Pavel Ivanovich Lazarenko
To Catch an Oligarch
BY JASON FELCH | SAN FRANCISCO MAGAZINE | OCTOBER 4, 2004

The strange and epic case of U.S.A. versus Pavel Ivanovich Lazarenko, which this spring asked 12 Bay Area residents to decide whether the former prime minister of a country 6,000 miles away had broken that nation’s laws more than a decade ago, actually began one cool night in January 1998 when FBI special agent Bryan Earl paid a visit to a small dumpster in Sausalito.

Earl is not the type to skulk under cover of darkness. A smooth-faced man with hints of gray at his temples, gentle blue eyes, and a profound sincerity, he looks more like a tax accountant than one of Louis Freeh’s or Robert Mueller’s blue-suited special agents. His pious demeanor hints at his Mormon upbringing on the quiet side of Las Vegas, and it’s easy to picture him wandering around Mexico in a suit and tie, with a small black name tag on his chest and the Book of Mormon under his arm, as he did 20 years ago. Not the first man you would imagine in the FBI, he is the first man you would want working there—the embodiment of God, family, and country.

At age 32, tired of practicing corporate law in D.C., he had sent an application to the FBI on a whim and then surprised himself by joining up. A year later, as a rookie fresh out of Quantico, he found himself in San Francisco, eventually part of the FBI’s local ten-member Eurasian Organized Crime Squad, investigating financial fraud and money-laundering schemes linked to the former Soviet Union and, in some cases, the infamous Red Mafiya. Earl enjoyed being part cop, part missionary, spreading the gospel of the American legal system among former Communists for whom the distinction between politics, business, and crime had fallen with the Berlin Wall.

In late 1997, Earl had been handed the name of Peter Nikolayevich Kiritchenko, a Sausalito businessman whom Ukrainian authorities had asked the FBI to check out. It was a routine foreign police request, the kind, Earl’s supervisor would later say, that most FBI agents would fulfill and forget. According to the Ukrainians, Kiritchenko had come up in the early stages of a Ukrainian investigation into the just-deposed prime minister, Pavel Lazarenko. At the time, Ukraine was a new ally of the United States, helping reduce the dangerous stockpile of nuclear weapons in the former Soviet Union, and nobody wanted to endanger the fragile relationship that had been forged with Ukraine’s autocratic president, Leonid Kuchma. Lazarenko was Kuchma’s biggest political rival. Many Ukrainians considered the investigation into the upstart presidential challenger to be a politically motivated ploy.

But Earl pushed on. By January 1998, he had pieced together an outline of Peter Kiritchenko’s story. Three years earlier, Kiritchenko had uprooted his life as a middle-aged Ukrainian commodities trader in Warsaw to move his wife, daughter, and business to the Bay Area. A compact man with sandy blond hair, cheeks ruddy from vodka, and a taste for excess, Kiritchenko stuck out in San Francisco’s Russian-speaking community. He drove a burgundy Bentley and, on a two-acre lot high atop Tiburon, was building a Mediterranean-style mansion with a 360-degree view of three bridges that he dubbed Shangri-La. His neighbors knew him from his petition asking the city to let him install a shooting range in the basement. Meanwhile, he had invested about $25 million in local real estate, and over undeveloped acres in Tiburon. The Ukrainian, Earl thought, was worth a closer look.

At 10 p.m. one weekend that January, Earl tucked his young child into bed, kissed his wife good night, and slipped into jeans and a sweatshirt. From his home in the city, he drove north across the Golden Gate Bridge into the hulking darkness of the Marin Headlands, following the necklace of lights to the Sausalito shoreline. From Bridgeway he turned onto Harbor Drive and pulled his standard-issue sedan into the empty parking lot of the brown three-story office building at One Harbor Drive. In a dumpster at the back of the lot, he found a single trash bag with the day’s detritus from Kiritchenko’s office. He tossed it in his trunk and drove away. No search warrant needed. By 11 Earl was home in bed.

