it would have been, in this case. The lead investigator of the crime would not necessarily have been the first on this scene, or any crime scene, but he would have been there soon and would have conducted the entire investigation.

His job as a witness was to tell the court what happened from the beginning, and to lead us through the procedures and timelines. He was to make the story linear and clear; he, in effect, establishes the base of the case. Not from the judge's point of view but from the city or state's, and therefore the prosecutor's point of view.

The lead investigator, having an overview, was always in the position in any case, to take the court step-by-step through the investigation from the first call, to the first visit to the crime scene, to the site examination, the visit of the medical examiner and then the coroner, and so on.

After that, a witness list would have been built, by the lead investigator, of all the individuals and authorities that he encountered in the procedure which he then gave to the court.

Maybe the policemen were first on the scene (in this case they were militiamen) if it wasn't the lead investigator himself. Then the medical examiner would have been called next or the coroner, whatever the case called for, and whomever was on record as having been associated with the investigation at the beginning.

But none of that happened.

Not one of those people was called as a witness. All the information that they would have testified to was apparently in the hands of the judge already. Or had not been called forth? If information from these people had been taken, gathered and organized, had it been agreed to as legitimate by the lawyers from both sides?

We certainly didn't know.

Why was Bazenov called to the stand first? In my admittedly scant experience, the accused was called last. Or not called at all; in the West, anyway, he didn't have to testify if he didn't want to. Not the case here, apparently.

Judge Shepilov began to question the accused concerning the case. He looked closely at the prisoner.

Bazenov was precisely what his appearance suggested: a simple, inarticulate provincial who was bewildered and terrified by his predicament. But throughout the trial he was given no opportunity to compose himself, because at almost every utterance, Shepilov interjected a comment or a question.

As a result, Bazenov's testimony added little to our knowledge of the case to us in the court. What it did was to give us an indication of Judge Shepilov's character, or at least of his attitude toward this particular case. He was truculent and impatient throughout unless he was playing Bazenov, toying with him, leading him to make statements that he, Shepilov, could deliberately misconstrue so to confuse the accused, make points for the transcript, and bamboozle the uneducated in the courtroom. And, of course, it gave us an intimate look at Bazenov himself. Under duress.

Judge Shepilov turned to the accused and said, "Did you shoot the boy intentionally?"

Bazenov: No! It was an accident!

Judge: An accident you shot...?

Bazenov: No....I mean...

Judge: ...or an accident you shot the *boy*? Come now, which is it?

Bazenov: No, please...

Judge: It wasn't an accident you fired a shot?

Bazenov: No, it was an accident I hit the boy...

Judge: An accident?

Bazenov: I didn't mean to shoot...

Judge: Wait, wait! You just said it wasn't an accident you shot. Now you say you didn't mean to shoot. Either you didn't mean to shoot so it was an accident, or you did mean to shoot so it was on purpose. Now be clear! Which was it? Or maybe the gun went off accidentally?

Bazenov: No, you don't understand -- I didn't mean to shoot....

Judge: You didn't mean to shoot; yet you *did* shoot.

Bazenov: I didn't mean to shoot HIM...I...

Judge: Oh, I see...you didn't mean to shoot HIM, you meant then to shoot one of the other people. Who did you mean to shoot?

Bazenov: I didn't mean...you are confusing my meaning...

Judge: I am confusing your meaning. I have nothing to do with your meaning. I take only your words and respond to them.

Bazenov: It was an accident...it was all an accident. I didn't mean to shoot any of them...

Judge: But you did shoot one of them, didn't you?

I saw Bazenov's frightened eyes search the courtroom for help. There was no help there and Bazenov meekly said, "Yes."

Judge: Yes.

- Bazenov: I...I ..
- Judge: What is it?
- Bazenov: I am tired.
- Judge: Tired. TIRED? A boy is dead, and you are tired? How unfortunate.
- Bazenov: They have been questioning me for so long.
- Judge: Who?
- Bazenov: The authorities?
- Judge: What authorities?
- Bazenov: I don't know...the police, the militia.
- Judge: And well they might, so we can establish the facts and know how to frame the charge correctly. Stick to the point. Where did you shoot?
- Bazenov: I shot into the air...I wanted only to scare them!
- Judge: You wanted only to scare them? ...You certainly accomplished your purpose with three of them...but what of the fourth...what of Vladimir Silkin... did you frighten him?
- Bazenov: I shot in the air!

Judge: In the air! IN THE AIR! And the boy was hit! Are we to believe he could fly? You hit the boy so you must have shot at the boy. Do you think we are fools? You shot at people!

Bazenov: I shot only in the air. I didn't want to kill anyone.

Judge: Really? Did you think that by shooting at a man you would make him healthier?

Bazenov: I didn't want to kill.

Judge: I didn't ask you what you wanted. We can judge only by your actions. Motive means nothing when violence occurs.

Bazenov: I didn't want to.

Judge: Why did you do it if you didn't want to? (No response from the accused.) Did you think there was nothing more important than apples? Why did you kill?

Bazenov: I just wanted to save my apples...I just wanted to shoot up... to scare them and save my apples.

Judge: Where did you shoot?

Bazenov: In the air!

Judge: Impossible! That you yourself fully understand. You are speaking nonsense. It's here in the report. Where did you in fact shoot? You saw the photographs.

Bazenov: In the chest.

Judge: Correct. And in the head. If you had wanted to shoot up, your shot would have gone into the tree branches or into the night sky. What was the direction of the shot?

Bazenov: Upwards.

Judge: You spent seven years in the army and didn't learn how to shoot? Really! Where did you shoot?

Bazenov: I have told you.

Judge: And you will tell me again and again and again until I am satisfied. Or until you get it right. In accordance with the facts. Where did you shoot?

Bazenov: I shot in the air...in the air!



2

BAZENOV ON THE STAND

Why the prosecution had to begin was beyond me. Shepilov had done a damn good impression of a particularly aggressive prosecutor by himself. Judges are permitted to question a witness, of course, even sometimes question an accused as if it was a cross-examination in some jurisdictions, but Shepilov's tirade was over the top.

I was used to American courtrooms. Well, actually I was only in one courtroom in my life, when I was a witness in a traffic accident case. More accurately, I was used to American courtrooms as seen on television or as I had read about them. What I was seeing was nothing like that.

I had to find out what was wrong with my impression of American courts and then contrast and compare it to others and try to determine which approaches (or parts of them) seemed right and which didn't. That wasn't going to happen that day in court. Later, I couldn't make any sense of it either.

On second thought, I had to *not* do that first. I had to first see what the legal rules in the USSR were since my goal was to learn about the USSR, not immediately compare whatever I was looking at—in this case, the legal system-- unfavorably to the U.S. I had to be particularly careful, especially when I didn't know what the hell I was talking about. My next area of exploration on this student trip might be agriculture, for all I knew. I didn't have an agenda for my study time in the USSR except to learn about Russia.

I wasn't there as a legal expert or to become one; I was here to learn about the USSR in general. Now I had to learn about the legal system. Fast, if I was to get anything out of this trial except wrong-headedness and be just another example of American chauvinism.

With regard to this case, it was trial by judge, not jury. Fair enough. We had that in the West too. The "facts" of the case were set out by the Judge. I wasn't sure if that was the case at home but if all participants in this case had agreed on the facts, I guessed that it was all right. But it didn't look or sound right.

What if the "facts" were in dispute?

What about all those possible witnesses or others who could have contributed the case. The ones who were never called in this case, who were never even mentioned or referred to, or whose testimony was read in court?

What happened to those commentaries?

Some of the wording used assumed “facts” not in evidence. Or, some “facts” were not accepted as facts from which to proceed on by prosecution and the defense as well as the judge representing the state.

Or, at least they weren’t here, in this court. Not yet anyway.

When Bazenov objected to the judge’s characterization of premeditation that was something to be proven. The judge admitted that, and I could see the same charge being leveled at home. A charge doesn’t mean a conviction.

But Bazenov also objected to the judge’s characterization of the killing as ‘wanton’ and done with ‘evil intent.’ I had no idea if those words could legitimately be used in a Russian court. Or, any court, as I said, unless it was a war crimes trial. Even then, it seemed to be a conclusion to be reached after a trial, not words or terms that one based a charge upon.

The two legal systems were not close in design in my mind. Those were not legal terms in the U.S. Were they here? Or would they be challenged by the defense? I was out of my depth.

On the other hand, what if the ‘facts’ were already agreed upon? I thought that might be possible theoretically except that the wording would change the meaning inherently.

It reminded me of Orwell’s 1984. And we knew from Stalin that ‘facts’ weren’t necessarily facts at all but lies and propaganda. The Nazis used the same techniques. Facts were whatever the state decided were facts. Tell a lie big enough often enough and with a masterful propaganda machine and back it up with force and people would believe it. But I couldn’t see an application for measures like those in this case.

It appeared to be a simple case of murder in the opinion of the state.

I had to wait.

The prosecutor strode to the stand. She was direct, confident and fast: professional. Her hair was in a bun. She wore a white blouse, black vest, black skirt, and heels. She introduced some exhibits early.

Prosecutor: The fingerprints of the accused were found on the shotgun, the deadly weapon. It was found by the militia in Citizen Bazenov's orchard on the night of August 9th last...the night of the killing. This is the spent shell that was found in Citizen Bazenov's gun. This is exhibit 'A.' Citizen Bazenov, why did you kill the boy, Vladimir Silkin?

Bazenov: I killed him by mistake...I just wanted to protect my apples. I need them to live....

Judge: You killed on account of apples? But what could your loss have been? Five or ten apples? Does that justify your shot?

Bazenov: Yes...well no...but...

Bazenov sank to his seat at in the box. The judge, irritated, waved the prosecutor on. She was a smug, self-satisfied woman, or at least her style here indicated that, and she questioned Bazenov almost carelessly.

She asked her questions rapidly and was extremely concise, almost as if she thought that the outcome was a certainty and her questions were only to comply with the formality of putting them on record. She moved closer to the stand. She then spoke directly to the judge.

Prosecutor: Your honor, I present this shotgun as exhibit 'B' at this trial. It is the gun that was used in the killing. (She hands the weapon to the clerk and turns to the defendant.) It is a Baikal, single barrel, 12-gauge shotgun, serial number 60013. It was purchased from Citizen Alina Kornashev's store in Nordalak. It is registered in the name of Citizen Bazenov. (She turned to the accused.)

Prosecutor: You are saying the killing was justified?

Bazenov: I mean...no.... I don't know...I didn't know they were only young people.

Prosecutor: Are you saying that if they had been older you would have therefore had the right to shoot them?

Bazenov: No...I had the right to...

Prosecutor: You had the right? And what power gives you this jurisdiction over other men?

Bazenov: You are confusing me...I had the right to protect my apples...they are my apples...I have the right to protect them....

Prosecutor: Even to the extent of killing? We shall see

She crossed the floor, heels clicking, threw her papers on her table and sat down. The judge waved the defender up, and Bykovsky rose slowly, adjusted his suit jacket, and walked deliberately, but unthreateningly, to the stand.

Bykovsky looked like one of the old lawyers you see in the movies. He was well dressed and groomed and looked like he was the smartest guy in the room. He had the appearance of a man western people have confidence in, a man who might know the system is against him but can't do anything about it so he just does his job the best he can.

He reminded me of Gregory Peck in *To Kill a Mockingbird*. The kind of man you'd want for your lawyer. But that appearance worked against him with apparatchiks. Yuri said it riled them up, made them suspicious that he preferred western ways to Soviet ways. Yuri said they were hostile to men like him. Also, he was the defense attorney and the people in the courtroom preferred to believe all the charges against people are correct and let's just get on with it and clean the place up. Defense attorneys just waste time. I wondered if people falsely accused felt that way.

Defender: Citizen Bazenov, please correct me if any of my information is wrong. You are a resident of Nordalak in Penza province. You are 38 years old and married?

Bazenov: Yes -- all true. That is right.

Defender: Children?

Bazenov: No.

Defender: How long did you attend school, Citizen Bazenov?

Bazenov: I went to school for only six years. My parents were not wealthy, and I had to work. Then, I am not very clever.

A laugh began in the court but Judge Shepilov checked it immediately.

Defender: What is your work, Citizen Bazenov?

Bazenov: I am a carpenter, sir. I work in a factory near my home. Well, that is, I work under a carpenter. I am more like a carpenter's assistant, a handyman.

Defender: And this carpentry work. I see it pays you 300 rubles a month. Does it account for your entire income?

Bazenov: No, sir. Only about two-thirds. The rest comes from my orchard.

Defender: Your orchard. This is the orchard from which the apples were stolen?

Bazenov: Yes, sir.

Defender: Tell the court please, of your orchard.

Bazenov: It is very small.... it is just the land at the back and side of my house.

Defender: Do you know how many trees constitute your orchard?

