Abuse of Power

Corruption in the office of the president

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Contents

Artemia Press Ltd

Published by Artemia Press Ltd, 2013

www.artemiabooks.com

ISBN 978-0-9543764-3-7

The photograph on the front cover

It shows President Leonid Kuchma and Viktor Yushchenko clasping hands, while his rival Viktor Yanukovych looks on.

Yushchenko's pot marked face bears witness to the Dioxin poisoning inflicted on him a few weeks earlier during the 2004 presidential election campaign.

Photo taken by Valeri Soloviov on Nov. 26, 2004, during the negotiations to end the Orange Revolution (Photo UNIAN).

System of transliterations

The study uses the Library of Congress system of transliteration for Ukrainian, with exceptions in order to make Ukrainian words easier to read in English.

The letter є will be transcribed as ye and not ie. For example, it will be Yevhen and not Ievhen.

The letter ї will be transcribed as i and not ii, that is Ukraina and not Ukraiina.

For ю, it will be yu and not iu: Yushchenko and not Iushchenko.

For я, it will be ya, and not ia: Yuliya and not Iuliia.

The soft sign ь will not be transliterated; hence it will be Lviv and not L'viv.

Places and names from Ukraine will be transliterated from Ukrainian and not Russian. It will be Kyiv and not Kiev, Kharkiv and not Kharkov, Lviv and not Lvov, Odesa and not Odessa, Chornobyl and not Chernobyl, Mykola and not Nikolai, Volodymyr and not Vladimir.

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Preface

Since independence in 1991, Ukraine has ranked, as measured by Transparency International, in the top quarter of the world's most corrupt states. This book focuses on corruption – "the abuse of entrusted power for private gain" – at the highest political level, the office of the president.

The primary evidence presented in this book are the office conversations of President Leonid Kuchma, which took place in 1999 and 2000 with a cross-section of the elite, ranging from the head of his office to ministers, oblast (regional) governors and oligarchs. The conversations document how a president conducted a host of illegal activities, including giving and taking bribes, and condoning the stealing of millions of dollars from the state.

To maintain this system of personal enrichment at state expense, the president and his cohort fixed elections, controlled the mass media, operated an illegal surveillance network, and instigated extra-judicial punishments of critics, including the murder of the journalist Georgi Gongadze.

In the same corrupt vein, the president conducted Ukraine's foreign relations. He and his oligarchs sold weapons to conflict zones in violation of UN and international agreements, skimmed the profits from imports and exports, especially gas and oil, and took international loans for the state while emptying its coffers for themselves.

The final chapters focus on Kuchma's chosen successor, Viktor Yanukovych, and the fixing of the 2004 presidential elections that sparked the October Revolution. From Yanukovych's conversations in President Kuchma's office, it could have been predicted that on becoming president in 2010, he would retaliate against those who had offended him, including his mentor Kuchma.

President Yanukovych took revenge on Kuchma for betraying him during the Orange Revolution by having him

prosecuted for the murder of the journalist Gongadze. However, Yanukovych crossed the political Rubicon when he imprisoned his presidential opponent, Yuliya Tymoshenko, who he only beat by 3% in the 2010 presidential elections.

The study reveals that the presidential guard, Mykola Melnychenko, recorded President Kuchma for the political benefit of Ukraine's first secret service chief, Yevhen Marchuk. Kuchma's office conversations are probably the most important source on the current political situation in Ukraine.

This is the first study on contemporary Ukraine that makes extensive use of President Kuchma's office conversations. Other studies have made minimal use of them, mainly because they didn't have access to them. The Yale academic, Keith Darden only used a single conversation with which he illustrated the use of graft as a mechanism to enhance the authority of the president (Darden 2002). He argued that the president allowed stealing from the state as a way to bind his supporters' loyalty, and punish the disloyal for the same crimes. The British academic Andrew Wilson used a few excerpts from the recordings to illustrate his thesis that Ukraine under Kuchma was a "virtual democracy," where those in power pretend to be democratic (Wilson 2001). The academic Paul D'Anieri referred to the Melnychenko recordings to back his thesis that Ukraine's politics can be described as "electoral authoritarianism," whereby politicians seek legitimacy by fixing elections (D'Anieri 2007). The Washington DC based academic Anders Aslund, who made no use of the Melnychenko recordings, asserted that Kuchma secured democracy for Ukraine (Aslund 2008) "with relatively limited violations of democracy" (Aslund 2009).

The abuse of power by a president has intensified since the coming to power of President Yanukovych in 2010. Repressive actions against opponents have been driven by vindictiveness, causing even deeper political divisions in society.

1 “Evil has to be stopped”

In early 1999, candidates lined *up* for the October presidential elections to challenge the incumbent President Leonid Kuchma. Among them was Yevhen Marchuk, the former prime minister and Ukraine’s first head of state security, the SBU [Sluzhba Bezbeky Ukrayiny]. His chances of becoming president were small on account of not having a sizable electorate or even a political party. His core supporters were those who believed only a “strong” hand was able to get rid of Kuchma and his oligarchs. Among them was the presidential guard Mykola Melnychenko, who had the job of protecting President Kuchma from electronic eavesdropping. Apparently, he had began experiments on how to record the president’s conversations. As Marchuk began to gear *up* for the elections, Melnychenko approached him through a mutual acquaintance:

> Our meeting took place at the beginning of the spring 1999. I presented myself, showed him my identification that I was a captain with the position of senior security officer in the State Security of Ukraine. … We spoke for about 17 minutes. I gave him a few recordings to listen to proving that Kuchma had broken the law and the criminal code. I asked him for advice on what to do, what we would be doing and how. He replied that “evil has to be stopped, continue to record, and find a way to stop this evil”. (Melnychenko 2003).

So began the systematic recording of the president’s conversations that lasted until the end of September 2000. The release of the president’s conversations on punishing extrajudicially the journalist Georgi Gongadze ignited one of Ukraine’s greatest political crises since independence. After Gongadze’s headless corpse was discovered, the conversations implied that the president was responsible for the murder.

For the public, Melnychenko has repeatedly stated that he recorded Kuchma to expose him as a criminal, and denied working for anyone (Melnychenko 2005d). He claimed to have recorded the president solely for altruistic reasons: “there was the matter of conscience” and “my father raised me to fight for what is right – the

rule of law" (Bihun 2002). He alone, he said, took the initiative to record the president in order to expose him as a criminal.

But in private, he said he worked for the former head of state security, Yevhen Marchuk. During 1999, he had provided Marchuk with the president's conversations so that the former head of state security could have an advantage over the other presidential candidates. He didn't expose any crimes by the president, including the throwing of grenades at a presidential candidate. This contradicted his assertion that he recorded Kuchma to expose him as a criminal.

In 2000, after Marchuk had failed in the elections to replace Kuchma, Melnychenko continued to record, as the two hoped Kuchma could be hounded out of office with a major scandal. Gongadze's disappearance and killing provided that opportunity.

In recording the president, the then 33-year presidential guard did take a life threatening risk. If discovered, he could have been jailed for espionage and may even have been assassinated. There was nothing in the guard's past to suggest why he would take such chances. Before becoming a presidential guard, all his work experience was with the KGB, an organization which you followed any kind of orders, legal or illegal.

Melnychenko was born on October 18, 1966 in the village of Zapadynka, today part of the town of Vasylkiv, Kyiv Oblast. In 1986, after completing high school he served in the KGB's 9-E Directorate that specialized in guarding the Soviet elite. His main guard duty was at the Soviet military command's top secret bunker – the Outside Moscow Command Post – in the town of Chekhov, about 60 km south of Moscow. According to Melnychenko, the KGB had used prisoners under the sentence of death to build the underground bunker complex, along with an underground railway to Moscow, so that 5,000 officials could escape from a nuclear attack (Melnychenko 2003).

After two years guarding the secret bunker, in 1988, he entered the Kyiv higher electronic engineering institute, known by its acronym KVIRTU, for a four-year course. It was one of the Soviet Union's top institutes to educate electronic specialists.

In 1990, when the movement for Ukraine's independence appeared on the streets of the capital, Melnychenko said he viewed with contempt the students on hunger strike in the center of Kyiv calling for the resignation of the Soviet Ukrainian government. Despite this dislike of protesters for an independent Ukraine, he, like over ninety percent of the electorate, voted for independence in the December 1991 referendum.

In 1993, when Leonid Kravchuk was president and Leonid Kuchma prime minister, Melnychenko graduated from Kyiv's electronic institute and joined the prestigious presidential guard service, which was part of the Directorate for the State Protection of Ukraine [Upravlinnya derzhavnoii okhorony Ukrayiny] under the president's control. The Directorate protected Ukraine's political elite, including the president, the prime minister and his cabinet, the head of the Verhovna Rada [parliamentary speaker], the prosecutor general and other top officials.

In the unscheduled presidential election held in July 1994, Melnychenko supported Kuchma against Kravchuk because he believed Kuchma would root out corruption and, as the former boss of one of the USSR's most important rocket plants, Yuzhnomash, would rescue the economy from the economic abyss it had fallen into after independence. He blamed Kravchuk's inability to manage the economy on his background as a communist party ideologue.

While Melnychenko worked as a presidential guard, his wife Lilya attended medical school in Kyiv. She obtained a medical internship in Melnychenko's hometown Vasylkiv, and, as they could not afford to live in the capital, they moved there from where he commuted to his job. At Ukraine's "White House," as the building housing the presidential offices was unofficially called, he specialized in protecting the president from electronic surveillance.

The justification Melnychenko gave for recording Kuchma was that he discovered accidently that the president was a "criminal." As he tells it, this discovery happened as he was surveying the president's office for possible listening devices. As he was checking the wardrobe in the president's office, the president and others suddenly entered. In order not to embarrass himself, he remained in the wardrobe and overheard a conversation that shocked him and shattered his loyalty to the president. Such was his earlier belief in Kuchma's incorruptibility that he compared the discovery to "the betrayal by a bride who slept with someone else the night before her

wedding" (Melnychenko 2003).

He explained what the "betrayal" took place at the end of March 1998. The conversation he heard was between Kuchma and Ihor Bakai [a gas oligarch, see Chapter 9]. The president apparently told Bakai he would appoint him to head the gas and oil industry in Ukraine, if he gave "250 million dollars in cash" to his re-election campaign (Ilchenko 2011).

Melnychenko was in position to record the president systematically from the spring of 1999 after he became the head of the unit that daily checked the president's office for electronic intrusions. In order to record on the days the president was in his office [a rough estimate suggests it was about 110 days a year], he created an extraordinarily demanding work routine. He would wake *up* at 5 am in Vasylkiv, and drive 30 km to the president's office for 7 am. There he would meet his subordinate and the cleaner to enter the president's office. While inside he would remove the recorder placed the previous day, while his assistant swept for listening devices and the cleaner cleaned. After the cleaner had finished, he would replace the recorder with a different one to one of the various hiding places in the office. He claimed to have done this for two years without his associate, the cleaner, or anyone else noticing. He would pass the recordings to an acquaintance who would listen for anything of importance for Marchuk.

Though Melnychenko used a variety of portable recorders to record the president (Melnychenko 2005d), in 1999 he mainly recorded with a Yava – an analog portable recorder especially made for the KGB. It was small, about the size of a tape cassette, with a silver wire cassette on top of the recorder, and recorded in high quality and *up* to five hours in near silence.

But the Yava had many drawbacks that were characteristic of analog recorders. Its batteries had to be changed after each use and it wasn't digital. Initially, Melnychenko said, he found the quality of the recording poor because the recorder was behind a panel and too far, about eight meters, from the president's desk. He solved the problem by placing the recorder under the sofa, where Kuchma held many of his conversations, which was also close to his desk. He also prolonged the life of the batteries by turning on the recorder only when the president was in his office. He attached a remote switch to the recorder so he could control it from outside the president's office. The remote switch enabled more conversations to be recorded during the day .

The silver wire in the analog Yava recorder was expensive, about $100, and difficult to obtain. Reusing it and transferring the recordings from the Yava to a computer was a time-consuming affair carried out by an associate of his and Marchuk's. Even more time consuming was transcribing analog recordings. Moreover, as the silver wires were reused in 1999, original recordings don't exist, as required by some courts for electronic evidence. All the 1999 recordings are copies from the silver wires or other analog recorders. Only a few of the 1999 recordings have been transcribed. In contrast, for the year 2000, when digital recorders were used, about a hundred forty conversations have been fully or partially transcribed.

From the start of 2000, Melnychenko used digital recorders, and in particular the Toshiba DMR-SX1, to record the president's conversations. Digital recorders had the advantage over analog in that their recordings could be stored on computers and disks without the need to copy from analog to digital.

The Toshiba with a 16 MB Smart Media memory card had a recording time of "four hours and 25 minutes" (Warner 2002b). For the year 2000, ideally there should be a memory card for each day of recording. In fact, the memory cards, like the silver wires, were reused. When Melnychenko submitted his recordings for authenticity examinations, he attempted to conceal that he didn't have the original memory cards. He provided memory cards that turned out to have been manufactured a year or more after the recordings took place (Lauyer 2005a).

After almost two years of recording the president, Melnychenko stopped on September 27, 2000. For the year 2000, he had recorded on at least 110 days a total of about 250 conversations that numbered about 440 hours. Of these conversations, only about 162 conversations have been fully or partially transcribed by transcribers with unequal linguistic abilities. The resulting quality of the transcripts varies from very poor to very good.

In contrast, very few of the conversations recorded in 1999 by analog recorders have been transcribed. As a consequence even the person who has the archive of the recordings does not have an estimate of the number or hours of conversations recorded in 1999. Moreover, many of the 1999 conversations were not dated.

The best transcripts of Kuchma's conversations in 2000 appeared on the defunct web sites 5element.net and 5elementplus.com (the first was shut down in Jan. 2003 and the second in Nov. 2006). These web sites, created by the former KGB officer Yuri Shvets, published seventy-five transcripts along with their sound recordings,

and his introductions.

A collection of Melnychenko's sound recordings appeared in public thanks to the International Press Institute in Vienna [*IPI*], which had been commission to authenticate the recordings by Ukraine's parliamentary commission investigating the disappearance of the journalist Georgi Gongadze. *IPI* made public thirty hours of complete conversations in the original and unique DMR recording format, which was used exclusively by the Toshiba DMR-SX1 recorders. The *IPI* collection also contained many hours of excerpts from the conversations. Already in February 2001, two journalists, Tom Warner and the author, circulated in Kyiv copies of the *IPI* recordings that resulted in some excellent transcripts (Stepura 2001).

At about the same time, a group of American academics placed the *IPI* collection of recordings on a Harvard University Internet site and called it the "Temporary home for the Melnychenko Tapes Project." The site, before it was discontinued, transcribed and translated Kuchma's conversation with the new head of the IMF, Horst Köhler, into English, Russian and Ukrainian (*IPI* June 12, 2000).

The worst transcripts were the twenty-three published by Radio Liberty on radiosvoboda.org and republished by pravda.com.ua and other Ukrainian web sites. They mostly appeared without the audio, and some were so poorly transcribed that they were unintelligible.

The conversations selected for this study document President Kuchma conducting a host of illegal activities, including taking and giving bribes, and stealing millions of dollars from the state. They show that the official who took the most amount of money from the state was not the minister Pavlo Lazarenko, as is popularly thought, but the head of Ukraine's oil and gas company, Bakai.

To maintain the system of personal enrichment at state expense, the conversations chronicle the president and his cohort fixing elections, controlling the mass media, operating an illegal surveillance network, and instigating extra-judicial punishments of critics, which led to the murder of the journalist Georgi Gongadze.

In the same corrupt vein, the president conducted Ukraine's "multi-vector" foreign policy – a post-Cold War policy in which NATO and Russia were both treated as strategic partners. Instead of "multi-vector", it should

have been called “multi-exploitation”, as it was an attempt by Kuchma and his oligarchs to exploit both sides. Relations with the NATO countries were based on obtaining low interest loans to prop *up* the state while the oligarchs headed by the president mercilessly robbed the national treasury. Meanwhile, Kuchma and his oligarchs worked with international gangsters involved in selling narcotics and weapons in violation of UN and international agreements. In relation to Russia, they together with their Russian counterparts, skimmed the profits from imports and exports, especially of gas and oil, leaving the state and society in poverty.

The conversations provide many examples of President Kuchma taking bribes in 2000. The Donetsk Oblast governor, Viktor Yanukovych said: “Leonid Danylovych [Kuchma], I am giving you a “Holland-Holland”, one of the world’s most expensive hand made guns, costing a minimum of $100,000 (Kuchma and Yanukovych, May 12, 2000). The Odesa mayor, Bodelan gave an statue made from an ounce of gold: “They say, this is an 18th century, either Spanish or Italian, from some family heirloom or other. I think only the wife of a president has the right to it” (Kuchma and Bodelan, May 16, 2000). The banker and future mayor of Kyiv, Leonid Chernovetsky gave what he said was a million dollar gift: “It is for your collection, it is a very light rare metal; it is palladium” (Kuchma and Chernovetsky, Sept. 18, 2000. The governor of Sumy Oblast, Volodymyr Shcherban offered shares in state companies about to be privatized: “Let it (25 percent plus 1 golden share) be for the children and grandchildren, this is for life, Leonid Danylovych” (Kuchma and Shcherban, April 14, 2000).

Kuchma took huge sums of money from oligarchs to fund his 1999 presidential re-election. The largest sum probably came from the head of the state company Naftogaz Ukrainy, Bakai. To get the job, he had promised the president $250 million (Kuchma, Bakai and Volkov, Oct. 11, 1999). Kuchma learned, however, that while Bakai took $184 million from the state company, but passed on “only” $66 million, and kept the rest for himself (Kuchma and Azarov, Feb. 10, 2000). It was also reported to him, that on other occasions, Bakai took sums of $150 million, $108 million and $350 million for himself (Kuchma and Lytvyn, Sept. 19, 2000). This study will show that in total, between 1994 and 2000, Bakai took well over a billion dollars from the state. In comparison, Lazarenko took less than $400 million while a government official.

President Kuchma helped Bakai to cover *up* his multi-million dollar stealing from the state (Kuchma and Bakai, June 29, 2000). He convinced the head of the supreme court not to put Bakai on trial (Kuchma and Boiko, Vitaly, July 11, 2000). Instead he decided that “Yuliya must be destroyed,” referring to the then deputy prime

minister Yuliya Tymoshenko, for attempting to expose Bakai's corruption (Kuchma and Azarov, April 17, 2000). In a conversation, the oligarchs Bakai and Volkov (Oleksandr) joked with Kuchma that they would be in jail if they didn't have his protection from the law (Kuchma, Bakai and Volkov, July 7, 2000).

Bakai was not the only person the president protected from the law. In another example, he rejected the prosecution of the Crimean prosecutor, Shuba, who was accused of taking $100,000 per month in kickbacks (Kuchma and Azarov, May 24, 2000). He also protected loyal oligarchs like Hryhoriy Surkis from prosecution for tax avoidance (Kuchma and Azarov, June 14, 2000).

President Kuchma not only took bribes but gave them to obtain something for himself. For example, he offered a new factory in Uzhhorod to the then head of Gazprom, Victor Chernomyrdin, to put pressure on a Russian oligarch not to give favorable coverage on his TV channel to Yuliya Tymoshenko (Kuchma and Chernomyrdin, June 29, 2000). He gave the presidential candidate Yevhen Marchuk shares in a coalmine and electricity company in return for his support in the 1999 presidential elections (Melnychenko 2003).

The conversations document Kuchma's fixing of the 1999 re-election by using tax inspectors and police to threaten local officials to get the vote out for him. Before the first round of the elections, Kuchma told the head of the Tax Office, Mykola Azarov, that officials whose district didn't vote for him: "will be out of a job after the elections" (Kuchma and Azarov, Oct. 1?, 1999). Before the second and final round of the elections held on Nov. 14, 1999, Kuchma said: "force collective farm heads to fucking dance to our tune" (Kuchma and Azarov, Nov. ?, 1999). He enjoyed the story of how a military unit was told only to vote for him (Kuchma and Hrynevetsky, Nov. 1, 1999).

As for the mass media that didn't support him or took a neutral position, he called for their destruction: "Take everything away from them, disconnect them" (Kuchma and Azarov, Oct. 15, 1999).

He consorted with major international criminals like Semyon Mogilevich and Igor Fisherman, both wanted by the FBI, while at the same time helping the FBI to prosecute his political enemy Pavlo Lazarenko. The president demoted the head of Ukraine's military intelligence, Ihor Smeshko, to a military attache, for saying that Mogilevich was a major criminal and that the "FBI considers Mogilevich's organization to be under the

complete protection of the SBU" (Kuchma and Mogilevich, Feb. 10, 2000).

The Melnychenko conversations document one of Kuchma's major crimes, the silencing of the journalist Georgi Gongadze. They document the president on four occasions ordering the extrajudicial punishment for the journalist (Kuchma and Kravchenko on July 3, July 10, Aug. 30 and Sept. 11, 2000). This study presents the most *up* to date analysis of the journalist's killing and its cover-up.

The Melnychenko recordings are the most important political documents to have emerged on contemporary Ukraine. The government has not given the public access to them, as it fears its citizens would discover the true nature of their rulers. As many of the conversations are in the public domain, they should be treated as a national asset with a commission formed to transcribe, annotate and publish them.

2 Marchuk, the arch-conspirator

Melnychenko's initial purpose to record the president was to help the former chief of Ukraine's state security [SBU], Yevhen Marchuk, to gain an advantage in his bid to become president in the 1999 election. In his election campaign, Marchuk promised to emulate strong world leaders, like Charles de Gaulle and Franklin D. Roosevelt, and especially the Tunisian president Ben Ali, to solve Ukraine's social ills. Why Ben Ali? Like Marchuk, the Tunisian had a career in the security service before staging a coup to take power. Marchuk, after failing to be one of the two finalists in the first round of the 1999 presidential elections, joined President Kuchma as his chief security official. But clandestinely, he had Melnychenko continue to record the president in the hope that he would commit heinous crime that would force him to resign. Within ten months, though his wish came true with the kidnapping and murder of Gongadze, Kuchma didn't resign.

Before entering politics, Marchuk was in the security services – twenty-eight years in the KGB, from 1963 to 1991, and three years heading Ukraine's state security service, SBU. It was only at the age of fifty-three that Marchuk entered politics. In 1994, the newly elected President Kuchma appointed him as deputy prime minister in charge of Crimea and for negotiations with Russia.

Marchuk was born on January 28, 1941 in the village of Dolynivka, Kirovohrad Oblast, on the eve of the Nazi invasion of Ukraine. In 1963, he completed a degree in Ukrainian and German and began his KGB career. The KGB had recruited him because of his knowledge of German which he apparently used to report on East Germans working in Ukraine. He continued to rise through the ranks of the KGB by specializing in spying on political opponents, including dissidents (Bondarenko 2003).

He executed an important conspiratorial action on the eve of Ukraine's independence. More than a year before the December 1991 proclamation of independent Ukraine, as the second highest-ranking KGB official in Ukraine, he switched sides from prosecuting opponents of the USSR to creating an independent Ukraine. In the

spring of 1990, as deputy head of Soviet Ukraine's KGB, he took the initiative to create a back channel to the CIA in-order for Ukraine's political elite to have direct contact with the White House.

The American journalist, Roman Kupchinsky, and the former director of the CIA funded New York City publishing house , Prolog, recalled secretly meeting Marchuk in Kyiv in the spring of 1990: "We shook hands and I tried to size up the man. Marchuk was a powerfully built man, with broad shoulders, a massive chest and strong arms, yet he had a shy smile and gentle manner" (Kupchinsky 2009). Marchuk told him that Ukrainian independence "was simply a matter of a few months and Ukraine needed to have Washington's ear as soon as possible … We want to ask you to try and arrange a meeting for us with CIA representatives so we can exchange information and views on events which are on the horizon" (Ibid.).

Marchuk was in the forefront of preventing the August 1991 putsch in Moscow from engulfing Ukraine. On August 19, the first day of the coup, as the State Minister on defense, national security and emergency situations in the Soviet Republic of Ukraine, Marchuk took charge of security matters to prevent the rebellion from spilling over into Ukraine. In contrast, the KGB boss in Ukraine, Mykola Holushko, went into hiding to await the outcome. With the putsch defeated in Moscow, Holushko re-appeared, jokingly telling the then head of the Soviet Ukrainian government, Kravchuk, that he had "gone fishing" (Solchanyk 1991).

The August 24, 1991 proclamation of independence by Ukraine's Supreme Soviet was met without a shot being fired and not a single armed unit rebelling. Much of the credit for this peaceful transition should go to Marchuk, who took control of Ukraine's KGB which in turn occupied the headquarters of the Soviet armed forces in Ukraine as well as its Ministry of Interior. However, the failure to take over the command of the Soviet Black Sea fleet, left Ukraine to this day with a Russian navy in the Crimea.

To prevent a coup, the new Ukrainian government banned the Soviet Communist Party and replaced the KGB with the National Security Service of Ukraine, with Holushko as its head and Marchuk as his deputy. Within three months, in November 1991, Holushko defected to Russia with wagonloads of KGB archives. He was rewarded with the position of first deputy of the ministry of security in the Russian Federation, and from September 1993, the minister of security. After the post was abolished in October 1993, he directed the Federal Service's counter intelligence from December 1993 to February 1994. President Yeltsin fired him for refusing

to stop the State Duma from granting amnesty to the rebels of the October 1993 constitutional crisis (Albats 1999).

Following Holushko's defection, Marchuk became the head of the new state security service of Ukraine or SBU [Sluzhba Bezpeky Ukrayiny], and his political partner Kravchuk became Ukraine's president in December 1991.

In the 1994 presidential elections Marchuk betrayed President Kravchuk and helped the former Prime Minister Leonid Kuchma to win. As SBU chief, he formally supported the incumbent, but after the elections Kravchuk complained: "Probably Marchuk worked with Kuchma. Subsequently I had a lot of questions for the leaders of the law enforcement agencies. In the spring and summer of 1994, representatives of election staffs repeatedly informed me that a lot of campaign materials, including false ballots, were being imported from Russia to Ukraine" (Bondarenko 2003). Marchuk assured him this was nonsense. But following Kuchma's victory, the new president appointed Marchuk as deputy prime minister in charge of state security and defense. Kravchuk's suspicion about Marchuk's helping Kuchma get elected were justified.

Within weeks of his appointment as deputy prime minister in charge of security, Marchuk's skills were severely tested. He found himself dealing with a potential rebellion in the Crimea, while heading the team negotiating with Russia to recognize Ukraine and its territory, including the Crimea. He improved his negotiating position by persuading the parliament of the Crimean Autonomous Republic to undermine its president, Yuri Meshkov, who wanted Crimea to be part of Russia. This allowed him to negotiated with Russia on what became known as "The Big Treaty". On February 8, 1995, he and the Russian deputy prime minister, Oleg Soskovets, signed the Ukrainian-Russian Agreement, in which Russia recognized the territory of Ukraine, including Crimea and Sevastopol. He then turned his attention to Meshkov. On February 21, 1995, he had President Kuchma dismiss Meshkov. Immediately afterwards, he had Meshkov arrested and deported to Moscow. For his success in the Crimea and the agreement with Russia, Kuchma rewarded Marchuk with the post of acting prime minister from March 3, 1995, and then as prime minister.

Soon Marchuk's relationship with Kuchma came under strain following the president's appointment in September 1995 of the Dnipropetrovsk governor, Pavlo Lazarenko, as the deputy prime minister in charge of energy. Kuchma appointed Lazarenko on the strength of his image as an effective manager, as well as a trusted

official from Dnipropetrovsk. His reputation for kickbacks from businesses in return for market monopoly proved not to be an obstacle in his appointment. [Chapter 7 details Lazarenko's corruption schemes especially in the import and distribution of natural gas.]

At a meeting held in January 1996, attended by Marchuk and Lazarenko and the presidential advisor Oleksandr Volkov, President Kuchma sanctioned the choice of companies who would have the monopoly to import and sell gas in Ukraine. The chosen few were Tymoshenko's UESU, Bakai's Intergaz and Gazprom's Itera. "Lazarenko paid Marchuk seven million dollars to include Tymoshenko in the gas trade," according to Lazarenko's partner in crime, Petro Kyrychenko (Leshchenko 2012d).

Increasingly, Lazarenko bypassed Marchuk and dealt directly with Kuchma on the important issues of energy and Russia. The prime minister reacted angrily to being excluded on these matters. The final straw for Marchuk came when Kuchma complained in public about his cabinet ministers. In response, Marchuk said it was the president who had appointed the ministers, adding sarcastically that if it were *up* to him, he would only keep a third of them, undoubtedly it would not include Lazarenko. On May 27, 1996, Kuchma fired Marchuk for insubordination and replaced him with Lazarenko.

After six years in powerful state positions in independent Ukraine, Marchuk found himself in the political wilderness. For the next three years, the arch-conspirator plotted his comeback and revenge against Kuchma. He was elected to the Verhovna Rada [Supreme Council or parliament] where he began to experiment with various political groups. He joined the Liberal Party headed by the Donetsk oligarch Yevhen Shcherban, who in November 1996 was assassinated. [For the details of the killing, see Chapter 16]. Marchuk purchased Shcherban's newspaper *Den* [The Day], which became his national forum to air his opinions.

In late 1998, Marchuk announced his intention to contest the 1999 presidential elections, as did Lazarenko, whom Kuchma had fired in July 1997. Lazarenko took over the political party, Hromada, to launch his bid for power. In contrast Marchuk, joined the Social-Democratic Party of Ukraine United or SDPU(U), a political front for oligarchs. Its main sponsors were the Kyiv based oligarchs Hryhoriy Surkis and Viktor Medvedchuk. In the March 1998 Rada elections, the social democrats received only seventeen of the 450 seats in the Rada, while Lazarenko's Hromada did marginally better with twenty-four.

On December 23, 1998, the presidential candidate Marchuk resigned as the leader of the social democrats united, as it was backing Kuchma for president. With ten months left to the October 1999 elections, he scrambled to attract supporters.

For Kuchma, the most formidable opponent was not Marchuk, but the former prime minister, Lazarenko, who had the money and charisma to take him on. However, Lazarenko made a fatal mistake that knocked him out of the presidential race. On December 2, 1998, the Swiss authorities arrested him on charges of money laundering as he attempted to withdraw $100 million from his bank accounts, and then released him on a bail of $2 million. Kuchma's tightly controlled mass media had a field day highlighting his arrest. Just as his political support collapsed, Lazarenko announced on January 22, 1999 his candidacy for president. In response, President Kuchma called upon parliament to remove his immunity so he could be arrested and put on trial for corruption. Fearing prison if not assassination from the many enemies he had made, Lazarenko fled Ukraine on February 3, 1999. He ended up in New York where the FBI, tipped off by the SBU, were waiting to arrest him for money laundering in the United States and where he was subsequently tried and imprisoned.

Soon another possible opponent was out of the race, the Rukh party leader and former Soviet political prisoner Vyacheslav Chornovil. He could not win in the elections, but could determine the outcome of it as he could influence the voting of at least a quarter of the electorate. He died in a tragic car accident on March 25, 1999 that might have been set-*up* (*UP* 2006b).

Marchuk decided to win over Chornovil's electorate, mainly based in Western Ukraine and a sizable following in Kyiv. At first it seemed to be an impossible task for a former KGB general to gain credibility in a constituency where Soviet political prisoners and anti-Soviet partisans were heroes. However, the calculating Marchuk met with the leaders of political party formed by former Soviet political prisoners – the Ukrainian Republican Party, blinded by his expression of patriotism and determination to fight corruption, declared their support for him. He appeared at a gathering of former combatants of the Ukrainian Partisan Army and got himself photographed with the son of its first commander-in-chief, Roman Shukhevych. His turned to the anti-Soviet core of the population paid dividends, as in the election hundreds of thousands of votes came from this constituency .

Marchuk took upon himself the mantle of being the leading candidate of anti-corruption. In his election campaigning, he indirectly used the evidence of Kuchma's corruption found on the Melnychenko recordings. In his election pamphlet Five years of a Ukrainian Tragedy (Marchuk 1999), in the chapter, "The government has removed its 'white gloves'," Marchuk obliquely referred to some of Kuchma's illegal infringements found on the recordings: "the illegal exploitation of the armed services; administrative pressure on the voters; the use of psychological war against the population; the illegal use of state and local budgets and special commercial structures and funds in the pre-election campaign; and the falsification of the election results."

However, Marchuk's solution to Ukraine's economic ills was authoritarian. In the election pamphlet, he called for state control of the capitalist economy, and for a strong authoritarian government to lead the country out of crisis. After briefly mentioning Roosevelt and de Gaulle, he presented a most unlikely hero to emulate – Tunisia's 1987 coup leader, Ben Ali. "The country clearly and competently has been led out of the crisis, though few predicted it would have any success," wrote Marchuk. He praised the coup leader Ben Ali for his democratic reforms and economic miracles. "Ben Ali showed a resolute and consistent policy, turning a stagnant country with a decayed political system into a dynamic society in the course of a few years, and again without putting down his political opposition, the local Islamic fundamentalists" (Khymych 1999). He attributed Ben Ali's success to a strong individual doing good for the country, just like himself.

In retrospect, his choice of Ben Ali to emulate was unfortunate. In January of 2011, after a popular uprising that heralded the Arab spring, Ben Ali fled to Saudi Arabia. A Tunisian court in June 2011 sentenced him and his wife in absentia to 35 years of imprisonment for corruption (Adetunji 2011).

In his official election manifesto, which every candidate was allowed to present on national TV, Marchuk ferocious attacked Kuchma and his supporters. He called him and his oligarchs "a system of criminal clans," and promised, "as a general of the Ukrainian Army," [he received the rank of an Army General in 1992, as well as being a KGB general and a SBU general to boot] to get rid of the oligarchs and bring order to society and create well-paid jobs for all.

Marchuk's ability to listen to Kuchma's conversations proved not to have any effect on his chances to become president. He failed to use the evidence in his possession that Kuchma had organized an assassination attempt

on the presidential candidate Vitrenko and blamed it on the socialist party presidential candidate Oleksandr Moroz. Instead, Marchuk attempted to use the incident to have Moroz resign from the race so he could take over Moroz's electorate.

The grenade incident occurred at 8 pm on Saturday, Oct. 2, 1999. As the progressive socialist candidate Natalia Vitrenko with about fifty of her supporters left an election rally in the factory town of Inhulets near the city of Kryvyi-Rih, two grenades were thrown at them. The explosions injured forty-five people, including Vitrenko, and two of her party's Rada deputies – Volodymyr Marchenko and Nataliya Lymar.

The event shattered Moroz's presidential hopes, as within an hour of the explosions, Ukraine's state media bombarded the public with the news that he was linked to "the terrorists". The national TV channel, controlled by the president's office, continued to lead the attack the following day. "It has become known to Ukrainian Television News [news on UT1] that Serhei Ivanchenko, an election agent of Oleksandr Moroz in constituency No 33, was the organizer of the attempt on the life of presidential candidate Nataliya Vitrenko" (Marchenko 1999).

The news coverage clearly violated the law that forbids the publication of details of an ongoing investigation and presumes Serhei Ivanchenko's innocent until proven guilty. The president also ignored this law when on Oct. 6, he named the suspects and associated them with Moroz: "the guilt of suspects has to be proved in court but it is an established fact that the organizer of the attempt, Serhei Ivanchenko, is from the election headquarters of Oleksandr Moroz, the head of the Socialist Party of Ukraine, and he is Moroz's election agent" (UT2 1999).

Marchuk and Melnychenko failed to warn the intended Vitrenko and her colleagues that a terrorist attack was being prepared against them, and failed to tell Moroz that President Kuchma would blame him for the incident:

When carrying out my duties, I learned by accident about the order by Ukrainian President Leonid Danylovych Kuchma to organize a terrorist attack on the presidential candidate Nataliya Vitrenko with the purpose of the political destruction of Oleksandr Oleksandrovych Moroz (Melnychenko 2000).

Melnychenko hasn't explained how he "accidentally" learned of Kuchma's order. He does not seem to have a

recording in which Kuchma gave this order. Instead, he published three undated short excerpts of Kuchma's conversations in which he stated the incident was to be blamed on Moroz. The most significant recording has the SBU chief Derkach telling Kuchma: "On the Ivanchenko affair, everything is going according to plan. There are no hitches." Derkach also promises that confessions would soon be obtained from Ivanchenko and his brother Volodymyr and his friend Andryi Smoilov. Kuchma replied it was necessary to put all the blame for the incident on Moroz (Kuchma and Derkach, Kravchenko ? 2000).

A court in Dnipropetrovsk on June 15, 2001, sentenced Serhei Ivanchenko, his brother Volodymyr and Smoilov to 15 years imprisonment based on their confessions. All three complained to the European Court of Human Rights that they "had been severely beaten and tortured by the investigating officers in order to extract confessions" (European Court of Human Rights 2004). On Feb. 17, 2004, the European Court rejected their appeal against their convictions on the basis that they needed to exhaust the Ukrainian legal process. In December 2004, just before he left office, President Kuchma pardoned Serhei Ivanchenko, but not his brother Volodymyr or Smoilov.

Melnychenko said he had warned Marchuk of the planned attack. "I warned him that a provocation was being prepared against Moroz. I warned him. He didn't take any action." However, Melnychenko hasn't explained why he didn't warn Vitrenko or Moroz of the impending attack.

Marchuk, after ten years of silence on the grenade incident, admitted in 2011 that Melnychenko had approached him in 1999 and told him about an impending attack. He claimed that Melnychenko had told him vaguely of a planned incident using "explosives or the imitation of explosives in a hall to cause panic" (Marchuk 2011). He said he didn't make this public because he feared for Melnychenko's life. In the article, Marchuk claimed that his meeting with Melnychenko in 1999 was one-off and that he had nothing to do with his recording of the president and the "scandals" sparked by them.

At the time of the grenade incident, Marchuk was in a coalition against Kuchma called Kaniv 4, as it was proclaimed in Kaniv in front of the Taras Shevchenko monument. It included Moroz and two other candidates the peasant party leader, Oleksandr Tkachenko and the Cherkassy mayor, Volodymyr Olinyk. Prior to the grenade attack, Marchuk backed Moroz because he realized that Moroz had a better chance of winning the

presidency. On Sept. 29, 1999, a month before the elections, Marchuk had announced he would withdraw his candidacy in favor of Moroz. This created the possibility that Moroz might have a chance against Kuchma. The coalition with Marchuk had the potential to attract voters from western Ukraine, where the former KGB general's popularity was growing, while Moroz's popularity in Western Ukraine was almost non-existent on account of his pro-Soviet views on the Ukrainian Partisan Army. He said things like: "let the German government pay their pensions."

After the grenade incident, in reaction to the mauling in the mass media, on October 25, Moroz stepped down from the presidential race in favor of Marchuk (*Den* 1999). It seemed that Marchuk would be the candidate for the coalition, but next day, Moroz changed his mind and decided to stand on his own as the socialist party candidate. Marchuk's newspaper, *Den*, on October 27, 1999 accused Moroz of betrayal for not supporting Marchuk's candidacy. It was Marchuk who betrayed Moroz by not warning him of the impending attack on Vitrenko. This quarrel caused the Kaniv 4 coalition to collapse on the eve of the election.

On the eve of the October 31 election, Marchuk held a private showing of a video to which he invited to view the "anti-mafia" MPs, Hryhoriy Omelchenko and Anatoly Yermak, and the presidential candidate Olinyk. The video showed a masked person, dressed in a police uniform, accusing the authorities of staging the grenade attack on Nataliya Vitrenko and the accident that killed Vyacheslav Chornovil (*Dzerkalo tyzhnya* 2000).

Shortly after showing the video, and just before the first round of the elections took place, Marchuk made a political metamorphosis from being a fierce opponent to Kuchma to his public supporter. He made a secret deal with the president. In return for the high-ranking post of Secretary of the National Council of Security and Defense, he promised to call upon his supporters, mostly in Western Ukraine, to vote for Kuchma in the second round against the Communist Symonenko. The Council for National Security and Defense (Rada natsionalnoyi bezbeky i oborony Ukrainy) was created by the Constitution of Ukraine to be responsible to coordinate all aspects of security and defense. The president heads the council and the secretary, appointed by the president, manages it.

Melnychenko claims to have a recording of the conversation between Kuchma and presidential adviser Oleksandr Volkov discussing the deal with Marchuk, which included also some financial incentives, like shares

in a coalmine and an electricity company (Melnychenko 2003). He hasn't released this conversation where Marchuk received a bribe to support Kuchma.

Following the announcement of the results of the first round, Marchuk shocked his supporters by calling upon them to vote for Kuchma in the second round. For many of his followers a vote for Kuchma was a betrayal. The journalist Georgi Gongadze, who supported Marchuk, was so upset that he stopped broadcasting for a week his twice-weekly news program on Kyiv's Radio Kontinent. When he resumed his broadcasts, he called for a boycott of the final round. Another outspoken journalist, Tatyana Korobova, a senior journalist at Marchuk's newspaper, *Den*, resigned in protest at what she called Marchuk's betrayal.