The “trash cover,” as agents call it, became Earl’s nightly routine. Every weekday morning for 18 months he would bring the bag 13 floors up the elevator of the Philip Burton Federal Building on Golden Gate Avenue and dump its contents on his desk. Occasionally Earl felt silly taking off his suit jacket to sift through garbage like a Tenderloin hobo. His colleagues ribbed the rookie for the mess he made. But it was fruitful. The trash yielded clumps of letters and envelopes from something called European Federal Credit Bank; a Post-it note with the word Dugsbery scrawled on it; envelopes bearing the return addresses of some of San Francisco’s most respected banks. All of it suggested to Earl that the Ukrainians could be right—there appeared to be a multimillion dollar pipeline between Ukraine and the Bay Area.

Among San Francisco’s 30,000 Russian-speaking Æ¾í»Í’s—many of whom are Jews and political refugees—who arrived as refugees over the past 30 years and congregate in the bakeries, churches, and restaurants along Geary Boulevard—only a small number have attracted the attention of the Eurasian Organized Crime Squad. In the 1970s, the KGB released thousands of hard-core prisoners from the Soviet gulags, where they had formed tight-knit criminal clans, and allowed them to emigrate across the globe. Over time these clans evolved into the sophisticated Russian Mafiya. Operating multinational drug, insurance

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Commercial flight to Kiev with Martha Boersch, an assistant U.S. attorney with Earl was eager to have a hideout, just in case. The answer was in the news. Back in Ukraine, the godfather was in a fight against Kiritchenko's dumpster by night, by day he was helping investigate a young Russian Almigard AC, Alexander Lushchak, who had bilked the local Russian community out of millions with an elaborate Ponzi scheme that promised tax-free returns of up to 25 percent. Lushchak pleaded guilty in June 2000 to money laundering. During his trial, according to an obscure report, an FBI memo emerged pleadingclaiming Lushchak had laundered as much as half a billion dollars of Russian organized crime money through his bank account in New York. But not all the Russian loot that has flooded into San Francisco comes from the Mafia. As the Soviet Union collapsed, state-owned industries were divvied up among politicians, crooks, and entrepreneurs. These new oligarchs built a Wild West capitalist economy in which pay-to-play was the rule.

Government contracts, international trade deals, the rights to natural resources—every potential profit came at a price. Later, as the young countries tried to impose the rule of law on the chaotic system, the oligarchs responded by splintering their politically embarrassing fortunes out of the country and into banking systems where they couldn't be touched.

It was an influx for which Earl was prepared. His course work in international and Soviet law at Columbia Law School and experience in financial litigation made him an immediate asset to the squad, and he began taking Russian classes. Earl knew that investigations into complex financial crimes—considered among the FBI's most challenging—were a single axiom: follow the money. The scraps from Kiritchenko's office that Earl rifled through each day were threads in a dense web of holding companies, offshore corporations, and beneficial trusts. It looked designed to disguise something, but what was this small-time trader hiding?

It was no secret that Kiritchenko advertised his ties to Pavel Lazarenko, handing out gold-embossed business cards reading 'Adviser to the Prime Minister.' In photos, Lazarenko—who was said to have accumulated up to a billion dollars, despite earning about $5,000 a year in government salary—towered over the crowds gathered to see him, an unnerving glare on his fleshy face. He was a bear of a man, about six-foot-three, counting his full, starchy head of hair.

The prime minister had begun his career driving a tractor on a collective farm, but by age 24, 'Pasha,' as his friends called him, had already become the powerful director of a state farm in the Soviet Republic of Ukraine. By 33, he headed all agriculture in his home region of Dneprpetrovsk. Even the fall of the Soviet Union in 1989 did not slow Lazarenko's rise. A year after Ukraine declared its independence, he was appointed governor of Dneprpetrovsk, and by 1996, Lazarenko had moved to Kiev to accept the premiership, the second most powerful man in a nation of 50 million. He was 43.

'He had an aura,' recalls Olena Prytula, a leading Ukrainian journalist. Prytula came to Stanford University on a fellowship this year and was one of the few Ukrainians to cover Lazarenko's trial. She first met Lazarenko in 1996 at a ceremony outside of Kiev commemorating the Soviet victory over Germany. 'He looked like the devil to me. I thought, 'This man is capable of killing someone,' she says. 'He would say something, and everyone would do it immediately. All of the journalists called him haziain, master.'