Bazenov: Oh, yes sir...13...thirteen trees...you can see it is very small, only thirteen trees. And I cannot afford

to have apples stolen because I need the money. I do not make so much as a carpenter's helper.

Defender: Have you had trouble with thieves in the past?

Bazenov: All the time it seems. Ever since the orchard began to produce fruit...people see the apples and (He shrugged.) I have lost much.

Defender: How much do you estimate you have lost to these robbers, Citizen Bazenov?

Bazenov: Often half of my apples have been taken, sir. (To the court.) Often half.

Defender: Has the situation been better or worse, generally speaking, during the past season?

Bazenov: Oh, very much worse. Many, many nights I would have to chase people from my orchard.

The court people laughed again. Bazenov looked uncomprehendingly at them. Bykovsky ignored the laughter and continued.

Defender: Isn't it true, Citizen Bazenov, that during the past season your losses have been particularly heavy, reaching such proportions in the weeks immediately preceding the unfortunate death that you have found it necessary to take emergency precautions to protect your orchard and fend off thieves?

Bazenov: Yes sir, most certainly. I stayed late on my porch steps for many nights watching for thieves, but it wasn't any good. Then I built a fence around my

trees, but still they came, so, finally, I took to sleeping in my orchard.

Defender: The situation was then so bad that you found it necessary to sleep in the orchard on the ground to protect your few apples.

Bazenov: Yes, sir. Well, I slept on the ground before I built the fence too.

Defender: Did you ever manage to catch any of these thieves?

Bazenov: Once. That is, nearly. About three weeks before...before, the accident -- um -- I -- after sleeping out most of the night. I managed to catch two robbers in my orchard. But when I tried to hold them, they beat me -- my face -- here -- you can still see...

Defender: Yes, it must have been painful.

Bazenov: Not as painful as the loss of my apples, sir.

Bykovsky winced. He appeared concerned that Bazenov might inadvertently hurt his own case by saying things open to misinterpretation or that could be used against him. Yuri and I exchanged glances. Then he whispered that Bazenov had better be careful or he'd hang himself. If he focused on his financial loss instead of the dead boy, he'd be in trouble. That would be true in any court.

Defender: Did you report this robbery and beating to the authorities?

Bazenov: Yes, sir. I went straight to the militia. They said they would "look into it." But as far as I know, no

investigation has been conducted. I have had no report and the robbers have not been caught....

Defender: When did you erect the fence?

Bazenov: The week after I was beaten. Well, over several weekends and evenings.

Defender: And when was that?

Bazenov: Oh, two weeks before the . . .accident.

Defender: And these dates are approximate or exact?

Bazenov: Well, the fence is approximate. It took me three days to build it over the three weekends. So, six or seven days, about. But the beating was exactly one week before I built the fence.

Defender: Any particular days when the robberies occurred more often?

Bazenov: Oh yes.... Saturday is the worst time...they steal all the time, but Saturday night is worst. I guess it's because they're off work Saturday night.

Defender: Go on.

Bazenov: (Warming, he appeared somewhat more secure.) Well, it was then that I decided to buy the shotgun.

Defender: Can you tell the court now please, exactly what happened on the night of August 9th?

Bazenov lost some of his newly gained composure. He was visibly frightened at the memory but tried to pull himself together and went on.

Bazenov: I was asleep under a tree when I was awakened by a noise, at the far end of the garden. It was late...around one, I think, and very dark. Very dark.... there was no moon. I could see some figures, but it was so dark that I could not see how many there were or that they were only young people. They seemed to be all standing around picking up apples.... I whistled but...

Defender: You whistled?

Bazenov: Yes...to warn them that I was going to shoot.... I whistled -- I thought that they would become frightened and run...sadly they did not. Then, I fired into the air (he looks at the judge), at least, I intended to shoot into the air -- but only to frighten them...to make them run and leave my orchard and me alone. I wanted only to frighten them. I fired into the air.... into the air!!!

Defender: Calm yourself, calm yourself. Thank you. That will be all for now.

Judge: You may step down. Clerk, call the first witness

Bazenov began to leave the box, the clerk rose but the prosecutor interrupted and asked the judge if she could ask a final question. He agreed. She just rose slightly from her chair.

Prosecutor: You intended merely to save your apples? You shot at the intruders merely to save your apples?

Bazenov: Yes, yes, exactly, there was no intent to...

Prosecutor: Of course, you did. That will be all.



3

1ST FIRST WITNESS: NESTA RESNATIKOV

Bazenov had been eager to confirm what the prosecutor said. He thought it stood him in good stead, taking away any thought of his of killing anyone. But for all the legal professionals in the court, it was another misstep.

I noted, though, that some similar actions as in other courts, such as exhibits being introduced, were being employed. But the lack of having technical witnesses to attest to these exhibits—not that there were many of those—and everything else that happened from the shooting onwards disturbed me.

I could not know, of course, if there might have been anything there to help Bazenov's case. It was not that I had special pleading for the accused, only that he seemed to be getting a raw deal from the point of view of legal procedure.

Judge: Call the first witness.

The clerk rose, Bazenov returned to his chair next to the defence attorney, the prosecutor resumed her seat, and the clerk called out "Nesta Resnatikov! A slight girl with dark hair and a clear complexion shyly took the stand.

Judge: (Reading and barely looking up.) You are Nesta Resnatikov?

Nesta: Yes.

Judge: How old are you?

Nesta: Sixteen.

Judge: Occupation?

Nesta: I am an apprentice at the ANA factory in Nordalak.

Judge: You knew the deceased?

Nesta: Of course. . . .I mean . . . yes, we are friends . . . we were all friends.

Judge: Tell the court, in your own words, precisely what happened on the night of the shooting, last August 9th.

Nesta: We were all

Judge: We?

Nesta: Vladimir, Mikhail, Katrina and I ...we were all going home from a public dance –and we passed the orchard.

Judge: Orchard? Which orchard? Whose orchard?

Nesta: Citizen Bazenov's orchard.

Judge: Where was the dance?

Nesta: At a community center, two kilometers away.

Judge: Do you go there often? Take the same route? And walk?

Nesta: We go a few times a month.... yes, we walk the same road always. It is the shortest way.

Judge: Go on.

Nesta: Well, we suddenly thought, what good thing it would be to have an apple. So, we went over the fence. Vladimir did not want to come at first. He felt it would be wrong and dangerous, but finally, he came. I guess he was right. He shouldn't have come. A few minutes later, there was a shot and Vladimir was lying on the ground ...he was bleeding ...he was dead.

Judge: (Indicates the prosecutor, Valentina, Zuraskin.) You may begin.

The prosecutor interrogated all three young witnesses in a casual, almost cavalier fashion, asking only a few perfunctory questions. It appeared that she had a script to follow.

Prosecutor: Have you since, or at any time previous to the killing, stolen apples from citizen Bazenov's orchard?

Nesta: Yes...that is we, or at least I, had taken some before...not after.

Prosecutor: How many times did you go into Citizen Bazenov's orchard?

Nesta: Several ...I'm not certain.

Prosecutor: And how many apples did you take on these occasions?

Nesta: Oh...I don't know.

Prosecutor: Come, come, now. 20? 100? 200? Did you strip a tree?

Nesta: No, of course not I ate some sometimes. Sometimes we didn't even eat them. I took... -I don't know ... some, in my hands.

Prosecutor: Would you say three or four?

Defender: Objection! The state is leading the witness.

Judge: Sustained.

Prosecutor: How many?

- Nesta: A few...five or six.
- Prosecutor: Five or six apples. On the night of the death, did you hear or see Citizen Bazenov before young Vladimir Silkin was shot?
- Nesta: No...well...just before the shot, there was a whistle.
- Prosecutor: (Startled, the prosecutor glares at the witness.) Are you certain? A whistle?
- Nesta: Yes.
- Prosecutor: What did it sound like? Noises can be deceptive at night. Perhaps it was an animal, a bird, an owl...
- Nesta: It sounded like a whistle, like the one the coach uses for soccer... (Simply). It was...a whistle.
- Prosecutor: And how long after the whistle did the gun fire?
- Nesta: Right away -- it seemed like it was right away.
- Prosecutor: You mean there was no time to run?
- Nesta: No. I heard the whistle, and then I heard the shot.
- Prosecutor: Immediately?
- Nesta: Yes.
- Prosecutor: That's all.

Prosecutor Zuraskin resumed her seat. Bykovsky, the defense attorney, took over. He walked up to the girl on the stand. He was gentle.

Defender: When you were in the orchard you took five or six apples and ate some –is that correct?

Nesta: Yes, sir.

Defender: And how often did you go into the orchard?

Nesta: Exactly?

Defender: Exactly.

Nesta: I don't know.

Defender: More than once?

Nesta: Yes.

Defender: More than five times?

Nesta: (Shrugs.) Yes.

Defender: Well, can we say frequently? Often? Nearly every week? Every week? Every day?

Nesta: I guess nearly every week. At least every week we went to a dance. Not in the winter. So, maybe two or three times a month in the late summer. But others did too. We were not the only ones who passed on that road and took apples.

Defender: Hmmm, just so. You mentioned a fence around the orchard. How high was it?

- Nesta: About four feet.
- Defender: Was the fence always there?
- Nesta: No.
- Defender: How long was it up before Silkin's death?
- Nesta: Uhhhh, it is difficult to say exactly... maybe a couple of weeks.
- Defender: You say you heard a whistle...that would be the warning whistle citizen Bazenov told us about. If you heard the whistle why didn't you run?
- Nesta: I don't know...there was no time...it happened...
- Defender: You were all standing around, but you were not very far from each other so that if you heard the whistle, it seems natural to you that your friends heard it?

Nesta, the witness, seemed as though she was about to answer. Instead, she just looked down and shrugged in that youthful, feminine, self-deprecating way.

- Prosecutor: Objection. The question is inadmissible. The attorney is asking the witness to answer for others.
- Defender: I withdraw the question. Did you warn the others after you heard the whistle?
- Nesta: Well...no

- Defender: Why not?
- Nesta: There wasn't time.
- Defender: No time? Not enough time to turn and yell?
- Nesta: I don't think so....
- Defender: Not enough time to yell around and yell, to turn around and yell, "Let's go!" That didn't take too long did it? Not that much time? Well?
- First Witness: I don't know...I don't know.
- Nesta: You do know however that you heard a whistle?
- Nesta: Yes.
- Defender: No further questions.
- Judge: Next witness.



4

2nd WITNESS: KATARINA KANGANIN

Not much time with these witnesses and no time at all between them. I wondered again why the judge was the one to present the condition of the corpse. Normally, in the West, the court would have called upon the coroner to provide this information. Or, surely the prosecution would have introduced it in order to magnify the death in the minds of the jurors. No jurors here.

The information was delivered to the court before the trial began and apparently, since it was a police report, no one challenged it. Not even the defense. Maybe the prosecutor would bring it up later, but she had already examined Bazenov.

It was an official document of the body's condition provided by the militia to the court and was to be taken as verified and correct. That didn't give the defense much to work with on that score. Yuri said it was the same in Ukraine. The deck seemed stacked.

The clerk rose and called the second witness: "Katrina Kanganin!" The girl looked uncertainly around, rose, and approached the stand hesitatingly. She was about 5'4," slightly overweight, with a round face covered with pimples.

Judge: (Reading.) Let us not waste time. You are Katrina Kanganin. You are an apprentice at the ANFA factory. You are sixteen years old. You accompanied the deceased and these two witnesses into the orchard belonging to Citizen Bazenov, on the night of August 9th. Are any of these statements incorrect or falsely stated?

Katrina: No, sir.

Judge: Very well. Prosecutor you may begin

Prosecutor: You admit to having taken a few apples from the defendant?

Katrina: Yes, ma'am.

Prosecutor: Only once?

Katrina: Yes.

Prosecutor: How many apples did you take on that occasion?

- Katrina: A few... three or four.
- Prosecutor: Three or four. How many did you take on the night of August 9th?
- Katrina: None.
- Prosecutor: Have you stolen apples from him or anyone else, since the murder—I mean death/? (Defender Bykovsky rose and then sat.)
- Katrina: No, ma'am.
- Prosecutor: Now, the defendant says it was very dark on the night of Silkin's death. Do you concur?
- Katrina: Ma'am?
- Prosecutor: Do you agree? Was it dark? Was there a moon?
- Katrina: I do remember. It was very dark. There was no moon. I remember because we had hidden...
- Prosecutor: Yes, yes...When you were in the orchard did you hear anything?
- Katrina: No, nothing...until the shot.
- Prosecutor: You heard no whistle, no warning before the shot?
- Katrina: No. There was no whistle. He just shot Vlady. We had no chance.
- Prosecutor: No whistle? No warning? No shout?
- Katrina: No, nothing.

Prosecutor: I'm surprised that more of you were not hit. Silkin got 78 wounds from the shotgun. How is it that you others weren't wounded? You were all standing very close to each other were you not?

Katrina: Yes, ma'am, we were. But Vlady was not.