Melnychenko claims he had urged Marchuk not to join Kuchma's government but to stage a coup, and promised to personally arrest Kuchma (Ibid.). Marchuk was not willing to take such a risk. He failed to emulate his Tunisian hero, Ben Ali. Instead he decided to take *up* Kuchma's offer and to continue the covert game of recording Kuchma. On November 10, four days before the second and final round of the elections, President Kuchma officially appointed Marchuk to the country's top security and defense position.

As for Melnychenko, despite Marchuk's "betrayal," like the good guard he was, he continued to record the president's office. As a matter of fact, he continued to record until the end of September 2000. He stopped after a police undercover unit kidnapped the journalist Gongadze.

Why did Marchuk decide to join Kuchma? He foresaw that he wouldn't win in the elections. He came fifth in the first round of the elections, with a respectable 2.1 million votes. This was a good result, considering his campaign began only ten months earlier without a political party or a constituency.

He came out in support of Kuchma because he didn't want to be in the political wilderness again. Unlike Melnychenko, he was too realistic to stage a coup. He hoped to bring down Kuchma by exposing him committing another serious crime. To increase the possibility of such an incident, Marchuk secretly financed the journalist Gongadze, who he knew the president disliked, and who, based on his previous activities, could provoke the president. Catching Kuchma committing another major crime depended on Melnychenko continuing to record the president's conversations.

In public, Marchuk, like Melnychenko, has consistently denied in public that he had ever conspired to record the president (Marchuk 2005). However, in private, he paid Melnychenko to record the president. For example, in 2001, while Melnychenko was on the run from Ukraine's authorities, Marchuk paid him $10,000 in cash (Melnychenko 2003). At the time Marchuk was secretary of Ukraine's national security and defense. The cash was given to Roman Kupchinsky who passed it on to Melnychenko. Kupchinsky, before he died on January 19, 2010, confirmed it to the author that he passed the money (Kupchinsky 2009).] In the interview with Kupchinsky, Melnychenko confirmed that he received the cash (Melnychenko 2003).

Besides Kupchinsky, Melnychenko disclosed the running of a covert recording operation for Marchuk to the former FSB agent Alexander Litvinenko, who died from polonium poisoning in London in 2006. Litvinenko recalled Melnychenko saying to him that Marchuk set *up* the journalist Gongadze to get rid of Kuchma (Litvinenko 2005) (*UP* 2005h). He also told Valentyn Labunsky, an emigrant from Ukraine living in New York, that Marchuk had sponsored his recording of Kuchma: "Now there is no sense in hiding that this grand operation was organized by Yevhen Marchuk. Mykola often told me about this" (Labunsky 2005).

Marchuk did much more to destabilize Kuchma than just provoke him to take his revenge on Gongadze. Using his position as the country's chief security adviser, he told to punish extra-judiciously his most vocal critics, like the journalist Lyasko. He denigrated Prime Minister Yushchenko and questioned his policies in the hope to be appointed in his place.

Melnychenko covered *up* Marchuk's role inside the president's office as a provocateur by not releasing to the public any of his conversations with Kuchma. However, some recordings of Marchuk's conversations with Kuchma become available and were used in this study.

As for the video that Marchuk had privately shown on the eve of the 1999 presidential elections, in which a masked policeman claimed the police organized the grenade throwing incident and Chornovil's road death, Marchuk claimed he had lost it and denied its credibility (*Dzerkalo tyzhnya* 2000).

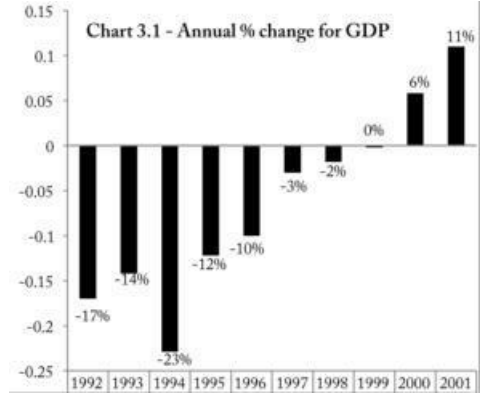
The grenade attack was a serious criminal offense. Not only should the law investigate Kuchma for the incident,

but also Marchuk and Melnychenko. They failed to warn Vitrenko and Moroz of the impending grenade attack. Marchuk betrayed all those who believed he was against the abuse of power. His fight against corruption was just another covert game to further his personal interests.

3 Kuchma fixes his re-election

Kuchma's chances to be re-elected in 1999 for another five-year term were poor. In his first term in office, 1994-1999, he failed to get the economy to grow, with the consequence that the average standard of living was worse than under the Soviet Union. The economist Anders Aslund described Ukraine's 1999-2000 in the starkest terms: "For ten years Ukraine was one of the sickest economies in the former Soviet Union. By 1999 most observers had decided that Ukraine displayed all the symptoms of economic malaise. It was hopelessly corrupt, market reforms were generally tardy and unfinished, the budget deficit was larger than the available financing, non-payments and arrears were rife" (Aslund 2002).

Chart 3.1 illustrates the state of Ukraine's economy during its first ten years after independence. It shows that following its collapse in 1992-1994, it achieved growth only from 2000. Kuchma, as prime minister in 1992-3 and president in 1994-9, must share the responsibility for the appalling state of the economy during the first decade of Ukraine's independence.



In 1994, Kuchma's got elected on the image that as a top Soviet director he would lead Ukraine's economy to health. People were fascinated by his meteoric rise, from the child of an impoverished one-parent peasant family to director of the one of the USSR's most important missile plants and finally president of Ukraine (Lukanov 1996). He had the image of an achiever rather than a talker, unlike the man he replaced, Leonid Kravchuk, the former head of ideology in the communist party of Soviet Ukraine. However, Kuchma, as the prime minister, along with President Kravchuk, shared the responsibility for the economic collapse.

Kuchma's background was similar to many Ukrainians who entered politics following independence in 1991. They were born in poverty to families who suffered profoundly from WW2, received a university education and achieved professional success. Most of the main protagonists in this study, Bakai, Marchuk, Melnychenko, Moroz, Lazarenko and Yushchenko shared this background.

However, it was also different. Kuchma's road to the presidency also was facilitated by his marriage, the communist party, being director of a major Soviet enterprise and corruption. He was born on August 9, 1938 in the village of Chaykino, in the northern tip of Chernihiv Oblast, squeezed between Belarus and Russia. His father died as a Red Army soldier during WW2. He with his mother, sister and brother survived the Nazi occupation and the general poverty of the collective farm.

His first life changing break came at the age of 17, when he received a place to study engineering in Dnipropetrovsk, then and now one of Ukraine's great industrial centers. After graduating, he made a career in rocket engineering and the communist party. In 1960, at the age of 22, he got a job at one of the Soviet Union's premier enterprises, Yuzhnomash [Pivdenmash in Ukrainian] missile plant. It designed and built intercontinental missiles which when tipped with nuclear warheads made the USSR a superpower.

His fortune improved with marriage. In 1962 he married Lyudmyla Tumanov, whose father Hennady was an important stalwart of the Dnipropetrovsk communist elite. The wife's family guided the peasant boy through the communist party maze, as Kuchma used the party to climb to the top of his profession.

At the design bureau, Kuchma first headed the Komsomol, the branch for younger party members, and moved *up* the party ladder. In 1975, at the age of 38, he became the head of the bureau's communist party. In 1981, he

became the design bureau's chief engineer – the second most senior post after its general director. A year later, he transferred from Yuzhnomash's design bureau to its manufacturing plant to head its communist party, and become the first deputy to its general director. In 1986, at the age of 48 he reached the pinnacle of Yuzhnomash, when he became its general director. He now joined the elite of the Soviet factory directors.

As the Soviet Union began to implode because of its unresolved political and economic problems, Kuchma vacillated between saving the USSR and creating an independent Ukraine. On January 9, 1990, the Dnipropetrovsk newspaper, Prapor Yunosti, quoted him as being against independence. A month later, at the February 1990 plenum of the communist chiefs of Ukraine, Kuchma supported the minority position calling for "full economic and political sovereignty of Ukraine as a state" (Ibid.).

In the March 1990 elections to the Supreme Soviet [Verhovna Rada in Ukrainian or parliament in English] of Ukraine, in which for the first time non-communist candidates were allowed to take part, Kuchma was elected as a communist from the Dnipropetrovsk Oblast. In parliament, he belonged to the 239-strong communist majority that kept the lid on the minority, who wanted independence immediately.

The attempted coup in Moscow, August 19-21, 1991, by advocates of a strong centralized USSR, made Ukraine's communist elite fear for its personal safety, as it had already committed itself to Ukraine's independence. On August 24, 1991, the day the coup leaders were defeated, Ukraine's parliament, led by its speaker Leonid Kravchuk, voted overwhelmingly to proclaim independence. It also banned the Soviet communist party of Ukraine because of the fear it might be used as a fifth column.

Parliament's declaration of independence was approved in a national referendum on December 1, 1991, by over 90 percent of the voters. Each of the 27 oblasts of Ukraine voted for independence, including the heavily Russian populated Crimea, where the vote was just over 50 percent.

On the same day, voters elected the first president of Ukraine, Leonid Kravchuk, who won 62 per cent of the vote, or 19.6 million of the 31.8 million votes cast. His nearest rival, the former Soviet political prisoner, Vyacheslav Chornovil, received 7.4 million or 23 percent. Kravchuk received a majority in all the oblasts, except for the three "Galician" oblasts – Lviv, Ternopil and Ivano-Frankivsk – which voted overwhelmingly for

Chornovil. Another former political prisoner, Levko Lukyanenko, came third with 1.4 million or 5 per cent of the vote (Nohlen 2010).

Kuchma took part in the presidential election as the campaign manager for the "New Ukraine" presidential candidate, Ihor Yukhanovsky, who received just over half a million votes. "New Ukraine" presented itself as a radical advocate of capitalism, calling for the privatization of the state economy with a strong nationalist flavor. Kuchma had joined it along with other "Red Directors," like Volodymyr Shcherban, who later became governor of Donetsk and then Sumy Oblast. Others became Kuchma's fiercest political opponents, like Volodymyr Filenko, Viktor Pynzenyk, Taras Stetskiv, and Ihor Yukhnovsky

In the first year of Ukraine's independence, the economy declined steeply and the population spiraled into poverty that worse than in the USSR. Ukraine's parliament looked for a savior. A consensus developed that Kuchma, the director of Pivdenmash, would make the ideal prime minister to reverse the economic collapse. Kuchma appealed not only to the former members of the Soviet elite but also to the radical reformers. On October 13,1992, parliament approved him as Ukraine's prime minister.

Prime Minister Kuchma began by asking for and receiving emergency powers for a period of six months. However, his dictatorial powers failed to stop the economic free fall. In 1991-4, Ukraine experienced the steepest GDP fall and highest rate of inflation recorded in any European country since World War Two. The only consolation for Ukraine's citizens during these first years of independence was that the economic collapse didn't lead to a civil war, as it did in many former Soviet republics, and the former Yugoslavia.

As prime minister, Kuchma already had a side of his character that would reappear repeatedly in later years. He would rage against corruption in public but participate in it in private. On November 18, 1992, as prime minister, he called for the creation of a cabinet commission to combat "Mafia-like activities," with strong investigative and punitive powers, including removing the immunity from prosecution from members of Ukraine's parliament, the Rada.

This was political bluster, as Kuchma was building a private fortune at the state's expense by conducting illegal transactions with Oleksandr Volkov (Yermak and Omelchenko 1999) (Stepanov, Ivan [pseudonym of Oleh

Yeltsov] 2000). The prime minister provided state funds to Volkov's private companies to profit from the selling and buying of energy supplies. In return Volkov gave him kickbacks.

Not only Kuchma the prime minister was involved in corruption, but also President Kravchuk. He sold off Ukraine's huge merchant fleet to make money for himself (Kuchma and Potebenko June 8, 2000). Kravchuk was also involved in the largest illegal shipment of arms to the one of the warring sides in Yugoslavia (Kupchinsky 2002c).

By leaving the government, Kuchma avoided being blamed with Kravchuk for the 1992-3 economic collapse. In September 1993 as the economic crisis deepened, he resigned as prime minister following parliament's decision to hold unscheduled presidential elections in the summer of 1994. In the interim, Kuchma began preparing to become the next president with the funds accumulated by his campaign manager, Volkov.

In the first round of the July 3, 1994 presidential elections, he failed to beat the incumbent, and came second. As Kravchuk hadn't received more than fifty percent of the vote, a second round was held on July 17, in which Kuchma was victorious with almost two million more votes than Kravchuk.

In his first term in office, Kuchma's continued the creation of oligarchs began by his predecessor Kravchuk. As prime minister, Kuchma took part in creating the oligarch Oleksandr Volkov by providing him with state funds to buy coal and oil. As president, he was responsible for transforming Pavlo Lazarenko from a regional to a national oligarch. [see Chapter 7], and making Bakai a billionaire [Chapter 8], as well as many others, including his son-in-law Viktor Pinchuk.

His class of oligarchs entered the political arena masquerading as political parties with populist sounding names. In the 1998 parliamentary elections, they won only 80 of the 450 seats. However, within two year, they doubled their number of seats by buying deputies from other parties. The Dnipropetrovsk oligarchs, Viktor Pinchuk and Andriy Derkach, respectively Kuchma's son-in-law and the son of the SBU chief, called their party "Working Ukraine." The Kyiv oligarchs Hryhoriy Surkis and Viktor Medvedchuk appeared as leaders of the "Socialist Democratic Party (United)" or SDP(U). A group of gas and oil and commodity traders called their faction the "Green Party". The Greens came to parliament on the back of advertisements aimed at gullible young

voters paid for by the oligarch Vadim Rabinovich, who couldn't stand for parliament because he had taken Israeli citizenship. Until the 1999 presidential elections, the then prime minister, Valeri Pustovoitenko headed the largest oligarch party the "National Democrats." After Kuchma replaced him with Yushchenko after the 1999 elections, Pustovoytenko's party melted away as deputies rushed to join the oligarchs the president favored.

Kuchma exerted his influence in parliament through all the oligarch parties but none so much as Volkov's. Volkov had entered parliament in a by-election in September 1998 to gain immunity from prosecution following charges of money laundering by the Belgian authorities. Kuchma's favorite oligarchs, Bakai, entered parliament in the June 2000 in a by-election to avoid being charged with corruption while heading Ukraine's oil and gas company, Naftogaz Ukrainy. Volkov called his group in parliament the "Rebirth of Regions," and his party outside of parliament as the "Democratic Party."

By the time of the 1999 presidential elections, the largest oligarch party in the parliament became Working Ukraine. Under Kuchma's presidency, its leader Viktor Pinchuk becomes one of the richest person in Ukraine. His industrial conglomerate centered in the Dnipropetrovsk Oblast, which grew enormously after the president dismissed Lazarenko from office. He took over some of Lazarenko's most profitable revenue streams, including the buying and selling of gas. It is doubtful that he would have become so rich and powerful it if were not for his marriage to Kuchma's daughter, Olena. He, like Kuchma, understood the importance of family ties in advancing a career.

The other leader of Working Ukraine, Andriy Derkach, also had used his family connections to succeed. His father's relationship with Kuchma began when they both worked at the rocket factory in Dnipropetrovsk, where Kuchma was the plant's director, and Leonid Derkach its KGB chief. When Kuchma became president in 1994, he appointed Derkach to head Ukraine's customs service, and his son as a presidential adviser. Soon after the 1998 parliamentary elections, Leonid Derkach became the new SBU chief, while his son's wealth skyrocketed.

While Kuchma controlled the state owned mass media, notably UT-1, or first TV channel, his oligarchs managed the other three national TV channels. On UT-1, sarcastically called the president's channel, he shared it with young Derkach and the oligarch Vadim Rabinovich. Their TV company ERA had the morning and evening slots

on the first channel.

On one occasion, Kuchma blasted the young Derkach's father for a documentary broadcasted on ERA's Pohlad (Viewpoint) on Friday evening of September 15, 2000. It showed Volodymyr Kysil, allegedly a mobster, as a respectable businessman and local politician. It also focused on his charity work including co-sponsoring, with the Minister of Interior Yuri Kravchenko, the Olympic weight lifter Denis Gotfrid. Kuchma burst out with profanities when he confronted Derkach senior over the program:

> [Kuchma shouting] So why did they show it on the fucking Ukrainian television? On the state channel! Fuck your mother! I have told him off before, this Derkach junior, because of such activity! And you have done it again! … If they show Kysil on a state channel together with Kravchenko, they can just show anyone! It's just awful. What will the nation say that the president is keeping a minister who is hugging criminals? Well, where does [the program presenter Yuri] Nesterenko get cassettes about Kysil? (Kuchma and Derkach Sept. 19, 2000)

The president's outburst showed that he didn't think Kysil was a respectable businessman. Kuchma could have asked his minister of interior why he associated with a mobster?

What would the country say if they knew his chief adviser and fundraiser, the oligarch Volkov, was a close friend of Kysil from childhood? Kuchma knew this as he had read the article, "Everything about Oleksandr Volkov" by Stepanov (2000). [Stepanov was a pseudonym for Oleh Yeltsov, who the president also wanted to be punished extrajudicially.] The article claimed that by time of the collapse of the USSR, Volkov and his friend, Volodymyr Kysil, were rich from criminal activities.

By 2000, Volkov had a major influence on the news of Ukraine's second channel, the private broadcaster Studio 1+1. He claimed to pay "$90,000 a month" in salaries to the news staff (Kuchma, Volkov, and Derkach Sept. 20, 2000).

The third national channel, Inter, and most watched, came under the influence of the Kyiv based oligarchs, Surkis and Medvedchuk. Surkis also had Kyiv's largest circulating newspaper, Kievskiye Vedomosti. Pinchuk

had his TV channel, the much smaller national ICTV, but owned Ukraine's biggest daily newspaper, *Fakty*.

As Kuchma's chances of being re-elected in 1999 were poor on account of the depressed state of the economy, the elections could not be won just by having the sole control of the public and private mass media. It needed huge amount of money to pay individuals to work for you and to vote repeatedly. Kuchma gathered an enormous amount of illegal funding to fuel his campaign. It ranged from the National Bank printing the equivalent of $200 million to pay off the arrears to students and pensioners [see Chapter 10 on Yushchenko], to the state conglomerate Naftogaz Ukrainy giving $66 million [see Chapter 8 on Bakai], and David Zhvaniya's company Brinkford giving $21 million [see Chapter 6 on corruption].

By the time of the 1999 election, President Kuchma had earned the image of being one of the world's worst enemy of the press. Each year, the New York based Committee for the Protection of Journalists [CPJ] marks the World Press Freedom Day (May 3) by publishing its list of the world's ten worst enemies of the press. In 1999 and 2000, it included Kuchma. He found himself in the unenviable company of dictators: Slobodan Milosevic of Yugoslavia, Jiang Zemin of China, Fidel Castro of Cuba, Alberto Fujimori of Peru, and Laurent Kabila of the Democratic Republic of Congo.

What did President Kuchma do to deserve this dishonor? In announcing its awards of shame, CPJ stated: "Using tax and libel laws as instruments of his hostility to journalists, Kuchma runs roughshod over any expression of opposition. His tacit acceptance of violence against the press has encouraged bombings of newspaper offices, assaults on reporters and editors, and a general climate of fear and self-censorship. His tax policies force print and broadcast outlets without foreign support to seek financial aid from businesses and politicians who then extort favorable publicity" (CPJ 2000). President Kuchma threatened to sue CPJ, but he didn't follow through.

During the 1999 elections, he engaged the state bureaucracy, the military and the police to campaign for him. In addition, he launched hit squads to carry out ruthless attacks against opponents, which included murder, arson, kidnapping, robbery, and assault, even with grenades.

In the run-*up* to the elections, President Kuchma had ordered repressive measures against media outlets that didn't support him. The persecution of the TV station STB during the elections stood out as another glaring

example of a president's abuse of power.

This private TV station had the fourth largest national audience. It found itself under siege after announcing in early 1999 that it would provide airtime to all candidates taking part in the elections. It also broadcast excerpts from the daily parliamentary proceedings, which Kuchma had banned from state TV and radio to prevent his opponents in parliament from being heard by the public. In addition, STB started to broadcast a series of documentaries on sleazy operations by oligarchs in the energy markets.

STB's announcements proved almost fatal for the company and its staff. Hit squads carried out ruthless attacks on its personnel. The OSCE Representative on the Freedom of the Media reported a number of violent attacks directed at STB staff members:

> On 4 March 1999, the President of the STB, Nikolay Knyazhickiy [Mykola Knyazhytsky], announced at a news conference that he had grounds to believe that there were attempts to exercise pressure on the staff of STB. In particular, on 23 February, retired Lieut.–Col. of the Ministry of Interior, Alexander Deneiko, advisor to Mr. Knyazhickiy, was killed. On 26 February, the camcorder and tapes of one of the cameramen [Serhei Korenev] were stolen. On 1 March the cellar under Knyazhytsky's flat was set on fire. On 3 March two people wearing masks broke into the flat of Dmitri Dahno, commercial director of STB. Mariana Chorna died under suspicious circumstances [the official version was suicide] on 24 June 1999. She was a member of STB staff and the Suspilstvo Centre Fund. She was found hanging in a flat. Prior to her death, her flat was broken into and robbed by unidentified persons. (Duve, 2000)

The terror was accompanied by official attempts to prevent STB from broadcasting (Ibid.). In addition, the Tax Office made repeated inspections of STB accounts and on August 26, 1999 froze its bank accounts (Frolyak 1999).

To appease the presidential administration, by early September 1999, STB had become noticeably favorable to Kuchma. However, after being advised by the head of the Tax Office, Mykola Azarov, that the STB management had "given *up*" the fight, the president insisted the repression must continue. The recorded conversations in the

president's office confirm the worst about Kuchma.

> [Kuchma] Now, we should decide about STB. [Azarov] How? [Kuchma] How? Take everything away from them, disconnect them; they are illegal – though they have, how to put it. [Azarov] … given *up*. [Kuchma] Given *up*! What they, the motherfuckers, so much filth by that Syvkovych [STB's general-director]. Syvkovych must be exterminated by all means. [Azarov] I told you about - about STB, he asked then… [Kuchma] Syvkovych saw [U.S. Ambassador Stephen] Pifer and complained to him. Then they wrote a letter to State [U.S. State Department] that we are persecuting the press here. (Kuchma and Azarov Oct. 15, 1999)

Two days later, on October 17, 1999, questioned by journalists on national television, Kuchma denied that he was repressing STB or other TV stations that didn't support him. Instead, he accused them of not paying taxes: "And it was revealed that all [TV] channels, almost without exception, did not even pay a penny into the budget and that all the channels show documents that they are working at a loss. Please tell me, what morality can we talk about?" (Kuchma 1999).

By late September 1999, the Russian oil company LUKoil, owned by Vagit Alekperov had purchased the majority of the shares in STB. On Oct. 11, 1999, STB's loyalty to Kuchma was sealed, at least for the duration of the election campaign, as LUKoil appointed a new management, and the remaining employees had to work for Kuchma's re-election (Ligachova 1999). [In the following year, Kuchma became disenchanted with Alekperov. He offered a bribe to the head of Gazprom, Viktor Chernomyrdin, to persuade Alekperov not to promote Tymoshenko on STB; see Chapter 6.]

Before the first round of the election, Ukraine experienced a new type of election program on TV. The Epicenter weekly talk show on the TV station "1+1", presented by Vyacheslav Pikhovshek, had invited each of the fourteen presidential candidates to be questioned by a panel of journalists. The American organization Freedom House provided financial support for these debates (Duve 2000).

The Epicenter debates took place weekly from June until October 1999. Pikhovshek handpicked the journalists from his generation of under thirty-five years olds. Among them was the outspoken journalist Georgi Gongadze,

who had a news and political talk show on Kyiv's only uncensored radio station, Radio Kontinent.

When on Oct. 17, 1999, Kuchma appeared on the program, Gongadze asked him an awkward question: why had he not fired the Minister of Interior Yuri Kravchenko for failing to prevent the grenade attack on the presidential candidate Nataliya Vitrenko?

Kuchma looked embarrassed and confused, and replied that the grenade incident was in the competence of the SBU chief Leonid Derkach and not the Minister of Interior Kravchenko (Kuchma 1999). This encounter started Kuchma's antagonism to Gongadze, and continued until the president ordered Kravchenko to organize Gongadze's disappearance.

On Oct. 25, 1999, Pikhovshek announced that Epicenter would start a new format. All the presidential candidates would be invited to appear together and debate specific topics in the week before polling day, October 31. In the first debate, on October 25, Kuchma came out poorly. Immediately afterwards, the remaining four debates were cancelled. Pikhovshek claimed that he had a heart attack and the program could not continue without him as the presenter.

For other presidential candidates, like Moroz, Epicenter was their only chance to debate with Kuchma before a national audience. Unlike Kuchma, it was impossible for Moroz to appear on the two major national channels, *Inter* or *UT3* and the state national TV station or *UT1*. The state channel *UT1* barred Moroz completely except for the few minutes provided officially for each candidate. It totally dedicated itself to promoting Kuchma. In the last week before the vote, it provided seven hours of positive coverage on Kuchma, as opposed to minutes to the other candidates: "Television also gave the President's campaign overwhelmingly positive coverage whereas his opponents' campaigns received either neutral coverage or substantial negative coverage" (ODIHR 2000). The Office for Democratic Institutions and Human Rights (ODIHR) reported that Ukrainian national TV had a clear bias against Moroz, Marchuk, Tkachenko and Olinyk who received much more negative coverage than Kuchma and Symonenko.

The observations by the election monitors backed *up* what appeared on the Melnychenko recordings. In conversations that took place between the first and second rounds of the election – Oct. 31 and Nov. 14, 1999,

Kuchma instructed his subordinates to threaten local officials with tax irregularities, unemployment and even imprisonment, if their district or farm didn't vote for him. In a conversation with the head of the tax office, Mykola Azarov, Kuchma ordered him to sack tax inspectors if they did not apply sufficient pressure on officials in rural areas of the central oblasts [regions], where support for Moroz was the strongest.

> [Azarov] Good day. [Kuchma] Hello. Sit down. We'll have some tea. So, I have some [tasks] for you. You should get together all of your fucking tax inspectors – from the districts, or, I don't know, maybe only from the oblasts. And warn them: who loses the election in the district will be out of job after the election. Not one will be left. You understand, down to the district village. You should sit down with every head - fucker and tell them: either you, fucker, will sit in jail, as I have more on you than on anyone else, or you get the votes. Right or wrong? [Azarov] I understand – everything will be done. [Kuchma] Now I'm will tell this to [interior minister] Kravchenko. And you later say, the same to every head of the collective farm. [Azarov] OK, from the heads of raion administration, yes? [Kuchma] [On the telephone to Kravchenko] I have Azarov here. Well, here is the scheme. They practically have a case on every collective farm head. They should be gathered together in every district so that the police and tax service chiefs can tell them: guys, if you fuckers don't give what's needed, then tomorrow you will be where you should be – yes. Well, we should gather all the guys, so to say – well, except for the western oblasts [Western Ukraine], not necessary. But those fucking central oblasts – Kherson, Kirovograd, Chernihiv, fucking Cherkassy – all these oblasts. Yes, we should ... they should be clear, we are not going to play fucking games with them anymore. I said that yesterday at a meeting. I said – though you are elected by the peo ple, but ... And that is it, I said. Let him think about it [laughing]. OK. Those fucking bitches, bloody collective farm heads. All of them. I said yesterday: they all act like landlords, barons. Simply after the elections introduce strict order. [Azarov] Of course [Kuchma] We must not relax. Second, we must win with a formidable margin. This is also important. You understand. When they say two or three per cent, it is not a victory. That is why we should do it so that none of the villages, fuck, not one place can say that it is protesting – it is a total protesting electorate, … – that is why they didn't vote. [Azarov] Well, right. Although, not all of them are for Moroz. (Kuchma and Azarov Oct. ?, 1999)

On Oct. 31, 1999, Kuchma came first with 36 percent of the vote (9.6 million). Symonenko was second with 22 percent (5.9 million). Moroz came third 11 per cent or 3 million, with his socialist rival, Vitrenko, right behind him. The three left-wing candidates – Symonenko, Moroz and Vitrenko – amassed an impressive 44 percent of the vote. Marchuk received more votes than the surveys had suggested – seven percent or 2.1 million votes. The remaining eight candidates received well below five percent of the vote each. A respectable 70 percent (26.3 million) of the voters took part in this first round (ODIHR 2000).

As neither of the two top candidates had received more than fifty percent of the vote, a run-off election was scheduled for Nov. 14, between Kuchma and Symonenko, exactly what Kuchma wanted, as some of the opponents would vote for him to keep the communist out.

In the two weeks before the final round, Kuchma intensified his illegal efforts to be re-elected. Odesa Oblast's Governor Hrynevetsky suggested that "the prosecution and the police" must be used to guarantee the outcome of the vote. "Why should we lose power?" – the governor rhetorically asked Kuchma (Kuchma and Hrynevetsky Nov. ?, 1999). Hrynevetsky told Kuchma how a military officer had instructed his unit to vote for him. Kuchma found the election fraud hilarious:

> [Hrynevetsky] Leonid Danylovych, a momentous event took place at Kotovsk's military unit of 4,500 officers, non-commissioned officers and soldiers. A major appeared who said: we are having an election so we need to practice. On the board he wrote "Kuchma" and drew a box. "I'll explain," he said. "You will receive a ballot paper, if you are for the president, place a plus, if you are against the president, place a minus in the box. Understood!" [Kuchma and Hrynevetsky burst out laughing] [Hrynevetsky] One smart guy asks: "won't there be others [on the ballot]?" He –the major replies: "I repeat, we are electing a president, our president is Kuchma, then if you are for him, put a plus, if you are against, put a minus. Understood? That there will be deputies [on the ballot], for us it is the president" [more laughter by Kuchma] [Kuchma] They voted correctly. [Hrynevetsky] Exactly this way! Yes in the military you won. Understand, the wisdom of the major [Hrynevetsky] The major! [Kuchma] The major thought this *up*? [Hrynevetsky] The major! [laughter by Kuchma] [Kuchma] We should make him a captain. How will the second round be? [Hrynevetsky interrupts] In law it is written; place a plus or some other mark. [Kuchma] Well yes. [Hrynevetsky] Yes, a plus or a minus is

our mark! (Kuchma and Hrynevetsky Nov. ?, 1999)

Kuchma again told Azarov to press the administrators in the districts to get the vote out for him in the villages.

> Kuchma] You have the [first round] election results, in the districts, all of them. Azarov] Right. [Kuchma] Tell them – guys, this is your fucking work – forcing collective farm heads to fucking dance to our tune. [Azarov] I will talk to Kravchenko now. Vitali has done it for the western oblasts. [Kuchma] The West is not necessary. There are no problems. [Western oblasts would not vote for the communist Symonenko.] [Azarov] But these Cherkassy [Kuchma] Vynnytsky, Zhytomyr … (Kuchma and Azarov Nov. ?, 1999)

Foreign election observers from OSCE's Office for Democratic Institutions and Human Rights [ODIHR] recorded numerous election violations:

> In Odesa, observers were informed that the deputy head of the OSA [the deputy governor of the Oblast State Administration] was on "sabbatical" leave, although still working from his office, so that he could organize the campaign for the president. Furthermore, the head of the Odesa OSA [Governor Hrynevetsky] was known to be holding meetings with RSA [Rayon State Administration] officials to urge them to work for the incumbent president's campaign. (ODIHR 2000).

The ODIHR also recorded other oblast governors and other civil servants working for Kuchma in a number of oblasts:

> In Kerch, in the Autonomous Republic of Crimea, observers received copies of a full-page article from the mayor urging voters to back Kuchma. In Sumy, observers confirmed that the Head of Personnel from the OSA was holding a series of meetings with RSA officials and local entrepreneurs to co-ordinate the Kuchma campaign in the Oblast. In Kharkiv, Odesa and Chernihiv Oblasts, observers verified reports that the heads of villages and kolkhozes had been urged to support the President's campaign or threatened with the loss of their jobs by RSA officials. Reports came to the election observers from villagers in the Oblasts of Zakarpattya [Transcarpathia], Odesa and Lviv that

> they had been threatened with having their gas or electricity cut off if they didn't vote for Kuchma. A number of officials lost their jobs because their oblast or raion failed to vote for Kuchma. Immediately after the first round, the governors of Vinnytsya, Kirovohrad and Poltava – Dmytro Dvorkis, Valeri Kalchenko and Oleksandr Kolesnikov respectively – left office. Moroz had won the majority of votes in both Poltava and Vinnytsya, beating President Kuchma, as had Symonenko in Kirovohrad. The militia [the police], according to international observers, involved itself in the campaign to get Kuchma re-elected. In Vinnytsya, they handed out "bundles of pro- Kuchma campaign materials". In Kharkiv "observers saw the militia handing out Kuchma leaflets to the audience at a concert on 29 October." (Ibid.)

Many students were forced to vote for Kuchma:

> Observers reported that in many cases, the students were voting under the supervision of professors, who had urged them over the pre-election period to vote for the incumbent. In the Polytechnic in Odesa, the University in Kharkiv [TEC 171] [one of the 225 Territorial Election Commissions [TEC]] Polling Station 66, throughout Vinnytsya, Chernihiv and Poltava, in various rations of Luhansk [TEC 103 Polling Station 46 & TEC 105 Polling Station 34], observers noted that students were forced to vote. The numbers voting were noted down and their dean or professor called upon those who had not done so to go and vote. It should be noted that according to the law, voting in Ukraine is voluntary. In Polling Station 190 in TEC 122 in Lviv Oblast, observers reported that students were coerced to vote, and that their vote was not cast in secret. In TEC 169, polling station 20, observers recorded that 400 students voted under the watchful eye of "guards" wearing red armbands hired by the college. (Ibid., 26-27.)

ODIHR summarized the state bodies illegal role in the elections as:

> Interference in the election campaign by State officials, public institutions and their workforce was widespread, systematic and coordinated. These activities were in breach of Ukrainian law and OSCE commitments formulated in the 1990 Copenhagen Document. (Ibid., p. 18)

The TV coverage in the second round – like in the first round – favored the incumbent president:

> The imbalance and biased coverage by the four major TV broadcasters, UT 1, 1+1 [UT 2], Inter [UT 3] and STB in the second round were even more for Kuchma than in the first round. In the news programs during the two weeks before the final vote, the incumbent president received 86 per cent on UT 1; 80 per cent on "1+1"; 77 per cent on Inter, and 59 per cent on STB. In addition the content was reported 'overwhelmingly positive for the President and negative for Symonenko. (Ibid., 21.)

The run-off on Nov. 14 saw Kuchma winning 56 percent of the vote, compared to Symonenko's 38 percent. A large number, 1.7 million voters, had protested by voting against both candidates. The outcome was predictable; an unpopular president won by standing against an even less popular opponent.

The ODIHR's conclusions matched the evidence on the Melnychenko recordings that showed President Kuchma had fixed his re-election. It concluded that the presidential elections had not been free and fair:

> Notwithstanding the recent improvement in the electoral legislation, the legal framework and administrative regulations failed to provide a fair playing field for all candidates. Furthermore, the widespread, systematic, and coordinated campaign by state institutions at all levels to unduly influence voters to support the incumbent President in violation of the electoral laws of Ukraine and OSCE commitments was unacceptable. There can be no doubt that the coercion of citizens by the State to campaign and vote for a candidate has no place in a democratic society. These shortcomings should be addressed prior to future elections. (Ibid., p. 33)

The international reaction to Kuchma's election victory was mild, because no one in the West wanted the communist Symonenko to win. The European Union limited its criticism to calling upon Ukraine to take note of ODIHR's conclusions (European Union 1999). The US reaction was critical when it should have been damming. At the beginning of 1999, Secretary of State Madeleine Albright had named Ukraine, along with Colombia, Indonesia and Nigeria as a "democracy priority" country. After the election, she criticized the conduct of the elections:

> The [Ukrainian] Government increasingly interfered with freedom of the press, most notably in the period before the October presidential elections. Government authorities stepped *up* pressure on the media, particularly broadcast outlets, through tax inspections and other measures. (U.S. State Department 1999)

But she didn't reject the outcome. The Clinton administration, like the European Union and Russia, celebrated Kuchma's questionable victory with an invitation for a state visit.

4 East & West celebrate Kuchma's victory

Russia or America? Ukraine under Kuchma created a unique -Cold War foreign policy, which was called "multi-vector." It attempted to treat the former adversaries as its strategic partners. This policy could exist only as long as both powers respected each other. As the U.S. increasingly considered Russia led by Vladimir Putin as a rogue state, and Russia believing American policies threaten its security, Ukraine's multi-vector foreign policy began to disintegrate. It had to choose between Russia and the NATO states. Under Kuchma, it selected neither. It based its foreign affairs on the interests of its oligarchs and not the state and society. The relationship with Russia focused on enriching Ukraine's oligarchs from the buying and selling of Russian gas and oil. Its relationship with the West centered on obtaining low interest loans from the International Monetary Fund [IMF] to keep the government afloat, while the oligarchs pilfered the national treasury.

On Sept. 7, 1999, the IMF loaned Ukraine $184 million, a tranche of a $2.4 billion loan agreed earlier (IMF 1999). At about this time, Ihor Bakai, the head of the state company Naftogaz Ukraine, took $184 million from the state company, giving $64 million to Kuchma's election campaign and keeping the rest for himself. In total Bakai took more than a billion dollars from the national treasury for himself, Kuchma and others [see Chapter 8]. In contrast the IMF's loan for Ukraine totalled $2.4 billion.

The IMF did stop its loan program to Ukraine in Oct. 1999, but not because officials were stealing state funds, but because the government broke its agreement not to overspend and create inflation. On Aug. 25, 1999, Kuchma had persuaded the head of the Bank of Ukraine, Viktor Yushchenko, to print over $250 million worth of Ukrainian money to pay the arrears owed to students and pensioners in order get their votes in the coming presidential elections. In return, Kuchma promised to select him prime minister (Kuchma and Yushchenko Aug. 25, 1999). The next day, Yushchenko and Prime Minister Valery Pustovoitenko sent a memorandum to the IMF promising not to print money but to balance the budget, raise revenues and stop corruption (Pustovoytenko and Yushchenko 1999).

When the IMF realized that Yushchenko had printed money to cover expenditures, it suspended its loan to Ukraine, and did not resume it until a year later in Dec. 2000 (Segura and Legeida 2002). This reduced Ukraine's creditworthiness, increased the cost of foreign loans, and warned off foreign investors. Yushchenko's decision devalued the UAH against the dollar by 20 per cent and increased inflation by 4 per cent just in the month of Dec. 1999 (Gorbatsevich 2007).

Following Kuchma's victory in the 1999 presidential elections, the EU, the U.S., and Russia invited him for state visits to mark his victory. This was despite the conclusion by the Organization for Security and Co-operation in Europe [OSCE] that there had been widespread interference by state officials in the elections (ODIHR 2000). The West was willing to ignore Kuchma's election violations for the sake of keeping the communist candidate, who came second, out of power.

Despite EU and U.S. political support for Kuchma, be it unenthusiastic, he saw malice and conspiracy from them. The day after the elections, he complained that the U.S. had not wanted him to be re-elected. He accused the American embassy in Ukraine of supporting the socialist candidate Moroz in the first round, the communist candidate in the second round, and, on the eve of the presidential election, prompting the IMF to stop further loans to Ukraine. Kuchma surmised that the American conspiracy against him was a punishment for not having signed a declaration to join NATO. He explained his reasons for not signing: "A declaration on accession to NATO is just empty talk that gives Ukraine nothing except unpleasantness with Russia" (Kuchma and Unknown Nov. 16, 1999).

He told the unidentified interlocutor [most likely the Foreign Minister Borys Tarasyuk] that the U.S. Ambassador to Ukraine, Steven Pifer, had spearheaded this conspiracy by supporting Moroz: "How did that Pifer behave [during the elections]? Brazenly, villainously. The bastard visited those TV studios teaching everyone how to conduct the elections. He backed Moroz!" (Ibid.).

Kuchma claimed that the U.S. had wanted the communist candidate, Petro Symonenko, to win the second round in order to create political chaos that would allow it to intervene and impose its own president, just like in Yugoslavia: "They wanted to bring the communists to power, so there would be chaos. It would hit Ukraine to the bone, and then they would throw out the communists, fuck, on the ruins of authoritarian rule they would build

a democratic society. They know how to fight communism. Look how they are now strangling Yugoslavia, fuck" (Ibid.).