Kiritchenko always called Lazarenko not Pasha but Haziain, master. The use of the formal patronymic made it clear who held the power. But Kiritchenko's connection to the Ukrainian leader wasn't just business. At the same time Earl began investigating, Lazarenko had flown from Ukraine to San Francisco to attend the christening of Kiritchenko's first granddaughter. During a simple ceremony at St. Nicholas Cathedral, a cozy Russian Orthodox Church on 15th and Church Streets, Pavel Lazarenko was named the child's godfather.

Afterward, at a party Kiritchenko hosted at the now-defunct Mediterranean restaurant Splendido in Embarcadero Center, the two men traded toasts, thanking each other for years of business success. After the toasts, Lazarenko and Kiritchenko began singing together. There had been much wine and vodka, but the song was not a drunken one. It was an old Ukrainian song, soft and heartfelt, a song about never-ending loyalty. 'More than best friends, they were brothers,' says a Ukrainian who was there.

Yet as Earl spent the summer investigating Kiritchenko, Lazarenko, safely outside U.S. jurisdiction, remained in the background. That changed, however, when an obscure company called Dugsberry Incorporated closed a deal with Marin County real estate agent Nan Allen to purchase a $6.75 million Novato estate once occupied by comedian Eddie Murphy. Rumor had the buyers as Russians.

Dugsberry-Earl had seen the word scrawled on a Post-it note in Kiritchenko's trash. From the public record, he discovered it was a shell company owned by Kiritchenko with a single account at WestAmerica Bank. Kiritchenko was already building his Shanghai la. Why would he need an even bigger mansion, with 20 rooms, five swimming pools, two helicopter landing pads, a full-sized ballroom, gold-plated doorknobs, and a master bedroom larger than entire Nob Hill apartments?

The answer was in the news. Back in Ukraine, the godfather was in a fight for his life. Now he had a hideout, just in case.

Earl was eager to explore the Ukrainian connection himself. In December 1998, he boarded a
commercial flight to Kiev with Martha Boersch, an assistant U.S. attorney with the San Francisco Organized Crime Strike Force who had been assigned to work with him just days earlier. Like Earl, Boersch was well suited to the case, and a lot less green. A graduate of Berkeley’s Boalt law school, she had been a government prosecutor for six years, had already won a number of complex fraud cases, and was lead attorney on Lushtak’s Ponzi scheme prosecution. She also spoke Russian.

On the flight, Earl updated Boersch. A month earlier his findings had been included in an FBI memo requesting help from Swiss authorities who were investigating Lazarenko’s and Krititchenko’s numbered Swiss bank accounts. It was titled simply ‘Re: Peter Krititchenko, Russian Organized Crime’ and laid out the FBI’s ideas: ‘While living in Warsaw, Krititchenko had been involved in myriad criminal schemes,’ including moving millions in stolen Ukrainian government funds. ‘He disguised the money as trade in ferrous metals, wheat, and sunflower seeds. He was also suspected of selling prefabricated houses made in Elk Grove, California, to the Ukrainian government at almost a 200 percent markup using falsified invoices.

Earl’s most intriguing find, however, came from a discarded FedEx envelope from European Federal Credit Bank. The offshore bank based in Antigua had been cofounded by someone Earl and Boersch knew well, Ponzi schemer Alexander Lushtak. It was now chaired by Alex Liverant, a Ukrainian Jew who had immigrated to San Francisco in 1979. When EuroFed needed capital, Earl had learned, Krititchenko became its primary investor and was now sharing a business address with Liverant. Under Krititchenko’s watch, EuroFed began opening U.S. dollar correspondent and investment accounts in San Francisco financial institutions big and small: Merrill Lynch, Bank Boston Robertson Stephens, Hambrecht & Quist, Pacific Bank, and Commercial Bank of San Francisco. The memo concluded that ‘millions of dollars have been obtained illegally’ and that Krititchenko was using EuroFed to ‘minimize his tax exposure in the U.S.’