Prosecutor: Was not? What do you mean -- he was with you -- where was he?

Katrina: He was in the tree.

Prosecutor: In the tree?

Katrina: He had climbed the tree. When he was shot, he fell out of the tree and dropped at our feet.

Prosecutor: In the tree! He was in the tree or up in the air! Now we see why it was that Bazenov shot into the air. That's where the target was! Of course! No further questions.

She shook her head and laughed, 'In the tree' as she walked back to her chair. The defender rose and walked quickly to the stand where the girl sat quietly.

Once again, I was perplexed. The militia would have seen the body, seen the tree from which he fell. He couldn't move after he fell, so they would have made the connection, wouldn't they? That he fell from the tree? Or, at least suggest it was possible? Did they deliberately not include it in their report? To what end?

The report seemed far too basic: Man shoots. Boy killed. Man with gun. Man admits shooting boy. He never denied it. Case closed. Write report. Send it to court. They didn't write the description of the body, though. That must have been the medical examiner, or coroner in the town. That should have been extremely detailed. I could not get the details down fast enough when the judge read them so what I wrote here was just a summary of the description of the body, really.

Defender: Let's clear up one detail. You say Vladimir Silkin was in the tree?

Katrina: Yes.

Defender: He had climbed up the tree to reach the apples.

Katrina: Yes.

Defender: (He had obviously not heard this detail either. He spoke to the courtroom.) So, it is clear citizen Bazenov shot in the air. In the air. Not suspecting that the intruder had climbed the tree already, having just realized they had leapt the fence and landed on his property. Not suspecting any of the teenagers were in the air—or in the tree—he shot into the air to warn them.

Shooting into the air is the customary way to alert someone of your presence, in a situation such as this. Especially if it is an intruder. Citizen Bazenov didn't have time to think that one of them had actually climbed the tree already. After all, they had just climbed the fence moments earlier.

Shooting into the air is the traditional way of a warning someone you are there.

If you are a captain of a boat at sea, you fire a warning shot over the bow of the enemy ship or even a vessel whose purpose you do not know, but whose actions are threatening or otherwise suspicious.

Police do it. Soldiers do it. Bazenov was a soldier in the Great Patriotic War, and he did it for eight years from 1939 to 1947. So it was perfectly normal that he would react that way—shooting into the air—as he has been telling us the whole time.

That's exactly what people do, exactly what Bazenov did.

The prosecution's attempt to slander citizen Bazenov is scurrilous. Her implication that he shot at the victim in the air, in the dark is ridiculous.

First, he fired the warning shot the way he should have, the way everyone does all over the world, not just in the USSR.

Second, he did not know the intruder was in the tree—or in the air—if you want to say it that way.

Third, it was too dark to see anything. Certainly, too dark to see a boy in a tree hidden by apples and branches and leaves.

He shot into the air, as he should have. A warning shot. Nothing more. And not two shots or more. Only one.

He shook his head, walked around the front of the room burning with anger. Then he turned to the witness.

Defender: Did you steal apples from Citizen Bazenov only once before?

Katrina: I took apples.

Defender: Oh -- you did not steal them? You paid for them?

Katrina: No.

Defender: You left money for them?

Katrina: Well, no but...

Defender: I understand. We often see at the end of laneways, little baskets of flowers or vegetables but the owner is nowhere in sight. There is a sign that tells us the price of these items and we usually take what we require and leave the money for them. Is THAT what you did? But you didn't leave any money for the apples, right? So, really, you stole them.

Katrina: Taking a few apples isn't stealing.

Defender: Really! And what would you call it? Borrowing? Hardly, since you weren't going to return them. Buying them? No, you've said you weren't buying them. Trading for them? Bartering? No. What then? Did the apples belong to you?

Katrina: No.

Defender: To whom then?

Katrina: Bazenov.

Defender: Citizen Bazenov. And what do we call it when someone takes something that doesn't belong to him?

Katrina: (Quietly.) Stealing.

Defender: I'm glad we cleared that up. How many times did you steal?

Katrina: Once.

Defender: You're certain?

Katrina: Yes.

Defender: What about the 9th of August?

Katrina: I didn't take any apples then.

Defender: Any other instances?

Katrina: Not that I can remember clearly.

Defender: Clearly or foggily -- any other -- at any time -- day or night -- alone or with others -- that month or the one before -- this year or the last.

Katrina: Maybe a few.

Defender: Maybe?

Katrina: A few.

Defender: A few?

Katrina: I don't remember.

Defender: And I suppose you don't remember how many apples you took each time.

Katrina: No.

Defender: So, you could have taken more than three or four apples each time?

Katrina: Yes.

Defender: And you could have stolen more than three or four times?

Katrina: Yes.

Defender: Did you see Vladimir Silkin fall from the tree?

Katrina: (Hesitating.) Yes.

Defender: You saw him? Then please tell the court from what height did he fall?

Katrina: From what...I...I... don't know exactly...

Defender: Oh, come, come, now. If you were close enough to see him fall, surely you were close enough to see how high up in the tree he was. How high?

Katrina: But that is....

- Defender: How high?
- Katrina: (Shrugs.) About ten feet.
- Defender: You swear to that?
- Katrina: No! It was dark I wasn't looking at the height of the tree or how high he was in it. I just heard him fall and saw only Vladimir's body on the ground. And I couldn't even really see that.
- Defender: How high? You are under oath. You saw him fall. How high?
- Katrina: That is impossible to say accurately:
- Defender: Why?
- Katrina: Because...I was not thinking of how high he was; I do not remember...it was too dark....
- Defender: Ahh! It was too dark! You were only a few feet away from him and yet you could not see well because of the darkness?
- Katrina: Yes. I have told you – there was no moon and...
- Defender: That is fine. Now, do you insist you heard no whistle?
- Katrina: (Quickly.) Yes.
- Defender: Do you also insist with the same assurance that there was no whistle?
- Katrina: (Trying to digest the different meanings, answers more slowly.) Yes.

Defender: Tell me, just before the shot, were you talking with your friends? Yes?

Katrina: We spoke quietly.

Defender: And did Silkin make any noise with the tree, rustling of the branches perhaps?

Katrina: Some, I suppose...what...

Defender: And did the shooting occur suddenly?

Katrina: Yes.

Defender: And did the body make a noise when it struck the ground?

Katrina: (Horried.) Yes.

Defender: And did the noise of the gun frighten you?

Katrina: Yes!

Defender: And did you all scream?

Katrina: Yes! Yes!!

Defender: Then isn't it possible that you might have missed the whistle? Not heard it because of all the excitement.

Katrina: Yes...I mean no; I don't think...(Finally.) There was no whistle.

Defender: Now miss Kanganin, You four were all friends, yes? You went around together to events, music, and dances, that sort of thing?

Katrina: Yes.

Defender: Would you say there was special relationship between you and Vladimir Silkin, Vlady, as you call him? Were you not his special friend and you his? By that, I mean, you were boyfriend and girlfriend?

Katrina: Yes.

Defender: And I assume you would have done anything for him?

Katrina: Yes, I would.

Defender: Yes, of course, it is a natural thing. And even now, you would do what you could for him? And for his memory?

Katrina: There is not much I can do for him now.

Defender: Except perhaps, lie for him about hearing a whistle?
That will be enough.

He returned to his seat.

The business of the boy, Vladimir Silkin, having been in the tree clearly, and astonishingly, had not been known to the lawyers before the trial.

How the hell did Bykovsky know that this girl and the dead boy were “special” friends? I whispered the question to Yuri, but he just made a face and shook his head. The lawyer, experienced for many years with witnesses, must have seen something we failed to pick up on.

Her reaction to questioning about the boy's fall and the shot must have contributed to how he figured it out. She also said she failed to hear the whistle when Nesta, the first witness, said she did. Maybe she said she didn't hear it because she felt that was a way of punishing Bazenov for killing her boyfriend.

You learn and don't learn in a courtroom; and you miss a lot.



5

3RD WITNESS: MIKHAIL SHIGANEV

Judge: Call the third witness.

Clerk: The court calls Mikhail Shiganev to the stand.

A shaggy-haired youth grinned to someone in the courtroom and rose. He ambled to the stand. Shepilov, the judge, looked up from under his glasses, and shook his head contemptuously.

Judge: Your name is Josef Mikhail Shiganev. You are an apprentice at the ANFA factory. You accompanied the deceased and the previous witnesses to the orchard on the night of August 9th. Is this information correct?

Shiganev: No! There has been a mistake -- Vladimir was not killed in August, it was July!

Judge: July?

Shiganev: (Wildly.) Yes, yes, July, not August.

Judge: How are you so certain?

Shiganev: Because...because... I remember -- it was July, July 19th.

Judge: Clerk, will you please inform the witness of the date of the killing?

Clerk: Yes, your honor -- August 9th.

Judge: And the date of the burial of the deceased.

Clerk: Yes, your honor. It was -- funeral was held on...August 11th at 10 o'clock in the morning.

Judge: (To the witness.) The eleventh of August. And you are trying to tell us that the corpse was held for at least 23 days before burial? Do you think bodies are kept in August in small towns in the country with no air conditioning to preserve them? Are you saying the police kept a stinking, putrefying body under their noses for a month? Do you still insist the crime occurred in July?

Shiganev: (After a long silence.) No.

Judge: You are not beginning well, boy. Explain, in your own way, with good use of your memory, the happenings of August ninth.

Shiganev: (Cautiously now.) We were coming home from a dance and we passed the orchard. We just decided to get some apples. It is true that Vladimir did not want to go over the fence. We wouldn't listen to him and finally he agreed. We climbed the fence. We were there but a short time before a shot was fired and Vladimir dropped at our feet.

Suddenly the courtroom erupted with the hysterical cries of a woman. She turned out to be Agatha Silken, the mother of the victim. She faced Bazenov and screamed at him.

Mrs. Silkin: Murderer! Murderer! You killed my boy! What did he take? A few apples! Oh, Vladimir, he was only 16 -- 16!! And he is dead.

There was a sympathetic murmur from the spectators before Judge Shepilov banged his gavel.

Judge: Silence! Silence! This is a trial, not a spectacle!

A guard moved over to quiet the mother, but she calmed herself sufficiently so that the trial could continue.

Judge: Prosecution may interrogate.

The prosecutor rose and crossed to the witness.

Prosecutor: Citizen Shiganev, the last witness, Katarina Kanganin, said that Vladimir Silkin was in the tree, is that true?

Shiganev: I think so.

Prosecutor: You are not asked what you think -- was he in the tree?

Shiganev: I was near another tree. I didn't see him in the tree....

Prosecutor: But you heard the fall?

Shiganev: (Shudders.) Oh, yes, I heard.

Prosecutor: Did you also hear a whistle before Silkin was killed?

Shiganev: No, I heard no whistle.

Prosecutor: No whistle? No shout? No warning? Any warning at all?

Shiganev: No.

Prosecutor: That is all.

She turned abruptly and returned to her seat. The defender looked at her, rose and walked to the witness.

Defender: You work in the same factory as the other witnesses?

Shiganev: Yes sir.

Defender: Are you deaf? Never mind. You are paid well?

- Shiganev: We are only apprentices. We are paid as apprentices.
- Defender: Your pay?
- Shiganev: 300 rubles a month.
- Defender: You find this sufficient for your needs?
- Shiganev: Of course, we would like to have more...
- Defender: But you are not lacking for entertainment funds. You were returning from a dance that charged admission?
- Shiganev: Yes, we can afford these things. And the dances are not expensive.
- Defender: So that if you wanted apples you could buy them.
- Shiganev: Oh...yes...we were just passing the orchard and...
- Defender: Do you often steal apples with girls?
- Shiganev: Uhhh no, as a rule....
- Defender: Mostly just young men?
- Shiganev: Yes.
- Defender: And sometimes, girls.
- Shiganev: Yes.
- Defender: And sometimes, young men and girls.
- Shiganev: Yes.

- Defender: Is this part of the new style of Soviet courtship?
- Shiganev: Well...no, we...
- Defender: This dance was on a Saturday night?
- Shiganev: Yes, generally they are always on Saturday nights.
- Defender: What is today?
- Shiganev: Thursday.
- Defender: What date?
- Shiganev: Uhhh...the 10th of November.
- Defender: You are certain?
- Shiganev: (Reflects.) Yes.
- Defender: It couldn't be the 9th possibly?
- Shiganev: I don't....
- Defender: Or the 11th, perhaps?
- Shiganev: You are....
- Defender: There was a whistle before the shot, Wasn't there?
- Shiganev: Yes! I mean no.
- Defender: Yes! No! What do you mean?
- Shiganev: There was no whistle.

Defender: Let us be exact. There was no whistle, or you heard no whistle? Did you hear a whistle?

Shiganev: No.

Defender: You did not hear the whistle...but there could have been a whistle. Is that not so?

Shiganev: No, there was no whistle.