Kuchma's paranoia that there was a conspiracy to get rid of him was getting the better of him. The U.S. and its NATO allies preferred him because of his "multi-vector" policy than to Symonenko or Moroz's tilt toward Russia. However, they were appalled at his election fixing. He was correct in thinking that the western leaders did not like him, but it wasn't for his strategic policies, but for his gangster like approach to politics. But in the end, the NATO heads of state hosted and celebrated his victory, as they wanted Ukraine, their "strategic partner," to be outside Russia's orbit, however difficult they found Kuchma to be.

On Dec. 6, 1999, Kuchma began his state visits with a stopover in Moscow to meet with President Boris Yeltsin and Prime Minister Vladimir Putin. There he reiterated his commitment to Ukraine's strategic relationship with Russia that was enshrined in the "Big Treaty," the Treaty of Friendship, Cooperation and Partnership.

In the evening, he flew to Paris to meet with President Jacques Chirac, who was the rotating president of the European Union. At this point the EU was making important historical decisions. It had decided to include into its ranks the states of Poland, Slovakia and Hungary, but not Ukraine. On Dec. 11, a few days after Kuchma's meeting with Chirac, the European Council of Ministers published a declaration in which it rejected Ukraine as a future member (European Union 1999).

Europe's rejection was a blow to Ukraine's future. Kuchma had made EU membership a priority. In June 1998, he had issued a policy statement – the Strategy on Ukraine's integration into the European Union (Sherr 1999).

In reality, Ukraine wasn't attractive to the European Union. Its economy was in a poor state and made much worse by corruption led by state officials starting with the president. Its president and oligarchs were seen as not having respect for democracy and rule of law, as the 1999 presidential elections vividly illustrated.

Furthermore, the Rada, Ukraine's parliament, had not passed the new laws required to make Ukraine conform with European legal norms, like the criminal code, the civil code, the customs code, the tax code, the land code and laws on political parties, the opposition, and elections. Neither Kuchma nor the Rada was serious about

passing laws that would undermine their corruption that underpinned their rule. The dire economy, the corruption, the manipulation of the 1999 elections and the opportunism of the multi-vector foreign policy, reinforced Europe's perception that Ukraine was not a serious contender for membership.

Though it had no future as a EU member, Ukraine gained financially from its attempts to join it. From 1992 to 2000, the EU gave it 1.5 billion Euro in grants for reform programs and another billion from 2001 to 2006 (European Commission 2006).

Not only Ukraine's oligarchs, but also its population was unenthusiastic about becoming part of Europe. A poll taken at the beginning of 2001 showed that only a third wanted to be part of the EU, half wanted some form of union with Russia, and another 16 per cent declined to give any answer (Chaly and Pashkov 2001). Ukraine's undecided citizens and its corrupt elite would not make the country a good member of the European Union.

On Dec. 8 and 9, Kuchma's state visit took place in Washington, DC. He arrived with a large entourage, including the new secretary of National Council of Security and Defense, Marchuk, and the prime minister to be, the head of the National Bank, Yushchenko. Kuchma had meetings with President Clinton, and business leaders and took part in the third session of the Kuchma-Gore Commission. There were many questions of mutual interest to discuss, including the closure of the Chornobyl nuclear power station at the end of 2000. However, Kuchma's chief interest was to persuade the Clinton administration to lean on the IMF to re-start its loan program to Ukraine.

At the end of 1999, at the start of Kuchma's second term in office, the government of Ukraine was in a panic, as it was on the brink of an international default to the tune of $12.6 billion. It owed $4 billion to the Russian government and Gazprom; $352 million to Turkmenistan; $2.9 billion to the IMF; $1.9 billion to the World Bank; $114 to the European Bank for Reconstruction and Development and $1.8 billion to foreign banks. In addition it had piled *up* over 20 billion UAH [over $4 billion] of internal debts for wages, pensions and various state bonds (Brudzynski and Kovalev 1999). In contrast, its national reserves at the end of 1999 were just over a billion dollars.

When the IMF decided to stop disbursing any further loans in October 1999, it had provided Ukraine with $965

million of the $2.6 billion loan package. Ukraine needed the additional IMF installments so it could pay $3.5 billion of interest on loans due in the year 2000 (IMF 1999).

Speaking to journalists in Washington DC, Kuchma said the Ukrainian government would try to reach agreement with its creditors on restructuring this debt, and stated: “Under no circumstances will any problem be solved by means of … printing money” (Intelnews 1999). He didn’t mention that he had the Bank of Ukraine insert a billion UAH into the economy to help him win his re-election.

Apart from his failure to persuade the IMF to continue its loans, two more events spoiled President Kuchma’s victory celebrations in Washington. The first was a decision taken by the State Department to refuse visas to his favorite oligarchs, Ihor Bakai, Hryhory Surkis and Oleksandr Volkov on the grounds that they were suspected of money laundering. For Kuchma this must have been embarrassing, as a year earlier the U.S. government had arrested his former prime minister, Pavlo Lazarenko on charges of money laundering.

Furthermore, Kuchma was rattled that visas were granted to three journalists to come to Washington to lobby against him. The journalists – Georgi Gongadze, Olena Prytula and Serhei Sholokh, the owner of Radio Continent – had arrived in the capital at the same time as Kuchma.

Sholokh, was the owner of Radio Continent, which the state authorities harassed because of Gongadze’s radio programs during the 1999 elections. For two months, from September to October, Gongadze presented a daily two-hour news and discussion program called “The First Round.” It did what most the media would not do; it not only gave a platform to all the candidates, but came out against Kuchma’s re-election.

Prytula for the previous five years had worked for Interfax-Ukraine as their correspondent covering the president’s office: “As I worked a long with the president, I saw from the inside everything that was happening there, and the Kuchma I got to know was not completely to my liking – I was disillusioned with Kuchma.” But when asked by the author, what she found to be unacceptable about Kuchma? “I cannot say because I consider it would be unethical,” she replied. What was unethical she would not say.

Armed with a petition, they charged Kuchma of muzzling the mass media during the presidential elections and

killing off democracy. The petition prepared by Gongadze had been signed by sixty-four journalists at the round-table discussion "Libel in Ukraine" held in Kyiv, on Dec. 2, 1999. The meeting was organized by OSCE, the Council of Europe and Irex-Promedia [an American government-sponsored NGO for journalism in Ukraine]. The petition didn't mince words in its criticism of Kuchma:

> During the past few years Ukraine has seen the formation of clan-like, oligarchic political groupings that have instituted antiquated methods of state control, and have led to the practical liquidation of independent television and print media … Such a situation was obviously present during the recent presidential elections, when the press and TV played a 'killer' role, morally destroying the opponents of incumbent President Leonid Kuchma. Millions of dollars were spent on persecuting and discrediting the president's rivals. (Gongadze 1999)

At the State Department, the three lobbyists met the Ukraine desk officer Mary Worlick, and Carlos E. Pascual, the former U.S. ambassador to Ukraine [to be re-appointed in October 2000]. At the House of Representatives, they met aides of congressmen who belonged to the Ukrainian caucus.

Despite receiving a sympathetic ear, the trio said they were disappointed with the reaction to their lobbying. Those they spoke to gave them the standard answer: "we know all about the situation in Ukraine and believe that after his re-election Kuchma will make Ukraine more democratic and free." The truth was that the American administration welcomed Kuchma's victory because he had kept out the communist Symonenko. The State Department reacted similarly to President Yeltsin's victory over the communist party leader Gennady Zyuganov in 1996.

News of the journalists' lobbying reached the presidential party. The Epicenter presenter Vyacheslav Pikhovshek, who accompanied the president, warned them to stop: "Do you know what dangers await you for what you are doing here," Prytula recalled Pikhovshek telling them. "Friends, I completely understand your position, but you are affecting such interests that you are threatened with physical harm," was what Sholokh recalled. "You don't realize that you could be killed for what you're doing here" was how Reporters Sans Frontieres [RSF] reported Pikhovshek's message (RSF 2001b). Pikhovshek was also quoted as saying: "You are playing a deadly game, that could cost your life" (Chornovil 2006). Whatever the precise words, the

message was clear; their lobbying activity might have dangerous consequences.

President Kuchma returned empty handed from his whirlwind trip. He had not received support for European integration, failed to get the IMF to resume its loans to Ukraine, and failed to attract any large-scale private foreign investments.

On his return, London's *Financial Times* [FT] began publishing articles accusing his government of misusing IMF loans. An article accused the National Bank of diverting $200 million of IMF loans to fund Kuchma's re-election (Catan and Clover 2000) and misusing IMF loans for speculative investments (Clover, Catan and Fidler 2000). Neither accusation proved to be true. Instead an external audit found that the National Bank of Ukraine during the period when it applied for the IMF loan had falsely claimed it had higher reserves than it actually did. Yushchenko to placate the IMF returned the loan received under false pretenses. [See Chapter 10 for more detailed information on the IMF loan to Ukraine].

Kuchma's personal intervention to resume the loan with the new IMF managing director, Horst Köhler, failed. On June 12, 2000, he telephoned him to restart the loans. Kuchma assured him that economic reforms were taking place. He complained that the withdrawal of further IMF loans had given Ukraine a negative image for would-be international investors. Köhler replied that until Ukraine balanced its budget by increasing its revenues from privatization and closing bankrupt banks like the state owned Bank Ukrayiny, no further loans would be forthcoming (Kuchma and Kohler June 12, 2000).

However, due to the improvement of the economy, Ukraine survived the whole of year 2000 without needing any further loans from the IMF. At the end of 2000, the IMF reinstated the loan after the Verhovna Rada passed a balanced budget for 2001.

Throughout 2000, Kuchma increasingly turned to Russia to solve Ukraine's economic problems. He met the new president, Vladimir Putin, eight times that year. However, not only did he fail to achieve his aim, but economic relations with Russia steadily became worse.

What Kuchma wanted was a free trade zone between the two countries. This, he hoped, would make the price of

Russian energy cheap. Putin, on the other hand, wanted Ukraine to first join the Union of Russia and Belarus before making any economic concessions. This new entity had been formed on Dec. 8, 1999, and in January 2000, Putin selected Pavel Borodin, his former boss at the President Administration's Property Department, to head the union.

Putin offered Ukraine an economic incentive to join the union which critics warned that it amounted to selling off one of Ukraine's most important strategic assets – its gas pipelines to Europe transporting Russian and Central Asian gas to Europe. In May 2000, he proposed to cancel Ukraine's $1.4 billion debt in exchange for its pipelines. Kuchma responded positively to the offer. In a speech to oblast governors on October 20, 2000, he said the offer should be accepted, as "Ukraine is not welcomed in Europe" (*CACDS* 2000c). However, the deal was not popular in parliament, and it did not materialize.

When Ukraine failed to join the Union of Russia and Belarus, relations with Russia began to deteriorate. Putin imposed higher duties on imports from Ukraine, causing trade turnover to fall by 30 per cent in 2000 (*UCIPR* 2001b).

Despite Kuchma's failure to persuade Russia to have a "non-political" free trade zone and the IMF to re-start its loans, the year 2000 proved to be Ukraine's best year for economic growth since independence. Its economy began to boom thanks to the world demand for its steel and agricultural products. It was also partially due to the Yushchenko led cabinet of ministers squeezing taxes from the oligarchs, and making them pay market prices for energy.

By the end of 2000, the government had paid off the outstanding interest on the foreign loans, and more of the outstanding capital than it needed to. The year 2000 saw the annual GNP surge to 5.8 per cent, followed in 2001 by a further annual spike of 11 per cent.

The improvement of Ukraine's financial fortunes negated Kuchma's failed multi-vector policy. Both of its strategic partners, the U.S. and Russia, had refused to provide funds to prevent Ukraine's government from financial collapse. Economic revival countered the ascendancy of Putin and his use of economic relations as a tool to force Ukraine to choose between it and the NATO bloc. It illustrated the obvious that Ukraine's

independence and foreign policy was only as good as its economy.

5 Kuchma and Putin share secrets

When Kuchma came to Moscow on December 6, 1999 for a few hours to mark his re-election, he might have stayed longer had he known that within three weeks, on New Year's Day, President Yeltsin would resign and be temporarily replaced by Prime Minister Vladimir Putin until the presidential elections in March 2000.

Putin came into politics with a past shrouded in secrecy. To start with, his fifteen-year career in state security, from 1975 to 1990, is an enigma. Only the bare outlines are known. In his first ten years with the KGB, he served in its Fifth Department, the division that acted as the internal political police, engaged in ideological enforcement, domestic spying, and monitoring anti-Soviet political dissent. In his last five years in the KGB, from 1985-1990, he was in its First Department as a GRU [Glavnoye Razvedyvatelnoye Upravleniye] military intelligence officer serving in East Germany. What he did in East Germany is not known, but the suspicion is that his activity focused on politics in East Germany. This might explain why he went into politics after leaving the KGB in 1991 (Waller 2000).

For the next five years, 1991-1996, Putin worked as the deputy in charge of foreign economic affairs in the St Petersburg city administration led by the mayor, Anatoly Sobchak. After Sobchak lost the mayoral election in 1996, Putin moved to Moscow where he became the deputy to the Presidential Administration's Property Department, which controls all the property owned by the Russian state. Its head was the controversial Pavel Borodin. After Putin became president, he appointed Borodin to head the Union of Belarus and Russia. At this time, the Swiss authorities wanted Borodin for money laundering and demanding bribes from Swiss companies that undertook renovations in the Kremlin and other state properties (Tavernise 2000) (Besson 2002).

After less than a year at the Kremlin's state property department, Putin moved on to became the deputy head of President Yeltsin's president's office. In 1998, Yeltsin appointed him as chief of Russia's security service, the Federal Security Bureau [FSB], the replacement for the KGB. On August 9, 1999, Yeltsin made him his prime

minister.

While head of FSB and prime minister, Putin did little if anything to combat corruption, but he stood in the way of those who tried. He took part in forcing the resignation of the Procurator General Yuri Skuratov, who was building corruption cases against members of 'The Family' [Yeltsin's family and those close to them like Pavel Borodin]. Skuratov resigned after state television broadcast a video showing a man who looked just like him in a compromising position with two prostitutes. Putin publicly affirmed that the video was genuine (Waller 2000).

On New Year's Eve, the ailing President Yeltsin handed over his powers temporarily to the prime minister. With the presidential election set for March 31, 2000, Putin was in pole position to become the next president.

Considering the wealth of Russian oligarchs, it came as a surprise that Putin turned to President Kuchma for a donation to his election campaign. Kuchma, in a conversation with the head of the tax office, Mykola Azarov, said: "Putin telephoned, the fuck, during the election campaign: 'Leonid Danylovych [Kuchma], well, at least give us a bit of money'. We gave 50 million." (Kuchma and Azarov June 14, 2000).

Kuchma illegally ordered that state money be given to Putin. The president asked the trusted Bakai, the head of Naftogaz, to take $56 million in cash from two state banks and delivered it to Putin. Bakai took $26 million from the bankrupt Bank of Ukraine [the bank was bankrupt according to the new head of the IMF, Köhler (Kuchma and Kohler June 12, 2000)], and $30 million from Ukraine's Import-Export Bank (Ibid.).

In the March 2000 presidential elections, Putin won with 53 per cent of the vote, or with 40 million of the 75 million votes cast. His nearest rival was the Communist leader Zyuganov with 22 million votes.

Following his victory, as a thank you for the $56 million donation, Putin also illegally withdrew $250 million from the Russian state treasury and gave it to Bakai to pay for Ukraine's gas arrears to Gazprom. Bakai returned the $56 million to Ukraine's state banks and kept the rest for himself, as Kuchma told Azarov and the new head of Naftogaz Vadim Kopylov:

> And this difference [$196 million – the difference between $250 million and $56 million] went

> where? They put it through Itera, and not through Gazprom, there too, so to speak, could be seen that it is less. They immediately put it [the difference] through offshore zones [accounts]. (Kuchma and Azarov, Kopylov July 15, 2000)

This was just once of the many incidents that President Kuchma failed to take any action against Bakai for stealing the millions from the state. Kuchma feared that prosecuting Bakai might expose that he had ordered the donation of state funds for Putin's election and that he had been the beneficiary of Bakai's robbing the state company Naftogaz to fund his re-election.

Soon after Putin became president, reports in the western European media charged him with being part of a scandal involving the laundering of money from Colombian drug cartels and investing it into property. It had the potential to seriously discredit him, but thanks to the FSB and Kuchma, who had the evidence connecting Putin to the scandal, his reputation was saved. Putin from 1992 to 2000 was on the executive board of the private German-Russian company called St. Petersburg Immobilien und Beteiligungs AG, [St. Petersburg AG or SPAG]. In 2000, this company was at the center of a scandal, accused of being a conduit for laundering money from the Colombian drug trade into real estate in St. Petersburg.

On May 26, 2000, the French newspaper Le Monde published an article about Putin's involvement in SPAG. (Duparc and Ivanidze 2000). *The Guardian* in London reported:

> Putin never commented on his role in SPAG. Various spokesmen on his behalf have denied he had anything to do with the real estate company or said he just held a non-paying honorary position. The Russian president's press office claimed that Putin had never worked for SPAG as an adviser and had never been paid any salary. (English 2000)

The case against Putin never stuck as the German investigating authorities lacked documentary evidence. Kuchma had the evidence, but chose not to use it. Kuchma's first conversation on SPAG took place on June 2, 2000. It took place after the May 13, 2000 arrest in Lichtenstein of the lawyer Rudolf Ritter, one of the co-founders of SPAG. He was charged with laundering money on the behalf of Russian and Colombian gangsters.

> [Derkach] Leonid Danilovich we've got some interesting material here from the Germans. One of them has been arrested. [Kuchma reading a report] Ritter, Rudolf Ritter. [Derkach] Yes, and about that affair, the drug smuggling. Here are the documents. They gave them all out. Here's Vova [diminutive for Vladimir] Putin, too. [Kuchma] There's something about Putin there? [Derkach] The Russians have already been buying everything *up*. Here are all the documents. We have the only ones that are still left. I think that [FSB chief] Nikolai Patrushev is coming from the fifteen to the seventeen [of June]. This will give him something to work with. This is what we'll keep. They want to shove the whole affair under the carpet. (Kuchma and Derkach June 2, 2000)

Two days later, on June 4, 2000, Kuchma and Derkach revisited the documents on SPAG. Kuchma could not decide what to do with them.

> [Kuchma] The handover should only take place with the signature of [Nikolai] Patrushev [the FSB head]. This really is valuable material, isn't it? [Derkach] About Putin? [Kuchma] About Putin. [Derkach] Yes. There is some really valuable stuff. This really is a company, which... [Kuchma] No, tell me, should we give this to Putin, or should we just tell him that we have this material? [Derkach] Yes, we could. But he's going to be able to tell where we got the material. [Kuchma] I will say the security services; I will say that our security service has some interesting material. [Derkach] And we should say that we got it from Germany, and that everything that exists is now in our hands. Otherwise, no one else has it, yes? Now, I prepared all the documents about Putin to give them to you. [Kuchma] OK, if that's necessary. I'm not saying that I will personally hand them over. Maybe you'll give them to Patrushev? [Derkach] No. I just... when we make a decision, we'll have to hand them over anyhow. … they've bought *up* all these documents throughout Europe and only the remaining ones are in our hands. [Kuchma] Or, perhaps, I will say that we have documents, genuine facts from Germany. I won't go into details. [Derkach] Hum. [Kuchma] I will say, "Give your people the order to connect our security service." And when they get in touch with you, you say, "I gave them to the president. Damn it, I can't get it from him now." [Derkach] Good. [Kuchma] We need to play with this one. (Kuchma and Derkach June 4, 2000)

On June 12, 2000, Kuchma told Derkach that since their last meeting on June 4, he had told Putin about the

existence of the incriminating documents:

> I said that "our [security] service has some materials taken from the Germans; they could be of interest to your country. If you do not object, we will hand them over to Patrushev; my security service chief will give them to Patrushev". I said: "I do not know the value of what is there." (Kuchma and Derkach June 12, 2000)

As for Rudolf Ritter, in 2003, a court in Liechtenstein [where his brother Michael was the economic minister] sentenced him to a suspended sentence of eighteen months for defrauding SPAG investors. There was not enough evidence to find him guilty of laundering drug money into real estate because documentary evidence was missing. The Russian and Ukrainian authorities had the evidence as the conversations of Kuchma and Derkach illustrated [see also a study of the SPAG affair in Felshtinsky 2012].

Another secret shared by Presidents Putin and Kuchma was their protection of Semyon Mogilevich who was wanted by the FBI. Described by some as "the world's most dangerous gangster" (Friedman 2000), the FBI wanted to question Mogilevich, Fisherman and other associates about a $10 billion money laundering operation through the Bank of New York, the disappearance of $1.2 billion of World Bank loans to Russia (Block 2003), and the $150 million share scam on the Toronto stock exchange. Mogilevich and his partners had fooled investors into buying $150 million shares in a company that supposedly manufactured super-miniature magnets that would revolutionize machines (U.S. v. a/k/a "Simeon Mogilevitch" et al 2003). In August 1999, Mogilevich and associates fled from their headquarters in Hungary from a joint FBI and Hungarian National Police task force to take refuge in Russia (Jones 1999) (Ashley 2003).

Kuchma also welcomed Mogilevich. In 1999, when Mogilevich was the FBI's top ten most wanted fugitive from justice, the SBU chief Leonid Derkach praised him in a newspaper interview as law abiding, a great investor and an entrepreneur. Derkach even compared him with Henry Ford, and complained that the FBI was making "attempts to include us in investigating his activities" (Mostova 1999). Derkach told *Zerkalo nedeli* that Mogilevich's company had created "a scientifically unique mini-magnet that would revolutionize industry and transport." This was pure nonsense or Derkach was naive. The so-called mini-magnets didn't exist. Mogilevich and his associates had used them to cheat investors out of $150 million.

In response to Derkach's public tributes to Mogilevich, the American ambassador to Ukraine, Stephen Pifer, complained to Ukraine's Secretary of State for Security and Defense, Yevhen Marchuk. On December 22, 1999, the ambassador handed Marchuk a thirty-one page confidential dossier on why the FBI wanted Mogilevich. The FBI agent accompanying Pifer, Michael Piszczemukha, told Marchuk that Derkach's extolling of Mogilevich's magnet company was contradicted by the fact that YBM had been closed down on criminal charges in America and Hungary (Yeltsov 2001b).

At the beginning of February 2000, Mogilevich came to Kyiv to meet Derkach and to conduct his business affairs. Despite giving him a glowing public tribute, Derkach met him in secret. They had conducted a business deal in April 1999, when Mogilevich and his partner Igor Fisherman convinced Derkach to buy for the SBU a "situation center," an electronic intelligence gathering system to be used for the October 1999 presidential elections. The SBU paid Mogilevich almost $4 million dollars for a system that apparently cost just over $2 million in America (Ibid.).

Mogilevich and his first lieutenant Fisherman were born in Ukraine and both studied at the University of Lviv. From 1995 to 1997, Fisherman was an advisor to Pavlo Lazarenko, when he became the deputy prime minister in charge of energy and prime minister. This must had caused tension betwen them, as Lazarenko cut back Itera's dominant share of the gas market in favor of Tymoshenko's UESU.

From Derkach's meeting with Mogilevich, the president wanted to know if Mogilevich had persuaded a witness to testify against former Prime Minister Lazarenko at his U.S. trial. Derkach replied that Mogilevich was still working on getting Oleksi Ditiatkovsky, Lazarenko's business partner from Dnipropetrovsk, to testify against him.

> [Kuchma] He promised, fuck, to bring and brought nothing. [Derkach] At the moment he says, that he gives his word, fuck, to bring that Ditiatkovsky. … I gave him my telephone [number] and everything. (Kuchma and Derkach Feb. 8, 2000)

Kuchma took an interest in how Mogilevich had settled down in Moscow after fleeing from Hungary. Derkach replied he had bought a house in an elite neighborhood.

> [Kuchma] Yes? He what, lives in Moscow? [Derkach] Lives in Moscow. Purchased a dacha. Well, he was in Hungary, now lives in Moscow. He bought Georgadze's dacha [the deceased Soviet Politburo member and Secretary of the Presidium of the Supreme Soviet of the USSR M. Georgadze]. It is next to Zyuganov's [the leader of the Russian Communist Party who would soon lose the election to Putin], that is the dacha. "Every morning when I leave," he says, "I greet him." This zone is like out at Konche [Konche Zaspa – an elite suburb south of Kyiv], he bought himself a dacha in a place like that. (Kuchma and Derkach Feb. 8, 2000)

Ukraine's military intelligence chief, Ihor Smeshko, was outraged at Kuchma and Derkach for dealing with Mogilevich. On Feb. 10, 2000, two days after Derkach spoke to Kuchma about Mogilevich, Smeshko came to his office to warn the president about the international consequences of associating with the wanted fugitive (Kuchma and Smeshko Feb. 10, 2000). The conversation revealed that Kuchma like Putin also had a scandal involving South American drug cartels.

Smeshko began by presenting a request from the FBI to help find Igor Fisherman, a Ukrainian citizen and Mogilevich's top associate. Kuchma replied that he could cooperate with the FBI only "on one condition – Ukraine is not there," meaning that there must be no mention of Fisherman's presence and activities in Ukraine.

Smeshko reminded Kuchma of the damage that was done to Ukraine's image by being associated with illegal drug syndicates. He recalled how during his 1996 state visit to the U.S. an article in The *Los Angeles Times* reported that Ukrainian government aircraft had transported narcotics for drug barons. The newspaper had reported that Ukrainian Antonov-32B twin-engine turboprop planes were being used to smuggle cocaine from Columbia to Peru, Panama and Mexico (Rempel and Pyes, 1996). Another article reported: "The Clinton administration said Tuesday that it will question Ukrainian President Leonid D. Kuchma during a scheduled visit to the White House about reports that the Kiev government has sold and leased aircraft to South American drug traffickers. State Department spokesman Nicholas Burns described the report in Tuesday's editions of The [Los Angeles] Times as disturbing, although he noted that the Ukrainian Foreign Ministry had denied that the government-owned aircraft company is doing business with drug lords" (Kempster, 1996).

He reminded Kuchma that while Ukraine had officially denied these newspaper reports, the SBU had turned

over to the FBI seventy pages of operational information, which included statements from Ukrainian government pilots that they had transported drugs in and out of Colombia. As a consequence, Smeshko said, "the Americans do not want to allow us on the aviation transport market."

> [Smeshko] ... Today a similar situation may reoccur. Look what the security service is providing the FBI about Mogilevich. [Kuchma can be heard turning over pages.] [Kuchma] Your view is that the Konstantynivsky [the twins born in 1960, Vyacheslav and Oleksandr Konstantynivsky, owners of the "Kiev-Donbas" company] are in league with this well-known gang? Is this your view? [Smeshko] This represents, this document is from State Security [from Derkach's SBU]. ... Such documents are exchanged between the FBI and SBU. While at the time the head of the SBU announces: "He [Mogilevich] is ours. He is an informer" … Speaking honestly, with all due respect, Leonid Vasylevich [Derkach] and our security service are powerless against Mogilevich. What kind of an ass informer is he! To say in the press he is clean [reference to Derkach's interview with Yuliya Mostova, (Mostova 1999)], when tones … [the remaining words cannot be heard]. Just look. This is the database. Any investigator could find this in the MIA [Ministry of Interior Affairs] database. This is a direct print out from the MIA database. (Kuchma and Smeshko Feb. 10, 2000)

While Kuchma was surprised that the FBI could so easily obtained such information from the Ministry of Interior, Smeshko lambasted the SBU for protecting Mogilevich:

> [Smeshko] They are gangsters! Yes, of course gangsters, big gangsters, who, who can strike, and not only in the teeth. This is understood. We are putting ourselves in an idiotic situation with the Americans. The lower levels exchange operational information, but on the highest level, we say that he is an honest man, just like Ford. … Every operative, lieutenant, knows that he is a criminal. … This is why the FBI considers Mogilevich's organization to be under the complete protection of the SBU. … [Kuchma] I want to show [Derkach these documents]. [I] will tell him: "You organized this leak?" [Smeshko] I have already given him this document. I delivered it to him. I gave him about "Kyiv-Donbas." Leonid Danylovych, what more can be done? (Ibid.)

Smeshko insisted that the president read about Mogilevich's criminal activities from the reports prepared by the

Ministry of Interior and SBU. He naively believed that the president didn't know who Mogilevich was. He told Kuchma that acting President Putin gave Mogilevich a Russian passport in a different name because Mogilevich was a valuable intelligence agent. He claimed Mogilevich had been a highly regarded intelligence-gathering network and had helped Yeltsin win the presidential elections in 1996.

The president had not shared with Smeshko about his negotiations with Mogilevich to provide a witness against Lazarenko. The irony was that while the FBI was building a case against Lazarenko, Kuchma was using their most wanted fugitive to find Lazarenko guilty in an American court.

The president punished Smeshko for criticizing his relationship with Mogilevich. In September 2000, he demoted him from head of military intelligence to a military attache at Ukraine's Swiss embassy.

Mogilevich's name has cast a long shadow over Ukraine since its independence. From its inception, Mogilevich and his associates have played a major role in the supply of energy, especially natural gas, to Ukraine from Russia and Central Asia. They did this by creating intermediary companies that paid kickbacks to politicians in the former Soviet republics in return for the privilege of selling natural gas to Ukraine or anywhere else in Europe.

Following the Orange Revolution, Prime Minister Yuliya Tymoshenko attempted to remove Mogilevich and his partners from the gas market. This brought her into conflict with the presidents – Yushchenko and Yanukovych – and was a reason for her imprisonment in 2011.

However, when she worked as a gas trader with Pavlo Lazarenko, she too had a relationship with Mogilevich, be it as a competitor. As mentioned, from 1995 to 1997, Fisherman was an advisor to Pavlo Lazarenko, when he was the deputy prime minister in charge of energy and prime minister.

When Tymoshenko became prime minister in 2005, her close political ally, and then chief of the SBU, Oleksandr Turchynov, had Mogilevich's file destroyed. She was not the only politician whose records have been adjusted to suit their needs. Viktor Yanukovych altered his criminal records to rebrand his public image (see Chapter 16).

6 Corruption

"What is the difference between a gift and a bribe? A gift is something of value given without the expectation of return; a bribe is the same thing given in the hope of influence or benefit" (Markkula Center for Applied Ethics 2006). In 1995, President Kuchma signed the law on corruption. It stated that it was illegal for state officials to use their position "to obtain material goods, services, benefits or other advantages" (Verhovna Rada 1995).

The value of gifts given to President Kuchma just during the two years covering the Melnychenko recordings amounted to tens of millions of dollars. During his re-election campaign, Kuchma had received illegal donations, including $66 million from Bakai and $18 million from David Zhvaniya. In return Kuchma protected them from prosecution.

Zhvaniya was born on July 20, 1967 in Tbilisi, Georgia. He became the General Director of the Cyprus registered company, Brinkford Cons. Ltd. He moved to Ukraine in 1991, where in 1996 he registered Brinkford. The company was involved in buying nuclear fuel rods from Russia for Ukraine's fourteen nuclear power stations. On April 17, 2000, Kuchma repaid Zhvaniya for the election donation by blocking a criminal case against Brinkford (Kuchma and Azarov April 17, 2000). The Ministry of Finance had accused the company of overcharging the state by $200 million for $50 million worth of services (Moiseeva 2003).

It turned out that not all of Zhvaniya's money was needed for Kuchma's re-election. More than six months after the 1999 presidential elections, on June 7, 2000, the president instructed his campaign manager Volkov to deposit Zhvaniya's $3 million bank bonds on Kuchma's private bank account (Ibid.).

After supporting President Kuchma, in 2002, Zhvaniya switched to Our Ukraine, the opposition led by Viktor Yushchenko. In 2005, Yushchenko appointed him Minister of Emergency Affairs. He was godfather to Yushchenko's son Taras. He broke with Yushchenko, and on May 23, 2008, accused his American born wife of

illegally having duo citizenship. A month later, on June 22, he accused Yushchenko of creating the Dioxin poison incident to attract sympathy votes in the 2004 election. In response, on July 28, 2008, Yushchenko accused Zhvaniya of participating in the poisoning. In June 2010, Zhvaniya joined the coalition in parliament supporting President Yanukovych.

The governor of Sumy Oblast, Volodymyr Shcherban offered the president shares in the chemical plant Khimprom, and the state oil producer Naftoprodukt:

> [Shcherban] Well, about this joint stock company, Leonid Danylovych. I am going to touch this topic now - it is our Khimprom in Sumy. It is a very interesting enterprise. It is the only company that produces super-phosphate [a fertilizer] for us; there is not even such a company in Russia or in the western region [of the former Soviet Union]. Well, it is the only one. Well, it is going to be privatized, but the way it will be privatized, we are just afraid it will be ripped to pieces and that is all. There is a proposal. I have never said this to you, I don't know, maybe I should not say, but maybe I should. I should be grateful to you for the job you gave me and all that. I would like some of your people to take part in this project. I am ready to give 25 per cent plus 1 golden share, we will give them to whomever you name. And every company that is interesting, I will bring it to you and give it to whomever you say. Let it be for the children and grandchildren, this is for life, Leonid Danylovych. Well, it is being privatized anyway, but it is one thing if it is privatized and just ripped apart and another if it works. [Kuchma] I have sent a letter to [Prime Minister Viktor] Yushchenko, [Head of the state privatization agency] Bondar and to you, saying that privatization should take place only with the [oblast] governor's consent. Have you received it? [Shcherban] Not yet. I will take a look. [Kuchma] I sent it a few days ago. [Shcherban] We spoke with [word not understood]. We will privatize it in a very smart way, with investments, the company will get working, and we are not going to just lose it. [Kuchma] Get working. [Shcherban] I will also send a letter. And then about Naftoprodukt – I will give shares to whomever you say. (Kuchma and Shcherban April 14, 2000)

Shcherban was probably offering the state owned shares as a thank you for appointing him governor of Sumy Oblast. He had been removed as Donetsk Oblast governor in July 1996, following an assassination attempt on Prime Minister Pavlo Lazarenko for which he and his Donetsk clan were blamed. After Lazarenko fled Ukraine

in February 1999, the president brought Shcherban back to high office.

On May 16, 2000, the Odesa Oblast Governor Ruslan Bodelan presented Kuchma with an expensive antique. Bodelan was born on April 4, 1942, in the village of Berezivka, Odesa Oblast. At the time of Ukraine's independence, he was the Secretary of the Odesa Oblast Communist Party. In July 1995, Kuchma appointed him governor of the oblast.

Bodelan gave the president an 18th century gold female figurine weighing an ounce in gold.

> [Bodelan] ... Hold this. This is an ounce of gold. [Kuchma] Yes? I can see. What is this, some kind of standard? [Bodelan] Yes, this is the standard for an ounce. [Kuchma] Damn it! It is also a woman! [Bodelan] Yes, like a woman. Ha-ha [laughs]. I brought, as the specialists say, a very special item for Lyudmila Mykolayivna [the president's wife]. [Kuchma] Well, you give! [Bodelan] They say, this is 18th century, either Spanish or Italian, from some family heirloom or other. I think that only the wife of a president has the right to it, because all the others [Kuchma] Ha-ha-ha. Nice, thank you. How are things? (Kuchma and Bodelan May 16, 2000)

After handing over the gift, Bodelan asked Kuchma for his support against the incumbent mayor, Edward Hurvits, in the coming 2002 Odesa mayoral elections. He complained that the key members of Kuchma's entourage, Oleksandr Volkov and Hryhoriy Surkis, were supporting Hurvits. Kuchma replied by calling Surkis a "monster" and promised to tell Volkov to keep out of the Odesa city elections.

Kuchma had looked the other way when Bodelan led a violent campaign in the 1998 mayor Odesa elections to dislodge the incumbent Hurvits. Oil had intensified their rivalry, as Hurvits' group supported the construction of the Southern [Pivdennyi] Oil Terminal for tankers to bring Azerbaijan oil from Georgia for the purpose of importing non-Russian oil into Ukraine. Bodelan backed Russian oil companies who wanted the oil coming from Russia.

On the eve of the elections, Hurvits' political lieutenants were attacked. On February 15, 1998, Leonid

Kapelyushny, a former journalist and now campaign adviser, was shot and seriously wounded, but survived. Two of Hurvits top deputies were kidnapped and never seen again: Ihor *Svoboda* on February 27 and Serhei Varlamov on March 22. On March 22, an explosion narrowly missed Hurvits. Despite the violence, Hurvits won the election. Bodelan protested the outcome in court. Kuchma came to his rescue and put Odesa under direct presidential rule, which lasted until the mayoral elections in 2002 that Bodelan won.

Bodelan also asked the president to approve a "cash" investment by his son Volodymyr and his "foreign boys." He wanted the president's blessing for an investment that sounded more like a money-laundering operation.

The Donetsk oblast governor, Viktor Yanukovych, came to the president with expensive gifts and asking for favors. On May 12, 2000, Yanukovych told him that he had left with the president's wife a handmade gun made by Holland and Holland of London [on the company web site the least expensive weapon costs $100,000]:

> [Yanukovych] Leonid Danylovych. I am giving you a "Holland-Holland."
>
> [Kuchma] What is it?
>
> [Yanukovych] "Holland-Holland" – the best weapon in the world. "Holland-Holland"! Well, I have delivered it to Lyudmila Mykolaivna [the president's wife].
>
> (Kuchma and Yanukovych May 12, 2000)

Considering that his annual salary for a governor was less than $10,000, where did the money come from to buy the gun? What Yanukovych wanted was for the president to take his side in his numerous disputes with Prime Minister Yushchenko and Deputy Prime Minister Tymoshenko. The disputes ranged from having to speak Ukrainian at meetings to bankrupting the state owned Donetsk Oblast-Energo [electricity company]. He told Kuchma that after bankruptcy, he and his friends could purchase it at a knockdown price:

> [Yanukovych] Well, as of today, we have fully prepared [two words not heard] this whole process. Thus, the oblastenergo is ready today to be put through a process of bankruptcy, through an auction,

meaning, we will get forty-eight percent. As for the creditors, those who are owed, we are ready to buy them out. Our future plans are, Leonid Danylovych, how can I say, to simply and calmly be able to work. The rest is up to you!" (Kuchma and Yanukovych June 26, 2000)

The owner Praveks Bank and future mayor of Kyiv, Leonid Chernovetsky came to see the president on Sept. 18, 2000 with a very expensive gift claiming to be worth a million dollars. Chernovetsky presented Kuchma with a bust made from a rare metal: "It is for your collection, it is a very light rare metal, and it is palladium" (Kuchma and Chernovetsky Sept. 18, 2000). Then Chernovetsky handed him a letter listing what he wanted from the president for his businesses. Kuchma replied that he would help.

Chernovetsky belonged to a religious sect. He told Kuchma that God helped him with his business activities, and that for the previous four years he had read the Bible every day. He further informed the president that he was a protestant and went to church regularly where he prayed for the president. Chernovetsky praised his pastor, the Nigerian born Sunday Adeladja, the founder of The Blessed Kingdom of God for All Nations in Kyiv. He made the startling claims that Adeladja's church was a member of the United Nations and that his pastor took part in the negotiations between "Arafat and the Israelis." Within six years of this conversation with Kuchma, Chernovetsky became mayor of Kyiv, largely propelled by the organizing power of Adeladja's church in the capital, and by the infighting between his opponents led by Yuliya Tymoshenko and Vitali Klychko [Klitschko], the world heavy weight champion. In the Kyiv mayoral elections, Chernovetsky won with minority of the electorate: 32 per cent of the votes in 2006 and 38 per cent in 2008. By the time Yanukovych became president in 2011, Chernovetsky's influence declined along with his church. In 2012, Adeladja fled Ukraine after being accused of fraud and embezzlement.

President Kuchma not only took bribes but also handed them out. As mentioned, he gave the presidential candidate Marchuk shares in a coalmine and electricity company in return for his support in the 1999 presidential elections. On June 29, 2000, in a telephone conversation, Ukraine's president offered a state owned machine plant in Uzhhorod to the head of Gazprom, the former Prime Minister of Russia, Viktor Chernomyrdin (Kuchma and Chernomyrdin June 29, 2000). [A year later, in June 2001, President Putin appointed Chernomyrdin as Russian ambassador to Ukraine.]

In return, Kuchma wanted Chernomyrdin to lean on the owner of LUKoil owner, one of Russia's richest oligarchs, who owned the TV channel STB in Ukraine. He wanted Alekperov to stop the station giving favorable coverage to Ukraine's minister in charge of energy, Yuliya Tymoshenko. The president told Chernomyrdin that he had the power to take away Alekperov's TV station.

To gain political advantage over an opponent, Kuchma dismissed a multi-million dollar loan owned to the state. In the summer of 1999, parliament had selected Oleksandr Tkachenko over Kuchma's candidates. Tkachenko's nomination was a victory for Kuchma's arch-rival the former prime minister Pavlo Lazarenko. Kuchma swiftly moved to buy Tkachenko's loyalty by having the government cancel his $70 million owed to the treasury by his company, Land and People (Zemlya i Lyudy).