It was a classic money-laundering case. Boersch thought-moving the proceeds of certain illegal activities through U.S. financial institutions with the intent to conceal their origins. But there was one huge twist: the money wasn’t the proceeds of crimes committed here. The alleged frauds all had taken place in Ukraine. That didn’t matter, Boersch argued. Read literally, the criminal code implied that anyone in the world who committed fraud or exported money could be charged with money laundering if they ever brought that money here. This was a daring approach—so daring, it had never been tried in U.S. courts.

armed with their novel legal theory, Boersch and Earl arrived jet-lagged at the Kiev airport for what they thought would be a low-profile trip to meet with Ukraine’s government investigators and confirm their ideas about Krititchenko. They were greeted by a crowd of people waving signs and chanting, ‘Free Lazarenko!’

Boersch and Earl were stunned when their hosts explained that while they had been in the air, the Swiss investigators tracking Lazarenko’s assets had changed the presidential challenger with money-laundering in Switzerland. Since Lazarenko had left office the previous year under a haze of allegations, the Swiss and a team of about 50 Ukrainian investigators had dogged him even as his opposition party won a bloc of seats in Parliament. The Swiss were expected in Kiev any moment.

The turn of events transformed the fact-finding trip into a multinational swap meet, with the Swiss, Ukrainian, and American investigators exchanging leads in their overlapping investigations. Boersch and Earl spent their days bundled in winter clothes in an unheated interrogation room interviewing potential witnesses. The witnesses explained how Lazarenko used his political power to direct government contracts to his offshore bank based in Antigua.

As Earl and his team spent their days on the ground, the Ukrainian government investigations were expected in Kiev any moment.

At night, the Ukrainians hosted elaborate six-hour banquets to celebrate the historic cooperation. For a country whose criminal corruption makes it ‘the epicenter for global badness,’ in the words of a former State Department official, teaming up with the FBI was a sign of acceptance. The vodka toasts continued to midnight, and Earl, who doesn’t smoke or drink, was obliged to attend. His fascination with two things Russian began to wane. ‘It’s a game-let’s see who can outdrink who—but I don’t think they enjoy it,’ he says. ‘And the pickled food? It’s their history, how they preserved stuff. But it’s horrible.’

Soon after Earl returned home, he found his investigation turned on its head. Lazarenko’s wife, Tamara, son, Oleksandr, and twin daughters, Katya and Lessia, had moved into the Novato mansion. With the Ukrainians’ legal vise closing in, the oligarch was feathering his nest. Earl put Lazarenko’s name on an FBI watch list that would alert him the moment the former prime minister stepped on a plane to the United States.

The call came just a month later. As Kuchma’s ‘anti-corruption’ campaign came to fruition, Ukraine’s parliament voted to revoke Lazarenko’s immunity from prosecution. The politician fled to Athens and on February 19, 1999, boarded a plane bound for JFK International Airport. Earl knew he was coming before Lazarenko had fastened his seat belt. Suddenly the routine police request had exploded into the biggest case in the Eurasian Organized Crime Squad’s history and one of the highest-profile cases within the FBI.

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On its face, Lazarenko's application for political asylum had some validity. He had been running for president as a reformer against a brutal autocrat who wanted him in jail or dead. Some Ukrainians suspected Lazarenko's only crimes were failing to share his "profits" with Kuchma, and then having the audacity to use that money to run against him for president. In audiotapes secretly recorded by a bodyguard of the president and first released in November 2000, Kuchma can be heard mentioning Lazarenko as an oligarch whose demise might conveniently satisfy the American government, which was pushing him to do something about the country's rampant corruption. Who from the oligarchs?" an aide asks. "Who embarrasses you most of all? Whom can I give to the American intelligence?" (The same tapes revealed Kuchma authorizing the sale of stealth radar to Saddam Hussein and allegedly ordering the death of a top Ukrainian journalist-the cofounder of Olena Yefrytsia's publication-who was later found beheaded in a forest outside Kiev.) Lazarenko was no saint, but some observers wondered if the United States had been conned into doing Kuchma's dirty work.

Lazarenko's arrival, meanwhile, threw the U.S. government into a tizzy. Ukraine was calling for his head, and the Swiss were preparing to file for his extradition. While the State Department madly debated the options, Lazarenko was detained until his asylum petition was considered. At his own request, he was transferred to Marin County Jail so he could be closer to his family. He was eventually moved to the Camp Parks Federal Correctional Institution in the Contra Costa County town of Dublin.