Defender: Your friend, Katrina, heard a whistle. Is she a liar?

Shiganev: No, she is mistaken.

Defender: As you were mistaken?

Shiganev: Eh?

Defender: You said the shooting occurred in July, but it was August. Is that not so? Do you know what the penalty is for perjury? Were you lying?

Shiganev: No! No! I was confused...I made an error.

Defender: About dates?

Shiganev: Yes.

Defender: I can understand that. I get confused about dates myself. And is it not possible that you are making an error now? Is it not possible that there could have been a whistle, which you did not hear because of the excitement or because of some other reason?

Shiganev: No...

Defender: Is it not possible? Are you forever faultless after one error? Could you be wrong?

Shiganev: Yes, I can be wrong.

Defender: Let the record show the witness can be wrong. Let it show that he is not secure in his opinion that there was no whistle. In other words, there could have been a whistle. How many times did you steal apples?

Shiganev: Once.

Defender: Including the night of the death?

Shiganev: No.

Defender: One other night?

Shiganev: Yes.

Defender: But of course, you have already stated that you stole often, sometimes with boys and sometimes with girls, and sometimes with boys and girls. When was this one time say you stole before the night of the killing?

Shiganev: The week before.

Defender: The week before what?

Shiganev: Before Vladimir was killed.

Defender: That would be August 2nd, also a Saturday night. Did you climb the fence that night?

Shiganev: No. There was no fence then; the fence wasn't up then.

Defender: So, the fence was put up between the first time you robbed the orchard and the second time...the night of the death.

Shiganev: Yes.

Defender: Why did you say July 19th was the night: of the death?

Shiganev: I don't know...I guess I was confused.

Defender: What did happen on July 19th?

Shiganev: Nothing.

Defender: You're sure you weren't in the orchard that night?

Shiganev: No, I am sure. I wasn't there.

Defender: You said a minute ago that you were last in the orchard on August 2nd, or the week before the death?

Shiganev: Yes

Defender: And there was no fence then?

Shiganev: Right. There was no fence.

Defender: Clerk read Citizen Bazenov's answer to my question 'When did you erect the fence'.

Clerk: (Looks in notes.) When did you erect the fence?" "A week after I was beaten."

Defender: One week after the beating. Continue.

Clerk: Then you said, "And when was that?" and Citizen Bazenov answered, "Two weeks before the accident."

Defender: I have a calendar here...the death of Silkin occurred on August 9th, a Saturday, and the fence was erected two weeks before the death; that would be on or around July 26th, also a Saturday. You said you did not climb the fence the first time you stole apples a week before the death on August 2nd.

So, either you weren't in the orchard on August 2nd or, if you were there, you climbed a fence to get in.

Now, Bazenov erected the fence after the beating, so let's see: the fence went up one week earlier, that would be July 19th, also the night of the beating. It is also one week before July 26th -another Saturday night and night you said Silkin was killed.

Your confusion seems to be endemic. Something important happened on the night of July 19th, but it wasn't Silkin's death, it was Bazenov's beating. And you were there that night. You administered the beating.

Shiganev: No. No....it isn't true.

Defender: You are a liar. The testimony of this witness is worthless.



6

4th WITNESS: MRS. ANNA BAZENOV

Judge: Clerk, call the next witness
(To the Prosecutor.) Prosecution...go
ahead. Clerk!

Clerk: The court calls Mrs. Anna Bazenov to the
stand.

The prosecutor moved toward the stand. Mrs. Bazenov spoke at first without emotion. She referred throughout to Bazenov as "he" and did not look once toward the prisoner.

Prosecutor: What is your name?

Mrs. Bazenov: Anna Bazenov. Mrs. Anna Bazenov.

Prosecutor: Were you with your husband when he shot the deceased?

Mrs. Bazenov: I was in the house -- asleep.

Prosecutor: Did you know your husband was outside in the orchard waiting for intruders?

Mrs. Bazenov: Yes.

Prosecutor: Did you know he had a gun?

Mrs. Bazenov: Yes. He bought it after we had been robbed many times and after he had been beaten by thieves.

Prosecutor: He bought the gun to get revenge on these thieves?

Mrs. Bazenov: Revenge? No. He bought it to protect his orchard, to frighten away thieves.

Prosecutor: I admit he accomplished this purpose extremely well. Mrs. Bazenov, did you know whether or not the shotgun was loaded on the night of August 9th last -- the night of the killing?

Mrs. Bazenov: Yes.

Prosecutor: Yes -- what? Yes, you know, or yes, you know it was loaded? Was it loaded?

Mrs. Bazenov: It was loaded.

Prosecutor: Why would he load the gun if he only wanted to frighten the thieves? Why wouldn't he just carry the gun?

Mrs. Bazenov: I don't know. Perhaps it's because when the thieves come it is night and if he just carried the gun there would be no threat as the thieves would not see it in the dark.

Prosecutor: Mrs. Bazenov, you are trying my patience with sarcasm.

Mrs. Bazenov: Yes, ma'am.

Prosecutor: Is it not true that your husband had suffered the loss of many apples in previous weeks? Isn't it also true that your husband's and your own home life were disrupted by the necessity of Citizen Bazenov sleeping many nights in the orchard? Isn't it also true that he was beaten by thieves a few weeks before the killing? Are all these things true?

Mrs. Bazenov: Yes. Those things are all true.

Prosecutor: Was your husband ever angry after any of these incidents?

Mrs. Bazenov: Yes, of course, he was.

Prosecutor: Naturally! This experience of having thieves constantly at your doorstep provokes anger. Having to sleep in one's garden in the night air deprives one of rest, and is likely to have the effect of being irritating to the person concerned --and a physical beating at the hands of those whom one was trying to remove from one's own property is not only insulting and humiliating -- but also painful...all of these things naturally make one angry. Would you say that your husband was angry after having been beaten?

Mrs. Bazenov: Yes, he was angry. But he was madder when the militia did nothing.

Prosecutor: Madder! And who wouldn't be! Wasn't your husband in fact infuriated when he bought the gun? Was he infuriated when he shot the youth, thinking only of his bruised head and loss of sleep and missing apples...and did he not shoot to kill one of the intruders and thereby teach all other would-be interlopers a lesson?

Now, Bazenov himself jumped up from his seat at the defense table and yelled. The court was taken by surprise as were we. Mrs. Bazenov seemed to be holding her own and this disruption didn't look as if it would ill help.

Bazenov: No, that is not true! That is a lie! I was not angry when I bought the gun. I was just unhappy and tired. It cost me many rubles that I did not want to spend on such a thing.

Bazenov tried to move around the table his fist in the air but was stopped by Bykovsky before the guards could reach him. Bykovsky restrained him easily with a pat on the arm. Yuri, whose Russian was a lot better than my university level skill, said to me that Bazenov's repetition of the same complaints, especially focussing in the money he lost, would work against him since, after all, a life was taken, not simply apples.

Judge: The prisoner will be silent!

Defender: Objection! The witness cannot answer for the defendant.

Prosecutor: Again, we hear about money! First, for the apples and their loss, and now for the expense of the gun. You seem obsessed with money, citizen. All right, judge, I withdraw the last question. Did your husband say why he bought the gun?

Mrs. Bazenov: To protect the orchard. It's part of our living. He wanted only to protect our apples.

Prosecutor: Of course. Thank you. You are both extremely clear on this point.

She sat down. Bykovsky went to the stand. Yuri shook his head and said, "See?"

Defender: Your husband has always obeyed the law, has he not?

Mrs. Bazenov: Yes, sir.

Defender: His file shows that he has never been arrested before. And when he was beaten, did he not go immediately to the militia?

Mrs. Bazenov: Yes.

Defender: And does he not have a licence for his gun?

Mrs. Bazenov: Yes.

Defender: And it is legal in this country to have firearms to protect oneself, one's family, and one's possessions. What did your husband do after he knew he had killed the intruder?

Mrs. Bazenov: He ran into the house and said to me- "I have just killed a man."

Defender: What did you do?

Mrs. Bazenov: I told him he must go immediately to the militia.

Defender: You or he did not attempt to conceal the death in any way?

Mrs. Bazenov: No. We had nothing to conceal from the authorities. They were thieves. My husband acted in good faith.

Defender: This action of your husband's would seem to indicate that not only did he not remain furious after being beaten by the thieves, but he regained his composure sufficiently to inform the authorities and, as a matter of fact, did so immediately after having shot young Silkin. I believe we can see the basic goodness in this man; his correct attitudes to our laws and authority. I require no further information. Thank you.

Anna Bazenov now looked at her husband for the first time and then returned to her seat in the courtroom. The only expression on her face is one of wonderment. She clearly could not believe things had gone this far. In her mind it was unfortunate that the youth died but it was an accident and would not have happened had the boy not been on their property stealing. She shook her head as if to say, Isn't this obvious to everyone?

Judge: Call the next witness.

Clerk: The court calls Mrs. Alina Korneshev.



7

5th WITNESS: ALINA KORNESHEV

Judge: Call the next witness.

Clerk: The court calls Mrs. Alina Korneshev.

Mrs. Korneshev took the stand. She was a stout, short woman with grey hair that seems to have been cut with a hacksaw. She reminded me of the old Soviet joke about a well-decorated general with four battles won, a former tank commander and mother of seven. Yuri appreciated it.

Judge: Mrs. Korneshev, do you live in Nordalak?

Mrs.
Korneshev: Yes.

Judge: What do you do there?

Mrs. Korneshev: I run a general store. I sell some canned food, hardware, some workmen's clothing,

Judge: Clerk bring the shotgun to the witness.

He does, and she examines it. The judge continues as this occurs.

Judge: Is that the shotgun you sold to Citizen Bazenov?

Mrs. Korneshev: Yes. (She unfolds a piece of paper from her purse.) Of course, all the guns of this type and make are the same, but that is the correct serial number for this weapon. The one I sold him, I mean. I have it here (She holds a sales bill which the clerk takes from her.)

After she inspected it, the clerk returned it to the prosecutor's desk

Judge: Citizen prosecutor...

Prosecutor: Are you an expert in firearms?

Mrs. Korneshev: I am considered so, where I live--- in Nordalak. But I am only strong in hunting rifles and shotguns.

Prosecutor: Did you find it unusual that Citizen Bazenov wanted to buy a shotgun?

Defender: Objection.

- Judge: Sustained.
- Prosecutor: Do many people buy shotguns in Nordalak?
- Mrs. Korneshev: Quite a few...it is a popular gun for hunting.
- Prosecutor: What would you hunt with a shotgun?
- Mrs. Korneshev: Birds. Ducks...quail, rabbits, squirrels, that kind of thing.
- Prosecutor: Why is that?
- Mrs. Korneshev: Birds are usually too fast to use a rifle. When you use a shotgun the spray of the pellets makes hitting the target easier. Of course, then you have the problem of removing the bullets from the carcass before you can dress and hang it before you cook it.

The court burst into laughter. I had to laugh too.

- Prosecutor: I see...in this case, the victim received 78 pellet wounds in the chest and the head. Would that indicate that the gun was fired from close range?
- Mrs. Korneshev: That is difficult to answer. You would have to define 'close range' and there are other questions....
- Prosecutor: Such as?

Mrs. Korneshev: Such as the type of shot, the number of barrels, the gauge of the gun, whether or not there was a choke on the gun...things like that.

Prosecutor: Well, let's take things one at a time. This is obviously a single-barrelled gun. It is 12 gauge. What type of shot would it use?

Mrs. Korneshev: It could use a variety...number 7, for example, which has about 480 pellets, or number 6, which has 350 pellets or so, or number 4 which has about 150....

Prosecutor: This is the shell. (She hands it to the witness.)

Mrs. Korneshev: That is number 6 shot.

Prosecutor: About 350 pellets?

Mrs. Korneshev: Yes.

Prosecutor: Is there a choke on this gun?

Mrs. Korneshev: A half-choke yes, it is built in.

Prosecutor: What does a choke do to the gun?

Mrs. Korneshev: A choke controls the spray of the shot. A full choke channels the shot furthest and closest, no choke allows the spray to lose velocity the fastest....

Prosecutor: And a half-choke controls the spray somewhat?

- Mrs. Korneshev: Yes.
- Prosecutor: Well, with a single-barrelled, 12-gauge, choke shotgun using number 6 shot and resulting in 78 wounds to the chest and more to the head, can you now tell me the range?
- Mrs. Korneshev: Not exactly.
- Prosecutor: Inexactly?
- Mrs. Korneshev: 25-35 meters.
- Prosecutor: And would you say that this shotgun fired from that range, at a human target, would kill? Is this shotgun at that range a killing weapon?
- Mrs. Korneshev: Yes. Depending, of course, on the accuracy of the strike. Whether anything impeded the shot, whether it struck the target head-on or side-long, that sort of thing.
- Prosecutor: Thank you. I do not need to get into too much detail since, from the wounds pattern, it appears to have been head-on. Could you describe Citizen Bazenov's frame of mind when he bought the gun?
- Defender: Objection! The witness' expertise does not extend to clairvoyance.
- Judge: Sustained.
- Prosecutor: I'll rephrase the question. Was he deliriously happy when he bought the gun?