In 1992, Land and People, had taken a loan of $70 million from U.S. banks guaranteed by Ukraine. He was one of the privileged few who was selected for the guarantee loans that totaled $2.4 billion and accrued interest of $1.5 billion by 1999 (Brudzynsky and Koval 1999). At the time, Tkachenko was the deputy speaker of parliament, and was a former minister of agriculture in Soviet Ukraine. On Nov. 14, 1994, the Rukh deputies attempted to pass a resolution accusing him of swindling the state. The left dominated parliament led by the speaker Oleksandr Moroz saved him from disgrace (Verhovna Rada, Nov. 16, 1994). A government audit ascertained that the would be capitalist squandered the millions dollar loan on poor investments (Boiko and Semenova 1994).

The president not only took and gave bribes, but also protected a state official who demanded bribes. He didn't allow the tax office to investigate the prosecutor of the Crimea, Volodymyr Shuba, for receiving kickbacks from businesses. Shuba had close ties with Prosecutor General Mykhailo Potebenko, who Kuchma did want to annoy, as he was very important for the president's power to repress people. Ukraine's justice system was based on the Soviet model. Once the office of prosecution made an accusation against an individual, it was near certainty that the court would find the individual guilty.

On May 24, 2000, the head of the tax office Mykola Azarov accused Shuba of taking bribes totaling up to $100,000 per month, mainly from alcohol producers, among them the prominent distiller Soyuz Viktan (Kuchma and Azarov May 24, 2000). Azarov also charged Shuba along with other officials in the prosecutor general's

office of taking a bribe of $200,000 from a company whose ship was impounded for not paying taxes on 2,800 tons of metal. Azarov complained that the General-Prosecutor Potebenko protected Shuba from prosecution. Kuchma rejected Azarov's requests to take legal action against Shuba.

In contrast, Shuba didn't hesitate to punish others for taking kickbacks. In the second week of May 2000, he ordered the arrest of two cabinet ministers of the autonomous republic of Crimea: the minister of finance, Lyudmyla Denisova, and the minister of agriculture, Mykola Orlovsky. He accused them of taking a $700,000 bribe from a company for the monopoly to sell ice cream in the tourist rich Crimea. The prime minister of Crimea, Serhei Kunitsin, complained to Kuchma about Shuba's actions against his ministers. Kuchma replied that Shuba was implementing the law (Kuchma and Kunitsin May 12, 2000). To resolve the conflict, Kuchma transferred Shuba to the Dnipropetrovsk Oblast, where as head prosecutor he continued his corrupt practice of demanding kickbacks (Sribnyi 2005). In 2007, he was promoted to the prestigious High Council of Justice, a government body overseeing the professionalism and conduct of judges and prosecutors. On Oct. 15, 2008, he accidentally killed himself at a shooting range (RIC 2008).

The head of the tax office Azarov was not a white knight fighting corruption while Kuchma was protecting his political allies from prosecution. Azarov targeted everyone for bribes and tax infringements, except his Donetsk clan led by governor Yanukovych and the oligarch Akhmetov. Surprisingly, Kuchma failed to perceive that Azarov was manipulating him against the rivals of the Donetsk clan of oligarchs.

The Kuchma conversations record an incident of corruption involving Azarov. In money terms, it was relatively minor, but nevertheless important. Azarov had asked President Kuchma to approve the exchange of his small 50 square meter apartment in the capital for a 180 square meter apartment in a more desirable building. For the exchange to succeed, a Jewish family in the larger apartment had to be evicted. Playing on Kuchma's anti-Semitism, Azarov said: "Well, there the Jews would have to be taken out" (Kuchma and Azarov April 17, 2000). The president shamelessly gave his permission to force the family out.

Azarov stood out in the president's cabal of officials for his shrewdness. He was well informed about the financial affairs of targeted individuals thanks to his network of tax inspectors. In comparison, the SBU chief Derkach, who had the best spy network, poorly articulated his reports, while Azarov impressed the president

with his presentations.

Besides bribes, everyone, especially oligarchs and celebrities, practised tax avoidance. Azarov gave Kuchma a list of forty-one individuals who in the 1999 tax year declared they had earned in hryvnia [UAH] the equivalent of more than a million dollars (Kuchma and Azarov June 14, 2000). He listed Oleksandr Volkov, Kuchma's treasurer for both presidential elections, as reporting the highest income in Ukraine, the sum of $40 million.

Azarov didn't mentioned, and Kuchma didn't ask, why Renat Akhmetov didn't head the list, as he probably procured much more money then Volkov. Instead, he focused on Akhmetov's rival, Hryhoriy Surkis, who paid very little tax considering he was earning tens of millions from his stable of regional electricity and gas companies alone. He listed the profits Surkis was making from some of the oblast energy companies: Sumy - $6 million; Lviv - $25 million; and Zaporizhzha – $11 million, claiming the money went straight to Surkis' offshore companies, which didn't pay taxes to Ukraine. Azarov asked for permission to take action against him. The president replied he would speak about the matter to Surkis' business partner, Viktor Medvedchuk.

Azarov even complained that Kuchma's son-in-law Viktor Pinchuk was avoiding taxes. He stated that Pinchuk had declared only a million dollars in earnings in 1999; well below the amount many considered the oligarch to had earned. He gave an example of how Pinchuk avoided taxes by declaring far less for his purchases than he actually paid for them: "[Azarov] There is this Interpipe [company] in Dnipropetrovsk. You know whose structure it is. Well, the guys are getting a bit out of hand there of course. Well, they bought gas worth 36 million [dollars] but actually paid only 3 million." Kuchma gave Azarov permission to go after Pinchuk for more taxes: "[Kuchma] Well, hang *up* their asses – you have my permission" (Kuchma and Azarov February 10, 2000). In the numerous conversations with Kuchma, Azarov never accuses Akhmetov or anyone else from his Donetsk clan of not paying tax.

Azarov entertained the president with stories about how little taxes Ukraine's sport and music stars paid by declaring tiny incomes. His list of football players avoids anyone associated with Akhmetov's Shakhtar Donetsk. Instead, he focuses on Kyiv Dynamo, their rival owned by Surkis. For 1999, Andrei Shevchenko declared an annual income of only 11,000 UAH or just over $2,000 [at the 1999 exchange rate of five UAH to a dollar]. Residents of Ukraine are subject to pay tax on their worldwide income. In 1999, Shevchenko playing

for AC Milan was one of Europe's highest paid players, earning millions of Euro. Another football international, Oleh Luzhny, declared an income of 19,000 UAH or about $4,000, when London's Arsenal in 1999 was paying him millions of pounds. Kyiv Dynamo's coach, Valery Lobanovsky, declared an annual income of 10,000 UAH, when Azarov said he was receiving hundreds of thousands (Kuchma and Azarov June 14, 2000). The president gave Azarov permission to let the press know about the footballers' tax avoidance, but not to include the coach Lobanovsky as it might prove unpopular.

7 Haunted by Lazarenko

In President Kuchma's conversations, the former Prime Minister Pavlo Lazarenko appeared as a threat that might take revenge on him for being dismissed from office. In the period of the Melnychenko recordings, Lazarenko was awaiting trial in the U.S. for money laundering. Kuchma feared he might he might be found innocent and return to overthrow him. To prevent this, he attempted to influence Lazarenko's trial by pressuring his former partners to testify against him, by stopping his Ukrainian lawyer from visiting him, and by accusing him of paying for assassinations. The president's greatest fear was that the deputy prime minister, Yuliya Tymoshenko, Lazarenko's former business and political associate, was plotting to take revenge on Lazarenko's behalf.

Transparency International had ranked Lazarenko as one of the eight world's most corrupt government officials (Hodess 2004). Little did this organization know that in Ukraine other officials were even more corrupt. For example, Bakai, the head of Naftogaz Ukraine took more than twice as much from the state as Lazarenko [see next chapter].

The primary source of the evidence against Lazarenko came from the testimony of his associate, Petro Kyrychenko, who turned witness in return for immunity from prosecution. The evidence presented in U.S. court trial provides an unparalleled insight into corruption in Ukraine.

Lazarenko was born on January 23, 1953, in the village of Karpivka in Dnipropetrovsk Oblast. After joining the communist party at the age of twenty-five, he quickly climbed to become on the eve of Ukraine's independence, the deputy head of the Dnipropetrovsk oblast government. The region was one of the USSR's leading political, industrial and agricultural centers. Lazarenko followed in the footsteps of many famous Dnipropetrovsk communists. They included Leonid Brezhnev, who in 1977 became the first person to hold simultaneously the positions of General Secretary of the communist party, and Leonid Kuchma, Ukraine's second prime minster and

second president.

In newly independent Ukraine, Lazarenko's upward mobility neatly combined with extorting money from businesses. In the first year of independence, President Kravchuk made Lazarenko his representative in the Dnipropetrovsk Oblast, making him the highest-ranking official in the region. Kravchuk's defeat in the 1994 election didn't stop Lazarenko's rise. In May 1995, President Kuchma appointed him governor of Dnipropetrovsk Oblast. Soon afterwards, on Sept. 5, 1995, he appointed him deputy prime minister in charge of energy in the cabinet of Prime Minister Yevhen Marchuk, and on May 28, 1996, as the prime minister. For the next thirteen months, Lazarenko was at the pinnacle of his political career. It came to a sudden end on July 2, 1997, when the president's office announced that the prime minister had resigned at his own request for health reasons.

In his time in political office, from 1992 to 1997, Lazarenko took at least $363 million in kickbacks from various companies [an incomplete list of companies that gave him kickbacks appear in Table 7.1]. Others, like Kuchma, claimed he took as much as $800 million (Kuchma and Lytvyn, etc al, June 27, 2000). Lazarenko obtained his kickbacks by demanding fifty percent of company profits, in exchange for market privileges.

Table 7.1 – Incomplete list of companies giving kickbacks to Lazarenko			
Year	Company	Company director	US dollars in millions
1996 -1997	Somolli Enterprises, UEI Ltd, UESU	Yuliya Tymoshenko	$197.0
1996-1997	L.I.T.A.T. Offshore Ltd	??	$42.0
1994-1998	AgroPostachZbyt and GHP Corp.	Petro Kyrychenko	$30.0
1994-1997	DAV Riga	??	$30.0
1996	ITERA	Igor Makarov	$29.0
1994	Nakosta Metals	Alex Kurkaev & Kokh	$0.4
1997	SB Corp.	??	$15.6
1993-1994	Naukovyi State farm	Mykola Agafonov	$14.0
1993-1996	Dnipronaft [Dneproneft]	Oleksyi Ditiatkovsky	$13.8
1995-1997	Internova Trading Co.	Andrei Mikhanev	2.0
Total			$363.0
(U.S. v. Lazarenko 2005, 21-22) (Leshchenko 2012h)			

The money Lazarenko made from extortions far exceeded his state salary. According to his Ukrainian tax returns, he reported an income of only 9,397 UAH [about $5,040] in 1996, and 10,286 UAH in 1997, and declared: “that he had no money in banks or other financial institutions” (U.S. v. Lazarenko 2008). At the time he had $281 million in his foreign bank accounts [Table 7.2]. This was after spending millions on a lavish lifestyle and funding his political cause. He paid $7 million for a mansion in Novato, north of San Francisco, formerly the home of the film star Eddie Murphy, with 41 rooms and five swimming pools. In 2006, it was valued at $8 million. After being removed from political office in 1997, he flooded Ukraine with millions of dollars to create a political opposition to Kuchma by funding the political party Hromada, newspapers and TV stations.

Table 7.2
Pavlo Lazarenko's foreign bank deposits in 2005

Country & Name of bank	Millions
Antigua & Barbados Eurofed Bank Ltd for Pavlo Lazarenko	$85.5
Antigua & Barbados Eurofed Bank Ltd for Alexander Milchenko [Oleksandr Mylchenko]	$1.6
Guernsey, Channel Islands, U.K. Julius Baer Company Ltd account no. 121128	$2.1
Guernsey, Channel Islands, U.K. Credit Suisse account no. 41610 & 41950. In addition £14,308 in account 41843	$147.9
Lichtenstein Verwaltungs-und PrivatBank AG, and other banks	$7.0
LithuaniaVilnaus Bankas formerly at Bankas Hermis, accounts 073721 and 073420	$29.3
Switzerland Credit Suisse account 0251-562927-6	$4.8
Switzerland Banque SCA Alliance S.A, account no. 5491	$0.5
U.S. banks	$2.5
TOTAL	$281.2
(U.S. v. Lazarenko 2005, 1-2, 4-8)	

As governor, Lazarenko's extortions came from companies he gave permission to export products, mostly metals, from Dnipropetrovsk Oblast. The export of metals was lucrative. At the time the average price of metal products in Ukraine was about ten percent of the world price (Aslund 1999). For example, on March 22, 1994, as the President Kravchuk's representative in the Dnipropetrovsk Oblast, he gave ten companies export licenses (Leshchenko 2012e). After selling the metals abroad, the company paying the kickback made money despite giving Lazarenko the required fifty-percent of the sale.

The key person who managed Lazarenko's kickback schemes and foreign bank accounts was Petro Kyrychenko [in American court documents he appears as Piotr Kiritchenko]. His association with Lazarenko began in 1992 in Dnipropetrovsk Oblast. As company director of Agrosnabzbyt, between 1994 and 1998, he gave Lazarenko

with about $30 million in kickbacks (U.S. v. Lazarenko 2005).

He also became the manager of Lazarenko's kickback empire. He managed Lazarenko's bank accounts across Europe and America. To be able to travel easier internationally, they bought Panamanian passports for $100,000 each, which by Ukraine's law was illegal. They created a variety of schemes to make money.

In Panama, Kyrychenko registered the company GHP, which extorted a million dollars from Ukraine's government. In 1997, Lazarenko's cabinet of ministers paid GHP a total of $1,416,000 for six prefabricated homes from California to be erected near Kyiv. The actual cost of the homes was $524,763. A U.S. court dismissed the GHP charges against Lazarenko because the prosecutor could not "establish the element of material harm" to U.S. taxpayers (U.S. v. Lazarenko 2008).

Mykola Agafonov, the director of the Naukova state farm from 1992-1997, was another person Lazarenko made money off. The FBI concluded: "between 1993 and 1995, Naukova state farm gave Lazarenko at least $14,000,000" (U.S. v. Lazarenko 2005). It had sold $38 million worth of metal products in Holland, but bought only $13 million worth of farm goods, mostly cattle. The remaining $25 million Agafonov split with Lazarenko (Kupchinsky 2002b). A U.S. court dismissed this charge against Lazarenko because U.S. interests were not involved.

Oleksi Ditiatkovsky, owner of Dnipronaft Ltd [Dneproneft], said he paid Lazarenko a total of $13.8 million (Ditiatkovsky 2005). After Lazarenko was found guilty in 2004, Ditiatkovsky failed to persuade a U.S. court to recognize his $13 million claim against Lazarenko's bank accounts. The court ruled that those who had given kickbacks to Lazarenko were not victims of crime but associates in crime (U.S. v. Lazarenko 2005).

From 1992, Ukraine Benzene, owned by Yuliya and Oleksandr Tymoshenko and Oleksandr Hravets also shared its profits with Lazarenko. When Lazarenko became prime minister, they created United Energy Systems of Ukraine [UESU] and within two years it became Ukraine's leading gas trader. UESU was Lazarenko's golden goose giving him almost half of his known kickbacks.

Lazarenko's appointment in September 1995 as deputy prime minister in charge of energy gave him the

opportunity to make more money than ever before, as he now was in a position to decide who would get the annual natural gas contracts for Ukraine, and not only for an oblast. As deputy prime minister he created a close relationship with the president to bypass Prime Minister Marchuk and deal directly with Russia on the issues of energy. This caused a rift between president and prime minister that ended in Kuchma firing Marchuk on May 27, 1996 and appointing Lazarenko in his place.

For the years 1996 and 1997, Lazarenko gave three companies, UESU, Itera, and Intergaz, the permits to sell foreign gas to businesses in Ukraine, with UESU receiving by far the biggest market share. Table 7.3 lists by oblast the three major natural gas distributors in 1996.

Table 7.3
Lazarenko's selected distributors of natural gas for 1996

Distributors	Oblasts	Total 58 Bm[1]
United Energy Systems [UESU] [Yuliya Tymoshenko]	Dnipropetrovsk, Donetsk, Cherkassy	25.2
UESU	Donbas enterprises	2.4
Itera-Energy [Makarov & Gazprom]	Donetsk, Kharkiv, Mykolaiv, Lviv, Zhytomyr, Kyiv, Ivano-Frankivsk, Kirovohrad, Luhansk, city of Kyiv, Crimea, Sevastopol	16.8
Oblastgaz [state companies]	Chernivtsi, Volyn, Poltava, City of Kyiv, Kyiv Oblast	3.5
Intergaz [Bakai & Sharov]	Odesa, Kherson, Vinnytsia, Poltava, Zarporizhzhia, Rivne, Khmelnytsky	7.8
Smaller traders: Ukrazarubezhnaftagaz, Ukrgazprom, and Motor Sich	Kyiv city enterprises; Chernihiv, Transcarpathia, Kirovohrad	3.2
Ukrgazprom [state company]	All Oblasts, except Dnipropetrovsk	21

(Kolesnik 1996)

UESU received the monopoly to supply the Dnipropetrovsk Oblast and the most lucrative contracts in neighboring Donetsk oblast, the two most industrialized oblasts. In this way Lazarenko designed a system to maximize his kickbacks at the expense of the state. He received about half of all his known kickbacks in 1996 and 1997, totalling at least $197 million, from UESU. It paid him through its foreign companies, UEIL and Somalli [Table 7.1].

Igor Makarov headed the American registered energy company, Itera. It apparently was created by Gazprom executives (Browder 2002) (Hoffman 2000), with Mogilevich, and paid Lazarenko at least $28.5 million in 1996. On April 1, 2004, its vice-president, Theodores Kavalieros, told the U.S. Federal Prosecutor Martha Boersch that Itera had transferred this money from its Cypriot affiliate Omrania to Lazarenko's Bainfield Company Limited (Global Witness 2006).

There seems to be no information on how much the third largest distributor of gas, Intergaz, owned by Ihor Bakai, gave Lazarenko. Most likely, Intergaz paid Lazarenko the same fifty percent of its profit as UESU and Itera did. As to why Bakai and Intergaz didn't appear at Lazarenko's trial might explain by Ukraine's authorities withholding the information from U.S. authorities.

Lazarenko also paid millions of dollars to key personalities to maintain his dominance over the natural gas import and distribution in Ukraine. His partner Kyrychenko testified in at his trial that Lazarenko paid the CEO of Gazprom, Rem Vyakhirev $2.7 million (Leshchenko 2012h). As mentioned in chapter 2, he paid $7 million to Prime Minister Marchukto give UESU the monopoly for gas distribution.

In 1997, UESU was scheduled to make even more money than in the previous year. Lazarenko, now prime minister, gave it more enterprises to supply in Donetsk Oblast (Kostiw 2000). In addition, on December 31, 1996, Lazarenko issued a state guarantee of $200 million to Gazprom for UESU's 1997 natural gas purchases.

Lazarenko's conflict with the Donetsk oligarchs was over kickbacks from the sale of gas and other businesses. He rejected the Donetsk Governor Volodymyr Shcherban request to grant IUD [the Industrial Union of Donets – an organization for the Donetsk oligarchs, see Chapter 16] a license to operate as a gas trader (Fujimori 2005). Instead, he limited it to buying natural gas only from Tymoshenko's UESU and then re-selling it to Donetsk

factories.

On July 16, 1996, an attempt was made to assassinate Lazarenko. As he was on his way to Kyiv's Boryspil airport to fly to Donetsk, a remote-controlled explosion narrowly missed him. Lazarenko speculated that the attempt on his life was "connected with events in the Donbas region" (Kolomayets 1996). However, three years later, in asking for asylum in the U.S., he attempted to blame it President Kuchma's right-hand man. He told American immigration officials, that Oleksandr Volkov organized the assassination attempt (Leshchenko 2012c).

Immediately after the attempt, Kuchma had blamed the Donetsk clan. Two days after the explosion that almost killed Lazarenko, Kuchma sacked the Donetsk governor, Volodymyr Shcherban, and replaced him with Lazarenko's protege, Serhei Polyakov.

In what look like as revenge for the attempt on Lazarenko, assassins shot dead the political godfather of the Donetsk oligarchs, Yevhen Shcherban. On Nov. 3, 1996, on the tarmac of Donetsk airport, Shcherban along with his wife and others were killed. Only his son Ruslan survived the attack.

Kuchma's reaction to the assassination of Shcherban was to turn against Lazarenko, probably because he feared further political instability in country's most important industrial oblast. Already in January 1997, Lazarenko thought Kuchma would dismiss him as prime minister (Leshchenko 2012e).

In the second half of May, Lazarenko suffered a nervous breakdown causing him to be hospitalized. Kuchma took the opportunity on May 14, 1997, to fire his protege, the Donetsk governor Serhei Polyakov, and replaced him with his deputy, Viktor Yanukovych. He followed this *up* by dismissing Lazarenko as prime minister on July 2, 1997, on the grounds of ill health. Events strongly suggest that Lazarenko was dismissed for causing political instability in the Donetsk Oblast.

Clearly, Kuchma didn't dismiss Lazarenko for corruption. In 1995, he knew of Lazarenko's corruption when he appointed him to the cabinet of ministers. In 1994, Hryhoriy Omelchenko, then the head of the SBU department involved in countering corruption, provided president with the details of the kickbacks received from Agafonov, Kyrychenko and Dytyatkivsky, and their deposits on Lazarenko's foreign accounts (Omelchenko and Yermak

2000) (Omelchenko 2001).

Lazarenko's corrupt practices in the natural gas industry also were in the public domain when he was prime minister. In January 1997, the newspaper *Zerkalo nedeli* reminded the president of the promise he had made not to give any private company a monopoly of the natural gas market, and asked why he had allowed Lazarenko's cabinet to give UESU a dominant position (Kolesnik 1997).

Kuchma would have allowed Lazarenko to retire to a life of luxury instead of ending *up* in an American prison, if he hadn't challenged him for political power. In a number of conversations, Kuchma said this. He told the governor of Sumy Oblast, Shcherban [the former governor of Donetsk Oblast who was fired because of Lazarenko] that Lazarenko had made a mistake in fleeing Ukraine: "If he had stayed, nothing would have happened to him" (Kuchma and Shcherban June 5, 2000). Kuchma told a former Lazarenko supporter, the MP Viktor Omelich: Lazarenko "could have comfortably stayed in Ukraine and operated normally. Moreover, he rubbed salt into my tail. I did not take a single penny from him" (Kuchma and Omelich February 15, 2000).

Almost immediately after being dismissed, Lazarenko decided to challenge Kuchma in the 1999 presidential elections (Leshchenko 2012e). To replace Kuchma, he poured money into creating the political party Hromada and spent millions on the mass media. He bought the national newspapers Pravda Ukrainy and Vseukrainskiy Vedomosti and forty-percent of Ukraine's only quality newspaper, *Zerkalo nedeli* (Leshchenko 2012e).

Kuchma reacted to Lazarenko's political challenge by closing down both Pravda Ukrainy and Vseukrainskiy Vedomosti, as well as other media outlets. On January 28, 1998, two months before the March elections to the Rada, the Minister of Information, Zinovyi Kulyk, stopped Pravda Ukrainy from being printed on the grounds that it was illegally registered. He accused it of incorrectly filling out the registration form, and violating the election law before the March 1998 parliamentary elections by distributing 500,000 free copies of the newspaper (Politiuk 1998). The authorities also closed down Lazarenko's media outlets in Dnipropetrovsk, the newspaper Sobor and the TV channel 11. Their editor, Volodymyr Yefremov, was arrested and charged with financial irregularities (Kharkivskoi pravozakhysnoi hrupy 1998). On July 14, 2003, he died in a suspicious car accident after volunteering to testify in a U.S. court on behalf of Lazarenko (Ukraina Moloda, 2003).]

Despite the media repression, in the Rada elections on March 30, 1998, Lazarenko's political party Hromada did well, though only in the Dnipropetrovsk Oblast. It won 35 seats to parliament, including a seat for him and Yuliya Tymoshenko.

In the new parliament, Lazarenko had made an alliance with the leaders of the left-wing parties – the communists, socialists and peasants – against Kuchma. In July 1998, after an unprecedented two-month marathon to elect a speaker, the left's candidate, the Peasant Party leader Oleksandr Tkachenko, won. It looked like Lazarenko's man was in charge of parliament and Lazarenko was on track to take on Kuchma in the October 1999 presidential elections. Kuchma reacted by cancelling Tkachenko's $70 million debt to the state in a blatant attempt to prise him away from Lazarenko [for details of the loan, see the previous chapter].

Kuchma reacted to Lazarenko's political success by increasing the prosecution against him. On August 14, 1998, more than a year after firing him, the prosecutor general charged him with corruption. His media empire was further attacked. The prosecutor's office charged the editor of Pravda Ukrainy, Oleksandr Horobets, with sexual harassment and attempted rape of an employee. He was arrested on September 30, 1998, and spent the next eight months in prison. This was Ukraine's "only known case of prosecution for sexual harassment in the workplace" (U.S. State Department 1999). A court fined Lazarenko's other newspaper, Vseukrainskiy Vedomosti, the sum of 3.5 million UAH [$1.8 million] for libeling the Kyiv Dynamo football team. The questionable offense was that the newspaper had speculated that the football star Andryi Shevchenko would sign with AC Milan [which he eventually did in 1999] (UT2 1999).

In December 1998, Ukraine's prosecutor's office invited the FBI agent Bryan Earl and Martha Boersch, a U.S. attorney with the San Francisco Organized Crime Strike Force, and both Russian speakers, to Kyiv to be briefed on the Lazarenko case. While they were in flight, on December 2, 1998, the Swiss authorities arrested Lazarenko on charges of money laundering as he attempted to enter the country on his Panamanian passport. On December 4 the Swiss judge Laurent Kasper-Ansermet questioned Lazarenko and found him uncooperative. On Dec. 8, the judge flew to Ukraine to obtain evidence from the prosecutor general's office (*Kyiv Post* 1998). On December 14, he questioned Lazarenko again, and who proved to be more cooperative. He admitted that the $96 million on his Swiss bank account CARPO-53 came from UESU [the gas company owned by the Yuliya Tymoshenko, her husband and Oleksandr Hravets]. On December 18, the Swiss freed Lazarenko on bail of $2

million and ordered him to reappear in a Swiss court in March 1999 (Leshchenko 2012c).

On his returned to Ukraine, his political party Hromada nominated him as its candidate in the coming presidential elections (Hodge 1999). But his days as a political player were numbered. Two days earlier his former close allies, Yuliya Tymoshenko and Oleksandr Turchynov, had announced they were planning to leave Hromada. Lazarenko accused them of betrayal and striking a deal with Kuchma (Rakhmanin and Mostova 2002).

The president's controlled mass media in Ukraine exploited Lazarenko's detention in Switzerland. Television, radio and the press were swamped with the reports of his arrest for money laundering. Kuchma took this opportunity to have Lazarenko prosecuted. He demanded that parliament remove his immunity from prosecution so he could be tried for corruption. If not, he said, he would call for a referendum to dissolve parliament. When it became clear that his immunity in parliament would be removed, Lazarenko fled to Greece on February 14, 1999.

On February 17, 1999, the Rada met to discuss the removal of his immunity. In a letter read out at the session, Lazarenko told the deputies that his case should not be discussed because he was hospitalized outside Ukraine on account of the stress caused by negative media coverage and fear for his life (Lazarenko 1999). He denied that he had opened a foreign bank account in his own name; created a foreign company; took kickbacks from the Naukova collective farm; cheated the cabinet of ministers in the purchase of prefabricated houses from California or abused his political position. Lazarenko ended the letter by accusing the authorities of attempting to prevent him from taking part in the presidential elections (Ibid.).

Following Lazarenko's letter, the prosecutor general, Mykhailo Potebenko, read seventeen pages of charges to the parliament detailing how Lazarenko had embezzled a total of $6.6 million (Potebenko 1999) [this was far less than the $281 million deposited on his foreign bank accounts]. Surprisingly, Potebenko didn't mention Lazarenko's most important partner, Yuliya Tymoshenko or her UESU, or Bakai and his Intergaz. This was probably because Tymoshenko had become a Kuchma supporter. He mentioned only in passing that in May 1996 Lazarenko had received $22 million from Somolli Limited, without mentioning who was behind this company. Potebenko's indictment also did not charge Lazarenko with paying for the assassinations of Donetsk oligarchs.

This charge was to be made two years later to influence Lazarenko's trial in the U.S. [see below the president's conversation with the prosecutor general on May 30, 2000 and Chapter 16 on Yanukovych].

Kuchma's enemies in parliament came to Lazarenko's defense, especially the socialist leader Oleksandr Moroz. He declared to the assembled Rada deputies that he would not be voting to remove Lazarenko's immunity from prosecution. He accused Potebenko of creating a spectacle, presenting six-year-old accusations about cattle and houses. "I will not vote for an organized farce, without evidence, and ignoring more important criminals," like Kuchma (Moroz 1999).

The Rada voted 310 to 70 to lift Lazarenko's immunity. The only deputies who voted against were the thirty-four Hromada members, sixteen of the nineteen Socialists led by Moroz, and thirteen deputies from a scattering of parties, including Yuliya Tymoshenko, despite leaving his party.

All the presidential parties – the National Democrats, Greens, and Social Democrats United, as well as the Rukh and Progressive Socialist parties, voted to have Lazarenko prosecuted. It included Lazarenko's former allies, the peasants led by Tkachenko and the communists by Symonenko, who were embarrassed by the much-publicized arrest, also voted to take away his immunity or abstained.

Lazarenko decided not to return to Ukraine. Instead, on Feb. 19, 1999, he boarded a plane in Athens for JFK International Airport. He hoped to claim political asylum on landing and join his family in his newly purchased California mansion.

Tipped off by the FBI, the immigration authorities arrested him on a Swiss warrant. To avoid being put on trial in Switzerland, he pleaded guilty from his U.S. jail to the Swiss charges. In June 2000, a Swiss court, in his absence, found him guilty of laundering $6.6 million through Swiss banks and confiscated his money. This was a slap on the wrist by the Swiss authorities, considering he and Kyrychenko had kept more than $96 million dollars of "dirty" money at two Swiss banks: Banque SCS Alliance and Credit Swiss.

Instead of giving asylum to Lazarenko or extraditing him to Switzerland, on June 13, 2000 the U.S. government indicted him for money laundering and other financial crimes in the United States. The case against Lazarenko

rested on the evidence of his former partner Petro Kyrychenko [or Kiritchenko as he was known in the U.S.].

Ukrainian prosecutors had informed the FBI that Kyrychenko was in charge of Lazarenko's foreign bank accounts and living in San Francisco. Following the tip-off, the FBI agent Bryan Earl spent a year investigating Kyrychenko. Searching through his waste bins, he discovered envelopes from a large number of banks that were being used to launder money. In San Francisco, Kyrychenko showed off his wealth. "He drove a burgundy Bentley and, on a two acre lot atop Tiburn, was building a Mediterranean–style mansion with a 360-degree view of three bridges that he dubbed Shangri-La" (Felch 2004).

Kyrychenko on behalf of Lazarenko made the far-reaching mistake of laundering some of the money through the United States, which led to Lazarenko's conviction and imprisonment for money laundering. The legal consequences would have been manageable if Kyrychenko had avoided transferring cash through the U.S. to be deposited on Antigua, one of the many so-called "Treasure Islands" where the world's rich and criminals hide their cash (Shaxon 2011). Antigua was an ideal "Treasure Island" for Lazarenko, as its political leaders at the time were notoriously corrupt (Library of Congress 2011).

Lazarenko began to transfer his cash to Antigua immediately after he was forced out of office because he feared it might be confiscated. He bought a majority stake in the European Federal Credit Union in Antigua. "In August 1997, Lazarenko and Kiritchenko purchased a 67 percent majority share in the Antigua-domiciled bank for U.S.$1.1 million" (van der Does de Willebois, et al. 2011). Another 33% was owned by the Soviet émigré in San Francisco, Alexander Liverant, who along with Alexander Lushtak had founded it. Lazarenko bought the majority of the shares in the bank and renamed it Eurofed Bank Ltd. (Felch 2004). Lazarenko shifted from his European accounts a total of $195 million to his bank.

Kyrychenko's and Lazarenko's fatal error was to transfer their cash through U.S. banks for which they could be criminally charged. The first transfer took place on July 30, 1997, just four weeks after Lazarenko was fired from office. Kyrychenko on Lazarenko's instructions transferred $8.2 million from the GHP account in Banque SCS Alliance to the American bank for the wealthy Merrill, Lynch, Pierce, Fenner and Smith, who in turn deposited the cash in Eurofed in Antigua. Based on this and other transfers through the U.S., totaling about $22 million, the Attorney General's Office on June 19, 2000 charged Lazarenko with money laundering.

In return for betraying Lazarenko, the U.S. authorities gave Kyrychenko liberty from imprisonment, and the right to keep as much as $30 millions of dollars from criminal activities with Lazarenko. It would take until 2004 from his detention in 1999 to be found guilty, and until 2009 to exhaust all his appeals, as his highly paid lawyers doggedly delayed the inevitable.

Lazarenko too had offered "to tell the FBI everything he knew about political corruption in Ukraine, arms sales, money laundering, and espionage maters" in return for political asylum (Bartow 2001). The U.S. Attorney General John Ashcroft rejected the offer. Lazarenko also claimed that "funds from the International Monetary Fund were used in a double-dipping fraud, wherein managers bought Ukrainian government bonds (GKOs) with IMF money, and then paid themselves 80% interest. This also created the false impression that there was a market for the bonds" (Ibid.).

For Kuchma, the U.S. indictment against Lazarenko removed his main rival in the October 1999 elections. It also gave him the opportunity to pose as the scourge of a corrupt official, thus hiding the fact he was the godfather of corruption in Ukraine.

The recordings made in his office in the year 2000 showed that Kuchma took a keen interest in ensuring that Lazarenko was found guilty in the U.S.. Besides having the fugitive from the FBI, Mogilevich, pressuring a witness against Lazarenko, he instructed the prosecutor's office to continue to provide the U.S. authorities with evidence against the former prime minister (Kuchma and Potebenko June 14, 2000).

Kuchma punished those who had worked with Lazarenko. On December 27, 1998, a Kyiv court sentenced the former head of the Ukrainian Foreign Ministry's consular directorate, Vasyl Koval, to more than five years in prison and confiscation of property (*UNIAN* 1999) for helping Lazarenko to free his business partner Kyrychenko from police custody in Poland. The Polish police had detained Kyrychenko on February 1, 1995, for possession of a handgun without a permit. The intervention was successful. Kyrychenko was freed on bail (Leshchenko 2012e).

Kuchma punished the MP, Mykola Agafonov, another of Lazarenko's former associates, for not testifying against him. "I told him: Return the money, testify against Lazarenko and we will not touch you" (Kuchma and

Shcherban June 5, 2000). The president had worked frantically on the chairman of the Rada, Ivan Plyushch, his deputy, Viktor Medvedchuk, and Oleksandr Volkov to have Agafonov's parliamentary immunity removed so he could prosecuted (Kuchma and Medvedchuk June 22, 2000). On June 22, 2000, the Rada removed Agafonov's immunity by 229 votes to five. Immediately after the vote, Agafonov was arrested and imprisoned (*Fakty* 2000).

Kuchma didn't punish Lazarenko's most important business associate, Yuliya Tymoshenko, because she left Lazarenko and expressed loyalty to him. At a reward, he appointed her as deputy prime minister in charge of energy. But after she re-incarnated as a critic of corruption, he ordered a criminal case against her [see Chapter 9 on Tymoshenko].

Kuchma also sought to undermine Lazarenko's legal defense. He agreed with his security chief to prevent a Ukrainian lawyer from going to the U.S. to help Lazarenko:

> [Derkach] ... some [American lawyer] telephoned and said, "you come and help me." So we shall prevent her from going. [Kuchma] Who [The name could not be heard. The name of Lazarenko's lawyer was Maryna Dolhopola.] [Derkach] Yes. [Kuchma] She is Pavlo's [Lazarenko] lawyer? [Derkach] Right you are. She is a fool. We shall plant something [on her] at customs. [Kuchma] That's right, they should be trampled, all of them, fuck! That's right! (Kuchma and Derkach May 29, 2000)

President Kuchma approved the adding of a murder charge against Lazarenko to influence the American court. On May 30, 2000, the president agreed with the prosecutor general to charge Lazarenko for "killing" Donetsk oligarchs. The Prosecutor General Potebenko suggesting that this news be released on the eve of President Clinton's June 6 visit to Kyiv.

> [Potebenko] On Lazarenko … In order to support the objectivity of the evidence, we need to close other matters. And we want to initiate the charge of murder [against Lazarenko]. Firstly, this will have an effect also on the United States where it will be [felt] immediately. [Kuchma] Absolutely, as there they are very sensitive to it. [Potebenko] Before the visit of the president Clinton here? [Kuchma] Yes. [Potebenko] And say [to them] be aware, you are dealing with a killer. We could provide an interview with [the deputy prosecutor general in charge of Lazarenko's case Mykola] Obikhod. He

would reveal it in great detail. Also, Leonid Danylovych, it is necessary for you to sanction the interrogation of two people. [Kuchma] OK! [Potebenko] That is all. And today we will move the case and give it [to the courts] (Kuchma and Potebenko May 30, 2000)

On June 2, at a press conference, the deputy prosecutor general Obikhod accused Lazarenko of paying for the killing of the Donetsk oligarch Yevhen Shcherban and the killing of two other unnamed persons [See Chapter 16 on Yanukovych for the details of the accusations against Lazarenko.].

Ukraine's elite feared Lazarenko. Kuchma believed that Lazarenko had ordered the killing of his enforcer, the Dnipropetrovsk gangster, Oleksandr Mylchenko [Aleksandr Milchenko in Russian] because he knew too much. He made this allegation over dinner on June 27, 2000 with his five top officials: the prime minister, Yushchenko, the chairman of the parliament, Ivan Plyushch, the secretary of national security and defense, Marchuk, and the head of the president's office, Lytvyn. Kuchma said that many people in Dnipropetrovsk had feared Lazarenko and "continue to fear him today" because "everyone knew" that many killings were "his doing." He alleged that Lazarenko had Mylchenko killed and his corpse disposed. "When he got rid of 'Matros' [Mylchenko's pseudonym]," he had his grave cemented so well that it took some effort to break into it. When it was finally opened, "there was nothing inside" (Kuchma and Lytvyn, et al, June 27, 2000). Plyushch responded to Kuchma's allegation with: "He was tough and violent."

Marchuk at the dinner recalled how Lazarenko humiliated his underlings in Dnipropetrovsk. On arrival at Dnipropetrovsk airport, he would order those who had done something wrong to fall on their knees before him and ask for forgiveness.

Years later, in his memoir, "After *Maidan*," Kuchma recalled Lazarenko falling on his knees before him and asking for his forgiveness. "When he was appointed prime minister, I sent him to Moscow. Within a day, [Viktor] Chernomyrdin [then the prime minister of Russia] telephones to say – 'He is a crook. … He wanted to give me money. … especially for [natural] gas. Causing me to throw out the idiot'. … Pavlo returned to me and fell on his knees: 'Father, forgive me! I will never do it again!'" (Kuchma 2007) Kuchma failed to explain in his memoir why he kept the "idiot" as prime minister for another thirteen months. He also failed to mention in his

memoir that he offered a bribe to Chernomyrdin for putting pressure on Vagit Alekperov to stop giving Tymoshenko favorable coverage on his TV station STB (Kuchma and Chernomyrdin June 29, 2000).

When President Clinton arrived on June 6, 2000, Lazarenko's American lawyers sprang their surprise. They issued a statement claiming that Lazarenko had shared his money with the president: "Mr. Lazarenko's U.S. Defense team has substantiating documents showing bank accounts and copies of the wire transfers verifying these participating distributions to President Kuchma" (Handwerker 2000). The next day, Potebenko assured Kuchma that the statement wouldn't have any effect in Ukraine because it was not reported, and outside of Ukraine only in the *Financial Times* and the *San Francisco Chronicle* (Kuchma and Potebenko June 8, 2000).

Lazarenko did share his spoils with the president's family members. He put $3.8 million in Kuchma's family mobile company Kyiv Star (Omelchenko 2004), owned and managed by Kuchma's daughter Olena Franchuk and brother-in-law Yuri Tumanov. In March 1997, Lazarenko, then prime minister, awarded Kyiv Star the license to operate as a mobile provider in Ukraine rather than the much better funded and experienced multinational Motorola (Ivzhenko 1999). By 2012, Kyiv Star was Ukraine's biggest mobile operator.