For Earl and Boersch, Lazarenko's surprising appearance was also problematic. He had always been a secondary concern in the investigation. Most of the evidence Earl had accumulated against Kiritchenko implicated Lazarenko, but there was not enough for an indictment against either of them.

Still, the endgame was on. Earl's Swiss colleagues had gathered enough evidence to include Kiritchenko in their case against Lazarenko and asked the agent to present the extradition warrant. One morning at 6 a.m., Earl knocked on the door of Shangri-la, finally coming face-to-face with a bleary-eyed Kiritchenko. After 18 months, his covert investigation had just become overt.

Earl's victory was tempered by a decision by the Bureau of Prisons, which, over the objections of Earl and Boersch, put Peter Kiritchenko and Pavel Lazarenko in the same jail cell at Camp Parks, two miles from downtown Dublin and 30 long miles from Shangri-la. For six months, the two men would spend all day together plotting a defense.

Their confinement was a classic example of what game theory calls, with good reason, the prisoners' dilemma. Given two prisoners, both implicated heavily in a case, the best group outcome is achieved if they refuse to cooperate with the prosecution. But while sticking together may save them both, each prisoner knows the surest ticket to freedom-or a favorable plea bargain-is to betray the other.

Under these psychologically grueling conditions, paranoia set in. Though the available evidence indicates that Lazarenko had not met with Earl or Boersch to discuss cooperating, Kiritchenko believed he was about to be betrayed and did did the only rational thing. He asked for a meeting with Earl and Boersch. Earl did not want to give up on prosecuting Kiritchenko, whom the FBI not only suspected of masterminding the money laundering but was investigating for deeper connections to Russian Mafiya. But Kiritchenko was what the case against the bigger fish needed: an eyewitness who could put a human face on the complex financial transactions for a jury.

The government's ultimate offer hinted at just how badly they needed him. He would cop to one felony count of interstate transportation of stolen property, for which he would be allowed to appeal any sentence over 37 months. But when it was all over, he and his wife and daughter would go back to their enviable lives unscathed and with guaranteed green cards to boot. Apart from a $3 million 'voluntary restitution,' he'd be allowed to keep everything he owned: his $11 million Shangri-la, all his businesses and other properties-including a $3 million condo in Los Angeles-and his yacht. After accepting the offer, Kiritchenko packed up his belongings and walked out of the cell with Lazarenko watching. He had won his freedom-and broken his brotherhood-by telling Earl where the money had come from and gone. It was quite a tale. As the Soviet Union crumbled, Kiritchenko, a low-level Communist functionary, had rushed into the void left by the central government, hoping to set up a small import-export company to trade in the resource-rich Dnepropetrovsk region. He learned that the regional governor, Lazarenko, controlled everything and demanded a cut of the business done on his turf. On January 13, 1993, Kiritchenko met with Lazarenko in a Warsaw hotel. The two walked to a nearby financial institution called American Bank in Poland, and the trader gave the governor $40,000 to open a dollar account. It was a down payment, Kiritchenko said. As they left the bank, Lazarenko told him, 'I work with everyone fifty-fifty.' For the next five years, Kiritchenko faithfully sent half of his profits to Lazarenko, who in return made Kiritchenko a very rich man.

When Earl and Boersch heard that story, they saw the potential underlying crime under Ukrainian law. As long as they could convince a jury that the locally commodities trader had been, in that moment, victimized by the all-powerful politician's scheme, it was extortion. Alone, that seemed enough to pursue the money-laundering charge.

Yet the rest of Kiritchenko's story complicated matters, for it was not a victim's tale. He quickly became Lazarenko's partner, often traveling between Marin County and Europe to serve as bagman. Well acquainted with European banking, he opened Swiss bank accounts, making sure money from Lazarenko's rapidly growing wealth was flowing smoothly out of Ukraine. The two men flew together to Panama to purchase Panamanian passports for $100,000 (to allow them to travel on the down-low), to Switzerland to meet with their bankers, and to

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Hawaii and Canada to vacation with their families. It was a deal so sweet that Kiritchenko forgot to stop paying Lazarenko when he was booted out of office.

