

NCDSV's Reader's Guide To

"Iphigenia in Forest Hills – Anatomy of a Murder Trial"

by Janet Malcolm, *The New Yorker* (4/29/10 – digital edition),

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Developed by Toby Myers

Characters

Mazoltuf Borukhova	Defendant accused of murdering her husband
Mikhail Mallayev	Defendant accused of killing Borukhova's husband for her
Daniel Malakov	Decedent, Borukhova's husband (10/27/07)
Michelle Malakov	4 year-old daughter of Borukhova and Malakov (born 2003)
Robert Hanophy	Judge in Murder trial
Stephen Scaring	Defense attorney for Borukhova
Mr. Siff	Defense attorney for Mallayev
Brad Leventhal	Prosecutor, Queens
Alla Lupyan-Grafman	Court-appointed Interpreter (p42)
Ismet Hoxha	Detective who interviewed Borukhova after Malakov died
Christopher Fleming	Juror (p40)
Laurie Rosen	Juror excused (p41)
Walter Stein	Juror seated as second alternate (p42)
William Bienek	Expert Witness on Fingerprinting for prosecution*
David Schnall	Witness, <i>Ad Litem</i> Attorney for Michelle from Family Court
Charles J. Heffernan	Original Family Court Judge
Sidney Straus	Family Court Judge who issued change of custody order
Nathan Pinkhasov	Daniel Malakov's Divorce Attorney
Florence Fass	Mazoltuf Borukhova's Divorce Attorney
Igor Davidson	Psychologist for Michelle
Khaika Malakov	Daniel Malakov's father
Ezra Malakov	Daniel Malakov's uncle and Khaika's brother
Istat Borukhova	Mazoltuf Borukhova's mother
Sofya Borukhova	Mazoltuf Borukhova's sister
Natella Borukhova	Mazoltuf Borukhova's sister
Ludmilla Borukhova	Mazoltuf Borukhova's sister
Maya Mallayev	Mikhail Malakov's daughter
Janet Malcolm	NEW YORKER Reporter
William Gorta	New York <i>POST</i> Reporter
Nicole Bode	<i>DAILY NEWS</i> Reporter
Anne Barnard	NEW YORK <i>TIMES</i> Reporter
Ivan Pereira	Forest Hills <i>LEDGER</i> Reporter

Assignment

1. What are the important issues in the trial?
2. What did you see not to do and to do?
3. Cite some things you knew and were confirmed.
4. Cite some you did not know and are now aware of.

Crux Issue

Custody transfer of Michelle from M. Borukhova to D. Malakov six days before Malakov's death.

Significance of Article Title

Iphigenia was daughter of Clytemnestra and Agamemnon. Agamemnon's brother Menelaus was husband of Helen (Troy). When the Greeks were to set sail to recover Helen, there was no wind. Agamemnon offered to sacrifice Iphigenia in exchange for favorable wind. He deceived Clytemnestra, knowing she would never agree, by saying Iphigenia was going because she would be married to Achilles. When Clytemnestra realized Iphigenia what happened, she was unforgiving and arranged to kill Agamemnon when he returned from the war.

Concepts from Article

1. Trial is a contest between competing narratives (p36) making opening statement decisive.
2. *Voir dire* is a recognition of the unattainability of the ideal of neutrality and the inescapability of bias (p40).
3. Prosecutor Leventhal portrayed Borukhova as and *avenging murderess* and Defense Attorney Scaring portrayed her has an *ordinary beleaguered mom* (p39).
4. Knowledge is transmitted in quiet ways. Malcolm picked up on Interpreter Lupyan-Grafman's stereotyping of Bukharan Jews (p43).
5. Courtrooms are temples of waiting (p43).
6. Sidebar conferences—out of jury hearing range or grownups speaking where children cannot hear, these are granted early in trial, but if trial drags, not granted (p44).
7. Handling of reporters (p48). Better not to talk until trial is over, if ever.
8. What happens when a witness "matches wits" with the opposing counsel (p49).
9. Demeanor, especially toward jury, during examination and cross (p49).
10. Malakov had power over Borukhova. He granted her a visit for day of killing (p39).

11. Borukhova never heard the shot.
12. David Schnall, *ad litem* for Michelle, got into record justification of ruling to change custody (p46). Case is one where a well-cared-for child is taken from mother ...because child failed to bond with father (p46). What might an IPV Expert have posited?
13. Concept of Protective Mothers v. Parental Alienation.
14. Things gone wrong. What missteps had Borukhova made to place herself under state control as powerful and arbitrary as the old Soviet regime (p47). Borukhova had asked the state for help and in exchange for its protection, state exacted control over a part of her life—her motherhood. What about many victims walking away with nothing to make demands of Malakov for resources (p47).
15. Borukhova had made accusations against Malakov of physical violence and child sexual abuse (p47). IPV Expert could have talked about why Borukhova did not press charges after calling the police (p47).
16. Another lawyer can end up being a prosecutor against defendant—Schnall.

Other Cases Referred To

Batson v. Kentucky dealt with peemptory challenge and dismissal of a potential juror because of race and later extended to gender, ethnicity, and religion (p40).

Explore

1. Expert Witness William Bieniek's testimony (p44).*
2. Borukhova told court-appointed psychologist Hymovitz that "he (Malakov) would insist on withholding nurturance, nourishment for eight to 10 hours at a time to train the child" and Malakov "was very dismissive of the concerns" (p54).
3. Ariel, Malakov's nephew commented on his wearing simple clothes around them, but in his closet were Prada, Armani, Hugo Boss (p62).
4. How Ezra Malakov did not play into Scaring's attempts to control him.
5. How the reasonable explanation of why the EKG's did not have a time stamp on them was fashioned by Leventhal into a "hideous implement of torture". Look at example of how opposing counsel telescoped a small, explainable inconsistency for a lie i.e. time stamp on the EKG. Toby can give example of Dana Pierce about not having fired a gun which was made from isolated incident to deception.
6. How could Igor Davidson (p55), who had the most fine-minded, non finger-pointing, blaming opinion, have been used? What could he have brought to this case?
7. Michelle's behavior was consistent with childhood witnessing of domestic violence and could have been explained as within reason (p55).

8. Why a mother would downplay the domestic violence and focus on the sexual impropriety with the child is that in one the child is the direct victim and the other the indirect (p55).
9. Look for examples of opposing (prosecution) counsel's attempt to vilify and blacken the image of the other party (defendant) to the point of a jury feeling good about ruling against (convicting) them. Toby can give example of Susan Wright and Kelly Siegler and gratuitous cruelty with the mascara statement and the dancing.
10. How could and Expert Witness helped to have used the video Borukhova made of the child exchange beneficially (p57)? How was it used against her? What is the double bind of victim's attempt at documentation and victim's not having proof of any of the abuse and/or results of it? What have participants' experiences been of this?
11. What were some of the naïve opinions of the jury that resulted in the verdict of the case (p58)?
12. "But perhaps my glimpse of her face distorted by mirthless laughter sufficed for my journalist's purpose. I thought I got the message" (p62). What is your interpretation of Malcolm's rendition of seeing Michelle after the trial?
13. Article ends with the foreboding, Greek tragedy-like comment about the next hearing which is part of the process of inexorably and "permanently stripping Borukhova of custody of Michelle."