Kuchma's daughter, Olena Franchuk (b. 1970), remarried the oligarch Viktor Pinchuk (b. 1960). Her surname is from her first husband Ihor, which whom she had a son, Roman b. 1991). In 2008, Olena Franchuk purchased "the world's most expensive home" in London, England (*Daily Mail* 2008). Even after Lazarenko's arrest in the U.S., on April 19, 1999, Lazarenko's company, Nemuro Industrial Group purchased Kyiv Star shares worth $1.6 million (Leshchenko 2012e).

After four year of investigation, Lazarenko's three-month trial began on March 15, 2004 at the Federal Court in San Francisco. On May 7, the Judge Martin J. Jenkins, dismissed a total of 21 charges against him relating to UESU, GHP and Naukova farms. This included criminal charges against the three owners of UESU - Tymoshenko, her husband and Hravets (Leshchenko 2012f). The judge accused the prosecution of not showing what financial losses the Ukrainian people or government had suffered on account of the UESU-Gazprom contracts, and not proving that another company would have provided a better financial deal for Ukraine than UESU. The judge added that UESU's giving money to Lazarenko that belonged to Gazprom was not a crime against the Ukrainian population.

On June 3, 2004, the jury convicted Lazarenko on twenty-nine accounts, including conspiracy to commit money laundering, money laundering, wire fraud, and transportation of stolen property through various banks in the United States (U.S. v. Lazarenko 2004). It took two years for a court to sentence Lazarenko, as his lawyers fought the conviction on the grounds that Lazarenko was a victim of Kuchma's dictatorship and didn't commit any crimes under Ukrainian law. Lazarenko attempted to improve his image by arguing that his former associate, Yuliya Tymoshenko, was one of the leaders of the 2004 Orange Revolution that was welcomed by the U.S. government. Rejecting these arguments, the judge, on August 25, 2006, sentenced Lazarenko to nine years imprisonment and a $20 million fine for "extorting over $40 million dollars from Ukrainian citizens and laundering over $20 million through American banks" (*BBC* 2006a).

Lazarenko continued to appeal against his conviction. On June 9, 2008, a judge decreased the number of convictions from fourteen to eight; however, his sentence and fines were not reduced (U.S. v. Lazarenko 2008). On April 10, 2009, Lazarenko lost his final appeal against his conviction. On November 2009, the U.S. 9th Circuit Court of Appeals upheld his conviction on the eight charges and denied him any further appeals (Williams 2009). It decreased his imprisonment from 108 months to 97 months (U.S. v. Lazarenko 2010) and reduces his fine of $20 million given in 2006 to $9 million (World Bank 2012b).

The final court ruling meant that Lazarenko would be freed on November 1, 2012. Since arriving in New York City on February 19, 1999, Lazarenko had been detained in the U.S. for a total of almost 13 years: almost eight years in prison, four years under house arrest and two years detention before being charged. The courts would have been lenient if he had admitted to his crimes and returned all the money he got by extortion. His millions of dollars held in Antigua and elsewhere is still a matter of legal dispute (World Bank 2012a). Apparently some of it has been or might be returned to Ukraine (Gongadze, M. 2008), while tens of millions might still be Lazarenko's, if he finds a country that will give him residence.

The Lazarenko trial and sentence was a landmark case in American law because, as an article in the Yale Law Journal said that for the "first time" in American history, "a former leader of a foreign country was convicted in a U.S. court in part for breaking his own country's laws" (Spence 2005).

On his release, Lazarenko was re-arrested by the Department of Immigration because he had no legal right to reside in the U.S. (Lyshchenko 2012). As he doesn't want to return to Ukraine, and no other country will give him refuge, he might sit in prison for the rest of his life.

The lesson from the Lazarenko affair for other oligarchs was that they would be prosecuted not only in Ukraine if they became disloyal to the president. The U.S. arrest and trial of Lazarenko not only helped Kuchma to get re-elected, but also provided the incumbent president with the opportunity to present himself as a crusader against corruption. Following Lazarenko's demise, the president continued to sanctioned large-scale abuse of power, as long as the oligarch remained loyal. Permitting the loyal Ihor Bakai to loot the national treasury on a grand scale ranked as the worst incident of corruption during Kuchma's presidency, and not Lazarenko's as is commonly asserted.

8 Bakai "the conman"

Kuchma learned a lesson from former Prime Minister Pavlo Lazarenko's control of the energy sector. It had to be in the hands of a person loyal to him but without political ambition. In the wrong hands the money made from it could serve as a financial base for a rival, especially in the coming 1999 presidential election year.

The person the president selected to take over the energy sector from Lazarenko was Ihor Bakai. He met Kuchma's tests for loyalty and lack of political ambition. The president selected him despite the fact he had previously criticized him for causing huge loses for the state. He wanted him because he could be trusted to take money from the state energy sector for his re-election.

Bakai first appeared on the national scene following the energy crisis during the presidency of Leonid Kravchuk. In February 1994, the Turkmen government switched off the supply of gas to Ukraine because of its failure to pay $672 million for natural gas supplied in 1993. On March 25, 1994, Ukraine's Cabinet of Ministers, headed by prime minister Vitali Masol, selected Bakai's company Respublika to deal with the debt to Turkmenistan and to purchase additional gas for 1994.

The choice of Respublika was surprising as its head, the then thirty-one year old Bakai, lacked both experience of the natural gas business, or the money to operate in this multi-million dollar industry. According to the natural gas mogul, Dmytro Firtash: "Bakai convinced then Ukrainian President Kravchuk to give him permission to buy gas exclusively for the Ukrainian market in Turkmenistan. Firtash noted that Bakai's success sparked his interest in the gas business" (Taylor, 2008).

The choice of Bakai was a billion dollar loss for Ukraine. Respublika failed to settle Ukraine's 1993 debt of $672 million to Turkmenistan, or to pay the 1994 bill of $460 million for the imported gas from Turkmenistan (Fujimori 2005). Instead, the government paid Bakai's bills after Respublika declared itself bankrupt. It has

been estimated that Bakai made for himself about $500 million from the debacle (Lisnychuk & Sushko 2005).

The Cabinet of Ministers took its revenge on Respublika. It confiscated its 2.2 billion cubic meters of natural gas held in storage, and initiated a criminal case against the company (Yeltsov 2001c). The criminal investigation failed, as Respublika's records, fortuitously for Bakai, had been destroyed in a fire (Markov 1996). Bakai blamed the government for the bankruptcy claiming it had confiscated Respublika's gas reserves as well as goods valued at $108 million which were destined for Turkmenistan to pay for the gas (Ibid.).

At the time, the government could ill afford the losses. In 1994, Ukraine's economy had hit rock bottom with inflation running at 10,000 percent. On November 9, the new president, Leonid Kuchma [elected in August 1994] made a scathing attack on the previous government's choice of selecting Respublika to import gas. He told a news conference that he was amazed that "a structure with a registered capital of 500 million Karbovantsy [about US $3,000] obtained a multi-billion dollar contract." He also told journalists that the Turkmen president, Saparmurat Niyazov, had complained about Respublika. "Something has gone wrong in our state," Kuchma remarked (*Global Witness* 2006).

Despite Kuchma's criticism of Bakai over the Respublika affair, he approved the decision by the deputy prime minister in charge of energy, Pavlo Lazarenko, to allow Bakai to return to the natural gas market in 1995 under a different company name, Intergaz. At Intergaz, as in Respublika, Bakai was president and Ihor Sharov the vice-president.

In the years 1995 to 1997, when the minister Lazarenko controlled the energy market, Intergaz had 10 per cent percent of the business gas market. After UESU and Itera, it was the third largest importer and distributor of gas. Lazarenko had given it the monopoly to distribute gas to enterprises in the oblasts of Odesa, Kherson, Vinnytsia, Poltava, Zaporizhzhia, Rivne and Khmelnytsky (Fujimori 2005).

Intergaz, like UESU and Itera, paid little or no taxes thanks to the law that allowed foreign investors with joint enterprises in Ukraine to repatriate their profits abroad. Intergaz's foreign investor was Intergaz USA, which Bakai owned. In addition, Lazarenko exempted the three wholesale gas traders from paying gas transport fees to the state pipeline operator, Ukragazprom (Yeremenko 1997). Lazarenko allowed the tax avoidance schemes for

the appointed gas companies so he could maximize his fifty-percent cut of their profits.

Bakai was flushed with money. Just like Lazarenko, he deposited his cash to banks around the world (Kolesnikova 2000), and spent millions on properties including in the U.S.. On April 18, 1994, he and his wife Elena, purchased a house at 1068 Herkness Drive, Meadowbrook, Pennsylvania for $1.8 million. On December 12, 1994, in the name of Bakai's mother-in-law's name, Bronoslava Demtshuk, land was purchased at 2790 Gordon Drive, Naples, Florida, to construct a new home. After construction of the house, the total value of the property was worth $6.4 million. On July 17, 2005, Elena Bakai bought a property at 1204 Ascot Drive, Fort Washington, Pennsylvania for $475,000. On April 29, 1993, Bakai registered the company Business Partners International in Pennsylvania. Bakai denied the money originated from him and claimed it came from his father-in-law. He, like Lazarenko, maintained that he didn't have any foreign bank accounts as holding such accounts was a criminal offense in Ukraine (Ibid.).

He got hold of a vast national park in Ukraine and transformed it into a private hunting reserve. On January 29, 1997, he paid an undisclosed sum of money for the 11,000-hectare Trakhtemyriv national park, located about seventy miles south of Kyiv on the Dnipro River. The park contained many prehistoric sites and the remains of a 17th century Cossack fort and monastery. It became a private hunting estate with armed guards patrolling the perimeter (Boichenko 2000). When Bakai was asked about the legal status of Trakhtemyriv, he replied: "It is called the Trakhtemyriv national nature park, but it is privately owned." He denied newspaper reports that he or "high-ranking officials" hunted in the park (Yeltsov 2001c). However, photographs showed Bakai and his nouveaux riches friends with trophies of boars and other wild animals (Lystopad 2006).

Following Prime Minister Lazarenko's dismissal in July 1997, Bakai's position in the gas market looked just as precarious as Tymoshenko's. On July 21, Gazprom stopped supplying gas to Intergaz and UESU, and demanded $320 million from Intergaz and $50 million from UESU for gas already supplied (Fujimori 2005). But with weeks, Bakai's fortunes improved exponentially while Tymoshenko's declined. In August 1997, Intergaz resumed selling gas, as the government recognized its claim to 1.2 billion of cubic meters of gas in the state reserves (Ibid.).

In contrast, no gas was found for UESU, and furthermore, the government demanded that it pay Ukragazprom for

its transportation fees. In order to pay its bills, UESU sold its shares in the lucrative enterprise Khartsyzsk Tube Factory [KhTZ], one of the world's largest manufacturers of large diameter oil and gas pipes (Ibid., 129).

President Kuchma hired Bakai to hound UESU out of the gas market because of its financial importance to Lazarenko. In September 1997, Kuchma appointed Bakai as deputy head of the State committee on oil, gas and oil refineries. It revoked UESU's license to operate in the gas market (Ibid.).

Bakai moved on to become Ukraine's energy Tzar. In August 1997, as a deputy in the Verhovna Rada, he had proposed the creation of a new state company to be called Naftogaz by merging all state companies involved in gas and oil production, transportation and distribution (Yeremenko 1997). In February 1998, Kuchma announced the implementation of Bakai's proposal – the creation of Naftogaz Ukraine with Bakai as its chairman (Yeremenko 1998).

The president had appointed a person whom he had previously criticized for incompetence, and who had left multi-million dollar debts to the state, not once but twice, first with Respublika and then Intergaz. In the run-*up* to the 1999 presidential elections, the president gave Bakai the job to head Naftogaz after he had promised to give $250 million for his re-election campaign (Ilchenko 2011). Naftogaz became not only Kuchma's piggy bank but also Bakai's.

Following the 1999 presidential elections, Bakai's position at Naftogaz was undermined by Kuchma's appointment in January 2000 of his old rival, Yuliya Tymoshenko, as deputy prime minister in charge of energy. At her first press conference on January 12, 2000, she lambasted Bakai for mismanagement and corruption at Naftogaz. She was not only taking revenge on Bakai for pushing UESU out of the lucrative gas market, but she also launched her new career as scourge of corruption in the energy market, that eleven years later landed her in prison (see Chapter 18 – Yanukovych's revenge).

At the press conference, Tymoshenko blamed Bakai for creating Naftogaz's debt of $2.2 billion (Yeremenko 2000). Additionally, she accused Naftogaz of illegally siphoning off gas sent by Gazprom through Ukraine to Europe. As a consequence, she said, the acting Russian Prime Minister Putin had ordered oil exports to Ukraine to be suspended until the problems with Gazprom were resolved. This had the immediate effect of stopping oil

refineries in Ukraine from operating, and causing a national gasoline shortage.

Bakai attempted to play down Tymoshenko's criticisms. His deputy Ihor Didenko correctly pointed out that Naftogaz's debt was "only" $873 million (Didenko 2000) and the remainder had been incurred before Naftogaz came into existence. He didn't reply to the charge that Naftogaz was siphoning Gazprom's gas meant for Europe.

The details of Ukraine's gas debts to Russia were secret. A leaked document showed that on January 20, 2000, Prime Minister Viktor Yushchenko agreed with Gazprom's CEO, Rem Vyakhirev, that Ukraine's debt to Gazprom was from $1.8 to $1.9 billion (Table 8.1). Naftogaz's debt was $780-$880 million, with the remaining debt consisting of pre-Naftogaz era debt and private companies, including Bakai's Intergaz and Tymoshenko's UESU. Yushchenko promised Gazprom that Ukraine would pay all these debts, including those incurred by the private companies.

Table 8.1
Jan. 20, 2000, Ukraine's Natural Gas Debts
to Russia's Gazprom and Turkmenistan in millions of dollars

Russia-Ukraine accord of Nov. 3, 1998,	$775
Naftogaz Ukraine	$780-$880
Intergaz (Bakai)	$197
Tsentr-Sigma	$41
UESU (Tymoshenko)	$22
Ukrgazprom-Motor Sich	$14
Total owed to Gazprom	$1,829 to $1,929
Total owed to Turkmenistan	$233
Total foreign natural gas debts	$2,062 to $2,162
(Source: Yushchenko and Vyakhirev 2000)	

The Yushchenko and Vyakhirev agreement also stipulated that the Ukrainian government would pay for the natural gas illegally siphoned by Naftogaz, but it didn't specify how much it would be. On January 29, 2000, only nine days after the signing the agreement, the head of Gazprom publicly accused Naftogaz of continuing to siphon off its gas (UT2 2000a). Vyakhirev followed this with a telegram to Yushchenko on February 2, accusing Naftogaz of "grossly violating" the new agreement (Vyakhirev 2000). He accused Naftogaz of undermining Gazprom in the East European market by selling siphoned gas for as little as $25 per 1,000 cu.m, while

Gazprom's price was twice as much.

About $184 million of Naftogaz's $870 million debt was the money Bakai took for himself and Kuchma's re-election. To cover his corruption, President Kuchma repeatedly vetoed parliament's attempt to investigate Naftogaz's accounts.

No audits of Naftogaz were ever carried out when Bakai headed it, despite a call from the IMF for audits to take place and promises that it would take place. On August 26, 1999, in a letter to the IMF, the prime minister, Pustovoitenko, and the then chairman of the National Bank, Yushchenko, promised: "We will also take steps to audit the operations of Naftogaz Ukraine" (Pustovoytenko and Yushchenko 1999). The first audit of Naftogaz only took place in 2001, three years after its creation (Global Witness 2006).

Bakai was guilty of many financial irregularities. The most infamous one was how he extracted $184 million from Naftogaz in the run-*up* to the October 1999 presidential elections. He sold sixteen Naftogaz subsidiaries for $52,000 to his private company New Microtechnologies [Novi Mikrotekhnologii], and then had Naftogaz buy them for $184 million, thus giving it an instant windfall profit.

New Microtechnologies was founded by Bakai and a number of officials, including the head of the president's office, Volodymyr Lytvyn. Its initial purpose was to illegally privatize state patents used in the gas industry and charge fees for their use (Omelchenko and Yermak, 2001).

From the $184 million, Bakai gave only $66 million to Kuchma's re-election campaign, and kept the rest (Kuchma and Azarov February 10, 2000). This caused the president to complain on October 11, 1999. "Ihor, I was looking you in the eye and you told me, 'I will provide $250 million for your election campaign'" (Kuchma and Bakai, Volkov October 11, 1999). In response, Bakai replied that his donation "in theory" came not from Naftogaz but from him [New Microtechnologies]: "I just want you to know that all the money [for the election campaign], in theory, came from me" (Ibid.).

The head of the Tax Office, Mykola Azarov, explained to Kuchma how Bakai's election donation came from:

> [Azarov] Now, Leonid Danylovych about Naftogaz. I must report, and you will make your decision. Bakai has concocted quite a lot, so has Didenko [his deputy at Naftogaz]. For example, let us say, Naftogaz has an UkrNDIgaz [Ukrayinsky naukovo-doslidnyi instytut pryrodnykh gaziv] in Kharkiv, and it has some 16 subsidiaries. Well, he [sold] those subsidiaries to the company Novi Mikrotekhnologii [New Microtechnologies] in Kyiv for $52,000. Naftogaz then bought them all. [Kuchma] What is that firm? [Azarov] I don't know what this company does now. Then Naftogaz buys them for $184 million and charges the [UkrNDIgaz] company account, and at the same time. [Kuchma interrupts] For $184 million? (Kuchma and Azarov May 24, 2000; Melnychenko 2002)

Azarov went on to complain that from the $184 million, Bakai had kept $118 million for himself and gave only $66 million for the elections. He called Bakai a "conman," ever since the Respublika affair.

The head of the tax office then recommended to the president how this crime could be covered *up*. He feared that the $184 million stolen from Naftogaz could be easily discovered as "any idiot could trace it." He suggested that Bakai should take time off to alter the relevant accounts:

> [Azarov] Well, about this Naftogaz. I invited Bakai, as you and I had agreed, and showed him everything. My people worked on that, I trust them. I spoke to Oleksandr Mykhaylovych [Volkov], and found out how much came in total [for the election campaign]. And I literally told him: "Well, Ihor, you have put at least $100 million in you pocket, at least. I understand that, of course, I will not set you *up*. I give you two weeks, a month at the most. Then I showed him all the schemes. Destroy them, these, so to say, your papers, which prove directly or indirectly all of your - You did it foolishly and stupidly." And I showed him that he did everything foolishly and stupidly. [Kuchma] Absolutely. I told him – listen, dear, no one will cover your ass. (Kuchma and Azarov February 10, 2000)

By the end of January 2000, Tymoshenko, as minister of energy, begun to take control of Naftogaz from Bakai by becoming the head of its supervisory board, and launching an investigation into the company (UT3 2000). Fearing the investigation might cause a major scandal, Kuchma asked Bakai to submit his resignation on March 24, 2000, to get rid of the evidence that he had taken money from the company, and to seek immunity from prosecution by getting into the Verhovna Rada in a by-election scheduled for June 2000.

On April 7, 2000, Bakai resigned, expressing regret that Naftogaz's debt to Gazprom had increased in the last three months: "My greatest mistake and problem is that I let our debt to Gazprom grow by $500 million over the first three months of 2000" (Global Witness 2006).

What Bakai didn't say was that he took a further $605 million for himself from Naftogaz, in addition to the $184 million during the election campaign. He had appropriated $194 million of the $250 million given by Putin as a thank-you for Kuchma's donation to his presidential election campaign (Kuchma and Azarov June 14, 2000). [The incident was presented in Chapter 5 – Kuchma's and Putin's dark secrets.]

Bakai took another $61 million from Naftogaz just before he resigned. He had transferred this sum from Naftogaz to the account of TsSKA Kyiv, a football club Naftogaz sponsored. From TsSKA, he transferred the millions to a bank account in Latvia held by Fahr European Ltd, a company registered in the American state of Oregon. The registration by done in 2000 by Michael Wise, a law professor at Willamette Law School in Salem, Oregon. In an interview with the author, Wise said that from 2000 until Feb. 2002, he had worked as a company registrar legalizing hundreds of companies from the former Soviet Union. He was being paid $50 for each company registration and had no knowledge of who was behind these companies and what they were involved in. He said the FBI, in June 2002 on behalf of investigators in Ukraine, had interviewed him about Fahr and other companies, and that he had told them the same story (Wise 2007). The money from the Fahr bank account was disbursed as follows: $19 million to Itera, $31 million to accounts held by companies and individuals outside Ukraine and $11 million to ten company and four personal accounts at UkrGazBank, where Bakai was one of its owners. (Where these dispersements unpaid bribes or kickbacks?)

An attempt in 2002 by investigators from the Kyiv City prosecutor's office to bring charges against those involved in the Fahr scheme was frustrated. The prosecutor general's office simply fired the investigators. In 2005, following the Orange Revolution, one of the investigators, Oleksi Donsky (2006), wrote an open letter to President Yushchenko accusing the prosecutor general's office of covering-up the Fahr case.

Bakai pocketed another $350 million. This was the amount that Naftogaz was suppose to transfer to the Ministry of Defense. The money came from the sale to Russia of eleven strategic bombers: eight TU-160 [NATO designated Blackjack], three TU-95MS [Bear-H], and 600 long-range X-22 cruise missiles and ground support

equipment (*CACDS* 2000a) (*CACDS* 2000b). The money initially came to Naftogaz to pay Gazprom for the purchase of natural gas. Later the government decided to allocate the money to Ukraine's armed forces. However, as Kuchma explained to the new head of Naftogaz, Vadim Kopylov, Bakai had surreptitiously deposited the money in his own bank account in Moscow.

> [Kuchma] Yesterday [the head of] Naftogaz Ukrayiny came to see me. [Lytvyn] Kopylov [the new head of Naftogaz]? [Kuchma] Kopylov. [Lytvyn] Yes. [Kuchma] In addition, besides that 150 million, an additional 108 million in May. The 108 million through TsSKA [Kyiv soccer club], through Georgia, and turn it over to Moscow, the fucker, and from there to that Bakai's account. … I would drop it if the Ministry of Defense weren't involved. He [Kopylov] says he [Bakai] did not pay this money, which is written into the budget, the $350 million for bombers, not a penny. (Kuchma and Lytvyn Sept. 19, 2000) (*IPI* Sept. 19, 2000.)

On July 14, 2000, Kuchma had appointed Kopylov, the deputy head of the Tax Office, as the new head of Naftogaz. The appointment of Kopylov was a brilliant move by the Donetsk led Yanukoyvch clan to install their person to manage the country's most lucrative gravy train. Inaugurating his appointment, Kuchma and Azarov instructed Kopylov that at important political moments, like elections or relations with Russia, he should not hesitate to use Naftogaz to maintain political power (Kuchma, Azarov, and Kopylov July 15, 2000).

Kuchma's sponsorship of Bakai cost Ukraine dearly, much more than Lazarenko. Lazarenko's central government positions netted him from $300 million to $400 million. Bakai's corruption or ineptitude cost the state more than a billion dollars, about $1.3 billion, as calculated in Table 8.2. It did not include the money he made from siphoning Russia natural gas and reselling it in Europe.

Table 8.2 Bakai's cost to Ukraine's economy in the energy sector in millions of dollars	
1994 – Respublika's debt to Turkmenistan paid by government of Ukraine	$460
1997 – Intergaz debt paid by government of Ukraine	$197
1999 – Naftogaz [$118 million for Bakai and $66 million for Kuchma's 1999 re-election]	$184
2000 – "Putin's thank you money"	$194
2000 – Fahr European Ltd	$61
2000 – Sale of strategic bombers and missiles	$350
Total between 1994 and 2000	$1,252
(Source: table created by JV Koshiw, 2013)	

After Bakai left office, Kuchma helped him to conceal his financial irregularities and prevent his prosecution. On July 7, 2000, Bakai asked Kuchma to appoint his candidate as director of Naftogaz's trading house, where natural gas was sold or auctioned to regional gas traders, in order to cover-*up* past irregularities.

> [Bakai] I need my director to be there for three months. [Kuchma] Well, at this time who? [Bakai] At the moment there are as many four people who are giving me all the documents. Yuliya [Tymoshenko is] there. [Kuchma] Yes, yes, yes. [Bakai] Yuliya put her own person in there and, simply, the situation, honestly, has put me on edge. (Kuchma and Bakai, Volkov July 7, 2000)

Bakai suggested his nominee could fix the accounts because he would not be suspected as he was considered respectable and honest – "a recipient of Soviet era honors":

> [Bakai] Leonid Danylovych, [he is] the general director of Ukrgazdobychi [Ukrgazvydobuvannia or Ukrainian gas extraction]. He is 54 years old, 30 years in the oil and gas division, a medalist. In my view, he is the best person in the field. Today he is a general director involved in extracting, extracting 18 billion [of cubic gas]. He completely pays his debts. [Kuchma] Where is he, in Kyiv? [Bakai] He was in Poltava, but last year I transferred him to Kyiv. In Poltava he was at Poltavagazdobych [Poltava gas extraction]. [Kuchma while reading the candidate's CV] He won a

state prize. [Born in 1949] 49. Why? OK. I will do it. [Bakai] Leonid Danylovych, I need him only for three months, so he would be there – that is all. We liquidate the [evidence at the] Trading House, and then they can do whatever they want. [Kuchma] We have come to an agreement. [Bakai] Yes? [Kuchma] Yes! [Bakai] Can I hope? [Kuchma] Today I will tell Yushchenko, you stop worrying. [Bakai] Thanks. (Ibid.)

The person selected by Bakai to take charge of Naftogaz's trading house was most likely Ilya Rybchych, the head of Ukrgazdobychi, who was born in 1949 and had been honored with a USSR state prize for his work in the natural gas industry.

Bakai was also anxious about an investigation by the prosecutor general's office into his dealings with the gas distributor, Zakhid-Tsentr Energo that covered the capital. Kuchma assured him that prosecutor's office wasn't carrying out such an investigation.

Kuchma prevented a court appearance for Bakai by helping him got immunity from prosecution by facilitating his election to parliament, where he joined Volkov's faction, the Rebirth of Regions. Shortly after Bakai took his seat in the Rada, the Chief Justice of the Supreme Court, Vitali Boiko, came to the president requesting that Bakai and another newly elected deputy be prosecuted. Kuchma replied that it was too late because both deputies had immunity from prosecution.

[Boiko] … two matters have re-appeared from the pre-election period. I will say, and you will receive about Bakai and [Rostyslav] Schiller from Ternopil. As for Bakai, I will take the decision. [Kuchma interrupts] They have registered [as deputies on July 7, 2000 following by-elections on July 5]. You will not be able to do anything. [Boiko] I said yesterday: "Well, this is the time to wave with fists." [Kuchma] Ha, ha [laughs], of course! [Boiko] The person has taken the oath, and on this [the case] is closed. (Kuchma and V. Boiko July 11, 2000)

Following Bakai's resignation in April 2000 and the appointment of Kopylov, Ihor Didenko temporarily took over Naftogaz . He was a controversial figure in his own right. He was part owner of Gardo Bank where the government had deposited the multi-million "Ostarbeiter" compensation given by the German government to

citizens from Ukraine who worked as forced laborers in Nazi Germany. The bank lost the money in a bad investment. Privately, the German government suspected that Didenko and the director of the Grado Bank, Viktor Zherdytsky, had stolen the money. In October 2000, Zherdytsky was arrested while visiting Germany. In the following year, the German authorities arrested Didenko, also during a visit. Both sat in prison until 2006 when a German court ruled they were innocent and that the money had been lost because of a bad investment.

Flush with hundreds of millions of dollars from his time at Naftogaz, Bakai came to see Kuchma on June 29, 2000, to tell him of his grand plan to create a financial empire called "Baza" [the base] that would finance as many as 80 companies involved in all aspects of the economy, including real estate, the mass media, oil and gas. It would also create a media company with satellites beaming TV programs to every corner of Ukraine, and rival Russia's NTV.

Bakai said he was building three five-star hotels in the capital: "At the moment I am building the St. Sophia [located across from the 11th century St. Sophia cathedral]. On Independence Day [August 24], [or] Kyiv Day next year, the first five-star hotel in Kyiv, the Intercontinental, will open." Within a year, he said, he would build Ukraine's first private hospital, among other grand projects.

As a sweetener, Bakai wanted to reassure the president that the company will be legitimate: "I want to create the first company in Ukraine that pays all its taxes and engages in legal business," and be audited by none other than the international auditors PricewaterhouseCoopers. Kuchma described the proposal, albeit without much enthusiasm, as "a good idea." It should have been clear to him that Bakai would not become Ukraine's richest oligarch, but a "conman" as Azarov called him.

Bakai and Volkov understood like no one else that without the president's protection they would prosecuted for corruption. They joked with the president about who would get more votes in parliament to have their immunity removed.

> [Volkov] Leonid Danylovych, you understand one thing. Bakai and I, we clearly understand, we are not children. We clearly understand that for us the only immunity from prosecution - it is you. If you are not there – everything else is rubbish. Well, if the prosecutor creates … [Kuchma] Absolutely!

> [Volkov] I would get 310 [much more than the 225 votes needed to have his immunity from prosecution removed]. He [referring to Bakai would not get even more than] 312 [votes]. Realistically speaking, they [the Rada deputies] will vote [against] us. We clearly understand, Leonid Danylovych. [Kuchma] You understand all this very well. You understand it correctly. Ha, ha. They would have taken action against you long ago if I weren't in this position. Or someone else would have come and everything would have been put before the prosecutor, the Rada, fuck. This is why, fuck, don't play the fool. (Kuchma and Bakai, Volkov July 7, 2000)

In an interview published on August 6, 2001, Bakai told the muckraking journalist Oleh Yeltsov that he had discovered from the Melnychenko recordings that Azarov had betrayed him, and blamed him for his dismissal from Naftogaz. "I know that the president's decision on my resignation was made thanks to just one person – Azarov. I only learnt it recently thanks to Mr. Melnychenko. If only I had known that Azarov was doing this, I would never ever have submitted my letter of resignation! I cannot say a single good word about this man now. He betrayed me" (Yeltsov 2001c).

Bakai denied to Yeltsov that he had taken for himself the hundreds of millions from the sale of eleven strategic bombers to Russia, claiming that he had exchanged them for Ukraine's gas debts. This, he said, was why the U.S. government had accused him of money laundering and refused to renew his visa. In a fit of patriotism, Bakai replied:

> I did a holy deed for Ukraine: I wrote $300 million off the Ukrainian debt to Russia in exchange for the bombers. I sold the bombers for which the Americans had signed a program to cut them for scrap metal, and two bombers had already been cut *up*. We were lucky that Russians took the bombers. This was a contract between Ukrspetseksport [the state arms trader] and the Russian Defense Ministry. Not a kopeck went through me. (Yeltsov 2001c)

Despite the pilfering of the state on a grand scale, in 2002 the president brought him back into government. He appointed him to head the state property company, the Derzhavny upravlinnya spravamy [DUS] or the State Administration of Affairs, the body under the president's office controlling state property.

At DUS, Bakai lived *up* to his "conman" image. He sold state property, especially in the Crimea, to well-placed politicians, including President Putin (Aryev 2004a and Leshchenko 2005). Following the Orange Revolution in 2004, Bakai fled to Russia, where Putin gave him refuge and Russian citizenship. Fleeing the country was something that Bakai had previously vowed he would never: "I am a Ukrainian patriot. To get me out of Ukraine, you would have to kill me and take me out of the country in a coffin" (Yeltsov 2001c).

9 “Yuliya must be destroyed”

On Dec. 22, 1999, parliament approved President Kuchma’s new cabinet headed by Prime Minister Viktor Yushchenko. The surprise choice among the other eighteen ministers was Yuliya Tymoshenko, whom the president appointed to the post of deputy prime minister in charge of energy. The appointment surprised Ukraine’s elite, as she had been a close ally of Pavlo Lazarenko, who was the president’s enemy and awaiting trial in the U.S. for money laundering.

Tymoshenko become rich because of her business relationship with Lazarenko. Their partnership began in 1992, when at the age of 32, she along with her husband Oleksandr, and Oleksandr Hravets created Ukraine Benzine Corporation [UBC] with her as its director. The success of UBC, like all Dnipropetrovsk companies, rested on the oblast’s governor Pavlo Lazarenko. For example, in 1993, operating under the company “Cube Ltd,” they received a $113 million contract from Dnipropetrovsk government to sell metals and buy oil products (Universal Trading 2012).

The big opportunity came in Sept. 1995, when Lazarenko become the deputy prime minister in charge of energy. On October 17, 1995, she and her partners registered a new company called United Energy Systems of Ukraine [UESU], with her as president. To take advantage of tax breaks, also in October 1995, UESU created two foreign investors: Somolli Enterprises Ltd of Cyprus and United Energy International Ltd [UEIL] of the United Kingdom.

To maximize their profits, astute businesses like UESU, exploited the tax law on joint ventures. The joint venture scheme was originally designed to attract foreign investors by giving them generous tax privileges, notably an exemption from excise and customs duties, value added tax, as well as a five-year holiday from paying tax for profits in Ukraine (Verhovna Rada 1992). In the eight years the law was fully in effect, foreign companies, many of them owned by Ukrainians, had avoided hundreds of millions of dollars in tax. In 2000,

Yushchenko's cabinet, with Tymoshenko as minister of energy, curtailed many of these tax privileges for foreign investments (German Advisory Group 2001).

In the months before the creation of UESU, Yuliya and her husband, like many of the emerging oligarchs, travelled with suitcases of dollars to enjoy the high life around the world. Why dollars? Before the launch of the hryvnya in 1996, Ukraine had the worthless unexchangeable karbovanets. Both were caught smuggling undeclared cash through customs. In March 1995, Yuliya was detained at an airport in Ukraine for having $26,000. In July, customs in Moscow caught her husband Oleksandr with $100,000.

For the Ukraine-Russia 1996 agreement, the new energy minister Lazarenko, in the cabinet of Prime Minister Marchuk, gave licenses to import natural gas only to three private companies: UESU, Itera, and Intergaz. UESU received by far the biggest market share. He repeated this arrangement for the year 1997.

For the years 1996 and 1997, UESU in return gave Lazarenko at least $197 million in kickbacks from its gas sales in Ukraine. The money actually came from its off-shore companies UEIL or Somolli, as UESU's business customers paid their bills to UEIL.

In turn, UEIL, or through Somolli, paid the bribes to Lazarenko. From April to December 1996, UEIL passed $140 million to Somolli, which deposited $84 million [the proverbial fifty percent] on Lazarenko's bank accounts. On another occasion, UEIL paid $65 million directly to Lazarenko's bank accounts. Tymoshenko and her associates paid in 1996 and 1997 at least $162 million to Lazarenko (U.S. v. Lazarenko 2005). His cut would have been much less, if he hadn't used state funds to pay some of UESU's bills to Gazprom or for the transportation of the gas within Ukraine.

He also had to spend money for bribes to give UESU the dominant position in the gas market. His partner in crime Petro Kyrychenko told U.S. prosecutors that Lazarenko gave $2.7 million to the CEO of Gazprom, Rem Vyakhirev (Leshchenko 2012h) and $7 million to Prime Minister Marchuk (Leshchenko 2012d).

Lazarenko's kickbacks dried up after Kuchma fired him as prime minister in July 1997 as UESU was hounded out of the market. In the process of excluding it, the authorities caused UESU to leave a $22 million debt to

Gazprom (Yushchenko and Vyakhirev 2000), and a $350 million disputed contract with the Russian Ministry of Defense. Costs which the Ukrainian government eventually paid.

In September 1997, the president's state committee on oil, gas and oil refineries gave UESU's share of the gas market to Interpipe, the company owned by Kuchma's son-in-law Viktor Pinchuk (Yeremenko 1997). As Interpipe could not supply UESU's large number of customers, about 2,000 companies, other oligarchs stepped into the breach, especially in the Donetsk Oblast. As some customers resisted suddenly changing supplier, the president's committee on oil and gas ordered all customers to dissolve their contracts with UESU (Prudka 1997).

Pinchuk replaced Lazarenko as the top oligarch in the Dnipropetrovsk Oblast. Interpipe received not only UESU's gas market. The government gave him the state shares in three large metallurgical plants: the Marganetsk Ore Enrichment, the Ordzhonikidze Ore Enrichment, and the Nikopol Ferroalloy Plant (Zhur and Yermak 1999).

In Donetsk oblast, Lazarenko's dismissal gave the opportunity for Rinat Akhmetov to buy UESU's lucrative enterprise, the highly prized Khartsyzsk Tube Factory [KhTZ], and for his IUD to supply the gas to enterprises. During the governorship of Yanukovych, Akhmetov expanded his collection of steel mills, coalmines, breweries and financial institutions to become one of the world's richest men (Zimmer 2005).

Initially, Tymoshenko supported Lazarenko in the coming 1999 presidential elections. She became a leading member of his political party Hromada and in March 1998 was elected to parliament as a Hromada candidate She had entered parliament in 1996, when she headed UESU.

But just days before Lazarenko fled Ukraine in February 1999, she split with him, and created her own party in parliament called Batkivchyna [Fatherland]. As a reward for transferring her loyalty from Lazarenko, President Kuchma on Dec. 30, 1999 appointed her as deputy prime minister in charge of energy. He said he wanted her to create order in a dysfunctional energy market and make it attractive for foreign privatization. He did not expect that she would use her government position to transform herself into a crusader against corruption and thus threatening his state of oligarchs.

Her inaugural press conference on Jan. 12, 2000, angered the president with her attack on his favorite oligarch, the chairman of Naftogaz, Ihor Bakai, as being incompetent and corrupt (Yeremenko 2000). Bakai was her former rival in the gas trade, who led Kuchma's effort to deny Lazarenko money by shutting down UESU.

She launched her campaign against corruption under the slogan "clean energy," and announced that industrial consumers would pay market prices for energy and in cash and not barter as it led to corruption and debt (*UT1* 2000) (Hedeon 2000). The "poacher who turned gamekeeper" accused Naftogaz's head of creating a $3 billion debt, as well as stealing Russian gas. From this press conference in January 2000, she has ever since presented herself as a Joan of Arc like figure slaying corruption. Her oligarch foes accuse her of being a hypocrite, and a betrayer of their system.

Tymoshenko's public attack on Bakai was a media sensation, overshadowing President Kuchma's first meeting with the newly appointed cabinet that was held on the same day. Her transformation from an oligarch to outspoken critic of corruption had the leading newspaper of Ukraine's capital, Kievskiye Vedomosti, to call her appointment "bizarre" (Kievskiye Vedomosti 2000a). The accusation was not surprising as the newspaper's owner was the oligarch, Hryhoriy Surkis, who was reaping millions of dollars from the electricity sector. The article pointed out that she had been a close ally of Lazarenko, and appointed to the same position that he once held before he became prime minister. Like her former boss, the newspaper warned that she will use her position to make even more money for herself and to launch a challenge to the president.

Kuchma rebuked Tymoshenko for her press conference with: "government newcomers should refrain from populism, especially in making statements." In private, he viewed her attack on Bakai as an assault on him. He probably feared was that her criticisms could lead to the public disclosure that Naftogaz's money was used for his re-election.

When the Prime Minister Yushchenko agreed with her criticisms, Kuchma began to also regret appointing him. Yushchenko said he supported her because he wanted the massive corruption in the energy sector to stop, as the oligarchs were enriching themselves at the state's expense. As for her past as an oligarch, he replied that she had "repented" her past and was ready "to serve Ukraine honestly and sincerely" (*Ukraina Moloda* 2000).

The paranoid president began to believe that Lazarenko had planted Tymoshenko like a Trojan horse to take revenge on him from inside the government: "[Lazarenko's] most important prominent face in the government is that of Yuliya" (Kuchma and Fokin May 13, 2000). He began to see Lazarenko's influence everywhere. He alleged several times during the year 2000 that Lazarenko was using the newspaper *Zerkalo nedeli* to batter him, claiming that Lazarenko owned a forty percent stake in the paper (Kuchma and Azarov June 14, 2000; Kuchma and Marchuk July 11, 2000).

Kuchma decided that the best way to silence Tymoshenko was to imprison her for having been a corrupt oligarch. On Feb. 10, 2000, just six weeks after appointing her, Kuchma ordered the head of the Tax Office, Mykola Azarov, to prepare a criminal case against her for tax evasion. Azarov began by focusing on the bank serving UESU's accounts – Slovyansky Bank and its manager Borys Feldman. The tax chief warned the president that it would not be easy to find the evidence. "This is why I am looking at how to take Feldman so later we do not let him go." He cited a previous investigation: "The interior ministry's organized crime department has been following Feldman for a year and a half now [...], and they have really found nothing on him" (Kuchma and Azarov Feb. 10, 2000).