When Lazarenko became a political hot potato, Kiritchenko's importance to his patron only grew, his wife Earl and Boersch now the safety of Lazarenko's wealth depended on him. With investigators breathing down Kiritchenko's neck, Switzerland was no longer a haven. That's when Kiritchenko approached Liverant, the co-owner of EuroFed, and bought a discreet place to stash money. After a quick trip to Antigua to check out EuroFed's books, Kiritchenko paid $1.1 million for two-thirds of the bank. Soon the two $48 million checks withdrawn from the Swiss accounts poured through the Bahamas and into EuroFed.

Earl and Boersch thought they had more than enough. They approached Robert Mueller, who was then chief of the U.S. attorney's office in San Francisco, and presented their case.

Mueller's reply: "Go ahead. Indict.'

The grand jury indictment of Pavel Lazarenko came down in May 2000, changing him in a sweeping conspiracy to launder what eventually became $114 million through San Francisco financial institutions. It would be an international prosecution like of which had never been seen. The last time the government had put a former head of state on trial, armed forces had invaded Panama in Operation Just Cause to capture General Manuel Noriega. This time, the government enlisted a Bay Area jury to call a former prime minister to account.

Even so, the prosecution's case shared elements of a foreign invasion. It represented a zealous expansion of American jurisdiction across the world. If Lazarenko was convicted, it would give U.S. attorneys the authority to judge whether anyone anywhere had committed fraud or extortion under their own nation's legal code, and then to hold them accountable in U.S. courts, as long as their money had moved through ubiquitous dollar accounts.

The world's crooks and their cronies weren't the only ones watching Lazarenko's case. Anyone in America who moves large, sometimes mysterious sums for a living, including investment and real-estate brokers and bankers, had a stake in the outcome. It's illegal to deliberately ignore the tainted source of a deposit. So far the FBI and IRS have won kid gloves on such 'willful blindness' cases, never once criminally charging a U.S. bank in a money-laundering case. Still, finance watchers have wondered if the winds could shift. (In this case, the city's bankers were never called to testify. Yet in August the Justice Department launched a criminal probe into a Washington, D.C., bank's possible role in laundering money for former Chilean dictator Augusto Pinochet and other foreign officials.)

Lazarenko would not go down without a brawl. The millions in his EuroFed accounts had been frozen in Antigua, but he still had hundreds of millions hidden out of U.S. reach and spent it freely. From jail, he hired a string of the Bay Area's top defense attorneys to argue the United States was overstepping its bounds, craftily dragging out the trial's approach each time he changed horses. Over the course of three and a half years, University of San Francisco Law School dean Joseph Russoniello, East Bay defense attorney Cristina Arguelles (who assisted on the O.J. Simpson case), and Harold Rosenthal, who handled the Billionaire Boys Club case, all came and went.

Eventually Lazarenko assembled a dream team. Dennis Riordan, Rosenthal's partner and ranked among the nation's best appellate lawyers, was in charge of motions and legal arguments. From behind thick, oversized glasses, Daniel Horowitz, a death penalty lawyer and occasional TV commentator, conducted depositions of foreign witnesses in Ukraine and across Europe. Then, three months before the trial began, Donor Riordan, a tough and preeningly confident civil rights attorney turned white-collar defense attorney, came on to argue the case in court.

Yet center stage belonged to Lazarenko. During opening statements this past March, the 12 Bay Area jurors—initially 10 women and 2 men—often glanced furtively at him, trying to figure him out. Lazarenko, sitting perfectly upright on the other side of the court, was dressed impossibly in an understated black suit. During recesses, he stood outside in the hall, chest thrust forward and hands clasped behind his back, drawing his linebacker's frame over his gaggle of supporters, with whom he consulted in Russian. Lazarenko's wife had returned to Ukraine, and his twin daughters appeared rarely, but his two aides and translators, both named Yury, one fat, the other skinny, were there. So was his son, Oleksandr, a haggish-looking twentiesomething with slick black hair who was often mistaken for a bodyguard. But no member of Lazarenko's posse drew more whispers than Oksana Tsykova, a blonde with striking Russian features and a growing belly who translated for Lazarenko at the defense table.