Mrs.
Korneshev: No, of course not.

Prosecutor: Was he angry?

Mrs.
Korneshev: Yes, he was angry because...

Prosecutor: Thank you, that's all for now. (She sat down.)

The defender, Bykovsky took over.

Defender: You said that this was a killing gun at 25-35 meters.

Mrs.
Korneshev: Yes. Or more. As I said, it depends on many variables.

Defender: Would you also describe it as a killing gun on humans at 50 meters?

Mrs.
Korneshev: Maybe not. The shot would be diffused. The shot, the pellets would scatter. Perhaps there would be perhaps more injuries, but perhaps not fatal. You would need to speak to a doctor.

Defender: Is it correct to say that this or any shotgun fired at a range of up to 50 metres could be described as a killing gun?

Mrs. Korneshev looked puzzled.

Mrs.
Korneshev: Well, guns are guns. They shoot at targets and if they hit them, damage is done. Any gun can be called a killing gun. That is not how guns are described. Any gun can kill if you shoot someone at close range.

Sometimes at medium range. There are many variables.

Defender: Do you have any guns in your store that you would not describe as a killing gun?

Mrs. Korneshev: No. It does not make sense.

Defender: Thank you. You said Bazenov was angry when he bought the gun. Was he ranting and raving? Was he banging angrily on your counter?

Mrs. Korneshev: No.

Defender: Well, how did you know he was angry?

Mrs. Korneshev: He told me he was angry because he had been severely beaten and the militia had done nothing, so people continued to steal his apples.

Defender: He told you he was angry, but he did not display anger. Did he also tell you why he wanted a shotgun?

Mrs. Korneshev: Well, he said he didn't really want a gun. He said he normally had no use for it—he was not a hunter. He said he wanted a gun to frighten thieves. He said he had enough of guns and killing in the Great Patriotic war against the Germans. He said if you had been in a war and been shot at or killed people as he had, or seen friends blown to pieces, you did not want to use, or even see a gun again. He looked sad, actually.

Defender: Sad, did he? Why did he choose a shotgun?

Mrs. Korneshev: I suggested it.

Defender: You suggested it? Why?

Mrs. Korneshev: Because it is cheap, and it makes a loud noise.

Defender: Louder than a rifle?

Mrs. Korneshev: Oh, much louder.

Defender: So, it was the noise, he was after, to frighten the thieves, not the pellets, to kill them. Thank you. (He returns to his seat.)

Prosecutor: Your honor, I would like to cross-examine.

Judge: Go ahead.

Prosecutor: Mrs. Korneshev, do you always remember so clearly the conversation you have with the people in your store after three months have gone by?

Mrs. Korneshev: No.

Prosecutor: Then it's possible that you could be making mistakes in what you remember?

Mrs. Korneshev: I don't think so...

Prosecutor: No mistakes in words, phrases, ideas?

- Mrs. Korneshev: Well, I... Maybe a word or two but...
- Prosecutor: Why do you remember this conversation so well, Mrs. Korneshev?
- Mrs. Korneshev: Well, Aleksandr Ivanovich Bazenov is a friend...more like an acquaintance, really...I know him from town.

The prosecutor looked bored and said, “No more questions” and returned to her seat leaving Mrs. Korneshev blank-faced.

The whole thing with the shotgun disturbed me. It seemed wrong in so many ways. First, no evidence of the death was introduced or referenced during the trial so far and it would have been introduced early if it was to be admitted at all. We just had judge Shepilov reading from a medical report of the body at the outset of the proceedings.

Then, there is quite a lot of complexity about shotguns, and that would have taken up more time in another court. It got short shrift here. Though to be fair, once you are dealing with a single-barrelled gun, things get less complicated.

Clearly both lawyers considered it of relatively slight importance. The boy was dead. He was killed by a shotgun blast. The accused admitted it. It did a lot of damage. Let’s move on, was what seemed to be their attitude.

- Judge: Does the Defense wish to cross-examine?
- Defender: Yes. I grant you that the most proper stance under normal circumstances is the one adopted by the witness, but I ask the court to consider points in this specific case

In the first place, consider the state of mind of the shooter – he was upset, frightened; he had just been awakened after sleeping outside in his yard. He had been beaten a couple of weeks earlier.

Consider the exact situation...would the Clerk please read to the court the response of Citizen Bazenov when I asked him to tell me what happened on the night of August 9th.

Clerk: (Reads) "Well, I was asleep under a tree when I was awakened by a noise, at the far end of the garden -- it was late, around one, I think and dark. Very dark -- there was no moon. I could see some figures, but it was so dark I could not see how many there were or that they were young people."

Defender: May I demonstrate? (He walks to the table and picks up the gun.) Bazenov heard noises at the far end of the garden and, not knowing Silkin was up in the tree, he fired where he thought it would be safe -- over the heads of the robbers. He fired into the air!

Prosecutor: Your honor, the defense cannot have it both ways; either it was too dark to see anything at all in the orchard that night or it wasn't.

If it wasn't and Bazenov saw figures at the base of the tree it is very convenient to say that he couldn't see a figure in the tree too. It's too convenient. I submit he saw the people on the ground, and he saw Silkin in the tree and fired purposely. Citizen

Bazenov spent seven or eight years in the army, so he surely knows

First, he certainly did not shoot shotguns in the army. Secondly, he adopted the correct stance for a warning shot.

Defender: It is not true or accurate to say that if Bazenov saw figures on the ground he would automatically see one in the tree.

In the first place he probably didn't take the time to look up and if he did, he would have seen branches, leaves and apples.

And maybe he didn't see figures at all but only heard the noise and assumed that because of all the previous robberies that the thieves were there. And it was dark.

The meteorological report of that night substantiates this. Bazenov didn't see the people, he only heard them. But the man was upset!

These were not normal circumstances. The court must take the human elements into consideration.

Prosecutor: Part of the human element is dead, sir.

Judge: (Raps gavel.) Does the prosecution or the defense wish to introduce any further evidence before beginning summaries and pleas?

Prosecutor: No further evidence.

Defender: Your honor, I would like to add several documents for the defence, (He produced some signed documents from his briefcase.)

“Here is the meteorological account of the night of the shooting.

This document is a citation from our government's Ministry of War. It states that: "Aleksandr Ivanovich Bazenov has been cited for bravery and devotion to country for war wounds suffered during April 1943 against the enemy. Soldier Bazenov risked his life in dragging an injured guardsman from a mine area. In so doing Soldier Bazenov received shrapnel wounds to his right shoulder. 'The Ministry of War commends a gallant action -- a gallant man."

At this point the spectators began commenting on the defender's remarks. "A hero! He loves his country." "He is very courageous!"

Defender: And, I have a further commendation from the Ministry of War which states that Citizen Bazenov was cited for service to country once more in 1945 when he was again wounded in action at the front.

The court now was visibly impressed. They continued a litany of favorable remarks and comments. "A wonderful soldier!" "Such strength!" "He was wounded twice!" "Ohhhh! Yes, yes, you are right, a gallant man." "He loves our country!" "Yes, yes, he is gallant, a real soldier!" "You are right – he is gallant, gallant!"

Defender: I have yet another commendation...(the court falls silent) the government, in 1955, cited Citizen Bazenov's civilian work with A First of May citation for good work!

But with this comment the courtroom spectators turned against him and Bykovsky immediately realized he had gone too far, or rather he should never have mentioned the First of May citation. His face expressed his disgust with himself.

“Ha, ha, who hasn't!” said one on-looker. “You're really scraping the bottom of the barrel. Ha, ha, what did he do -- empty his garbage regularly?”

Judge: (Rapping.) Silence! Silence! The spectators will keep their remarks to themselves. There will be a ten-minute recess, after which the court will reconvene.



8

BREAK: THE LAW STUDENTS

The crowd headed for the corridor, once more breaking into low laughter, pointing derisively at Bazenov. We walked out into the corridor too.

Yuri and I watched Mrs. Silkin, the mother of the victim, seated as she was sobbing quietly. She was in her mid-thirties, slender, attractive and wearing a dark dress suitable for a funeral. She had probably worn it to her own son's funeral.

This experience was tantamount to an extension of the funeral itself. She had no idea of trials, courts, accusations, lawyers, judges,

or even laws. She was taken up in a vortex of grief and wonderment, but grief was dominant. She sobbed incessantly.

Three young law students, which information we learned by listening to their conversation, stood nearby. The first law student, Pyotor, we later discovered, was in his mid-twenties, as they all were. He was laughing. “That was really something. Imagine trying to persuade us of his character by using a ‘First of May’ citation! Who hasn't got them?”

He mimed a medal ceremony applying one to the chest of the second law student, a young woman named Alina. “‘Citizen—for six weeks continuous unfailing service to our glorious motherland, we are happy to present you with this First of May citation for good work.’” Then, turning to his fellows he said, “Just think, for six glorious weeks she has put on gas caps at the Gorky Tractor Works. I have five of those. My father has a drawer full but, of course, he’s a lot older.” The students all laughed. The second law student, Alina, said, “Still, he has two legitimate war citations.”

“Yeah, said the third student, Alexi, “but now he’s in another war.”

“He’s doing all right,” said Alina.

“Is he?” said Pyotor.

“At least his lawyer is,” she replied. “He’s made some good points.”

“What about the prosecutor?” said Alexei, the third student. “What about her points. What about the boy in the tree? It’s pretty obvious Bazenov shot on purpose.”

“I don’t think so. But there’s something about the prosecutor that I don’t understand.”

“What?”

Alina said, “Her cross-examinations have been so short, and her attitude is so cavalier.”

“She’s getting the job done, isn’t she?”

“Yes, I suppose she is but...”

“Then what of it?” said Alexei. “Maybe she works better that way...puts the witness off guard.”

“And the judge is so severe,” said Alina. “The opening questions were devastating, and she was cruel to Bazenov. And the description of the corpse was too long, too detailed and horrendous. Yet no pictures, no medical report from the coroner. Shouldn’t he have been called?”

The first law student, Pyotor said, “My friend, your idealism is showing. Shepilov is a hard-nosed son-of-a-bitch. So what? What if he is somewhat harder than usual? The man is charged with murder, not breaking and entering. Everyone appears to have agreed about the facts of the death. This may be an unusual trial. Why else were we excused from lectures to see it? We should not be surprised by abnormal factors. Or what we think are abnormal factors, at a trial like this. Or any trial really.”

Alina said, “I think you're right. Something unusual will happen. Remember we were told to come to this trial. It was not a suggestion.”

“You've pointed out signs yourself,” Pyotor replied. “The prosecutor’s laxity and the judge's severity, although with the prosecutor, I think her casual attitude is just a method of operation. The judge, well, it isn't out of place; the man Bazenov deserves to be broken down. To kill a child for apples. The man's greedy; he was trying to keep his puny private orchard to himself.”

“They are his trees,” said Alina. “He is entitled to the fruits of his labors.”

“And can he also take a life?” said Alexei?

“Hold it!” said Pyotor. “You're beginning to sound crazy! You are making assumptions based on assumptions, and you haven't even heard the whole case yet. Is that what you've been taught? To take sides after the first recess? You're quarrelling over a matter of personal preference and feeling! Maybe you'll change your minds before the verdict.

“I think the only thing we can say at this point is that there's no way Bazenov will go free. I can't see an acquittal.”

Yuri and I winced. We felt the students, except for Alina, were being rough on the accused. But this was our first look at Soviet justice. What did we know? But we too thought the prosecutor was being cavalier and not engaged. And there were a lot of unanswered questions.



9

PERSONAL ATTACK

Down the corridor some fifty feet, we heard raised voices. Yuri and I moved towards Mrs. Silkin, the mother of the victim, seated, as she was sobbing quietly.

For her, this experience was tantamount to an extension of the funeral itself. She had no idea of trials, courts, accusations, lawyers, judges, or even laws. She was taken up in a vortex of grief and wonderment, but grief was dominant. She sobbed incessantly and shook so violently finally a woman went to her, wrapped her arms around her and tugged.

The corridor was only partially full of locals, hangers-on, people who wanted a thrill, people with nothing to do, peasants and others.

Mrs. Silkin was still distressed and crying. An elderly man moved over to her and spoke to the woman. "Stop your crying, woman. A thief was shot. So what? You're better off without him. He would have been a burden to you all your life. He would have only caused you grief. You are well rid of him."

The man went on blisteringly: "He was a thief. He stole the apples and he stole your happiness and now he steals your peace of mind. You are better off without him."

A second man had moved over to join the first, emboldened by the first man's tirade and the woman's non-responsiveness. "He was a thief," the second man said. "What but a bad end could be anticipated for such a son?" The woman hugging Mrs. Silkin did not raise her head from Mrs. Silkin's shoulder.