On March 13, 2000, armed tax police, dressed in black uniforms and balaclavas, raided the headquarters of Slovyansky Bank in Zaporizhzha. They arrested Feldman, the director Olena Yakymenko and the assistants Nina Vasylevska and Mykhailo Irtlach, and seized the bank's records (Koshiw 2000b). Azarov told Kuchma he placed an article in the national newspaper *Fakty*, owned by Kuchma's son-in-law Pinchuk, to justify the raid and arrests. The raid ruined Slovyansky, which was Ukraine's most profitable bank (Fedorchuk 1999), because the raid led to a run on the bank and its closure.

The Slovyansky Bank attack and arrests failed to produce any evidence against Tymoshenko. Azarov complained to Kuchma that Feldman was refusing to cooperate, as during interrogations he "keeps absolute silence ... won't give evidence against Yuliya." The president suggested that he be "placed among criminals" to make him talk (Kuchma and Azarov May 24, 2000).

Feldman paid a high price for his silence. Azarov, with Kuchma's approval, organized the trial in Luhansk, so it would not receive the public scrutiny if it took place in Kyiv (Kuchma and Azarov Aug. 30, 2000). After two

years in prison under investigation, on April 19, 2002, the Luhansk city court sentenced the 44 year-old banker to nine years with confiscation of all his property and forbade him to work in banking for three years after his release. To add insult to injury, the judge ruled that Feldman could not make a final statement to the court because it might be political.

While the tax office was preparing a case against her, Tymoshenko was busily investigating Naftogaz and piling the pressure on the vulnerable Bakai. She had the Yushchenko led cabinet appoint her to chair the supervisory board of Naftogaz, and proceeded to take control of the company. The pressure was too much for Bakai, and even Kuchma. On March 24, the president asked for his resignation, and in April 2000, Bakai resigned.

After her victory over her old rival, she turned to the corruption in the electricity industry, much of it controlled by the parliamentary member Hryhoriy Surkis. She accused him of pocketing nearly a billion UAH a year from seven of the twenty-six oblast electricity companies he owned or controlled. To remedy the situation, she proposed to re-nationalize them and auction them off.

Unlike Bakai, Surkis fought back. His Kievskiye Vedomosti attacked her relentlessly, with six articles just in April 2000. On April 18, 2000, Tymoshenko and Surkis clashed on the TV talk show Epicenter, which turned out to be one of the liveliest debates on Ukrainian TV, as each accused the other of every crime they could think of (UT2 2000b 2000). The journalist Georgi Gongadze commented that such a debate was beneficial for the public: “Maybe it was the first time in live broadcasting that we had seen an un-manipulated, un-brushed and un-edited face of Ukrainian political reality. As it is – without cuts” (Gongadze 2000a).

Kuchma knew that Tymoshenko’s charges against Surkis were true. The head of the tax office had reported to him that Surkis had laundered millions of dollars from his oblast electricity companies (Kuchma and Azarov June 14, 2000). He also told Kuchma that the bank Nadra, just like Slovyansky Bank, had engaged in laundering money. “Nadra is 100-per-cent linked to Surkis,” responded the president (Kuchma and Azarov Feb. 10, 2000). But in contrast to Tymoshenko and Feldman, Kuchma instructed Azarov not to prosecute Surkis.

Tymoshenko also went after Surkis’ alleged corrupt activities in Energoatom, the state company in charge of Ukraine’s fourteen nuclear reactors, which produced about half of Ukraine’s electricity. She accused his bank,

Ukrainian Credit Bank, of creating a $1.2 billion debt for Energoatom so he could take it over (NTI 2000). On Feb. 14, 2000, Tymoshenko had the Cabinet fire Energoatom's president and vice-president for mismanagement and corruption.

Kuchma went public with his dislike of Tymoshenko's anti-corruption campaign by accusing her of threatening the country with electricity shortages. At the April 19, 2000 meeting with the Cabinet, the president called her actions in the electricity market risky and warned that "only a miracle has saved the nation's power grid from collapse" (Koshiw 2000a) (*UCIPR* 2000b). He called for her cabinet post to be abolished.

Next day, addressing his Corruption and Organized Crime Committee, Kuchma said corruption was widespread in the energy market. He wasn't referring to Bakai or Surkis, but to Tymoshenko, who was no longer involved in the energy market. He said UESU owed UAH 3.6 billion in back taxes (Melanchuk 2000). He defended the tax office raid against Slovyansky Bank by accusing its managers of corruption and tax avoidance, and said that unnamed people in high places were trying to protect it. He said that UESU had to return the stolen money from the energy sector, and said that the "biggest thieves must not be allowed to get away with nothing more than a slap on the wrist" (Koshiw 2000; *UCIPR* 2000b).

On April 27, 2000, Azarov launched a court case against her. He had the Dnipropetrovsk Oblast commercial court order UESU to pay UAH 7.4 billion [UAH 3.6 billion plus fines]. [After becoming prime minister in 2005, she had a court reverse this decision. It illustrated the power by politicians over the courts.]

Other officials joined in giving advise to the president on how to put her in jail. On May 5, Prosecutor General Potebenko said that an opportunity had been missed to charge her for abuse of state property. Tymoshenko with two associates had flown to London on her private plane after the president's office refused to let her have a government plane. Potebenko told Kuchma that she should have been allowed to fly on a government plane, and then be charged for misusing state property. "I understand that it is necessary to act [against her] from all angles, yes?" "At full power" the president urged (Kuchma and Potebenko May 5, 2000).

In London, SBU agents had followed Tymoshenko to a restaurant where she met with a banker, but they failed to overhear their conversation. But Kuchma did learn from illegal SBU phone intercepts that Tymoshenko was

associating with his most bitter political enemies, the parliamentary members Stefan Khmara and Hryhoriy Omelchenko. Khmara was a former dissident imprisoned during the Soviet period, while Omelchenko was a former investigator in the Ministry of Internal Affairs and SBU. Omelchenko had authored many parliamentary reports charging Kuchma and his closest oligarchs, Oleksandr Volkov and Ihor Bakai, with corruption.

Kuchma also attempted to get American courts to include Tymoshenko in their case against Lazarenko. To this end, on May 11, 2000, the president ordered the SBU to provide the FBI with documents implicating her in money laundering in the West.

On May 24, 2000, two months after instructing the chief of the tax office to create a criminal case against Tymoshenko, Kuchma reminded Azarov to provide the evidence so she could be imprisoned:

> [Kuchma] "Yuliya [Tymoshenko] must be destroyed" [Azarov] We are working on Yuliya. I have issued an order; she is not such a fool. [Kuchma] We need a criminal case against her and to put her ass in prison. (Kuchma and Azarov May 24, 2000)

Kuchma also pressed Azarov to include the non-payment of tax on a Russian contract. Azarov warned him that it would be difficult to prove that she avoided tax on the $350 million contract between her British company United Energy International Limited [UEIL] and Russia's Ministry of Defense. As Ukraine had no jurisdiction over a British company, it could not demand tax from UEIL. As for Russia, it had accused UEIL and Tymoshenko of not fulfilling its contract and owed it the money. In her defense, Tymoshenko replied in an interview that UESU was not able to meet the contract because the Ukrainian government had frozen its bank accounts in 1997 (Yeromenko 2000).

Despite Kuchma's public criticism of her, Prime Minister Yushchenko didn't fire Tymoshenko. The president was not in a position to respond to Yushchenko's insubordination. He had technically lost his power to fire the prime minister on April 6, 2000, when the Verhovna Rada had approved the cabinet's spending program. The law stated that once the parliament approved the program, the prime minister and his cabinet could not be dismissed for another twelve months (*UCIPR* 2001a). Once the year was *up*, Kuchma got parliament to dismiss Yushchenko.

Kuchma's ability to dismiss Tymoshenko and Yushchenko was constrained also by the support they received for their reforms from western governments and the IMF. He feared taking any action against them before the June 2000 state visit by President Clinton would be awkward to explain. Such an action would postpone the promised renewal of the IMF loans. He opted for denouncing Tymoshenko in public and for his minions to create court cases against her, while waiting for the right moment to oust her and Yushchenko.

The president rather overenthusiastically welcomed the news that an official had volunteered to arrest her. His close confidant Volkov told him that a senior investigator in the prosecutor's office had volunteered to arrest her in return for a promotion. The president was so delighted that he immediately telephoned Prosecutor General Potebenko with the news:

> Do you know a Zherbytsky, Volodymyr Hennadyi? Zherbytsky, senior investigator of the Starokyiv district prosecutor's office [Starokyiv is the central district of Kyiv], a colonel … He is given difficult tasks … They say he's not bad … There is a proposal, well you look into it, give him, command him or give his district, Yuliya. That is, Zherbytsky Volodymyr Hennadevych. Yes, give her to him. Good. All in hand. There. Don't tell Haisynsky [the prosecutor of the city of Kyiv] any of this. (Kuchma and Potebenko May 5, 2000)

Frustrated at the failure to put Tymoshenko in prison, Kuchma asked Bakai and Volkov, who were experts at laundering money, how Tymoshenko does it:

> [Kuchma] Do you know what kind of simple scheme Yuliya [uses]? [Bakai] To launder money or to manipulate? [Kuchma] To launder money. [Volkov] Well if you are speaking in general, then I know. She makes a direct agreement. Pays the money by sending it abroad and that is where it stays. [Kuchma] Absolutely right! This is how she accumulates all her money there, and this is the way the agreements are made for coal with Poland, Russia, for gas with Itera, fuck, no one knows this. [Volkov] A cunt! [Bakai] She is clean. Never signs [her name]. [Kuchma] It is important to expose her. It is important to expose her through the press, through the First [TV] Channel, Second Channel [1+1] absolutely and Inter [TV] should also work on this. And that Yushchenko invited you [after

> Bakai's forced resignation, Prime Minister Yushchenko had invited him to a dinner party] shows he is not stupid. (Kuchma and Bakai, Volkov July 7, 2000)

While the prosecutor's office hesitated to charge the deputy prime minister, it struck at her family. On Aug. 18, 2000, it arrested her husband, Oleksandr, an owner of UESU, and one of its managers, Valery Falkovych, for tax avoidance (*UNIAN* 2001). The police also interviewed her sixteen year-old daughter. On Nov. 6, it charged her husband with giving bribes to Lazarenko.

Tymoshenko responded with fury to her husband's imprisonment and her daughter's interrogation. She accused those who wanted to make money illegally from the energy markets of being behind her husband's arrest. The clean energy policy, she said, had already deprived oligarchs of five billion UAH [about a billion U.S. dollars].

By the autumn of 2000, she was being criticized for her anti-corruption campaign all quarters, including the secretary of national security and defense, Marchuk [see Chapter 14], and the Donetsk governor Yanukovych [see Chapter 16].

She fired a broadside against her numerous critics. She accused her fellow minister, Serhei Yermilov, the minister for fuel and energy, of attempting to create new corruption schemes in the energy market on the behalf of the Donetsk oligarchs. Anatoly Kinakh, the head of the Ukrainian Union of Industrialists and Entrepreneurs, she said was using his organization to attack her on behalf of Surkis. She accused Marchuk of preventing the importing of Azeri oil to feed the newly built Odesa-Brody pipeline. The prime minister, she said, was in total agreement with her on eliminating corruption in the energy market (Yeromenko 2000). In actual fact, Yushchenko was beginning to distance himself from her, and would soon betray her in the hope of saving his position as prime minister.

Tymoshenko received another blow when Kuchma gave the FBI permission to interview her in Kyiv on her relationship with Lazarenko. He would not allow the FBI to interview Bakai or any other presidential supporter connected to the Lazarenko case. She had already been interviewed by the prosecutor general's office on the charge that UESU laundered money.

On September 20, 2000, two days before the FBI interview, Tymoshenko tried to make peace with Kuchma. Her trusted political ally, Oleksandr Turchynov, came to the president's office to persuade him of her loyalty and to drop the tax charges.

> [Turchynov] This affair is seven years old. During this time it could have been shoved away somewhere. [Kuchma] No, not possible …
>
> [Turchynov continues to plead on her behalf, but the president remained unmoved. He didn't want the elimination of oligarchs but that they ran the market in an orderly fashion.]
>
> [Kuchma] Yuliya made one fundamental mistake. She entered the government and started to fight with the so-called oligarchs. She forgets that she is an oligarch herself. [Turchynov] I thought this was her job and that you gave her this power. [Kuchma] She has the right to establish order there. And I stand for tough order, but there are different, so to speak, measures in this connection. To establish order - read the decrees, all the sittings of the National Security Council. There are very tough decisions, very tough decrees. I always support measures. Tell me about a measure concerning, for example, any oblast [energo] company where the president opposed the proposal. There isn't one. Read my speeches, I say there clearly, so to speak, understandably and clearly say. In this sphere I do not have either a father or brother. But when they start to fight between themselves, if you yourself are absolutely clean - this is one case, but if you walk and too much is being dragged behind you ... (Kuchma and Turchynov Sept. 20, 2000)

Kuchma reminded Turchynov that he knew what he and Tymoshenko really thought about him [this was probably to a reference to the illegal SBU spying on Tymoshenko]: You know, I know a lot about what you think, what I don't know. I know Yuliya Volodymyrivna has made many attempts against me" (Ibid.). Turchynov denied that she had organized any plots against him, but Kuchma assured him he knew this was the case.

Turchynov asked for Kuchma's forgiveness on behalf of Tymoshenko, saying she was willing to learn:

> [Turchynov] Leonid Danilevych, I think that we don't have your protection. You do not support her;

> [critical] attacks come and come. Provide support, and this without a doubt will help her. Well, I don't know, Leonid Danylovych, can you do it? [Kuchma laughs] [Turchynov] You know, nothing ventured, nothing gained. It is necessary to teach her. I will help. She herself asked. It is necessary to teach and help us. [Kuchma] You have set yourself very high goals. (Ibid.)

The president complained to Turchynov that Tymoshenko had exceeded her authority when she went to Turkmenistan to negotiate a gas contract. Kuchma said that her offer of $42 to be paid half in cash and half in barter was too high, compared to Itera's offer of $36, forty percent in cash and sixty percent in barter. He argued that barter is better for Ukraine's economy as it didn't have the cash.

Worse still, he accused Tymoshenko of competing with Russia over Turkmen gas that might lead to a confrontation. He disliked her proposal to circumvent Russia by building a gas pipeline across the Black Sea to Georgia and then to Central Asia. Such a pipeline, he said, would bring retribution from Russia:

"One must know the psychology of the Russians. It is one thing, when it was Yeltsin. Another thing - when there is Putin today" (Ibid.).

Turchynov countered with the view that if Russia threatened to stop the flow of Turkmen gas to Ukraine, Ukraine could stop Russia's gas exports to Western Europe. The president rejected this. He said that France, Germany and others would protest too much; and besides, Russia had more influence over Turkmenistan than Ukraine.

Turchynov ended the conversation by accusing Kuchma of insulting Tymoshenko and him: "OK, Leonid Danylovych, you insult us". "No," replied Kuchma, and continued: "I do not have evil [intentions]. You know that I am not vindictive" (Ibid.).

On September 22, 2000, FBI agent Bryan Earl interviewed Tymoshenko as a witness in the US government case against Lazarenko. He questioned her about the $100 million worth of transfers from the company Somolli to Lazarenko's foreign accounts between May and September 1996. She denied knowing anything about these transfers. She claimed Somolli belonged to Doncho Stoyanovsky and UEIL to Sherif Erdzumen Askoy (Tymoshenko 2000).

In contrast, UEIL's company director, Askoy, testified that Tymoshenko, along with her husband and Hravets, owned UEIL through a Swiss trust (Kein 2000). The Cyprus authorities provided the information to the U.S. prosecutors that Hravets, Tymoshenko and her husband had created Somolli Enterprises Ltd.

Hravets, who fled Ukraine for Israel and then Canada, gave evidence against Tymoshenko. He didn't deny owning part of UESU, UEIL and Somolli, but claimed she and her husband had paid Lazarenko kickbacks without his knowledge (Leshchenko 2012h).

Itera admitted in court to paying Lazarenko $26 million and was especially vulnerable to prosecution because it was registered in U.S.. Intergaz was not called to court, as Kuchma successfully withheld what Bakai's company had paid Lazarenko in kickbacks.

When the legal proceedings against Lazarenko started in the U.S., Tymoshenko was listed as a co-defendant. However, the accusation that she gave bribes to Lazarenko was dropped. A court ruled that the prosecutors "failed to prove that there was fraud in Lazarenko's alleged dealings with UESU." (World Bank 2012) She didn't appear in Lazarenko's trial either as a defendant, victim or a witness.

In the autumn of 2000, President Kuchma created a scandal for Yushchenko and Tymoshenko. On October 10, Yuliya Tymoshenko reported to parliament on the cabinet's successes in collecting revenues in the energy sector: "1.3 billion UAH more than the a year before, and the adequate preparation of energy for the winter." On the same day Azarov released an alternative report with contradictory conclusions. It said the government had received half of the revenues it claimed and that the country would suffer a shortage of energy in the coming winter leading to blackouts and shutting off of heating to consumers. Three days later, the president called for a special commission to be headed by the secretary of national security and defense, Marchuk, Yushchenko's, to decide whose analysis of the energy sector was correct (*UCIPR* 2000c).

Soon, Kuchma became distracted from attacking Tymoshenko to defending himself from the charges of kidnapping and murder. On Nov. 28, 2000, the Socialist Party leader Moroz stood *up* in parliament and accused him of ordering the disappearance of the journalist Georgi Gongadze. Tymoshenko did not comment in public on Moroz's accusation. But her "Fatherland" party, unlike the Yushchenko supporters, did not sign the statement

denouncing Moroz's accusations as a "bloody provocation."

Despite her public metamorphosis, in private Tymoshenko didn't accept that Lazarenko's abused his political position for private gain. On June 24, 2003, after refusing to be interviewed by the U.S. federal prosecutor Martha Boersch and the FBI agent Bryan Earl, citing her right not to incriminate herself, she told them that Lazarenko was a victim of Kuchma's repression because he challenged him for the office of the president (Leshchenko 2012d). What the Americans failed to understand was that Kuchma used them in an internal struggle over state power, and they were supporting one criminal grouping against another.

The focus on Lazarenko and Tymoshenko exploiting the gas market hides the politicians and oligarchs who enriched themselves before and after the relatively short existence of UESU. Before the appearance of Lazarenko and UESU, in 1994, there was Bakai's Respublika, and in 1995, Itera's [Gazprom's executives] Omrania. After Lazarenko's demise, Bakai's Interhaz and others, especially IUD and Itera, came to dominate the gas market. From 1998, the state owned Naftogaz Ukrainy, headed by Bakai, dominated the gas and oil purchases for Ukraine.

In 2002, a new corruption scheme began and exists until today. It began with the creation of Eural Transgaz and superseded by RUE (RosUkrEnergo). Both schemes are said to involve kickbacks for officials as determined by the respective presidential offices in Ukraine and Russia. The attempt by Yuliya Tymoshenko to eliminate RUE landed her in prison on the charge of "abuse of power" and followed by accusations of sponsoring the killing of oligarchs in Donetsk (see Chapter 18).

10 Prime minister's wife "from the CIA"?

In the run-*up* to the 1999 presidential elections, on August 25, 1999, President Kuchma asked the head of the Bank of Ukraine, Viktor Yushchenko, to provide a billion hryvnia [about $200 million] to pay the arrears owed to students and pensioners in order to influence their vote in the election. Yushchenko at first resisted the request. The president then reminded him of past favors, like saving him from the consequences of a parliamentary investigation on charges of corruption and poor management of Ukraine's foreign reserves. Kuchma was disingenuous when he said this, as the allegations came from him through the State Security Chief, Derkach, who he firmly controlled (Derkach 1998).

Kuchma appealed to Yushchenko's patriotism: "Today, Yushchenko is needed by Ukraine in order to win the election" (Kuchma and Yushchenko Aug. 25, 1999). He warned that if any of the other presidential candidates would win, they would print even more money. Finally, he told Yushchenko that if he didn't want to do it himself, he could take leave of absence and have someone else in the bank do it.

While stating that he wanted Kuchma to win, Yushchenko said he would prefer to take another job or be sent somewhere. Kuchma replied jokingly that he could send him to Siberia.

The president then increased the pressure by claiming that President Yeltsin had won his re-election by this means. Yushchenko replied that Ukraine should not copy Russia. He then asked how much money was needed. "About a billion" for pensions in the villages, at least 40 per cent to 50 per cent, and mainly to pay the grants to students, replied Kuchma. Yushchenko finally agreed to provide the money after the president offered to make him his prime minister:

> [Kuchma] Will you agree to be prime minister? [Yushchenko] … [not clearly heard] [Kuchma] It will be OK, pleasant! I am taking you on as prime minister! So get ready to be prime minister! I am

> speaking to you completely seriously! [Yushchenko] Leonid Danylovych, wherever you want me, I will be there! Oh God! [Kuchma] Seriously? [Yushchenko] I belong to you! I belong to you! Because … the situation is such, that if, God forbid, they [the communists] return, millions of people will suffer! (Kuchma and Yushchenko August 25, 1999)

After agreeing to help with Kuchma's re-election, Yushchenko and Prime Minister Valery Pustovoitenko sent a memorandum to the IMF promising the opposite of what they were about to do. They wrote that Ukraine would balance the budget, raise revenues and stop corruption (Pustovoitenko and Yushchenko 1999). In response, on Sept. 7, 1999, the IMF granted Ukraine a further $184 million more of its $2.4 billion loan (IMF 1999). In return for IMF loans at low interest rates, the government had promised not to create inflation, as it primarily hurt the poor.

Within a month, the IMF saw through Pustovoitenko and Yushchenko's promises, as inflation surged because of the dumping of new money to help Kuchma's re-election. In anger, the IMF suspended its loans to Ukraine, and did not resume them for another year. The IMF action reduced Ukraine's creditworthiness, increased the cost of foreign loans, and warned foreign investors of Ukraine credit risk.

Yushchenko's action to help Kuchma to attract votes devalued the UAH against the dollar by 20 per cent and increased inflation by 4 per cent in the month of December 1999 (Gorbatsevich 2007).

Following Yushchenko's appointment as prime minister, a rash of articles appeared in London's *Financial Times* (FT) alleging that he was involved in corrupt activities when he headed the Bank of Ukraine, including the misusing of IMF funds. An article quoted the former prime minister Lazarenko as saying that Yushchenko had diverted some $200 million of IMF money to fund Kuchma's re-election (Catan and Clover 2000). Another article accused Yushchenko of spending IMF loans on speculative investments (Clover, Catan and Fidler 2000).

The IMF reacted to these accusations by opening an investigation. It had already stopped its loans to Ukraine. Meanwhile, Ukraine could not meet its re-payment to a private Western bank. "On January 20, 2000 Ukraine failed to pay $18 million for Eurobonds due to mature in February 2001 issued by the Chase Manhattan Bank Luxembourg S.A" (*UCIPR* 2000a). Ukraine didn't have adequate reserves and faced an international default if

its debtors called in their loans. The government had outstanding foreign debts of $12.6 billion, with $3.5 billion of interest due in the year 2000, and only just more than a billion dollars in reserves.

Viktor Suslov, the head of parliament's committee on banking, had fed the FT journalist Charles Clover with the allegations against Yushchenko. He had investigated the Bank of Ukraine after the October 1998 report by the SBU Chief Derkach that accused Yushchenko of mismanagement and corruption (Lyashko 1998). When Suslov told Kuchma on Feb. 10, 2000 that he was the source of FT's information, Kuchma expressed his displeasure by saying that the articles had damaged Ukraine's image. Suslov had hoped Kuchma would reward him for attacking Yushchenko by appointing him as Ukraine's ambassador to Brazil (Kuchma and Suslov February 10, 2000), a country he had private interests in.

The prime minister denied FT's allegations of misusing the IMF loans. He invited the IMF to appoint the accounting firm, PricewaterhouseCoopers to investigate the bank's accounts for the relevant period. In May 2000, it didn't confirm the allegations of corruption, but found that National Bank had misled the IMF by claiming higher reserves than it actually had: "… it would appear that...NBU's [National Bank of Ukraine] reserves were potentially overstated by an amount that varied from $391 million in September 1997 to $713 million in December 1997" (IMF 2000) (Guttsman 2000) (Fidler 2000). Yushchenko placated the IMF by returning the part of the IMF loan received under false pretenses (Catan and Clover 2000).

While the FT accused Yushchenko of corruption, the head of the tax office, Mykola Azarov questioned Yushchenko's loyalty to the president and competence. On Feb. 10, 2000, he told Kuchma that in the 1999 presidential elections, Yushchenko had supported one of his opponents: "You recall, I showed you that Vitya [diminutive for Viktor] financed Marchuk in the elections." Kuchma reacted by calling Yushchenko "a filthy Jew, a mother-fucker" (Kuchma and Azarov May 24, 2000). Azarov attempted to calm him down by saying that Yushchenko would not become president because he was too incompetent.

On March 24, 2000, the journalist and TV talk show host, Vyacheslav Pikhovshek, told Kuchma that Yushchenko was secretly gathering political forces to challenge him. He suggested that the president should punish him by releasing more compromising information about his time at the helm of the Bank of Ukraine (Kuchma and Pikhovshek March 24, 2000).

Other visitors called for Yushchenko's removal from office because of his marriage to an American. Vitold Fokin, a former communist official and the first prime minister of independent Ukraine, told the president to get rid of the "traitor" Yushchenko, who was turning Ukraine into an American colony. Fokin said he preferred oligarchs like Surkis and Volkov, as they were "our kind of people" (Kuchma and Fokin May 13, 2000).

Kuchma replied that Tymoshenko and not Yushchenko was the more serious political problem, as her anti-corruption campaign was destabilizing the country. As for Yushchenko, he suggested that the problem with him was his inability to deal with her and his incompetence. He said that the minister of economy, Serhei Tihipko, was resigning because he found it impossible to work with him.

By the spring of 2000, President Kuchma found himself believing that he was not in control of his own government. He thought his sworn enemy Lazarenko supervised the deputy prime minister Tymoshenko, while the CIA controlled the prime minister through his American wife, Katya Chumachenko.

She was born in Chicago on September 1, 1961, and married Yushchenko in 1998. Together they had three children (*Ukrainian Weekly* 2005). Following the prime minister's defense of Tymoshenko's anti-corruption campaigns, he decided by the spring of 2000 to get rid of him, by creating a scandal in which his American wife would be exposed as a CIA agent.

A number of people influenced his belief that she was an agent. Among them was the communist leader, Petro Symonenko, who told him: "She is CIA, and something should be done. We understood this beautifully. You see, the prime minister finds himself practically under the continuous control of the CIA!" (Kuchma and Symonenko April 17, 2000). Kuchma promised to rid of Yushchenko as soon as the next budget was presented at the end of the year. Symonenko offered the 120 communist votes in parliament to dismiss the "heretic" (Ibid.).

The communist leader also asked for Tymoshenko's dismissal. Kuchma assured him that he was distancing himself from her: "I am not receiving her anymore. I do not invite her to meetings on her own. She has conducted herself so brazenly with her trip to Moscow, her announcement there about the two billion dollars [gas debt to Russia and Turkmenistan]" (Ibid.).

The SBU chief Derkach added to the paranoia about Yushchenko's wife. On April 21, 2000, he reported that the new CIA controller in Ukraine was her former Georgetown University classmate, and like her, an Ukrainian-American (Kuchma and Derkach April 21, 2000).

In the hope of catching the prime minister and his wife in an act of political disloyalty, the president engaged Volodymyr Shepel, the head of the presidential guard service, to organize a private spy network around the prime minister. Shepel said it would consist of SBU retirees and two of Yushchenko's government guards (Lyutyi 2002d) (Kuchma and Shepel May 6, 2000).

The first spying report on Yushchenko yielded mundane results: "Well, Leonid Danylovych [Kuchma], on Saturday at 12:45, he [Yushchenko] left work and drove immediately to Sumy region [where his mother lived]. He returned on Saturday night and on Sunday he was here [in Kyiv] and went about the city only" (Kuchma and Shepel July 1, 2000).

Some of Yushchenko's friends were critical of his support for Tymoshenko. The businessman and parliamentary deputy, Petro Poroshenko, reassured the president of his loyalty to him and of his endeavors to persuade Yushchenko to get rid of Tymoshenko. "I came *up* to Yushchenko at that reception for [President] Clinton [on June 5, 2000]. I told him: "Listen, why are you tied to that idiot? Give her *up* and we could form a normal team!" (Kuchma and Poroshenko June 7, 2000). The president using his spy reports blurted out to Poroshenko:

> I believe he goes to the side. Well, I know that he often runs to a whore, and where he goes, the motherfucker. Well, I know [about] the wife! What is this love or what? She is an American, the whore [from the] State Department … She is from the CIA, one can say. Everyone knows this, my God. He knows where she comes from. (Kuchma and Poroshenko June 7, 2000)

Kuchma increasingly worried that Yushchenko was plotting against him. "Yushchenko has 100 per cent decided to make himself a prominent political personality. He is spending more time, as you see, with public relations than taking care of the economy," he told Oleksandr Zinchenko, the parliamentary deputy and one of the owners of Itera, Ukraine's most watched TV station. They agreed that Yushchenko should get minimum access to TV stations (Kuchma and Zinchenko May 14, 2000). Zinchenko at this time was the head of parliament's

commission on freedom of expression and information. In 2005, Zinchenko would serve as the first head of Yushchenko's presidential office.

To emphasis his disdain for his prime minister, Kuchma told the Donetsk governor Yanukovych that he had thrown down the telephone several times during conversations with him (Kuchma and Yanukovych June 5, 2000). Yanukovych lobbied the president to get rid of Yushchenko as well as Tymoshenko. On August 31, 2000, two months later, Kuchma again promised him that he would get rid of Yushchenko: "I will drive him out" (Kuchma and Yanukovych Aug. 31, 2000).

Kuchma exposed his duplicity in a conversation with Yushchenko on September 19, 2000. After the prime minister presented a report on the state of the economy that Kuchma met with silence, Yushchenko placed a newspaper article in front of him and asked him if he had read it. The article accused Katya Chumachenko of being a CIA agent. The president, who had repeated made this accusation in private, didn't answer the question. Instead, after nervous laughter from Kuchma and his entourage, the president went into a diatribe on how he too was a victim of media attacks, but didn't respond to them:

> [Kuchma] … Don't ask what they write about me. … [I tell them] don't write about me, I don't read it. Through the Internet they spread it to Russia. … Such vile things are written about me. … [the parliamentary deputy Hryhoriy] Omelchenko wrote such awful things on the impeachment of the president … [Unknown] He is a sick person. [Kuchma] They spread this through Russia. Who is behind this? … They grind this about the president across Russia and spread it not only through the Internet, but also in [the Russian newspapers] Nezavisimaya Gazeta, Izvestiya [Yushchenko] Why do they bother you? I don't know …. [Kuchma] The newspapers are full of this. [Unknown] Brodsky, Mykhailo [Kuchma] Brodsky – he is the main person behind this … Brodsky [Yushchenko] … you should issue a statement … [Kuchma] … I don't take revenge; I keep silent and don't say anything to anyone and just accept it as I accept the parliamentary opposition. (Kuchma and Yushchenko Sept. 19, 2000)

Kuchma's statement, "I don't take revenge" was blatantly untrue. Three days before this conversation, the president had taken his revenge on the journalist Georgi Gongadze by ordering an undercover police unit to

punish him, and who then murdered him. In a conversation with Turchynov, he similarly denied plotting and being vindictive (Kuchma and Turchynov Sept. 20, 2000).

On Nov. 2, 2000, the prime minister's relationship with the Secretary of National Security and Defense, Marchuk, came to a head. Marchuk reported that Yushchenko's and Tymoshenko's energy policies had created an energy crisis. Kuchma had directed Marchuk to report on whether Yushchenko's or Azarov's report on the state of energy was correct. The prime minister reacted angrily to Marchuk's conclusion, calling it "a rape" of his government (*UCIPR* 2000c). It had sided with Azarov's view that the government had collected only half of the revenues from the energy sector than it claimed, and that energy shortages would occur in the coming winter.

The debate on state of the energy was interrupted at the end of November 2000 by Moroz's accusation that the president was responsible for the disappearance of Gongadze. Yushchenko, instead of demanding an investigation, came to the defense of Kuchma. He opposed any attempts for parliament to investigate the president. He continued with the false hope of keeping his job as prime minister. He quitely protested Tymoshenko's dismissal from his cabinet of ministers in Jan. 2002, and her imprisonment the following month, and then called anti-Kuchma demonstrators fascists. All these expressions of loyalty to Kuchma came to nothing. On April 19, 2001, Kuchma had parliament dismiss him as prime minister.

11 Kidnapping Podolsky & killing Gongadze

In the six months before giving the order to extrajudicially punish the journalist Georgi Gongadze, President Kuchma was obsessed with the "Georgian," as he called him, and his Internet newspaper Ukrainska Pravda (*UP*). In the period, Gongadze's name came *up* at least twenty times in his conversations. His fixation on Gongadze was surprising. Why should the president of a state with fifty million people be preoccupied with a journalist who published on the Internet that few people in Ukraine had access to? The answer was found in Kuchma's irrational and delusional fear that Gongadze's criticisms of his regime might lead to his removal from office.

Georgi Gongadze was born in Tbilisi, Georgia, on May 21, 1969 to Lesya nee Korchan from Lviv, and her husband Ruslan. He became a citizen of Ukraine by the virtue of being registered in the country on December 2, 1991, the day of the independence referendum.

He achieved national prominence during the presidential election campaign by asking President Kuchma a question that embarrassed the president. On October 17, 1999, on the TV program Epicenter, Gongadze asked the president why he had not fired the Minister of Interior Yuri Kravchenko for failing to prevent and solve the grenade attack on the presidential candidate Nataliya Vitrenko (Kuchma 1999). Kuchma appeared to find the question annoying and answered it awkwardly.

> [Gongadze] Today, despite the fact that weapons are being found and explosions take place, Kravchenko is riding high. Do you not think that this is incompetence? People who cannot find the guilty crimi nals should not be in their jobs. First of all, they are compromising you. No one cares whether Kravchenko knew or did not know about something that is his responsibility. [Kuchma] Excuse me sir; I do not know your name. [Giya] Georgi Gongadze. [Kuchma] So, Georgi, this is a question to the Security Service of Ukraine [SBU] and not to the Interior Ministry. Serious changes

have taken place at the Security Service since that time. It is the Security Service that is responsible for economic security. (Kuchma 1999)

Kuchma, rattled by Gongadze's question, answered incoher ently that the incident had to do with economic security and should be referred to SBU. The throwing of the grenades at the presidential candidate Vitrenko and her supporters was the responsibility of the interior minister, as well as the SBU and had nothing to do with economic security.

The host of Epicenter, Vyacheslav Pikhovshek, later told the president that Gongadze was a disrespectful loudmouth (Kuchma and Pikhovshek March 24, 2000).

After the elections, Gongadze gave Kuchma another reason to be angry with him. During the president's state visit to Washington DC on December 8-9, 1999, to celebrate his re-election, Gongadze, along with two other journalists, Olena Prytula, the future editor of Ukrainska Pravda, and Serhei Sholokh, the director of Radio Kontinent, came to the American capital to lobby against him. They were armed with a petition from sixty-four Ukrainian journalists that denounced the president as a tyrant who had fixed his re-election [see Chapter 4 for more details on the lobbying in DC].

The president's anger increased after Gongadze launched the Internet newspaper Ukrainska Pravda on April 17, 2000, that focused on him. Kuchma gave the Internet publication more credence than it deserved. The rocket engineer saw the Internet newspaper as a deadly threat, where as in reality it had a miniscule influence on the public opinion. In 2000, the Internet in Ukraine was in its infancy. Only about 400,000 people, less than one percent of Ukraine's population, had access to it (Ofitsynsky 2005). And of those that did, mostly at work, very few read or had even heard of pravda.com.ua.

The person who brought Gongadze and Ukrainska Pravda to the attention of the president was the head of the presidential office, Volodymyr Lytvyn. On May 10, 2000, Lytvyn showed Kuchma a list published in the newspaper *Zerkalo nedeli* of Ukraine's fifty most influential journalists, in which Gongadze, the publisher of Ukrainska Pravda, was listed (Rakhmanin and Mostovaya 2000). Kuchma expressed his displeasure at seeing him honored and instructed the SBU head Leonid Derkach to find something to discredit him (Kuchma and

Derkach May 10, 2000).

A few days later, Kuchma complained about *Zerkalo nedeli*'s list of the fifty most influential journalists to Oleksandr Zinchenko, the chairman of parliament's commission on freedom of expression and information. The president conceded that there were some talented journalists on it, but not "that Georgian." Zinchenko knew who the Georgian was, as he helped Kuchma to remember Gongadze's name (Kuchma and Zinchenko May 14, 2000).

On Monday, June 12, 2000, the SBU head Derkach came to complain about "Georgadze" – Derkach mispronounced Gongadze's name – who offended the president with an article calling for the president to be replaced by Derkach's son, Andriy (Kuchma and Derkach June 12, 2000). The article in question was: "Andriy Derkach – 'The Ukrainian Putin?'" It was a summary of the article "Our Ukrainian Putin" by Sergei Karkov that appeared on June 7, 2000 in the Russian newspaper, Nezavisimaya Gazeta.

Kuchma should have read both articles and not relied on the incompetent Derkach to report to him. Gongadze's article was a satirical comment on the original article in Nezavisimaya Gazeta, which was a promotional piece for Derkach's son Andryi. The Russian article said that Andryi, as a former KGB officer and now an oligarch, had the experience to bridge the gap between the old communist and the new moneyed elites. It heaped praise on him – calling him an oligarch without scandal, a political centrist, a pragmatist, a progressive, constructive, well educated, forward-looking, who understood Ukraine's place and role in the world and had good working relations and contacts both with Russians and Americans. In short, he was the perfect man to whom Kuchma should hand over the reins of power, and was just like Putin. All that Gongadze did was to summarize the Russian article and make fun of it.

Why did the head of SBU bother the head of state with such trivialities and blame them on Gongadze? Firstly the article promoting Derkach Junior was probably paid for. Derkach Sr., aware of the president's fear that someone wants to take his job away, blamed the article on Gongadze.

After Derkach, the Epicenter journalist Pikhovshek came to see the president. Without prompting, Kuchma launched into a tirade against Gongadze. He wrongly blamed him for the article in Nezavisimaya Gazeta

(Kuchma and Pikhovshek June 12, 2000).

While Derkach was threatening to crush critics, his opposite number at the Ministry of Interior, Yuri Kravchenko, had a unit specializing in punishing opponents. What upset the police minister was the "My [We]" demonstrators in front of his office buildings protesting for a week, from June 2-5, 200, and handing out leaflets and their "My" bulletin accusing officials of abusing the law. The offending bulletin contained an article – "From the 'referendum' to a society of free citizens" – charging Kuchma with fixing the April 16, 2000 referendum in order to acquire dictatorial powers over parliament.

Kravchenko ordered his office head, Fere to take action against the demonstrators. One of them, Oles Podolsky had the misfortune to be singled out for a special treatment as a warning to the others. Fere gave the job to punish Podolsky to Oleksi Pukach, his acquaintance of thirty years. The policeman, Pukach, was born on Jan. 1, 1953 in the village of Zhyznikivtsi, Bilohirsk district, Khmelnytsky Oblast. At the time of Fere's order, the forty-seven year old Pukach was the first deputy head of the secret unit, HUKP [Holovna Upravlinnya Kryminalnoho Poshuku], or the Criminal Investigation Department or CID. The unit specialized in surveillance and in extra-judicial punishments on the behalf of the Minister of Interior Yuri Kravchenko.

On June 9, Pukach, with Mykola Naumets, selected because of his Afghan military experience, and his driver Oleh P. Marynyak, kidnapped Podolsky, drove him to a forest, beating him on the way, then on arrival threaten to kill him, and released him naked.

The punishment was terrifying, as described in "My":

> At 22:30 on Lviv Square three "unidentified" men forced Podolsky into their car and drove 130 km out of Kyiv. During the ride, they hit him with a rubber baton and their fists, and took his money, passport and personal items. In woods near the village of Petrivka, Pryluky District, Chernihiv Oblast, Podolsky was pulled out of the car, violently beaten, forced to dig his own grave, threatened with being burnt with petrol and had his belt tightened around his neck. The three 'unidentified' men warned Podolsky that if he did not stop his political activities and articles against the president and the interior ministry, and attempted to distribute "MY" publications again, they would kill him."

("My" 2000)

The attack on Podolsky was in a long line of politically motivated violent attacks on members of "My". It included the July 29, 1998 shooting in the leg of one its leading members, Serhei Odarych (My 1998).