Lazarenko looked like a free man, and in a way he was. Nine months earlier, he'd been allowed to post his frozen EuroFed accounts—though he no longer had control of them—as an essentially illusory $86 million bill so he could be released into house arrest in a two-bedroom San Francisco apartment at an undisclosed location.

If Lazarenko appeared commanding, Earl was tired and nervous. He'd spent 6 of the previous 12 months overseas, away from his kids, missing much of his youngest child's kindergarten year in preparation for the trial. Now he would work seven long days a week until it ended. Six years of digging were at stake.

Weary of legal proceedings that turn into personal dramas, the prosecution approached the trial with dry factuality. Their opening was simple and straightforward. Boersch stood behind a podium and recited the spare tale of how $114 million made it from Ukraine to the United States. All she asked the jurors to do was follow the money.
asked, ‘Where shall I go now?’ Weinberg wasn't sure. Flinch as
underlying crimes
Guilty. Guilty. Guilty. She said it again
examined it without expression and gave it to his
The foreman handed the verdict to a U.S. marshal, who
over four days, the jurors filed into the
The answer came at 11:30 a.m. on Thursday, June 3.
beyond
end, Weinberg argued
painting Kiritchenko as a traitor and
trotted out Ukrainian after Ukrainian to testify to the
accumulated. The defense, meanwhile, hammered away at Kiritchenko's credibility,
Lazarenko's victory was imminent. Nearly seven weeks into the trial,
criminal at the time and place it was committed,' Jenkins told Boersch.
Almost every day Earl and Boersch tangled with the sprawl of the trial. Trials had featured foreign records and witnesses before, but never to the extent this one did. Earl had interviewed potential witnesses during five separate trips to Ukraine, but many simply refused to appear. ‘If we say to somebody, ‘Will you come to the United States?’ and they say, ‘No,’
Fortunately for the prosecution, its star witness lived on the other side of the Golden Gate Bridge. Three weeks into the trial, the man Lazarenko once called ‘brother’ climbed the steps of the witness box reluctantly. He scanned the packed gallery, nervously avoiding Lazarenko's cold gaze. For the next five days, Kiritchenko dutifully told in Russian the story he had given Earl and Boersch more than four years ago. At times he stumbled into the traps Weinberg set to impeach his credibility, and he even refused to concede that the deals he and Lazarenko did in Ukraine were wrong. But Earl thought the defense failed to turn Kiritchenko into a liar.
'It might have appeared to be begrudging and it probably was, but it was who he is. He didn't pretend to be something he wasn't.'
Yet the chinks in the prosecution were growing. Their star witness's penchant for blurring out the unflattering truth came to a head as he described the day after he'd cut his deal with the government, when he was released from prison. Kiritchenko packed his belongings and turned to Lazarenko to say good-bye. He embraced his friend and gave him a kiss on the cheek.
'And you hugged him and kissed him on the cheek?' Weinberg asked softly during his cross-examination.
'I kissed him. That was a Judas kiss!' Kiritchenko burst out in reply.
The crowded courtroom let out a collective gasp. The defense had turned the tide.
The final week of the prosecution's case was a parade of disappointment. Reluctant witnesses had left Earl and Boersch holding a weak hand, and the droning of the videotaped depositions reduced what was initially a capacity crowd to a few hardy souls. It was Dali on downers, the
courtroom clock dripping off the wall and into a horizonless tedium.
The coup de grâce came at the hands of a motion to dismiss written by the silver-maned
Riordan. On May 7, Judge Martin J. Jenkins threw out 24 of the 53 counts in the indictment, coming down hard on the prosecution for overreaching the scope of the limited Ukrainian law that existed at the time. 'It is simply inconceivable to try someone for something that wasn't criminal at the time and place it was committed,' Jenkins told Boersch.
Lazarenko's victory was imminent. Nearly seven weeks into the trial, Martha Boersch and Bryan Earl appeared ready for the trial to end.
Earl's hopes for a conviction were tied precariously to the tangled paper trail he'd accumulated. The defense, meanwhile, hammered away at Kiritchenko's credibility, their three-pronged strategy narrowed to a single-minded smear campaign. Lazarenko's team trotted out Ukrainian after Ukrainian to testify to the heartfelt friendship between the partners, painting Kiritchenko as a traitor and liar who had every incentive to turn on Lazarenko. In the end, Weinberg argued to the jury, ‘It all comes down to this: Do you believe Peter Kiritchenko beyond a reasonable doubt?’
The answer came at 11:30 a.m. on Thursday, June 3. After deliberating for about 24 hours over four days, the jurors filed into the packed courtroom.
The foreman handed the verdict to a U.S. marshal, who passed it to Judge Jenkins. He examined it without expression and gave it to his courtroom deputy. She stood and read.
Guilty. Guilty. Guilty. She said it again and again, 29 times in all. Guilty on all counts and all underlying crimes-the jurors had checked every box on the verdict form. Lazarenko did not flinch as the verdict was read. When the deputy had finished, he turned to Weinberg and asked, ‘Where shall I go now?’ Weinberg wasn't sure.
The verdict left mostly confusion in its wake. Though Earl, Boersch, and the rest of the prosecution team quietly accepted congratulations from colleagues who had crowded the courtroom to hear the jury's decision, they knew enough to downplay the results. By checking every box on the verdict form, the jurors had affirmed what appeared to be incompatible theories about what crimes had been committed in Ukraine. Their subsequent refusal to talk to anyone, rare in legal circles, left everyone wondering what beyond exhausted sighs went on during deliberations. 'I don't think this jury had any idea what it was charged with deciding,' says Weinberg, and the speed with which the jurors returned the verdict made it hard to disagree. 'And I don't think the United States should be able to impose its view [of financial law] on the world.'