Finally, Mrs. Silkin replied: "No, no, he was a good boy!"

The second man laughed and said: "Yes, yes, a good boy. They are all good boys to their mothers. There are no bad boys in jail."

The first man said: "Yes, they're all good 'till they're caught!" The second, urged on, said, "They are good boys to the mothers. If mothers were judges, murderers and thieves wouldn't exist."

"A saint! He was a saint!"

"They're all good 'till they're caught!"

Mrs. Silkin was overwhelmed, “No, no, Vladimir was a good son!”

“A good son, yes, a model son,” said the second man.

“No, not a model, a bad example,” chimed in the first guy. By this time a small crowd had formed around the woman and they thought this was hilarious.

All laughed, kidded and jabbed each other in the ribs. The guards in the corridor did nothing and said nothing.

Mrs. Silken said, “Please -- you did not know my son!”

By now, a third man had joined the group along with several silent on-lookers.

He spoke to her too: “The son was killed. He was a thief. That's what should happen to all thieves and robbers.”

Now it was a cacophony of words coming from all sides.

“All thieves should die.”

“Kill them, before they rob us of everything.”

“We work hard for our meager money and they steal from us?”

“Bazenov was right to shoot him.”

“He deserved it,” said the first man. “He deserved to die. He was caught stealing. He probably died with an apple in his hand.”

“Was his name Adam? Adam the apple thief? Who died in the garden of Bazenov?”

“What, no Eve? OHHH, yes! She was that dark-haired girl on the stand. Eve and Adam, Adam and Eve, the apple thieves in the garden of Bazenov!”

This change provoked peals of laughter.

And on it went. A torrent of abuse and viciousness directed at the distraught mother.

“Stop, stop, leave me alone! Please! Stop!” said the mother.

I regret I did nothing. I wanted to, but what could I do? A foreigner with the rudiments of the language interfering with a verbal attack in a Russian court? With the guards looking on. The situation was absurd, but I dared not interfere. Yuri was contemptuous of the attackers.

“Leave you alone?” said the third man. “Shall we leave you alone, so that you may steal? Don’t children behave as their parents? Or as their parents taught them. Did you teach him to steal?”

Suddenly, the second law student, Alina, ran from her friends and broke through the group surrounding the woman the girl “Enough! That’s enough! Leave the poor woman alone. She isn’t on trial. You are like dogs. Do you want to tear her to pieces? You are cowards to attack her like this. Leave her alone or I’ll call the guards.”

The threat to call the guards was enough to make the people shuffle away from their target mumbling and cursing to themselves under their breath. It was bizarre because the guards stood only twenty feet away, and they heard and saw everything yet had done nothing. The woman with Mrs. Silkin relaxed her grip somewhat on the terrified mother.

Yuri shook his head. “What is unbelievable about this reaction is that these people are mostly farmers, peasants, rural folk who have gardens of their own. They grow vegetables and flowers and sell them to augment their salaries—if they have a job at all. It would be even more important for them to feed themselves if they don’t have work. This stealing could easily happen to them. I’m sure it does.”

“So why the hell are they berating Mrs. Silkin? I asked him.

“They are indoctrinated by the system. I don’t know, maybe they think someone is watching them react this way and they will curry favor with the authorities with this behavior. It doesn’t make sense for them to react this way. It could be them under fire in this court!”

“They have been treated so badly for so many decades, I offered.

“I can’t handle it,” said Yuri. “They are like Pavlov’s dogs, or brain-washed, or so beaten down they can’t resist. Maybe they are just stupid. It’s a combination of experience and helplessness. I know they have been treated badly for decades but you must fight to get out of mud, otherwise you drown in it.

“It is so frustrating to watch. But it is more frustrating and enraging to live with. It is the same at home in Ukraine. Ukrainian law is taken, with few local exceptions from Soviet Law. They just basically copied it from the Russians. If you oppose the authorities, bad things happen. This is exactly why I am becoming a lawyer. Much chance I have of changing things. More chance I’ll be imprisoned if I object or fight for their rights. But you can’t just sit and wait for doom.”

Suddenly the courtroom door opened, and the clerk said. “The court will convene. Take your places,” and the spectators slowly shuffled back towards the courtroom

Yuri and I watched all this with sense of impotence.



10

SUMMATIONS

We went back inside the courtroom and took our places on the wooden benches. The bayoneted guards entered with Bazenov who looked even more tired than he did earlier. He seated himself next to his lawyer, Bykovsky. The judge, Shepilov, entered from his chambers and everyone rose together automatically.

The clerk rose and said unnecessarily that all should rise. When Shepilov sat down, the clerk, who had a magnificent grasp of the obvious, told everyone to sit down. The law students laughed. Then he said that the court should “come to order.” Since this had already occurred, the young lawyers sighed and rolled their eyes. The whole court was laughing.

Judge: The Prosecutor may make her final remarks.

The Prosecutor rose and moved in front of her desk to begin her summation. She spoke rapidly and without passion or even much vocal inflection or variety. Except on a couple of words and phrases

Prosecutor: My summation will be brief. There are two questions to be answered: was the murder premeditated, and was it committed from base motives. As for premeditation -- the answer is simple: that the accused intended to murder is obvious from the facts -- he purchased a gun and loaded it.

It is clear why he purchased the gun -- he intended to use it -- and he did use it. Not only did he buy it, but also, he bought ammunition for it and loaded it. We have his word on that. And his wife's.

His wife also told us that the accused loaded the gun when he stood guard in the garden. Is this not planning? Is this not premeditation?

The offender has repeated over and over that he shot "into the air." What he did not tell us was that Vladimir Silkin was in the tree, or (she turns to Bazenov) if you will, IN THE AIR!

The offender's protestations to the contrary notwithstanding, he fired, not just into the air - - but directly at a person.

The fact that he had perhaps not intended the *specific* death that occurred is irrelevant.

The issue of motivation is equally clear-cut. He committed the crime from base motives.

Soviet Law is always especially severe where the protection of life is concerned but it has to be doubly so when life is taken in defense of a few apples.

The accused himself has admitted repeatedly to us that he murdered for the sake of, or to protect, his apples.

This man had a full range of defensive measures available for the protection of his orchard: he could have gone to the police earlier, or built a higher fence, or hired someone to capture the thieves, or frightened them somehow when they attempted to enter the yard, and so forth.

But he chose to kill and that without even a warning. The motive was to save a few apples. Can there be any doubt that to kill a person for apples is a base reason for killing?

The victim was a young boy of 16 who had not even begun to live. It is clear Bazenov intended to kill -- the crime was premeditated.

And it is clear that killing for apples is killing for base motives. What could be baser?

In the light of these facts, I ask for a finding of guilty under Article 136A of the Criminal Code and request that the Court return the normal maximum sentence of ten years deprivation of liberty.

She whirled about abruptly and walked quickly to her desk. The judge noted something on his papers and nodded to Bykovsky.

Judge: The Defense may make final remarks.

The defender Bykovsky, rose, adjusted his suit jacket. Then he turned to Mrs. Silkin.

Defender: I want to express my deep sympathy to you and all relatives of young Silkin. I understand what you suffer.

This trial and its cause have forced insight upon us again. Once more we see how blessed the gift of life is, how easy to snuff it out, how impossible to restore (He wheeled, after a pause, on the bench.)

But, although young Silkin's life is gone, Bazenov is still alive and his fate, the fate of a living human being rests now with the Court.

Citizen Bazenov is a poor and simple person. He had given many years of his life to the service of his country and upon returning to civilian life, sought, above all, peace and quiet.

He worked diligently and devoted every spare moment to his small orchard. The orchard is much more than a source of profit to Citizen Bazenov; it is a source of stability and personal satisfaction.

However, as soon as the orchard had begun to flourish -- thieves beset it.

Citizen Bazenov was forced to abandon his bed and sleep among the trees in order to protect them and all they stood for. He built a fence to keep thieves out -- it did no good.

His whole life had been disrupted.

The militia did nothing to help him, and, when he at last managed to catch the thieves, he had been badly beaten!

Yet even then the militia did nothing except to file a report on the assault. I have the report here, but it was not acted upon.

It was only at this point -- only after he had been harassed, insulted for years, and then injured, only after he had looked in vain to the authorities for support, only after he had been provoked again and again, did Citizen Bazenov, in desperation, purchase a gun.

The fact that Bazenov purchased a gun and loaded it does not necessarily mean that he wanted to kill with it, as the Prosecution would have us believe. He could have bought it -- as he did -- as a threat to thieves, all other threats having failed.

There can be no doubt that a Soviet citizen possesses the right to defend his property against hooligans and thieves.

How can one attribute the exercise of this right to "base motives" and thereby bring it under

Article 136A? Must one simply yield to a thief who demands one's clothing or watch?

Can resistance to a thief in such cases be attributed to base motives?

In years past, it had been an accepted part of our Soviet Court practice to attribute the worst imaginable motives to the accused and to avoid inquiry into the specific circumstances which surrounded an alleged crime.

At that time, it had been customary to consider the trial nothing more than a ceremonial ritual, after which the accused was automatically given the severest possible sentence.

But all that was with Stalin. Stalin is gone now - - and gone too should be any vestiges of the corrupt law practices of his time!

With regard to this case we can see that changes have been made; two years ago -- in 1956 -- we can see the change in the judicial instruction handed down by the Supreme Court.

This directed all courts to recognize that all citizens had the right of active defense of their property as well as their bodies and lives against hoodlums.

I refer you to page 236, volume 7, of the Revised Articles of the Criminal Code, published in 1956.

How could any Prosecutor in 1958 claim that Citizen Bazenov's act was one of premeditated murder from base motives?

Try as I might I can find nothing in any authoritative judicial text or contemporary directive which suggests that Citizen Bazenov's act was anything more than active defense of property.

True, active defense is justified only in response to "socially dangerous attack." But that was precisely the nature of the robbery attempted by the unfortunate Silkin and his comrades.

Socially dangerous? Of course. If one asks where one can go from apples, the answer is - a long way -- one could go to a watch, a jacket, a suit, and so forth.

The populace demands that the fruits of its labors be protected.

There is only one relevant question here: that of the degree of proportionality between attack and defense.

Citizen Prosecutor is wrong to suggest that any question of proportionality exists between apples and lives.

No jurist would frame the question in this manner.

Bazenov wasn't murdering children to keep his apples for himself. He accidentally shot a boy while protecting his own orchard, his livelihood - and the boy was stealing.

If he can be charged and convicted of murdering from base motives while protecting his own property from thieves, what does that do to the 1956 directive?

Is the law to say one thing and do another? As for the really relevant question, the defense itself is persuaded that Bazenov had adopted a disproportionate defensive response.

It is for this reason that I do not consider it possible to recommend the simple acquittal of my client.

However, the maximum sentence, which can be tolerated, is three years, and even that would be grossly excessive.

Bazenov's crime clearly falls not under Article 136A but under Article 139 of the Criminal Code -- the article which deals specifically with overly extreme methods of defense.

Under *this* article Bazenov is guilty. He should have shot directly above him or perhaps toward the ground. But some sort of active defense was appropriate and necessary.

Even if Silkin and his comrades had simply been strolling through the orchard, the Court would have to make a distinction between the objective situation and the motives of the accused.

Even in this hypothetical case, the relevant article would still be Article 139 -- overly extreme defense measures.

And here in the actual case at hand, where not innocent strolling but criminal theft characterized the objective situation, there is clearly no way to go beyond Article 139.

Neither sympathy for the relatives of the deceased or outdated judicial habit should, or can, lead us to apply the wrong article.

Bykovsky then resumed his seat. The Prosecutor was visibly stunned by the vigor of the defense. She rose, highly agitated.

Prosecutor: Your honor, the Prosecution demands rebuttal time.

Judge: Granted.

Prosecutor: My-- so to speak--opponent, is right about the instruction of the Soviet Supreme Court. But what my opponent fails to mention is that while the Criminal Code of the Russian Republic does not deny citizens the right to active defense of their private property, the Code specifically directs that great caution be exercised where only gardens or orchards are involved.

This constitutes a warning to the courts that such things as the theft of apples by children does not justify active measures of defense. Motive doesn't matter in the instance of death.

She sat down, distressed, and Bykovsky rose quickly.

Defender: Motive doesn't matter? That is an opinion without foundation or merit. I will not even address it. I expect the court certainly will.

I hope I have succeeded in pointing out to the court that at midnight on a dark night one could neither distinguish adolescents from adults nor be expected to ascertain the age of one's assailants before acting in self-defense.

I do not contest the Prosecution's characterization of the Russian Code, but simply reiterate the instruction of the Soviet Supreme Court.

It was precisely because an orchard was involved that I concede Citizen Bazenov's action was excessive. Certainly, there is nothing in the Code to support the Prosecution's suggestion that action in defense of one's orchard was automatically tantamount to action inspired by base motives.