After Podolsky's kidnapping, Pukach set fire to the door of the apartment of the "My" member Serhei Kudryashov, where Podolsky was staying (Vyrok Pukachu 2013). Only thanks to neighbors was the fire put out and a further tragedy averted.

Next day, June 10, Pukach personally reported to the Minister of Interior Kravchenko about one of the demonstrators was punished. Two days later, the minister saw the president to boast about his unit with "no morals" punishing his critics. From the sound recording, Kuchma could be heard enjoying Podolsky's punishment:

> [Kravchenko] Now about that gang, you remember, that distributed leaflets from [Serhei] Holovatyi [a parliamentary deputy and leading member of "My"]? [Kuchma] Yes. [Kravchenko] I mean the day before yesterday he was found as far away as Sumy Oblast, the one who was distributing them. They beat the hell out of him [laughter]. And he's yelling, "It is Holovatyi" [laughter]. When he gets home, and the dacha, the door's burned out. [Kuchma] Whose? [Kravchenko] His [both laughing]. … [Kuchma] Was he only the only one distributing or - [Kravchenko] … he, the bastard, came out again with a new pile. That same day, 15 cops – and he was with three bodyguards. Then he came out alone and they shoved him into the car. And he started – "I won't do it again, it is Holovatyi. Who is your boss? Who is your boss? I will give evidence." To be brief – I have such a unit, their methods; they have no morals, no nothing. So, God forbid that something happens. Simply, I have a group and they have begun to silence things. (Kuchma and Kravchenko June 12, 2000) [Podolsky confirmed that some of the words attributed to him by Kravchenko were his (Podolsky 2008).]

On June 22, Kuchma asked the SBU chief Derkach if there was any news on Gongadze. The SBU chief answered by promising to punish him soon: "we're now watching him closely ... Soon we'll completely" and banged on the table as if to illustrate the smashing of Gongadze (Kuchma and Derkach June 22, 2000). There is

no evidence that the SBU took any violent action against Gongadze, other than spying on him and his staff.

The police special unit began its spying on Gongadze on June 10, the day Pukach reported to Kravchenko on his action against Podolsky, Kravchenko instructed Pukach to begin a surveillance on Gongadze because he claimed the journalist was spreading false information about state leaders (Vyrok Pukachu 2013).

Pukach's deputy, Volodymyr Bernak had the job of monitoring Gongadze. His actions inadvertently revealed to the target that a surveillance operation was taking place. At first there wasn't much to observe, as Gongadze and his wife Myroslava went on holiday to Turkey from June 28 to July 8.

On July 3, the president, speaking through an office intercom to the head of his office, Lytvyn, asked what should be done about Gongadze.

> [Kuchma] Good day. [Lytvyn] Good day. [Kuchma] You give me the same about Ukrainska Pravda and we will decide what to do with him. He has gone too far. [Lytvyn] I need to start a [criminal] case. [Kuchma] What? [Lytvyn] Start a case? [Kuchma] What do you want? [Lytvyn] A case in copies [Kuchma] No, I don't need a case. (Kuchma and Lytvyn July 3, 2000)

Following his conversation on the intercom, the president continued the discussion on Gongadze with an unidentified person in his office. As the unknown person knew details about the secret units in the ministry of interior as well as about Gongadze's movements, he mostly likely was a high-ranking official from Kravchenko's ministry of interior

> [Kuchma] Ukrainska Pravda, well this is too much, the motherfucker, the scum, the Georgian, Georgian. [unknown] Gongadze? [Kuchma] Gongadze. Well, who is financing him? [unknown] Well, he actively works with this, with Moroz, with *Grani* [a Socialist Party newspaper]. On Saturday he was with [Anatoly] Matviyenko [the head of the Sobor Party and an MP and critic of Kuchma]. [Kuchma] To court, maybe the people's deputy, let the lawyers bring him to court. This goes to the prosecutor, right? [unknown] No, let Kravchenko decide how and also Horbanyeyev [or Komanyeyev] and Kholondovych [chief of an uncover police unit called the General Administration

> of Operational-technical Control, specializing in taping telephone conversations]. [Kuchma] Simply a shit. Is there any limit, after all, son-of-a-bitch. Deport him, the scum, to Georgia and drop him out there. Get Chechens to kidnap him and ask for a ransom. (Kuchma and Unknown July 3, 2000; sound recording in *IPI* GIA07.dmr, 0:07:38-0:10:45 or GO3007p2.dmr, 0:02:40-0:5:45.)

Following the conversation with the unidentified person, the interior minister Kravchenko came to the president's office to present his bi-annual report on the state of crime in Ukraine. After some time, Kuchma interrupted Kravchenko's monologue about crime to order the punishment of Gongadze:

> [Kuchma] So that I don't forget, there's a Gongadze [Kravchenko] I have heard such a name. [Kuchma] Well, the scum is the limit. [Kravchenko] Gongadze, he has run through us before – [we have] run into him before. [Kuchma] What? [Kravchenko] He has gone through us before. We will find him. [Kuchma] Understand, he writes all the time in some Ukrainska Pravda, he pushes it in the Internet, understand. Find out who is financing him? [Kravchenko] … I have people … [Kuchma] But the main thing, I say, as Volodya [Lytvyn?] says, the Chechens must kidnap him and take him to Chechnya on his ass … and demand a ransom. [Kravchenko] Yes, we will somewhere … I tell you … they are such people [laughing] terrific … [undecipherable], never failing, and don't tell anyone.
>
> [Kuchma] Just drive him to Georgia, that's all. (Kuchma and Kravchenko July 3, 2000; sound recording in *IPI* "GO0307p2.dmr, 0:49:36-0.51.00.)

This was the first of the president's four directives to Kravchenko to punish Gongadze extrajudicially. Kravchenko assured him that he had people who could do the job. The minister of interior was referring to an undercover unit he told the president about on June 12, 2000: "I have such a unit, their methods; they have no morals, no nothing. So, God forbid that something happens." This sounded like a death squad, which proved to be.

On the same day, July 3, the SBU chief Derkach came to see him and immediately launched into an attack on Gongadze and three journalists from the opposition publication *Grani*: Olha Ansimova, Tatyana Korobova and Iryna Pohoryelova. He again promised Kuchma that action would be taken against Gongadze.

Significantly, Kuchma didn't tell him that he had just ordered Kravchenko to have Gongadze punished. Instead, he instructed the SBU chief to make sure that the government printer in Zhytomyr stopped printing *Grani*.

The CID officer Bernak, who was in charge of the observation teams on Gongadze, experimented with tying Gongadze to an attack on Chechens. The fabrication probably originated from Kuchma's suggestion on July 3 to have Chechens kidnap Gongadze and dump him in Chechnya or Georgia.

On July 10, Bernak came to Kyiv's Radio Continent, where Gongadze worked before starting his Internet publication. Pretending to be a police officer from Odesa and calling himself Oleksi Bagrov he told the radio station's director Serhei Sholokh that he was investigating the presence of a Georgi Gongadze and a person called Kostya [reference to Kola or Konstantyn Alaniya, his close friend from Georgia and the office manager of Ukrainska Pravda] during a shooting at a cafe in the Black Sea city of Odesa.

Bernak was referring to a murder incident that took place in Odesa on Friday, June 23, 2000 at the beach cafe called "Zhemchuzhyna." As a party of Chechens was barbecuing, out of the darkness appeared a gunman firing a number of rounds from an auto matic weapon. Five people were wounded and later one of them – Archek Beslan – died.

Bernak suggested that employees from Radio Kontinent were present just before the incident. He claimed two journalists, Gongadze and Kostya, had identified themselves with red folder identification cards from "Radio Continent in Kyiv."

Sensing a provocation, the station's director explained to the officer that the press cards shown in the cafe must have been faked. Radio Continent identification cards were not in the standard red folders carried by Ukraine's journalists, but were sealed in plastic and didn't even have Radio Continent on them, but Media-Center, its registered company name.

The visibly embarrassed officer then asked Sholokh to find Gongadze so he could interview him. An interview was arranged for later in the day, but the officer did not show *up*.

After learning of this visit, Gongadze worried even more about his personal safety. The Ukrainska Pravda editor, Prytula, had noticed that three men watched him after he left her apartment. He had told her that the men followed him wherever he went.

On July 10, the same day of Bernak's visit to Radio Kontinent, Kravchenko came to see the president who shouted at him for failing to have Gongadze kidnapped:

> [Kuchma] I'm telling you, drive him out, throw out, give him to the Chechens, let [undecipherable] and then a ransom. [Kravchenko] We, we are thinking it over. We'll do it in such a way that … [Kuchma] Take him there, strip him, the fucker, leave him without his trousers, and let him sit there. (Kuchma and Kravchenko July 10, 2000; sound recording in *IPI* collection, Gong01.wav.p4, 04:55-5:46.)

A few days later, on about July 12, 2000, the socialist leader Moroz warned Gongadze to leave Ukraine because his life was in danger. "We discussed this with Georgi at our old office on Volodymyr [Street]. … Unfortunately, we didn't take this threat seriously enough," Prytula recalled.

Moroz must have learned from Melnychenko about Kuchma's orders to Kravchenko. The socialist leader was in contact with Melnychenko from the spring of that year (Tsvil 2007). Moroz denies this and claims he was in contact with Melnychenko only after Gongadze was kidnapped. He claimed that the warning he gave to Gongadze had come from a police contact.

The denial that Melnychenko was the source was probably an attempt by Moroz to disassociate from the presidential guard when he realized he was being used in a covert action on behalf of Marchuk. If Melnychenko was the source, then he has to be praised, unlike in 1999, when he and Marchuk failed to warn Moroz and Vitrenko of the impending grenade attack.

On July 14, Gongadze complained to the Prosecutor General Mykhailo Potebenko about the harassment of himself and his colleagues by the police and undercover officers (RSF 2001a) (Masalskyi 2000). In the letter, Gongadze gave the following instances of harassment:

1) On July 10, a police officer had attempted to frame him for a shooting in Odesa; 2) Undercover men had kept surveillance for several weeks near his apartment and office in a Zhiguli car with the license plate number 07309 KV; 3) Uniformed police had stopped three employees of pravda.com to check their identities and ask questions; 4) A state security service or police agent pretending to be a Lviv city official had asked his mother and neighbors in Lviv for personal details on him.

Gongadze ended his letter by demanding that this persecution stop. He went to the headquarters of the Kyiv city ministry of interior to complain (Moroz 2001). Acting on his complaint, the deputy head of the Kyiv city police, Petro Opanasenko, launched an investigation.

The prosecutor office in Kyiv cynically forwarded Gongadze's complaint to the office in Lviv, where he and his mother were officially resident, though he was being shadowed in Kyiv. The Lviv office replied to Gongadze that the names of the places and the streets where he had followed were "unknown in Lviv" (RSF 2001b).

On account of Gongadze's public complaint, Pukach stopped the surveillance. During the month of August, nothing much happened as most of the officials involved were on holiday. After returning from their respective summer holidays, Kuchma asked Kravchenko again whether he punished the journalist. At their Aug. 30th meeting, Kravchenko promised for the third time that he would carry out punishment: "After tomorrow, after tomorrow." He further promised to silence three other critics: the parliamentary deputy Holovatyi, the newspaper publisher Lyashko, and the political crime reporter Yeltsov (Kuchma and Kravchenko Aug. 30, 2000). Though Kravchenko promised to have Gongadze kidnapped within two days, it did not happen. Kravchenko left for Cholpon-Ata in Kirghizia to attend the September 6th Commonwealth of Independent States [CIS] conference of interior ministers. The only significant decision he made before he left was to promote Pukach from deputy to chief of CID.

Meanwhile Kuchma attended the UN millennium conference of 150 heads of states on September 7-9 in New York City. On his return, on Sept. 11, he spoke to his office head, Lytvyn, about the critical articles appearing in Russia and being reprinted in Ukraine. He pondered the possibility that Putin might be behind them. Lytvyn turned the conversation to the article "Everything about Volkov" in Ukrainska Pravda. The article by Yeltsov under his pseudonym Stepanov charged the president's chief adviser with becoming rich from crime (Stepanov

2000). Kuchma said that Volkov had read the article by the author, whose name he couldn't remember, but who was part of "that Georgian" group. Lytvyn interrupted with "Gongadze?" Kuchma said yes "Gongadze."

Then Lytvyn asked if Kravchenko had "taken care of Gongadze?" He didn't, answered Kuchma. This showed that Lytvyn knew about Kuchma's order to kidnap Gongadze.

Lytvyn added that there also was an article on Kravchenko in Ukrainska Pravda (Gongadze 2000b). In the article, Gongadze had called Kravchenko "The general in a 'SS' uniform" being groomed to become the next president.

Kuchma reacted by blaming President Putin for orchestrating a media campaign against him:

> [Kuchma] Now listen, I have on the nineteen [Sept. 19] a press con ference. I am obligated to say that some of the mass information media exploit the Russian [media] as a dumping ground – the fuckers so that they can reprint dirt in Ukraine. Yes? [Lytvyn] … [Kuchma] What? But what should I say? Maybe. I think I could say that I am surprised that during President Yeltsin's time such things didn't occur, and that it has taken place since the election. Does this mean that someone in Russia is interested in worsening the situation in Ukraine? [Lytvyn] Putin … [Kuchma] Putin, so what? [Lytvyn] …[not heard] [Kuchma] Hum? [Lytvyn] Though in reality … in the last period. [Kuchma] … Not to say this about Yeltsin, I think. Earlier this did not occur. It's happening recently. [Lytvyn] Yes [Kuchma] Even during the election campaign this didn't happen. (Kuchma and Lytvyn Sept. 11, 2000)

Following this conversation with Lytvyn, Kravchenko came to see Kuchma. The meeting had scarcely begun when the president told him off again for not getting rid of Gongadze. Kravchenko replied that he had to postpone the action because of Gongadze's letter of complaint to the prosecutor general and to the deputy head of Kiev city's police, Opanasenko. To appease Kuchma, Kravchenko repeated his promise, now for the fourth time, to punish Gongadze:

> I will take care of him, Leonid Danylovych. I will do it. I simply, so that it doesn't fall through anywhere. So, he will be sorry. … I won't let Gongadze go. Simply, it is also important for me …

(Kuchma and Kravchenko Sept. 11, 2000)

The conversation continued with Kuchma telling Kravchenko to ignore Gongadze's official complaint and get on with the task of getting rid of him.

> [Kuchma] But what does the General [Prosecutor's Office] have to do with Gongadze? [Kravchenko] There is their complaint. It is official. [Kuchma] So what? [Kravchenko] The request is official. I will see what happens. [Kuchma] So, what if every shithead writes to the Prosecutor General. [Kravchenko] Leonid Danylovych [Kuchma] He will forward it to a district prosecutor. [Kravchenko] But how can I know what the prosecutor will say? This is the prosecutor … Who controls the money? [they laugh]. [Kuchma] – Good luck. (Kuchma and Kravchenko Sept. 11, 2000)

According to Pukach, Kravchenko called him to his office and ordered him to immediately "get rid" of Gongadze by killing him, burning the body, and burying it . The minister emphasized that the order came with the authority of the president, Pukach told the court (Vyrok Pukachu 2013).

After giving his order to Kravchenko, the president flew to Paris on Sept. 14, 2000 to attend the 4th Ukraine-EU summit. On Friday, Sept. 15, Kravchenko's "eagles" unsuccessfully attempted to seize Gongadze. The following day, Sept. 16, Pukach took personal charge of the operation to capture the journalist (Hryshchenko and Shubyn 2006). In the morning, he instructed as many as sixteen CID operatives to spread out across Kyiv and focus on the places Gongadze frequented: his apartment, the Ukrainska Pravda office, and the apartment of the editor Prytula. At about 9 p.m., reports came that Gongadze and Prytula had entered her apartment building. Soon afterwards Pukach arrived in a car with his son-in-law Mykola Protasiv, Valerie Kostenko and his driver Oleksandr Popovych. He told Popovych that when Gongadze leaves the building, he was to offer him a ride.

At about 10:30 p.m., Gongadze came out in the street to hail a car. Popovych stopped and offered him a ride, but told him to sit in the back, as the front seat was broken. As Gongadze got into the back seat, Protasov and Kostenko jumped in beside him and seized his arms, while Pukach sat in the front passenger seat.

The CID officers Oleh Pigol and Volodymyr Petruk followed the car with Gongadze to the city limits, where

Pukach instructed them to return to base. The person nominally in charge of the Gongadze operation, Bernak, had observed the snatch and then went home. As did another ten CID operatives. Among them were Serhei Chemenko, Dmytrenko, Ivanov, Ihor Nazarchuk, Oleh Pigol, Volodymyr Petruk, Andryi Tsetkovsky and others. According to the officer A. Shevchenko, the kidnapping became a topic of conversation in the CID ranks (Ukraine v. Kostenko et al 2008).

As the car sped away, Gongadze was held down on either side while Pukach beat him with a rubber truncheon from the front. The car arrived in a forest clearing outside the village of Sukholisy, near the town of Bila-Tserkva. There, Pukach told his driver Popovych to dig a grave, while Gongadze was left in the car with Kostenko and Protasiv. Before killing him, Pukach didn't interrogate Gongadze. Pukach knew very little about Gongadze, despite the fact that his unit had followed the journalists for weeks. The kidnappers were surprised that "the Georgian" spoke Ukrainian. As soon as the grave was ready, they pulled Gongadze out of the car, threw him to the ground, tied him *up* and held him, while Pukach choked him with a belt. Then they dumped into the grave and burned him with petrol. On their return to the capital, they stopped to drink Vodka. "If we hadn't killed him, they would had killed us," Pukach said, according to his subordinate Kostenko (Ibid.).

The swiftness of the execution suggested it was premeditated, and carried out by individuals with previous experience. As a reward, a few days later, Kravchenko raised Pukach's police rank from a colonel to a major general.

12 Covering up murder

After the killing of Gongadze, Kravchenko called Pukach to his office to be congratulated by the deputy minister of interior, Dzhyha, the ministry of interior office head, Fere, and the head of the president's office, Lytvyn. According to Pukach's testimony in court, which was held in camera, Kravchenko introduced Pukach to Lytvyn as: "This is the boy, chief of our intelligence, who took and killed Gongadze. To what Lytvyn replied: I know very well that it is him" (Podolsky 2011).

Gongadze's failure to return home on the night of Sept. 16, 2000 caused panic for his wife Myroslava and friends. The editor of Ukrainska Pravda, Olena Prytula, alerted the public the following morning.

President Kuchma's first public reaction was on Monday, Sept. 18, 2000 when he said that Gongadze's disappearance had "upset him very much." He announced that he had ordered the Minister of Interior Kravchenko to take charge of the search for Gongadze and to report to him daily.

On the same day, an anonymous telephone caller to the Georgian Embassy in Kyiv blamed Gongadze's disappearance on one of the president's favorite oligarchs, Oleksandr Volkov, the reputed Kyiv gangster Kisyl, and the Minister of Internal Affairs, Kravchenko.

Next day, Sept. 19, at the president's press conference for the regional press, Prytula, handed Kuchma a petition signed by eighty-seven journalists asking for a full investigation into Gongadze's disappearance. The president announced he would ask the security services to provide him with a list of all journalists who had been physically attacked. This was the same person who enjoyed Kravchenko's description of how Podolsky was kidnapped, beaten, and threatened with death.

Later that day, Kuchma and Lytvyn watched on TV a news report on the organizers of the campaign to find Gongadze: This included Prytula, Gongadze's wife Myroslava, the *Zerkalo nedeli* journalist Mostova and

others. Lytvyn reassured Kuchma that he didn't need to worry about his role in the disappearance of Gongadze because the consensus among journalists was that Gongadze had organized his own disappearance so as to call attention to himself (Kuchma and Lytvyn, Sept. 19, 2000).

On Sept. 20, Oleksandr Volkov, one of Kuchma's closest allies, came to see him to find out what had happened to Gongadze. The conversation showed that Kuchma was not sharing with him on what happened to Gongadze.

> [Volkov] Leonid Danilovich, I don't understand what is happening. [Kuchma] What? [Volkov] With this Gongadze ... You understand I'm not that kind of man [to have eliminated him?]. I have never seen the bastard in my life. [Kuchma] They're after me, motherfuckers! Did you read this? It's not against you! Everything is directed against me. (Kuchma and Volkov, Derkach Sept. 20, 2000; sound recording in *IPI* "Gong07p2.wav.")

Volkov complained that the TV station Studio "1+1" had alleged he was involved because his security guards prevented Gongadze from attending his and Bakai press conference on the day before his disappearance (Gongadze 2000c). He also was angry with "1+1" TV station, for publicizing the anonymous phone call to the Georgian Embassy that claimed he was involved. As a part owner of the station, he told Kuchma he had appointed a "commissar-chief-editor" in order to avoid the broadcast of any more reports blaming him or the president for Gongadze's disappearance: "I got them together [the management] and said: 'Boys, I'm fed *up* with this. I'm paying you $90,000 a month. I pay your salary. I pay for your news. I'm the one that puts out the news'" (Kuchma and Volkov, Derkach Sept. 20, 2000).

Kuchma said he had complained directly to the head of "1+1," Oleksandr Rodnyansky: "I told him today: 'You' – I told him – 'you have simply fucked things *up*, fucker. You're absolute scum. You've no conscience, fucker, none whatsoever'" (Ibid.).

At this point in the conversation, Derkach arrived to report on the how his agents had frightened the journalist Oleh Yeltsov at the weekend. The same weekend that Gongadze was murdered. Derkach told Kuchma that after being threatened with decapitation, Yeltsov had fled with his daughter to his mother's house in southern Russia (Ibid.).

Derkach reported inaccurately to Kuchma. Yeltsov said that on Sept. 15, an anonymous telephone caller said "your time is running out" (Byrne 2000) and not as Derkach reported "your head will be cut off."

During their conversation, both the president and the SBU chief displayed their ignorance of the Internet. Kuchma asked – "Listen, is the whole Internet disconnected?" Derkach, ever ready to please his boss, replied that it was switched off. Derkach could only have disconnected the Internet unless all telephone lines and satellite links between Ukraine and the rest of the world had been cut.

After Derkach presented his report on Yeltsov, the three of them bantered about Gongadze. Volkov started it with: "Did you hear that Gongadze was in the pay of Yuliya Tymoshenko?" He then spoke about Gongadze's sex life, though earlier in the conversation he said he didn't know Gongadze.

Derkach complained that the U.S. embassy's press attache, Peter Sawchyn, had been attempting to "stir things *up*" among journalists over Gongadze's disappearance. Kuchma commented that the Americans were "trying to use" Gongadze's disappearance to "pressure us."

Gongadze had contact with the American embassy. A week before his kidnapping, on Sept. 7, he and the editor Prytula conducted an on-line Internet interview with the U.S. Ambassador to Ukraine, Steven Pifer. The day before his disappearance, Gongadze met the U.S. press attache, Peter Sawchyn, asking for a personal loan to fund Ukrainska Pravda.

What Volkov and Derkach wanted to know was what had happened to Gongadze. Kuchma wouldn't tell them. Instead, he replied that Gongadze and Yeltsov were involved in a "dangerous business, not journalism, but dangerous business." Volkov and Derkach didn't press him on what the "dangerous business" was.

The conversation ended with Kuchma being pleased to hear from Derkach that repressive actions were also being taken against the newspaper *Svoboda* and its editor Oleh Lyashko. "OK, good" replied Kuchma. On Sept. 19, the SBU had prevented the publication of *Svoboda* from appearing by ordering the state-printing house in Zhytomyr not to print it.

The SBU repression against Lyashko continued intensively for the next two years. Their agents cancelled his agreement with Desnyanskaya Pravda in Chernihiv to print the Sept. 26 issue. In vain, the editor Oleh Lyashko approached Tyrazhya printers in Kyiv to publish the October 3 issue. Once again state agents successfully intervened. After three weeks of not appearing, *Svoboda* came out on Oct. 10, but in a self-published format. Lyashko produced his newspaper by printing both sides of four A3 sheets and then stapling them together. *Svoboda* appeared in this self-published form for the next year. The authorities got a court in Kyiv on July 7, 2001 to ban Lyashko from publishing a newspaper for two years. Maybe as a joke, the court handed out the punishment on Ukraine's official day to honor journalists. In March 2002 the police threw 100,000 copies of *Svoboda* into the river Supoi. In April 2002 Lyashko was detained for nine days for resisting the police during the operation (Lyashko 2004).

On Sept. 21, 2000, under pressure from journalists, the parliament set *up* a fifteen-strong committee headed by Oleksandr Lavrynovych to investigate Gongadze's disappearance. Lavrynovych, a former member of Vyacheslav Chornovil's Rukh, did not live *up* to the journalists' expectations, as he undermined the parliament committee's investigation and the attempt to impeach Kuchma. In the autumn of 2001, Oleksandr Zhyr from the Reform and Order Party took over the committee from Lavrynovych, who had resigned to take *up* a job as Minister of Justice. This was his reward for undermining the investigation into Gongadze's disappearance.

The committee's work was hampered from the start because Kuchma had not signed into law the legislation that would have given it the powers to subpoena witnesses and use law enforcement agencies to investigate.

On Sept. 22, 2000 Lytvyn suggested to Kuchma a way of undermining the campaign to find Gongadze. He said that the weekly TV news program, "7-Days" should downplay Gongadze's disappearance with statistics showing how many people disappeared annually in Ukraine and that nobody took any notice. He also said that it should also be stressed that a journalist's job was not as dangerous as a miner's.

From the first day of Gongadze's disappearance, the ministry of interior took the lead in misinforming the public on what had happened to him. On Sept. 20, Kravchenko had opened the first police press conference on the missing journalist. Flanked by his deputies, he said that an unprecedented effort was being made to find Gongadze. The police chief for Kyiv, Yuri Smirnov, said that the police were working on the assumption that

Gongadze was alive. He added that the police were focusing on possible causes for his disappearance, including marital, professional and other difficulties. This became the leitmotif of the police investigation for the next five months.

Kravchenko announced that his deputy, Dzhyha, who headed the interior ministry's department fighting organized crime, would take operational charge of the case (Chepurko 2000). Dzhyha [who Pukach said in court testimony knew Gongadze had been murdered] proved to be vigorous and aggressive in denying any state involvement in the disappearance of Gongadze, while emphasizing the journalist's financial and personal problems and alleged sightings of him across Ukraine and Russia. He was the official spokesman on Gongadze's disappearance until early December 2000, when the prosecutor general's office took over the case.

Even before being officially appointed to head the inquiry, on Sept. 19, Dzhyha told the "Inter" TV channel that he discounted any political motivation for Gongadze's disappearance, and that he might have simply "run away."

At the press conference on Sept. 21, Dzhyha was asked about Gongadze's July 14 complaint to the prosecutor general about being under surveillance. "I do not believe there were political motives, because he was not a political or a civic figure, who could have influenced politics … I do not believe that special services [undercover units like Pukach's CID] had anything to do with the disappearance of Georgi Gongadze, because he was not a danger to the state" (Prytula 2000a). If the police had followed him, Dzhyha said, Gongadze would never have noticed. "As to Gongadze, no approaches of a secret character were ever carried out [against him]. He did not have any criminal interest for us (Ibid.)." The SBU official at the press conference said the same on behalf of Derkach.

At a press conference on Oct. 3, 2000, Dzhyha denied that any police officer had visited Radio Kontinent to accuse Gongadze and his friend Koba of participating in a shootout in Odesa (*UP* 2000a). What Dzhyha didn't say was that the police had not interviewed the two witnesses who met the police officer at Radio Continent – the director Serhei Sholokh and an employee. Only in December 2000, six months after the unidentified officer had visited his office was Sholokh interviewed. From a police line-*up*, he identified the visiting police officer, who he turned out to be Volodymyr Bernak (Sholokh 2001), the officer in charge of the CID unit stalking

Gongadze.

Dzhyha emphasized Gongadze's debts, which he claimed totaled $5,000 and said that they were an important factor in his disappearance. He specialized in providing many false sightings of Gongadze. He reported that Gongadze was seen in the center of Kyiv on Sept. 17, the day after he disappeared, in Eric's bar, a popular Kyiv watering hole for expatriates, "new Ukrainians" and journalists. He did not know that two people who knew Gongadze – Pikhovshek, the Epicenter presenter, and Katya Gorchynska, a reporter from *Kyiv Post* – were aware of his disappearance and had been at Eric's at that time and had not seen him there.

He reported that Gongadze had been seen in Lviv, 525 km from Kyiv, the day after being spotted at Eric's. Soon he reported that Gongadze was sighted in Moscow on Sept. 21. Following this report, Dzhyha told the press that Gongadze was probably not in Kyiv or even in Ukraine, because the unprecedented police search – the biggest ever – would have found him by now. "Such thorough search efforts for an individual in Ukraine were not utilized at the time of the search for Mykhailo Boychyshyn," said Dzhyha (*UP* 2000a). [Boychyshyn was a very able organizer for Rukh, the political party led by Chornovil. He disappeared in 1994 in Kyiv. His body was never found.]

The president's press secretary, Oleksandr Martynenko, announced that the heads of the police and security services were reporting daily to Kuchma on the search. On Oct. 6, Kravchenko reported to parliament that the police were following three lines of inquiry – personal problems, professional activities or a victim of crime. Kravchenko assured parliament that the police were using unprecedented resources to find Gongadze, though it seemed he had run away from his marital and financial problems. He then proceeded to ask, using the idea suggested by Lytvyn in a conversation with Kuchma, whether it was fair to use such huge resources at the expense of thousands of similar cases. In the previous year, he said, the police had searched for 35,000 missing people.

Kravchenko ordered Pukach to rebury Gongadze's body because of the fear that it could be discovered, as too many police officers knew where it was. Pukach said that the order was given immediately after Kravchenko met with Kuchma's office head, Lytvyn (Leshchenko 2010b). Two weeks after the killing, at the beginning of October, Pukach dug out the body, chopped off the head with an axe, and reinterred the headless body in woods

near the town of Tarashcha, about 30 km away, and the head in woods near the district town of Rokytyan, not far from where the body was originally buried (Vyrok Pukachu 2013).

Two local farmers, 58-year-old Volodymyr Shushko and his 21-year-old son Serhei, on the evening of Nov. 2, 2000, found the reburied headless body with Gongadze's jewelry in woods near Tarashcha. They found the headless corpse at the intersection of two trails. It was covered lightly with earth with a hand sticking out (Shushko 2001). It remains a mystery why Pukach, who claims to have reburied the body, did it so poorly.

The discovered body had Gongadze's jewellry: a ring, a bracelet and a half-moon shaped necklace. [The editor of Ukrainska Pravda, Prytula, wore the other half moon.] As for the head it wasn't found until Pukach's arrest in 2009, and it was where he said it would be (*UNIAN* 2009b, Vyrok Pukachu 2013).]

The discovery of the head undermined the official cover-*up* that Gongadze was alive and on the run. There must have been panic in the offices of the president and the interior ministry. What remains a mystery was why Pukach didn't bury so it would be difficult to discover.

Next morning, Nov. 3, the Tarashcha police chief V.V. Veliyev and his deputy, M.I. Chava, and most of the town's officials came to witness the exhumation of the headless body. It was taken to the morgue in Tarashcha where the local coroner, Ihor Vorotyntsev, carried out the first autopsy. On Monday, Nov. 6, he concluded that, subject to a DNA test, the body matched the description of Gongadze as described in a police document. On the same day, the Tarashcha police made the same conclusion. The criminal investigators from the prosecutor general's office agreed with their findings (Silin and Stolyarchuk 2002), but not Prosecutor General Potebenko, President Kuchma and Minister of Interior Kravchenko. They did not welcome the appearance of the corpse. Instead, they ordered it to be destroyed. They committed another unlawful act, as the body, even if it didn't belong to Gongadze, was evidence that a murder took place. It should have been immediately transferred to a refrigerated morgue in Kyiv, and not left to rot in Tarashcha for two weeks.

On Nov. 8, five days after the corpse was discovered, the Kyiv Oblast Prosecutor, Volodymyr Babenko, and Ukraine's chief coroner, Yuri Shupyk, with three other experts, came to Tarashcha to view the corpse. They too came to the conclusion that the body fitted Gongadze's description (Vorotyntsev 2001). However, Babenko

ordered the coroner to get rid of it, but to his credit, Vorotyntsev disobeyed Babenko's order and kept it (Ibid.).

A year later, on April 29, 2001 when Kuchma was asked about the corpse found in Tarashcha by America's top TV news program, CBS 60 minutes, he replied: "Law enforcement agencies originally thought it was a homeless person and paid no attention to the corpse at all." The president fabricated this story, as it has never been mentioned by anyone else.

In order to counter the rumors of the discovery, the authorities created more misinformation. One of Kyiv's major newspapers *Segodnya*, owned by the oligarch Ihor Bakai, reported on Nov. 10, 2000 that the body found in Tarashcha did not match Gongadze's description, and that it had been buried for at least three years. This contradicted the view of the local police and coroner, as well as Ukraine's chief coroner.

On Nov. 15, the editor of Ukrainska Pravda, Prytula, went to Tarashcha, accompanied by the TET TV producer Lavrenti Malazoni, the 1+1 TV presenter Lyudmyla Dobrovolska and Gongadze's lifelong friend Koba Alaniya. The journalists viewed the body but could not identify it. After two more weeks in the open, it had decomposed, stank and was infested with maggots. The coroner suggested that the visitors take it to Kyiv for burial, as the prosecutor's office and the police were not interested in it. He issued a death certificate in Georgi Gongadze's name and handed it to Prytula, which gave her the right to take charge of the body.

From Tarashcha, Prytula telephoned the interior minister's office to speak with Kravchenko, in the naive belief that he might be interested in hearing that Gongadze's corpse had been found. Neither Kravchenko nor Dzhyha wanted to speak to her. This was hardly the response expected from officials who said they were conducting the biggest manhunt ever to find Gongadze. While there was no reaction to Prytula's telephone calls to Kyiv, an order came from the Kyiv Oblast prosecution office to have the local police seize the body and take it to Kyiv.

On their return to the Tarashcha morgue, having located a casket and transport to take the body to Kyiv, the journalists found the corpse missing. The cry went out agains: "Gongadze had been kidnapped again!" They returned to Kyiv on the evening of Nov. 15 and raised the alarm in the media. Late that evening, Ukrainska Pravda released a long, detailed press release from Prytula about the her trip to Tarashcha: "I cannot explain why Georgi's body, found on Nov. 3, had been hidden *up* to now from his relatives and friends. Why did they

assure us that the body they had found was two years old? And finally, I do not understand why the body was in fact kidnapped" (Prytula 2000b).

It now was too late for the authorities to destroy the body, as too many people had seen it along with preliminary autopsies. The prosecutor general's office announced that the Tarashcha body had been taken to the Kyiv city morgue located at Oranzhereina Street.

Next day, Nov. 16, angry members of the parliament summoned the interior minister to explain what had happened in Tarashcha. Kravchenko declined to come and sent his deputy Dzhyha. The speaker of parliament, Ivan Plyushch, limited Dzhyha's appearance in order to minimize embarrassing questions. He allowed only a total of fifteen minutes for Dzhyha's presentation and for any questions and answers. In twenty seconds Dzhyha said that on Nov. 3, a headless corpse had been discovered in Tarashcha, a murder inquiry had begun and that the identification of the corpse was taking place, and concluded that: "Today it cannot be asserted that this corpse is Gongadze's, there is no basis to say this."

The speaker allowed only a few questions from the deputies. Dzhyha was asked why he though the corpse was not Gongadze's. He answered that it was 174 to 177 cm in height – "very much less than Gongadze," too old, and had "lived" through a winter or two, while Gongadze had disappeared only two months earlier (Dzhyha 2000).

Prompted by a pro-presidential deputy, Dzhyha complained that the mass media was interfering in the inquiry – a reference to the article by Prytula on her visit to Tarashcha. A deputy asked him whether the jewelry found on the corpse matched Gongadze's. Dzhyha said it was similar, but that this didn't mean it was identical, and that the relatives would only be allowed to view the jewelry after the corpse had been identified.

A few deputies were furious, demanding that Dzhyha should resign for his evasive answers. He countered by reassuring parliament that the autopsy results on the corpse would be available within a week. In fact, the autopsy report was made available eleven weeks later. [It appeared on January 10, 2001, when the Prosecutor General Potebenko presented it to parliament, and it too didn't tell the truth.] Fifteen minutes after Dzhyha began speaking, the Rada chairman Plyushch thanked him for coming and closed the session for lunch.

Next day, Nov. 17, 2000, only a minority of deputies in parliament expressed their anger at Dzhyha's assertion that the Tarashcha corpse was not Gongadze's. Serhei Holovatyi expressed his indignation: "I don't understand what is going on. But when I am told that the corpse lay for two weeks, and no one took responsibility for it, when I am told that the mother and wife are not allowed to identify it, that it is not necessary to show the items [the jewelry] to the mother and wife, that this is not allowed by law, well pardon me, what is this?"

Other deputies came to Dzhyha's defense. "There is not a single fact that would convincingly prove that the discovered body is Georgi Gongadze's," said Oleksandr Zinchenko, head of parliament's committee on freedom of speech and information.

While this debate was taking place in the Rada, the police and prosecutor's office raided the Tarashcha coroner's office and apartment. They confiscated all of Vorotyntsev's records including his autopsy of Gongadze's body. They also took his computer, keyboard, mouse and all his diskettes. His computer was returned with a virus that wiped out every file that was opened, until he had no records on anyone, including Gongadze's (Vorotyntsev 2001). To be sure Vorotyntsev kept quiet, the prosecutor's office made him a witness in the murder inquiry, which meant he could be imprisoned if he spoke in public on the subject.

As the authorities had confiscated all the evidence on the body, Dzhyha was free to say whatever he wished about it. He even "cancelled" Vorotyntsev's autopsy report, because "We proved that the law was violated in the first coroner's examination," because Vorotyntsev had carried out the autopsy without a representative from the prosecutor's office.

Also on Nov. 17, 2000, Kuchma joined the chorus in saying that the Tarashcha corpse didn't belong to Gongadze. "I don't know in whose interest it was to organize this 'scandal' [referring to the journalists' visit to Tarashcha], which took place yesterday. To say that the discovered body belongs to Gongadze means taking responsibility for what you say," the president lectured the students at the Institute of International Affairs.

While delaying the publication of the DNA tests, the president, the minister of interior and the prosecutor general kept *up* the pretense that Gongadze was alive. Finally, after the Feb. 26, 2001 Russian DNA test (Shevchenko 2001), and the May 8, 2001 American skeleton test (Rodriquez III 2001) that showed conclusively

that Tarashcha corpse was Gongadze, Ukraine's authorities admitted that the Tarashcha body was Gongadze's.

The prosecutor general's office started *up* another made-*up* scenario: "gangsters murdered Gongadze, who in turn were killed by other gangsters." At the end of 2001, the prosecutors dropped this fantasy story as the two gangsters accused of killing Gongadze were found to be alive and with solid alibis for the night Gongadze was killed. After this the prosecuting office gave *up* any pretense of investigating who organized and killed Gongadze (Koshiw 2003).

13 Marchuk's "secret coordinating center"

Realizing he wouldn't win the 1999 presidential elections, Yevhen Marchuk made a secret deal with Kuchma even before the first round of the elections. In return for calling upon his supporters to vote in the second round for Kuchma, he received the prestigious post of secretary of national security and defense, and the accompanying bribes of shares in coal mining and electricity companies.

The high government position gave him another chance to replace Kuchma. He would be able to continue to spy on Kuchma through Melnychenko, while being at the heart of the president's office – the perfect position to do maximum damage to the head of state. It gave Marchuk the ability to provoke Kuchma to carry out an extra-judicial action, record it, and then release it to the public in the hope it would force him out of office.

Marchuk's major covert action was to set *up* Gongadze for Kuchma's revenge (Litvinenko 2005; Lubunsky 2005). The journalist was a willing candidate to provoke Kuchma's wrath. The president already loathed him for his Radio Kontinent and TV criticisms of him during the 1999 presidential elections and for his lobbying in Washington DC that marred his state visit.

Attracting Gongadze to the plot was relatively easy. The journalist was actively seeking funds to create an Internet newspaper so it would be free from President Kuchma's censors. He was sympathetic to Marchuk during the 1999 elections. On the eve of the Oct. 31 presidential vote, Gongadze made an emotional appeal to his Radio Kontinent listeners not to vote for Kuchma but instead for Marchuk or Moroz:

> I am appealing to all those who are planning to vote for the sitting president. I say this with complete consciousness. Today's regime does not have any right to stay in power. They have had every chance to improve the situation. They did not do it; in five years they made all of us beggars, moral beggars. And this is their worst sin ... We live today in a Belarus with a yellow-blue flag and a trident

> [Ukraine's state emblem], we are not a state, [we] are only left with trappings. (Gongadze 2001)

A telephone caller asked, if you call for a vote against Kuchma whom should we vote for? "I would be pleased if in the second round the contest was between Marchuk and Moroz. We [then] would be voting not against, but for," replied Gongadze. In an answer to another caller, Georgi gave his view on the president:

> I somehow managed to appear on Epicenter with the president. You probably saw this program. Everyone sat there upright and quietly. I will tell you my own feelings. In the first half [of the program] I was ashamed of this president and of living in a country headed by this man. I prepared questions that would be sharper]. ... In the second half I was somewhat scared by what would I do if he stays. When you are ashamed of your government this is catastrophic. (Gongadze, 2001)

The outcome of the Oct. 31 vote depressed Gongadze as Kuchma and Symonenko came first and second respectively. His hero Marchuk failed to qualify to contest the final round on Nov. 14. The depression turned into a breakdown, when his Marchuk called upon his supporters to vote for Kuchma in the second round. His feeling of betrayal was such that for week he couldn't broadcast. He resumed his broadcasts before the second round and futilely appealed to the electorate to boycott the election.