The defense attorney wasn't alone. The precedent, if upheld, 'invites a jury to say, 'This just generally looks sleazy,'' says Robert Weisberg, a Stanford law professor and expert in white-collar law. 'It makes prosecutors the moral arbiters of world capitalism.'

But Bryan Earl was characteristically clear-eyed in defending what the government had done. 'We weren't out fishing; he came to us. And he brought his money, and he brought himself, and he bought a big house and tried to set up his hiding place in the United States,' Earl says with sincerity. 'That doesn't strike me as us trying to impose our will on somebody else.'

In Earl's mind, he was just doing his duty to his country: enforcing the laws on the books, never mind the precedent or the political fallout. But the agent's priorities were back in evidence when Mueller, now head of the FBI, phoned Earl to congratulate him on securing one of the FBI's top convictions ever. Mueller spoke to a colleague of Earl's, complimented their work, and asked to talk to Earl. But the agent was at his daughter's kindergarten graduation, where he'd asked not to be bothered.

Epilogue

Pavel Lazarenko is still under house arrest in a San Francisco apartment; government arguments that he should return to jail were rejected. He will be sentenced this fall and could face as many as 15 years. Doron Weinberg and Dennis Riordan will have many avenues to appeal the conviction—the appeal will begin in 2006—and are confident they will make him a free man.

Lazarenko's Novato mansion was put on the market for $12 million.

Peter Kiritchenko lives in the $3 million condo he owns in Beverly Hills. He will also be sentenced this fall but, according to the terms of his plea agreement, should face a sentence of no more than 37 months.

The Ukrainian presidential election will take place October 31. President Leonid Kuchma will not run for reelection, but his handpicked successor is expected to square off with a young and popular Western-style reformer. The opposition has promised a revolution if Kuchma does not deliver a fair election.

Martha Boersch announced she was leaving the U.S. attorney's office. She will join the San Francisco offices of Jones Day, where she will specialize in white-collar defense.

U.S. Attorney Kevin V. Ryan, a successor of Robert Mueller in San Francisco, vowed to prosecute other 'corrupt public officials at home and abroad' using Boersch's legal theory and tougher money-laundering laws passed as part of the Patriot Act.

Bryan Earl still lives in San Francisco and works on the Eurasian Organized Crime Squad but is interested in joining the FBI's international programs to help fellow agents coordinate and assemble similar transnational investigations.

* * *

Justin Kane is a freelance writer, while Jason Felch is a reporter at the Los Angeles Times. They reported and wrote this piece as Correspondents with the Center for Investigative Reporting.

Tags: organised crime, San Francisco, FBI, Ukraine, Russian Mafiya, Pavel Ivanovich Lazarenko, money laundering, financial law

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