He sat down.

Judge: If there are no further remarks the Court will be adjourned until tomorrow morning at 10 a.m. NO? Court is adjourned. We will reconvene tomorrow morning at 10 o'clock.



11

COURTROOM

Almost everyone left the courtroom, but the law students lingered and so did Yuri and I.

The Defender was writing, making notes at his table. Yuri and I hung back. The young law students, who seemed about our ages, maybe 23-25, were talking together in their seats. We sat behind them intentionally and so heard their conversation. I had been taking shorthand notes throughout the testimony, recording it the best I could and making general notes as well. Yuri, who seemed to have total recall, fed me anything I missed.

I wanted to get down everything during my time in the USSR. I was a student, so I thought few people would have

considered me a threat, although Yuri, again my Russian expert, later told me that I was being naïve. In Russia, you never knew who was watching and listening. So few people from the West had first-hand experience of daily life, never mind what could be regarded as delicate events such as trials, and the Soviets wanted to manage any impressions that left the country.

Tape recorders were too obvious--big and cumbersome in 1958-- and in any case were banned from court. The area of jurisprudence was off-limits for taping, in any case, since it dealt with law and order, crime and punishment, and inevitably, to a possible suggestion of political manipulation. Show trials were not long gone from the scene in the USSR.

Show trials were prosecutions rigged by Stalin in order to keep the country in line and punish people who varied from his directives on almost any issue.

They were part of The Great Purge, or the Great Terror, as it was referred to, a campaign of political and social repression from 1936 to 1938, in the USSR, which ended exactly twenty years earlier than this trial.

It purged many senior Communist Party members, army generals, other military ranks, and repressed the peasants, as if they needed more of that. It was done by exhaustive police surveillance prompted by a general suspicion of "saboteurs." "Guilty" meant imprisonment and sometimes arbitrary executions.

The most drastic year was 1937-38, when a man named Nikolai Yezhov, was the head of the NKVD, the Russian secret police as it was then called. About a million people died during this purge period.

The accused were arrested, charged, put on trial and summarily convicted of whatever "crime" Stalin or Yezhov's

stooges had decided upon and then the prisoners were sent to Siberia or shot.

I did use a recorder when talking to other people, in other circumstances, on other topics, which gave me permission to tape them (some were eager to talk) if we were outside –no one spoke inside buildings.

It was impossible to know in advance, which topics were sanctioned, and which were off limits, although, as with the law, you could make some sensible guesses. Some topics were encouraged, of course, anything that would put the Soviet system in a good light such as education, for example.

I didn't have an assignment in the USSR; nobody in the States asked me to do anything, report anything, or investigate anything. No one in the USSR told me a given place was off-limits, although I was sure that if I intended to go somewhere verboten, I would have been told about it. I was generally free to do go where I wanted talk with whomever which meant talk with anyone who would talk with me. Mostly, of course, I spoke with other students and professors at the university.

Alina approached Bykovsky. I was close and pretended to tie a show and then riffle through some papers. The law student tentatively approached the lawyer and complimented him on his defense. He thanked her but did not indicate he was inclined to talk.

But she was anxious and said, "But how do you expect the verdict to go?"

Bykovsky just closed his briefcase with a click and said, "You will see."

And he walked quickly away.



12

OUTCOMES

“There are only a few ways it could go,” Yuri said. “One, he’s guilty as charged, in which case he gets the normal maximum of ten years...or less depending on whether Shepilov is feeling lenient.”

“Do you feel Shepilov ever feels lenient?”

“Ok, number one, guilty as charged. Number two, not guilty of either premeditation or not guilty of killing from base motives or not guilty of either, in which case, legally, he’s not guilty as charged and so he is acquitted.

“Or, number three, Shepilov accepts the defence position and shifts the charge from 136 A to 139—overly extreme

methods of defence of private property—and so he gets five to seven years. That’s all that can happen.

“All right.” I said. “I hope Bykovsky gets him off. He should, based on the evidence. But Bykovsky himself said he couldn’t ask for an acquittal. Besides, the prosecutor’s case was strong technically.

“She proved premeditation because he bought the gun, loaded it and fired it.

“She attempted to prove murder because—well, it’s either murder or it’s not.

“She argued murder from ‘base motives’— she didn’t prove it, but she might have persuaded Shepilov according to the strictest interpretation of the law. She argued Bazenov killed for apples, therefore base motives. He didn’t help, of course, with his constant referral to money issues.”

“It’ll depend on how much he takes into consideration the changes in the law from two years ago regarding private property.,” said Yuri.

The law is complicated. It was first formed in Russia, expanded and remade in the USSR, copied by all kinds of satellite states, such as my home in Ukraine, amended and so on.

“Private property is a touchy subject here and when you make laws about it, it gets out and if it gets out that you can kill over private property, there’ll be hell to pay all over this country.”

“But circumstances alter cases, surely,” I said.

“In the USSR there is nothing sure, my friend.” Said Yuri.



13

BAZENOV'S FINAL STATEMENT

Courtroom

Judge: The accused may address the court for a final statement.

Bykovsky urges Bazenov to stand and face the judge. He does so.

Judge: Speak.

Bazenov: I did not want to kill anyone. I received two wounds in the war. I was beaten only a few weeks before the accident. The militia did

nothing. I love my orchard and need the money it gives us to live. I went to the chapel to repent shooting the boy. But I did not shoot him on purpose. He was stealing my apples and he was in the tree. All the other youths were on the ground. I shot in the air. It was a warning shot to scare them off my property. I shot in the air. I paid over 600 roubles for my trees.

Judge: Be seated. The court will reconvene for sentencing in 45 minutes. Adjourned.

The prosecutor was laughing, and the rest of the courtroom was silent. Yuri and I exchanged looks that indicated Bazenov had said the wrong thing.



14

SENTENCING

Back in the courtroom. Bazenov was in his chair next to Bykovsky. The judge was glowering from his higher seat. The mood was taut with expectation. People were not talking with each other. They sat with their heads down or their eyes slowly searched the room for some clue as to the verdict. Mrs. Silkin has stopped crying, but her exhaustion curled her body over her knees. As if awaiting execution. The clerk called the session to order.

Judge: I have a description of the corpse. I'll read it.

'The victim was mutilated. His chest was riddled with 78 wounds; the right shoulder

received so many wounds the arm was almost torn off.

His neck was a huge blotch of shell and blood. His mouth had been torn and ripped by the shells!

His teeth were either missing or broken, his nose was a pulp of flesh, one eye was out, the other bulging in shock. His forehead and hair were matted with blood.

It was only because we knew the other three young people were alive that we could identify him.'

And all this for a few apples.

(Shepilov put down the paper and looked searingly at Bazenov. Then he continued.)

Judge: The Prosecution has proven that Bazenov bought the gun, loaded it and kept it loaded.

He took the loaded gun with him into the orchard. He did not take care, or care to take, the proper precautions in the face of his right to own a gun.

Rights demand obligations.

He did not even give a warning, or if he did, he gave one which the victim did not hear, which is altogether useless.

When the opportunity arose, he used the gun to kill this 16-year-old whose only crime was to

leap over a fence and filch an apple. A childish prank. Had the loot been expensive equipment or a large sum of money -- but no -- he killed for apples.

The defense has tried to persuade us that there is no difference between stealing in the large sense and the filching of a few apples, but there is clearly a difference in kind as well as degree.

Bazenov lied to the Court. He said over and over that he fired into the air, but he concealed from us the fact that the boy was in the tree.

He did not even tell a reasonable, plausible lie -- that he fired in error, that it was an accident -- this we could have countenanced -- but no, he said it was no accident he fired the gun, only that he hit the boy.

This is preposterous. He considers us willing fools, ready to sanction his reprehensible following of the bourgeois property instinct.

The accused will stand.

Bazenov stood up shaking. The judge continued his tirade.

Judge: This murder was ghastly.

Committed in defense of a few apples.

Base motives lie unmistakably at the root of your actions.

The crime clearly falls under Article 136A defining premeditated murder from base motives.

The crime is not merely horrible; it is full of implications which justify our considering it a "socially dangerous" crime.

In the light of this fact, the crime falls *outside* the limits visualized in the scale of normal penalties attached to Article 136A. It more properly falls under article 139, Socially Dangerous Crimes. An extension of Article 136A.

Because this crime was particularly "socially dangerous," the Court sentences the accused to the extreme measure of social defense -- death by shooting.

CLEAR ENOUGH?

Throughout the court there was silence. The Prosecutor looked questioningly at Shepilov as she left. The Defender exited angrily, followed by Mrs. Silkin, friends, and the Prosecutor.

The first sound heard was a long, low sob from Mrs. Bazenov who immediately rushed to her husband as the guards brought him back to his seat.

Only the law students, the gathering around Bazenov and some of the spectators were left in the courtroom.

Now, as before, but this time more forcefully, more hideously, the courtroom crowds started to scream at Bazenov. They encircled him. The guards did nothing.

The crowd: Correct! Correct! Bazenov, you bastard, you're guilty! Thank God! Correct! Correct!

You've lost Bazenov. You killed, now you'll be killed.

Damn you, Bazenov. You murderer, you deserve death!

Third man: Why do you cry, woman? Women always cry. It never does any good. The past is dead, (He looks at Bazenov) or nearly dead! Look to the future. Soon you will have a new husband.

First man: Yes, you're still young. You still have your youth. You can marry again. Maybe have more children...ones that will be better brought up if you have learned your lesson.

Second man: You're free, free from this man -- free from marriage? You have a second chance at life! Grab it!

First man: I might be interested.

Third man: Me too.

First man: The verdict was right.

All: The verdict was right...the verdict was right!

First man: (Pointing at the law students who are leaving in disgust.) The verdict was right, wasn't it?

Second man: Yeah! They should know, they're lawyers. The verdict was right, wasn't it?

First man: It was right, wasn't it?

Alina turned to her companions before speaking to the mob.

Alina: I can speak only for myself, but I cannot agree either with the verdict or the sentence.

You must know as well as we that the words "socially dangerous" are applied only to crimes of high political importance or serious crimes committed by hardened criminals.

But this is mad! We boast to the world that the Soviet Union has, to all intents and purposes, no death penalty -- and the world believes this -- but now, after this?

This was not a "Socially dangerous" crime -- a crime of negligence, yes, or of overly active measures of defense, yes, but do you really believe that is was a "socially dangerous" crime to be punished by death?

There was silence in the courtroom as the mob seemed to digest what Alina had said. Then, I wrote down what they replied as fast as I could.

First Man: You don't know Bazenov. He's a monster, a fiend! Before he killed Silkin, he gnawed off the hand of a five-year-old baby he found in his orchard. He's a cannibal! A monster: He had six children of his own, but he killed them all - - he's a monster, a fiend. You don't know Bazenov!

Second man: He gnawed the hand off a five-year-old baby!

Alina: You're insane...oh, forget it.

She turned to her two friends and said, "Come on." And they left. The mob continued chanting...

"He's a monster, a devil, a fiend...."



15

CORRIDOR

Yuri and I went to the corridor, the lobby, I guess you could call it. It was a long room, almost the length of the building with stairs going up and down at either end. There were several courtrooms on the main floor, but none got out on a break when we did so the corridor was sparsely filled

Yuri said, “Idiots. They change their allegiance and support on a whim. Bykovsky shouldn’t have mentioned the stupid general awards; they are like children’s gold stars. Not a smart move.

“But they liked the war medals, I said, “they were impressed with those.”

“Yes,” replied Yuri, “but they negated them immediately after they heard about the proforma ones...it’s as if they make their decisions based on whomever they speak to last.”

“Good thing for Bazenov that they aren’t the jury.”

“Yeah, maybe,” said Yuri, although there’s no jury anyway. Which leaves him with Shepilov. What do you make of him?”

“Tough guy. I wonder if he’s just harsh normally or if he’s got an agenda here.”

The three young law students were discussing the trial. They were standing close to us, two of them smoking and we could hear their conversation. We listened carefully without appearing to.

I was trying to keep each person’s ideas and position straight both for the record and so I could properly examine my notes. My lack of expertise with Russian, and the rate at which they were speaking and the talk-overs, made it hard to keep track. This is the best I could so I’m writing this as if they were in court. Yuri got me a transcript of the court record for the trial later. They seemed happy to supply it, he said. We eavesdropped on the law students

Alina: But it was not a "socially dangerous" crime. The charge is ludicrous!

Mikhail: It didn't seem like a "socially dangerous" crime, but maybe there were other factors.

Alina: What? Then why weren't they brought out?

There are so many things wrong. We were told specifically to come to see this trial and the first thing you know the judge verbally lacerates the accused even before anything is said. Shepilov knew at the beginning what the verdict would be! It was outright terrorism!

Pyotor: Easy, go easy, the guards are right there.

Alina: And Zuraskin, the prosecutor -- she might as well have been a plumber for all the concentration she put on judicial aspects of this case. She kept making Bazenov say that he killed for apples -- all he spoke of was apples -- and she was astonished at Bykovsky's defense. What was he supposed to do, just sit there?

Mikhail: What hit me was that Bykovsky brought up the Stalinist ceremonial trials. He obviously warns of a parallel and then he says that he can't ask for an acquittal. Why not? If it's a parallel and those trials were discontinued...actually shut down, then why not?

Alina: And when I asked Bykovsky -- remember when you went on ahead? I asked if he thought he would win. All he said was -- "You will see." It was as though he knew he was going to lose, as if he couldn't have any influence at all on the decision.

Pyotor: Apparently, this trial wasn't just to uphold the law, but to make a point.

Mikhail: What do you mean?

Pyotor: The trial was probably intended to serve as an object lesson.

Shepilov said that Bazenov was following the bourgeois property instinct. The Party fights against too much private property, right? Too much private property, or too great a care for it, can destroy a man. Take us away from our communistic beliefs. So, it's like this... he values his property above everything else. He becomes selfish, acquisitive, greedy. So, occasionally, when a man becomes this way, it's good to use him as an example of what happens to men who allow personal belongings to corrupt them.

Mikhail: So, the trial is supposed to discourage the idea of private property? Private property is allowed!

Pyotor: Under certain conditions and restrictions. I think it is designed to discourage private property. I can't figure out any other meaning. On the other hand, two years ago that law said it was fine to have private property—to a degree.

Alina: But it didn't work!

Pyotor: What?

Alina Well, if that was the intention of the state in this trial, to castigate people—actually put them in jail or worse.....It didn't work -- don't you see? If you're right -- the lesson failed.

Pyotor: Why?

Alina: Because the people didn't get the lesson!

Mikhail: Some will – later, they'll think.

Alina: Think? They won't think. Those idiots can't think. You saw them. Did you pay attention? They rationalized the sentence after I objected to it. They began to invent stories of Bazenov having six children and killing them... eating a child's hand, and so forth--they've created a monster out of Bazenov. They think he is evil - - they even called him a devil!

Mikhail: What about it? They are just reacting emotionally on the spur of the moment. Later, they'll reconsider...

Alina: Don't you see? The lesson can't come if Bazenov is evil incarnate --what's the relevance of private property to a fiend? It has no relevance for a normal citizen.

The lesson would work only if he *became* evil under the corrupting influence of private property.

The lesson was not that Bazenov was an evil man but that he succumbed to evil and "backward" instincts under the influence of unfettered capitalism. You can't introduce capitalism because people turn evil with greed once they are exposed to it.

This is a show trial. It is just like in the thirties! It is meant to show the people that even a

small amount of private property is evil, retrograde, an abomination to the Soviet state.

The absolute retrograde instincts of capitalism! This means the USSR is regressing on this matter. Why were we lawyers told to attend? It was not a suggestion. It was not on the curriculum.

We were supposed to see it and incorporate it into our studies, buy into it for when we are practicing law next year.

The legend those people created ignores all this. They're not even aware of it -- and they will never be aware of it because they're concentrating on the effect: Bazenov, the evil man, and not on the cause -- the evils of capitalism.

Pyotor: You seem happy.

Alina: Happy? No, I think it is funny, ridiculous, a hammer to kill a fly. And worst of all...they went to all that trouble with no result. Well, not with no results but not the result they wanted, expected, arranged for. All that and it's terrible. Bazenov's going to die.

The other two law students looked at their friend and stared at her uncomprehendingly. None of the students, including the speaker, looked as if they believed this student's remark. Now they all looked crushed.

Yuri and I were shocked and bewildered. It was clear now why the law students were told to attend this trial and

clear too why it was posted for all to see in the halls of the law faculty at Moscow University.

We looked for the defense lawyer, Naum Bykovsky, but he had left the courtroom.

We just stood there. Bykovsky had fought well, argued well, did not lose his temper. He faced overwhelming odds regarding the lack of professional witnesses, the harassment of the judge, the cavalier performance of the prosecutor.

He battled the prosecutor, which is normal and correct, but the judge and the state were against him from the start. The law was on his side with regard to sentencing, but it was a case he could not win, even given the change in the law and its punishment regarding private property that had been changed only two years ago.

It was difficult to fault the prosecutor except for her desire to get the trial over with as quickly as possible.

All these thoughts and many others went through our minds as we tried to figure out what the hell had just happened.

As we slowly left the court building, Yuri said, “This is not good for the future of private property, the Russian people, or the legal system from now on in the USSR. And, the way things work here, it will not be easier in Ukraine either. But of course, they never respected us anyway. We are always collateral damage.”

“Like the Russian citizens?”

“Like Bazenov.”



16

End

Shortly after the trial and an appeal, the Supreme Court of the USSR reduced the sentence on Citizen Alexandr Ivanovich Bazenov from death to the maximum possible for a conviction under Article 136 A: ten years deprivation of liberty.

It was learned that V.A. Zuraskin, the prosecutor in the case, had made the appeal.

No rationale was given and no further comment on the trial was made.

The End.

ACKNOWLEDGEMENTS

First, thanks to the late Jeremy Azrael who brought this trial to my attention many years ago in a magazine article. He granted me the right to adapt it. as a play first which I did.

It was performed at St. Patrick's College (then part of Ottawa University, now part of Carleton University) using college actors and production staff. Later it was produced at The Ottawa Little Theatre, a 100+year old community theater also in Ottawa.

The play was never offered for professional production because it calls for a large cast and most small theaters can't afford to produce plays of this size.

And thanks to his wife, Julia Azrael, who encouraged me to adapt my play of the same name to the narrative format of a novella.

Thanks to my pre-publication readers, Bob Jones, Bob McGill, Tony Aspler, Paul Gaffney, Regan Daley, and Rachel McQuillan for their valuable assistance and comments.

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It was an unusual job taking a print version from the 70s, passing it through several bungled adjustments on its way to a Word document, then combatting the underlying Word coding to finally achieve a stable combination of narrative and stage format for the court-room dialogue.

And I thank my wife, Patti-Anne who is not always sure what I am doing in my office. This book is an example.

Frank Daley

Waterloo, Ontario. 2018-2020

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If you enjoyed this novella, could I persuade you to write a short review of it?

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**HERE'S A SPECIAL GIFT
AN INTRODUCTION TO MY WRITING.**

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The next novel is a historical adventure story based on a real event in 1660 near Montreal.

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BARRICADE: Dollard des Ormeaux and the Battle of the Long Sault.

Here's a short description.

NEW FRANCE: MONTREAL, 1660

The Iroquois have attacked the fort of Montreal for years. They own the forest. They wait at rapids to ambush Huron and Algonquin hunters, who are French allies.

They kill them, steal the furs and take them to New Amsterdam to sell to the Dutch. The Huron and Algonquin are too busy negotiating the treacherous rapids in their canoes to fight back.

The problem is getting worse. Montreal has received only three or four canoes of beaver pelts in several years. People are dying, being picked off one by one. The outpost is losing money, people, courage, and resolve. France, preoccupied at home, is of little help.

Dollard des Ormeaux is an angry and frustrated young Montreal garrison commander afraid of leading a worthless life and dying in a harsh new country where the Iroquois control the economy, the geography, and the battlefield.

He has no idea the Iroquois feel trapped in the same way, and while they win most of the battles, they know their way of life is threatened by the European invaders.

Governor Maisonneuve is fearful of engaging the enemy outside the fort because of 15 years of disastrous results, but Dollard convinces him to sanction an attack in the forest or face annihilation.

Dollard selects an excellent site to take revenge and gets 16 men to accompany him up the Ottawa River. Most are not soldiers—they are bakers, plowmen, stone masons and farmers—but they know the danger of doing nothing.

Simultaneously the enemy Iroquois, beset by their own problems, and having had their lives hi-jacked to a degree by the newcomer Europeans, are preparing to wipe out the whole of New France the same week as Dollard's mission up the Ottawa River.

The Iroquois are hemmed in, disrupted from their ancient lives, fearful of the future. Their enemies, the Huron and Algonquin, are endangered by the Iroquois, have suffered under them, and are trying to remain stable and secure.

The French are themselves trying to establish lives in the hostile climate and warring difficulties of New France. But they are transfixed by striving to create homesteads, grow the fur trade and deal with the warfare. Aside from some priests who try to help the natives (but also want to convert them) most of the French have no idea of the havoc they are wreaking on the indigenous populations.

All are struggling to adapt to the different economic and cultural world brought by the French

These four cultures meet in a guerrilla war at The Long Sault.

Dollard scores a dramatic early victory, but quickly things escalate, and the outnumbered French and their few allies make

mistakes, suffer defections and start running out of supplies and resources. The odds increase to 12-1.

Only extraordinary thinking and action can save them from certain death.

New France in 1660. The French, Huron, and Algonquin against the five Iroquois tribes.

The book is Rashomon-like in that it examines the situation and conditions from the points of view of all four peoples.

But...

Barricade is not a love story.

Think the Canadian Alamo.

You are going to love it I think.

You might say, 'When can we see the movie?'

Help me make that happen.

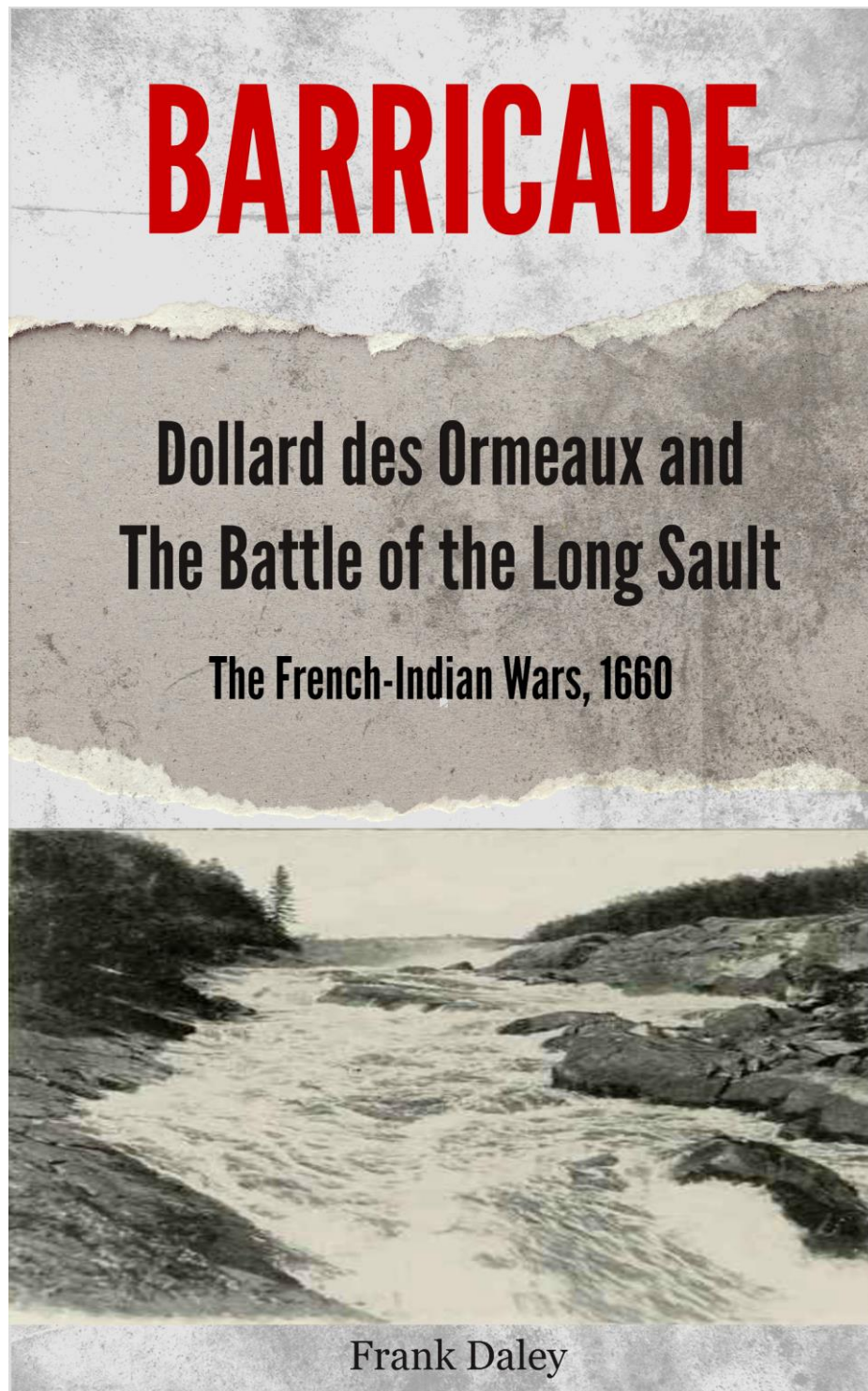
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