A few months later Marchuk made *up* with Gongadze. Through an intermediary he provided money and an office for Gongadze to start-*up* Ukrainska Pravda [Ukrainian Truth]. The evidence of Marchuk's funding comes from Gongadze's wife, Myroslava, who testified to this effect during the trial of the three policemen accused of taking part in the murder of Gongadze (Chornovil 2006). The *Zerkalo nedeli* journalist Yuliya Mostova who also testified in court: "In the words of Olena [Prytula], Yevhen Marchuk supported Ukrainska Pravda at its birth" (Mostova 2006).

Years before the trial, its financial manager, Lyudmyla Frolova, said: "In March [2000] a sponsor appeared who provided us with an apartment near Tolstova Ploshcha [Tolstoy Square in Kyiv], computers, and two thousand dollars a month for expenses. I don't know either the name or the details of these people. But I guess that they were connected to Marchuk" (Kroll Associates 2002). In Ukraine at that time, $2,000 a month, plus the expenses for an office and computers, was more than enough for a financially viable Internet publication. In that

year, journalists in Kyiv could easily be hired for $250 a month.

Though Gongadze founded Ukrainska Pravda, the person in charge was its editor, Olena Prytula. Gongadze played the role of a proprietor and wrote articles. In the first six weeks of the publication he was absent for long periods from the office. In the last weeks of April, he took an active part in protests against the attempt to shut down the Lviv newspaper Express. A court had ruled that Express had to pay 150,000 UAH (about $40,000) in damages – a huge amount for a Ukrainian news paper – for a 12-line article about an obscure composer. The journalists protested the ruling as an attempt by the authorities to use libel laws to shut down newspapers they didn't like. In the month of May, Gongadze was in the city of Vinnytsia working for the mayoral election campaign of Volodymyr Vahovsky, whose financial sponsor was the leader of the Solidarity faction in the Rada, Petro Poroshenko.

Soon Marchuk withdrew his support for Ukrainska Pravda. This followed the publication on May 15 of a scurrilous article on him, "The Presidential Pretenders – Keep Cool," by Tatyana Korobova. She had left Marchuk's newspaper *Den* [The Day] in anger after he had called on his followers to support Kuchma in the second round of the 1999 presidential elections. Korobova's article in Ukrainska Pravda came from the newspaper *Grani*. It lampooned Marchuk, accusing him of wanting to be president at any price. It also attacked him for being unfaithful to his wife of 34 years and exchanging her for a young opportunist who wanted to be the country's first lady. The "opportunist" in question was Laryssa Ivashyna, the editor of Marchuk's newspaper. Korobova's article also made disparaging remarks about the head of the president's office, Volodymyr Lytvyn, and how he too wanted to become Kuchma's successor.

Two days after the article was published, heavy-set men walked into its office, took the computer equipment and told the staff to vacate the premises. The publication ceased for about two weeks. At the beginning of June, Gongadze re-launched it from another apartment with money from new sponsors. On June 28, 2000, he left with his family for a ten-day holiday in Turkey. Meanwhile, Ukrainska Pravda under its editor Prytula continued with articles lambasting Kuchma and his entourage.

Marchuk's relatively small and shortlived investment in Gongadze's Internet publication had the desired effect. It provoked Kuchma to order an undercover police unit to punish Gongadze that culminated in his murder.

The security advisor also provoked the president against other journalists in the hope that it also might lead to Kuchma's downfall. He asked him what actions had been taken to silence the editor of the radically anti-Kuchma newspaper *Svoboda*, Oleh Lyashko. *Svoboda* specialized in publishing articles exposing Kuchma's autocratic power and corruption, with the consequence that Lyashko suffered much police and court harassment and violence from the authorities. Marchuk told Kuchma about the SBU surveillance of Lyashko and the existence of a compromising video on him [in the video, a young Lyashko defends homosexuality]. Marchuk added that Lyashko was a "jerk, [for whom] 170, nothing is sacred, [only] money and that's all" (Kuchma and Marchuk July 11, 2000).

Knowing the president's antipathy to Yuliya Tymoshenko, and the growing dislike of Prime Minister Yushchenko, Marchuk intensified his efforts to have them dismissed from office, and to creating a crisis which he hoped to be the beneficiary. Marchuk succeeded in getting Kuchma to take action against *Zerkalo nedeli – Dzerkalo tyzhnya*. He told him that they were financing it to publish critical articles about him. [The president didn't need much convincing as he already believed that Lazarenko was using the newspaper to attack him and claiming that Lazarenko owned a forty percent stake in it (Kuchma and Azarov June 14, 2000).] Marchuk pointed out that Tymoshenko gave a car to the newspaper and Yushchenko had written an article for it. The prime minister had written a front-page article welcoming the launch of *Zerkalo nedeli*'s first Ukrainian version, *Dzerkalo tyzhnya* on July 1, 2000.

In response, Kuchma picked up the telephone in Marchuk's presence and contacted the head of state material reserves, Yevhen Chervonenko, and ordered him to limit the availability of newsprint for the newspaper. Marchuk assured him he was doing his bit by putting pressure on the paper's leading journalist, Serhei Rakhmanin, to moderate his criticisms of the president.

Marchuk also wanted to know from Kuchma how he had dealt with suppressing Tymoshenko's influence on the TV station STB. Kuchma replied that he had told its owner, Vagit Alekperov, the CEO of LUKoil, to eliminate her influence or he would take STB away from him. Marchuk reinforced the president's paranoia by claiming that Tymoshenko's Fatherland Party had formed an alliance with the Rukh party and Moroz's Socialists to replace him with Yushchenko.

In the conversation of Sept. 22, 2000, held after Gongadze's murder, Marchuk spoke to the president, as he was about to leave for Moscow to negotiate with Russia on the questions of energy. He was usurping the prime minister's responsibilities, just like Lazarenko did when he was prime minister. He assured Kuchma that would come back with a better deal than Yushchenko's and Tymoshenko's. He dismissed as ridiculous their attempt to bypass Russia by directly dealing with Turkmenistan on gas, or to substitute Ukrainian electricity suppliers for Russian ones in eastern Ukraine, or to use the Odesa-Brody pipeline to import oil from Azerbaijan. He told Kuchma he planned to write an article criticizing Tymoshenko's energy policy by emphasizing "the market gives results and not patriotic slogans." Kuchma agreed that Tymoshenko's trip to Turkmenistan to buy gas directly had offended the Kremlin. Furthermore, Marchuk said, he was better able to negotiate because Putin personally disliked both of them.

In a further attempt to destabilize Yushchenko's cabinet, Marchuk warned the president that the Foreign Minister Borys Tarasyuk was "not liked by the Russians" (Ibid.). Kuchma came to Tarasyuk's defense saying that he was as good as three ministers. However, a week later, on Sept. 29, Kuchma replaced Tarasyuk with the "pro-Russian" Anatoly Zlenko. At the time, commentators could not have imagined that the suggestion to get rid of Tarasyuk came from Marchuk.

Following Gongadze's disappearance on Sept. 16, 2000, Marchuk must have worried that his role in launching Ukrainska Pravda might come to light. Rumors were circulating that he and the oligarch Medvedchuk were behind an attempt to impeach Kuchma by using the deputies Hryhoriy Omelchenko and Anatoly Yermak. On Sept. 5, 2000, the two had introduced a resolution in parliament calling for the impeachment of Kuchma on account of corruption (*Svoboda* 2000).

The two former security agents were suspected of having a close ties with Marchuk. On the eve of the October 1999 presidential vote, the then candidate Marchuk had invited them to see a video in which a masked person dressed in a police uniform accused Kuchma's administration of organizing the grenade attack on the candidate Nataliya Vitrenko, and the car accident that killed the leading politician Chornovil. [A year later, in 2000, after the disappearance of Gongadze, Omelchenko asked Marchuk, now Secretary of Defense and Security, to make the video public. Marchuk declined, saying it had been lost.]

In the Sept. 22, 2000 conversation with Kuchma, Marchuk denied that he was conspiring with Medvedchuk. Instead he blamed Omelchenko and Yermak for Gongadze's attacks on the president: "It is, as they say, a false trail that either Medvedchuk or Marchuk is behind them" (Kuchma and Marchuk Sept. 22, 2000). He said the operation against the president – the impeachment attempt and Gongadze's disappearance – was being conducted "by the rules of the intelligence services or simply by KGB-type measures" (Ibid.). For good measure, he accused the two deputies of sponsoring Gongadze as well as Yeltsov. He added that the clandestine operation against Kuchma would only get bigger and bigger, "like a gas balloon, [it] will expand around Gongadze or [Oleh] Yeltsov and so on; and it will grow and grow."

At this point, the head of the president's office, Lytvyn joined the conversation, and Marchuk introduced the idea of a "secret coordinating center" conspiring to bring down the president. This suggestion of a professionally organized plot appealed to Kuchma, who replied: "There must be a team. Simply, an individual alone could not do this." Lytvyn, who fed Kuchma with articles from Gongadze's Internet publication, added that the attacks on the president "principally go through Ukrainska Pravda." Neither of the three expressed any concern or sympathy for Gongadze's disappearance that took place earlier four days earlier. Marchuk was just playing games with Kuchma and Lytvyn. Soon his "secret coordinating center," would expose to the public that the president had ordered Gongadze's disappearance.

"The secret coordinating center" would get the socialist leader Oleksandr Moroz to make public the evidence that the president issued the order for Gongadze's disappearance. Already, in the spring of 2000, Melnychenko brought Moroz into the secret that the president was being recorded. Moroz was very willing to take revenge on the president for destroying his chances to become president by blaming him for the grenade-throwing incident during the 1999 presidential elections.

In the spring of 2000, Moroz had asked Volodymyr Tsvil, a businessman and socialist party supporter, to help Melnychenko find medical facilities in the West for his supposedly ill daughter (Tsvil 2007). Tsvil said he didn't know until Melnychenko was safely in the West that this was a ruse for Melnychenko to escape with his recordings from Ukraine.

In contrast to Tsvil's account, Moroz vehemently denies he had any relation with Melnychenko before Oct. 18,

2000 (Moroz 2006). He claims he began dealing with Melnychenko from this date when the guard gave him excerpts of recordings showing that Kuchma was responsible for Gongadze's disappearance.

However, besides Tsvil's testimony, there are other pieces of evidence to prove that Moroz had contact with Melnychenko earlier than October. In June 2000, he had asked in parliament what kind of European state was Ukraine if its state security services spied on the prime minister. This remark most likely was a reference to a conversation recorded on May 16, 2000, in which Kuchma ordered the head of the presidential guards to spy on the prime minister and his wife. In July 2000, Moroz had warned Gongadze that he was in danger from President Kuchma and should leave Ukraine for his safety. Prytula reported, "Oleksandr Moroz knew about the recordings in July 2000 and warned Georgi that he should leave" (Areyev 2005). A fourth bit of evidence appears on the Melnychenko recordings. On Sept. 18, 2000, two days after Gongadze's disappearance, Moroz's close socialist party associate, the parliamentary deputy Ivan Chyzh, who secretly supported Kuchma, warned the president that his conversations might be recorded. He said Moroz had confronted him with the same words that he had used in the president's office: "I consider you to be my 'Godfather'."

> [Chyzh] I fear that this [the conversation] might have been recorded, or something. [Kuchma] No, it could not be. [Chyzh] In my last meeting with Moroz, he brought up that I consider you to be my "Godfather." This is why I suspect that maybe we are somehow being recorded. (Kuchma and Chyzh Sept. 18, 2000)

This conversation with Chyzh, coming just two days after Gongadze's murder, alerted Kuchma to the possibility that he was being recorded. It might explain why after Gongadze's disappearance, there is not a single recording of a conversation between Kuchma and Kravchenko.

[In contrast Melnychenko has stated that there is a conversation between Kuchma and Kravchenko after Gongadze's disappearance, and it would be released at the right moment. This was what he told the author at a National Union of Journalists conference on Gongadze in London on Feb. 17, 2003. This recording, if it exists, has never been released. A reference to such a conversation taking place on Sept. 25, 2000, appears in the notes Melnychenko left behind with his sponsor Boldanyuk in the Czech Republic (Goldfarb 2005b).]

Ten days after the disappearance of Gongadze, on Sept. 27, 2000, Melnychenko made his last recording in the president's office and left his job. On Oct. 18, he gave Moroz the excerpts of recordings documenting the conspiracy against Gongadze, and made his preparations to leave Ukraine.

On Nov. 26, 2000 Melnychenko, along with his family and a copy of his recordings left Kyiv for Lviv. The next day, he and his wife and daughter took the bus to cross Ukrainian-Polish border. However, his computer and CD recordings of the president's conversations crossed the border in Tsvil's car. In Poland, Tsvil picked *up* the family and drove them to the Czech border where he handed them over to his Czech business partner, Volodymyr Boldanyuk, who in turn took them to his hometown of Ostrava, where the family stayed for the next four months before receiving asylum in the U.S. in April 2001.

With Melnychenko safely out of the way, Moroz selected the next session of parliament. On Tuesday, Nov. 28, he made an announcement from the podium that caught his closest supporters by surprise. The political bombshell coincided with the day parliament met to discuss the state of human rights in the presence of the foreign diplomatic corps.

> The decline of society into the darkness of crime and banditry has to be ended. I have enough grounds to state that the organizer of the disappearance of Georgi Gongadze was President Leonid Kuchma, who systematically controlled the course of events. The planning and executing of this plot from the beginning was by the head of the president's office, Volodymyr Lytvyn. The person in charge of implementing the scenario was the minister of interior of Ukraine, Yuri Kravchenko. (Moroz 2000)

During a break in the session, Moroz called a press conference to play nine excerpts of Kuchma's conversations on Gongadze. He said the recordings came from an officer of Ukraine's state security service who was ready to testify about their authenticity.

In retrospect, the recordings on cassettes were prepared inaccurately, which gave the government the excuse to claim they were falsified. The excerpts were undated and not in chronological order. Three excerpts from different conversations were pasted together in the wrong chronological order and presented as a single conversation.

The excerpts created a sensation but initially only among the elite because of censorship in the mass media. The transcripts appeared on the same day on the Ukrainska Pravda web site (*UP* 2000b). The public, unless they had an Internet connection, knew little of substance about Moroz's charges against the president, or what they did hear was muffled by counter-accusations.

The mass media attacked Moroz, without mentioning the accusations he made against the president. The national state TV channel [UT1], presented the first official reaction by Kuchma's press office: "The president of Ukraine considers that the methods used by Oleksandr Moroz are unacceptable and unforgivable. He reserves the right to take the necessary measures, including legal ones, to defend his honesty and character." The most-watched national TV station, Inter [UT-3], and the second most popular TV channel, 1+1 [UT-2], relegated the story to short items at the end of their news broadcasts. Both questioned the credibility of Moroz's accusations, while the 1+1 channel didn't even mention Kuchma's name (*Kyiv Post* 2000). ICTV, owned by Kuchma's son-in-law, aggressively defended the president and attacked the authenticity of the recordings. What was surprising was that ICTV's attack on Moroz was presented by the journalist Mykola Knyazhytsky, a victim of Kuchma's attempts to crush STB in 1999 for not supporting his re-election.

Moroz's accusation was heard in full only on Radio Rox, a private Kyiv FM station broadcasting parliamentary proceedings. The small circulating opposition newspapers, *Svoboda* and *Grani*, published Moroz's accusation and the Melnychenko's transcripts. The weekly quality newspaper, *Zerkalo nedeli*, and its Ukrainian version, *Dzerkalo tyzhnya*, while providing an in-depth analysis of the affair, refrained from publishing the transcripts. The authorities banned the publication of the weekly newspaper Tovarysh, whose Dec. 1 issue had the transcripts (Mostova and Rakhmanin 2000).

Thanks to the Internet revolution, Melnychenko's recordings and transcripts were heard and read. The web sites pravda.com.ua and radiosvoboda.com led the way.

A few months later, a group of American academics placed forty-five hours of Melnychenko recordings on Harvard University's web site, wcfia.harvard.edu/melnychenko. The recordings came from the collection provided by Melnychenko to International Press Institute (*IPI*) in Vienna.

Kuchma's first public reaction to Moroz's accusations came on Dec. 1, 2000, in the Belarussian capital Minsk, where he was attending a Commonwealth of Independent States [CIS] summit. He accused an unnamed foreign secret service of creating a "provocation". He then launched a public relations campaign to express his innocence of the kidnapping of the journalist, and attempted to move the focus to a conspiracy against the state.

On Dec. 6, he made an unscheduled TV appearance where he described Moroz's Nov. 28 statement in parliament "as a provocation aimed at pushing Ukraine into chaos, anarchy and social disorganization." He alluded to conspirators conducting "a dirty game," using Ukraine's politicians "to show Ukraine to the world as an uncivilized country, a wild and benighted society." He accused politicians of using the fate of Gongadze and the grief of his family "for political speculation," and ended his appearance by proclaiming himself a stout defender of free speech and the press:

> I have stood and continue to stand for freedom of speech, against any pressure on the mass media, for the possibility to express one's thoughts freely and publicly. After all, you can judge for yourself. The publications that consider themselves an uncompromising opposition have been continuously published. (*UP* 2000c)

In his response, Kuchma failed to even mention Moroz's name, the accusations made against him, or the existence of the Melnychenko recordings. His aim was to mobilize the public against evil conspirators who were bent creating instability and undermining the sovereignty of Ukraine, the conspiracy theory enunciated by Marchuk's in his Sept. 20, 2000 conversation with Kuchma.

While the president made statements about defending the freedom of the press, the government-printing houses refused to publish opposition newspapers with articles on the Melnychenko recordings. This included the Nov. 26 edition of *Grani* and the Nov. 29 edition of Tovarysh (RSF 2001b).

Moroz called upon parliament and the courts to investigate the president. Parliament's failer to impeach Kuchma defined Ukraine for the next decades, as a state where the president and the elite were above the law.

It took more than two weeks to just get parliament to debate Moroz's accusation. During three days of debates,

Dec. 12, 13 and 14, there was not a simple majority just to start the impeachment process, not to speak of the two-thirds, 338 deputies, needed to find the president guilty (Koshiw 2003).

The president escaped justice with the help of the oligarchs led by his son-in-law, Viktor Pinchuk, who rallied to his defense in and outside parliament. In the mass media under their control, they popularized the myths created by the police and prosecutor general's office that Gongadze was alive and in hiding, that the Tarashche corpse wasn't his, and that the Melnychenko recordings were doctored. On January 10, 2000, the Prosecutor General Potebenko presented the official view: Gongadze was alive and the Melnychenko recordings were fabricated (Potebenko 2001).

When Russian and American DNA and other medical tests proved the Tarashche corpse was Gongadze's, the police propagated another false story – that gangsters killed Gongadze who were killed in turn. In addition, the former prime minister, Pustovoitenko, sponsored the St. Petersburg Agency of Journalistic Investigations, known by their Russian acronym ZAhR [Agentstva zhurnalistkikh rassledovanii], who concocted the story that Prytula, the editor of Gongadze's Internet publication, organized his murder.

Americans too got involved in the cover-*up*. The oligarchs led by Pinchuk employed the Kroll risk consulting company of New York City to carry out an investigation that produced the desired conclusions, that President Kuchma wasn't responsible for Gongadze's disappearance and the Melnychenko recordings were falsified (Koshiw 2003).

Pinchuk also paid for a documentary film, PR [Public Relations] authored by the American Charles Clover, who was the *Financial Times* correspondent in Ukraine. The film, shown on Ukrainian TV, claimed that President Kuchma was innocent because the same people who killed Gongadze fabricated the Melnychenko recordings (Ibid.).

After parliament failed to impeach President Kuchma, demonstrators created a tent city in *Maidan*, the central square in the capital on Feb. 17, 2000, calling for Kuchma's resignation. It ended four days later when Kuchma met the organizers and promised them access to Ukraine's state TV. After the demonstrators left, Kuchma reneged on his promise. The second wave of protests began on Jan. 30, 2001 with tents along Khreschatyk, the

main street of Kyiv. On Feb. 6, 2001, the police attacked it with police cadets pretending to be anarchists (Ibid.). The March 9, 2001 demonstration turned out to be very violent as protesters led by police provocateurs attempted to storm the office of the president. The violence and the subsequent bad publicity lost the protesters much public support (Ibid.).

The demonstrations failed to oust Kuchma because they didn't have the impact to bring down a head of state like those that took place in other parts of the world. In 1998, massive demonstrations involving hundreds of thousands threw out Suharto of Indonesia, and in 2000, Estrada of the Philippines and Milosevic of Serbia. The demonstrations in Ukraine didn't even compare to those in Prague in 2001 where 50,000-strong rallies took place repeatedly in solidarity with TV journalists on strike against an autocratic management.

The demonstrations against Kuchma rarely numbered over 10,000 people. Only one protest reached 50,000, and it didn't receive any TV coverage. It was a reaction to the fixing of the March 31, 2002 parliamentary elections. The leaders of the four parties - the socialist Moroz, the communist Symonenko, the Our Ukraine bloc head Yushchenko, and Tymoshenko with her bloc – held a common rally. It was the first and last rally where nationalists, liberals and communists came together to demonstrate for Kuchma's resignation. The rally was held on Sept. 16, 2002 in the center of the capital, and coincided with the second anniversary of Gongadze's killing. It too failed to force Kuchma to leave office. Soon after wards, the non-historical coalition soon disintegrated, with the communists again coming to the aid of Kuchma.

Marchuk who had provoked the Gongadze affair and the release of Kuchma's conversations, kept out of the protests. Even if they had succeeded in ousting Kuchma, he probably would not have been the beneficiary. Most likely it would have been Yushchenko who undeservedly gain the image of being an opponent of Kuchma.

14 Kolchuga fails to oust Kuchma

After the failure of the Gongadze affair to oust Kuchma, Melnychenko executed a new action to get rid of President Kuchma – the Kolchuga affair. It exposed Kuchma as a violator of the UN embargo on military equipment to Iraq. In NATO capitals his action was also viewed as a betrayal. In Ukraine, thanks to censorship and ignorance, the Kolchuga affair as well as the illegal selling of weapons had no political consequences.

Melnychenko first mentioned the existence of a recording in which President Kuchma secretely approved supplying Saddam Hussein with military equipment soon after arriving from Ukraine to the Czech Republic. He told his host Boldanyuk that Kuchma gave permission to supply Iraq with a sophisticated radar system called Kolchuga.

Once in the U.S., Melnychenko could not release the recording, as Boldanyuk and his partner Tsvil would not return his collection of recordings because they claimed it contained state secrets. They only knew from Melnychenko about the state secrets, as they could not listen to the recordings as Melnychenko had encoded them with passwords.

To make the Kolchuga recording public, Melnychenko had to wait until March 2, 2002 when another copy of his collection arrived from Ukraine. After BEK-TEK verified the Kolchuga recording, Melnychenko released it on April 11, 2002. This was less than a year before the March 19, 2003 British-American led invasion of Iraq. The Kolchuga conversation caused a political storm, especially in America. It showed Kuchma betraying Ukraine's strategic partner in order to make a few million dollars, after receiving hundreds of millions in American aid.

The Kolchuga conversation took place on July 10, 2000 (Kuchma and Malyev July 10, 2000), a month after President Clinton's state visit to Ukraine. In the conversation, Kuchma approved the sale of the Kolchuga to Iraq, in defiance of UN Security Council resolutions and the interests of his American and European allies.

Kolchuga was a radar system invisible to aircraft being tracked, unlike normal radar that could be detected. He gave permission to the director of UkrSpetsEksport, Valeri Malyev, to sell four Kolchuga systems to Saddam's regime, but to do it so that the Americans did not find out.

> [Malyev] We have been approached by Iraq through our Jordanian intermediary. They want to buy four Kolchuga stations and are offering 100 million dollars up front. [Kuchma] What is Kolchuga? [Malyev] Kolchuga is a passive radar station manufactured by Topaz in Donetsk. … A complete radar system costs $100 million. [Kuchma] Can you sell it through Jordan? [Malyev] Well, Leonid Danylovych, I suggest Leonid Vasylevych [Derkach, the state security service chief] carry it out as a special operation. [Kuchma] Excellent suggestion! [Malyev] Let him look at the export structure we have used to export from our territory to Iraq. Our KrAZ [Kremenchuk Avto Zavod or Automobile Plant] company ships its products in crates. We can use the crates marked by KrAZ. In other words, Kolchuga should be shipped to Iraq in KrAZ crates. Then we will send people with forged passports who will install the system. [Kuchma] Just watch that the Jordanian keeps his mouth shut. There is the American seventh fleet, bastards, patrolling. Suppose they find it. [Malyev] Who is going to find it? We do not sell much to them. I mean to Jordan. We will look closely and … [Kuchma] Okay. Go ahead. (Kuchma and Malyev July 10, 2000)

The impending release of the Kolchuga conversation in 2002 may have led to Malyev's death. According to Zhyr, the head of the Gongadze Commission, Kuchma discovered on March 3, 2002 that his commission would soon release the recording. The day before, Melnychenko had received a copy of the recording in America.

On March 6, at 10 am, on the road from Poltava to Kyiv, the Audi driven by the 63 year-old Malyev smashed head-on into a Kamaz, a large heavy-duty truck, killing him. The police suggested that Malyev might have fallen asleep at the wheel. His passenger, Serhei Krasiyev, said it occurred so suddenly that he had no idea what happened (Wins 2002).

The first public mention of the Kolchuga radar system appeared three weeks after Malyev's death in an article in the *Financial Times* on March 28, 2002. On April 11, 2002, Melnychenko provided the Kolchuga recording to the San Francisco Grand Jury investigating the money laundering charges against the former prime minister of

Ukraine, Pavlo Lazarenko. Two days later, the transcript in English and the recording of Kuchma's conversation with Malyev appeared on the Internet site of the Center for Public Integrity (Kuchma and Malyev July 10, 2000).

The Kolchuga recording became a sensation in the U.S. because of the charged political atmosphere following 9/11, and the administration plans to punish Saddam Hussein for his impudence. Washington's view on Kuchma was unforgiving. It wanted to punish him for supplying sophisticated military radar to an enemy state that it believed had weapons of mass destruction.

In reply to criticism, President Kuchma denied the conversation had ever taken place and said that: "Ukraine has not supplied any arms to Iraq" and "religiously observes the ban on arms" (Warner 2002a). Marchuk in his capacity as secretary of security and defense issued a statement that Ukraine didn't sell Kuchma to Iraq, and added that the accusation was a provocation against Ukraine (Marchuk 2002).

Harsh words over Kolchuga appeared on Sept. 24, 2002, when the State Department spokesman Richard Boucher accused President Kuchma of approving the sale of military equipment that violated US and international law. He announced the suspension of $54 million in aid to Ukraine. If the radar system's presence in Iraq was verified, all aid would be cut as required by US law, he said.

In response, Kuchma invited American and British government experts to Ukraine to investigate whether a Kolchuga system had been exported from to Iraq. A thirteen-strong group of experts carried out their inspection in the second half of October 2002, and issued a highly critical report accusing the Ukrainian government of a lack of transparency (U.S. and U.K. 2002). The NATO inspection team managed to verify that Malyev was in Kuchma's office on July 10, 2000, by simply looking into the logbook located at the entrance of the president's office.

The NATO leaders' response to Kuchma for giving permission to sell military equipment to Iraq was brutal by diplomatic standards. They did not invite him to the NATO summit in Prague, on Nov. 20-22, 2002, held on the occasion to mark the entry of seven additional East European states into its military alliance. Though not scheduled for admission, Ukraine was to be invited on account of its special treaty with NATO.

Kuchma decided he would attend the summit without an invitation. In response to Kuchma's wish to attend the conference, a State Department spokesman told *Reuters* on Nov. 18, that "the United States has no plans for any high-level meeting with Kuchma in Prague," while a NATO spokesman said it would be "'very unwise' for Kuchma to go to Prague."

At first it looked as if Kuchma wouldn't come. On Nov. 20, on the opening day of the Prague conference, Kuchma extended his state visit to China. On that day, NATO issued its Prague Summit Declaration, inviting the seven countries to join NATO. Point 9 of its declaration said that if Ukraine wanted to join NATO it would have "to implement all the reforms necessary, including as regards enforcement of export controls." It also said: "continued progress in deepening and enhancing our relationship requires an unequivocal Ukrainian commitment to the values of the Euro-Atlantic community." In other words, it warned Kuchma that duplicity was not acceptable.

On the second day of the summit, to the surprise of the other heads of state, Kuchma flew into Prague in the late afternoon and came uninvited to a dinner given by the Czech president, Vaclav Havel. On the third and last day, Kuchma insisted on joining the heads of state at the conference table. The NATO Secretary-General Lord Robertson agreed, but changed the alphabetical seating arrangements from English to French so that Ukraine would not sit next to Tony Blair, United Kingdom, and George Bush, United States. In French, Ukraine appeared in the end, after Turkey. News of this reseating arrangement, in which 48 heads of state searched for their seats in French alphabetical order, flashed around the world.

Kuchma's humiliation was complete. His chief security adviser Marchuk must have been delighted, but it didn't lead to Kuchma's resignation. Once again, Marchuk's attempt to topple Kuchma failed, as the humiliation on the world stage didn't lead to Kuchma's resignation.

What the heads of NATO states didn't realize at the time that Kolchuga was not Kuchma's worst international weapons violation. He had violated the treaties not to sell missiles capable of carrying nuclear warheads. In April 2000, the state company Progress, a subsidiary of UkrSpetsEksport, sold six Kh-55 Soviet cruise missiles to China (Warner 2005b). In the following year, it sold twelve cruise missiles to Iran (Lysenko 2005). These

sales became public after Kuchma left office in January 2005.

Even before the 2002 Kolchuga affair, Marchuk found himself depressed at not being able to outwit and replace Kuchma either through an election or covert actions. He attempted to use the CIA to topple Kuchma. Marchuk volunteered to spy on President Kuchma for the CIA. In a recorded conversation, the journalist and former CIA operative Roman Kupchinsky told this story to Melnychenko:

> Marchuk told me that almost twice a week he dines with Kuchma. He then said that if the Americans are interested in his dinner conversations with Kuchma, he was ready to provide them. This was [said] at the end of 2001, when Marchuk headed a delegation to NATO. We sat together, and he explained this to me. He simply said: "if you are interested in my conversations with Kuchma, or you have specific questions, or you have information you want Kuchma to know, I am willing to do this. I didn't answer Marchuk because at this point I didn't have any relationship with the CIA. I couldn't honestly say anything to him because I didn't have any more connections. For me to find a contact in the new administration [of President Bush], these barbarians … would not succeed. Thus I listened in silence and nodded my head. What irritated me was that Yevhen Kyrylovych [Marchuk] was ready to sell himself. I knew that this wasn't a normal behavior for the Head of the Council of National Security of Ukraine. This simply was a sale; it had a "For Sale" sign. I could not even if I had a contact do something like this. I didn't want Ukrainians to sell themselves so cheaply, or to sell themselves at all to Americans. (Melnychenko 2003)

Melnychenko listened in silence to Kupchinsky's revelation of Marchuk's act of state betrayal. He neither defended nor criticized his patron's proposition to the CIA.

15 The Melnychenko-Kuchma pact

After fleeing Ukraine for the Czech Republic in November 2000, Melnychenko had to decide where to live with his family, as returning to Ukraine wasn't an option. Hope faded that Moroz's release of the recordings implicating President Kuchma in Gongadze's disappearance would lead to his resignation.

With his Czech visitor's visa expiring at the end of March 2001, Melnychenko looked for political asylum either in the United Kingdom or the U.S.. Two correspondents who interviewed him (Taylor 2001) (Krushelnytsky 2001) passed his request for asylum to their respective embassies. The New York Times Moscow correspondent Patrick Taylor intervened with the US Embassy in Kyiv and Prague. The British citizen and journalist Askold Krushelnytsky contacted his Embassy in Prague. Melnychenko chose to take *up* the American offer [Tsvil 2007]. On April 13, 2001, the U.S. immigration authorities granted him and family political asylum. On the same day it offered asylum to Gongadze's wife Myroslava and their twin daughters, Nana and Solomiya.

Fearing that on arrival, the FBI might confiscate his collection of recordings, Melnychenko left it with his Czech host Volodymyr Boldanyuk. He arrived in New York only with a notebook containing details about his recordings: "Melnychenko arrived here practically completely empty. He didn't have any recordings. He had a notebook in which something was written [about the recordings]" (Lauyer 2005a). The only set of recordings he could obtain in the U.S. was the thirty hours of original recordings he gave to International Press Institute in Vienna for authenticity tests. Among other key conversations, they held President Kuchma's conversations on Gongadze.

In America, Melnychenko was inundated with requests to publish his recordings. He refused all offers. Instead he decided to cooperate with a businessman called Yuri Lytvynenko with the intention to make money off the recordings.

Lytvynenko was not related to Alexander Litvinenko who was murdered by radioactive polonium-210 poison in London on November 23, 2006. Yuri was a former minister of trade in the Uzbek Soviet Republic and a dean at the Kyiv Institute of Trade and Economics. He left Ukraine after being accused of corruption.

Meanwhile Ukraine's parliamentary commission on Gongadze and Melnychenko sought a reputable body to conduct an authenticity test on the recording, after the inconclusive examination results by the International Press Institute. On August 30, 2001, Melnychenko submitted five excerpts of Kuchma's conversations on Gongadze to BEK-TEK, one of the world's foremost audio forensic specialists.

Melnychenko and Lytvynenko asked the Gongadze commission for a sum of $350,000 for the BEK-TEK test. Oleksandr Zhyr, the head of the penniless parliamentary Gongadze commission reacted furiously when he discovered BEK-TEK wanted less than $20,000 for the tests.

Soon afterwards, a court deprived Melnychenko of his business partner. On November 20, 2001, the New York City Supreme Court found Lytvynenko guilty of contempt of court on a business deal, and sentenced him to two and half years imprisonment. The Supreme Court of New York State (IBE Trade Corp. v. Iouri P. Litvinenko. 2001) ruled that he was guilty for failing to return stock certificates belonging to the IBE Trading Corporation of NYC and selling them for several millions of dollars to third parties.

Melnychenko's reaction to Lytvynenko's imprisonment was paranoiac. Instead of accepting that he had linked *up* with a questionable character, Melnychenko believed that the American authorities had jailed Lytvynenko as a reprisal for not giving his recordings to the FBI. He claimed that the court would have dropped the charges against Lytvynenko if he had cooperated with the FBI.

> Immediately after arriving in America, the matter was helped by the businessman Yuri Lytvynenko. He is now in prison. Someone shut off my 'oxygen'. It was done in a brutal manner, by a false accusation. On the eve of the trial in the Lytvynenko affair, a voice informed me on the telephone: 'Give *up* all your recordings and Lytvynenko will be freed'. (Labunsky 2002).

Melnychenko didn't have the money to pay BEK-TEK for the test results, and neither did Oleksandr Zhyr, the

new head of the Rada Gongadze commission. Zhyr obtained the money from the NYC based Foundation for Civil Liberties headed by Alexander Goldfarb, which was sponsored by the Russian oligarch Boris Berezovsky. This brought an important player with finances into the Gongadze affair. Besides paying about $20,000 for the authentication of the recordings, the foundation went on to pay more than $40,000 for the transcription of some of Melnychenko's recordings. The Fifth Element project headed by Yuri Shvets produced seventy-five quality transcripts of President Kuchma's conversations.

Finally on February 8, 2002, BEK-TEK gave Melnychenko its test results on the Gongadze conversations. Bruce Koenig, the author of the report, provided a technical account of the examination of five fragments of conversations on Gongadze: "the five [5] designated portions, located within two files on specimen Q1 [a CD-R], revealed no audible or electronic indications of deletions, additions, or alterations …" (Koenig 2002). He added that it would have been possible to fake the five excerpts, but "if it did occur, without being obvious, then the most probable scenario would be a loss of data, and not additions or editing of content" (Ibid.).

The five designated portions came from two conversations recorded on July 3, 2000. The first being Kuchma's conversation with Lytvyn (Kuchma and Lytvyn July 3, 2000) and the second with Kravchenko (Kuchma and Kravchenko July 3, 2000).

BEK-TEK also tested the recordings that were of special interest to Berezovsky, who had fled Russia and wanted to embarras the Russian president. It found Kuchma's June 2 and June 4, 2000 conversations with Derkach's on Putin's involvement in a drug and money-laundering scheme funding the German-Russian Joint venture SPAG to be authentic.

Bruce Koenig wrote that BEK-TEK's electronic tests would stand *up* in western and international courts. During his lifetime he had conducted 14,000 electronic tests and appeared more than 300 times as an expert in court trials, including at the UN Tribunal on the former Yugoslavia (Lyutyi 2002b).

Officials in Ukraine did not welcome the BEK-TEK test results. The Deputy Prosecutor general, Oleksi Bahanets, said the tests had no validity in Ukrainian law because his office had not authorized them (Bahanets 2002). The head of the president's office, Volodymyr Lytvyn, dismissed the tests disparagingly: "For Ukraine

this was another piece of paper, which means nothing to the Ukrainian justice system" (Lytvyn 2002).

The former prime minister, now a deputy in parliament and the acknowledged leader of the opposition, Viktor Yushchenko, welcomed the BEK-TEK tests and said they were a step forward in the direction of the "truth." However, he was against using them to impeach Kuchma because it would cause political instability (*UP* 2002a).

Following the BEK-TEK tests, Melnychenko sought financial sponsorship from Berezovsky, and his New York based Foundation for Civil Liberties. He was in position to sell his collection of recordings after March 8, 2002, when he received a copy not from Boldanyuk but from Ukraine. Melnychenko offered the foundation the recordings in return for money and a stipend to transcribe them. Berezovsky's chief interest in the recordings was to discover compromising materials on his arch-adversary President Putin.

Melnychenko received a number of payments from the representative of the Foundation for Civil Liberties, Yuri Felshtinsky. On May 5, 2002, Felshtinsky wrote him two checks, one for $10,000 and another for $5,000 (*UP* 2005k). Felshtinsky said he hired Melnychenko at $10,000 a month to transcribe the recordings (Shevchenko 2005). In return Melnychenko gave him a set of recordings. However, they could not be opened because he had encoded with passwords. Melnychenko did this to make sure he was in control of the transcription project.

Melnychenko took the money but didn't produce any transcripts, according to Yuri Shvets who also participated in the project. Shvets made Melnychenko superfluous to the project by cracking the passwords guarding the recordings: "When I told him about it [the breaking of the passwords], he was very upset; the monopoly on the recordings was lost. So, I then told him: Mykola, I have all six disks, passwords opened, I have all the iron" (Lauyer 2005a).

Instead of Melnychenko, Felshtinsky employed Shvets to transcribe the recordings. With a budget of $40,000, Shvets hired two professionals and, as editor, proceeded with the transcriptions. On September 17, 2002, under the pseudonym Petro Lyutyi, he announced the launch of the web site www.5element.net (Lyutyi 2002c), and began publishing transcripts, which turn out to be the best quality compared to those produced by others, especially by Melnychenko.

Shvets accused Melnychenko of taking the first drafts of some of these transcripts and publishing them, with mistakes, in his booklet Kto yest kto (Melnychenko 2002) without crediting Shvets and his team of transcribers (Lauyer 2005a). Berezovsky's foundation paid for this booklet to be secretly published in Ukraine.

In January 2003, Berezovsky's foundation ended its contract with Shvets. Melnychenko got his revenge on Shvets by persuading Berezovsky to close down Shvets' transcription project because it would lead to violence against them by Kuchma's agents. When www.5element.net shut down, it had published fourteen conversations with their transcripts and audio recordings. [In 2005 following the Orange Revolution, Berezovsky would resume funding Shvets and his team produced a further sixty transcripts on their new site, www.5elementplus.com. Shvets closed down the site suddenly and without explanation in November 2006.]

In February 2003, Roman Kupchinsky interviewed Melnychenko for a book that never materialized. The former presidential guard told his life-story, including how in 1999 he began working with Marchuk to record Kuchma. This six hour recorded interview took place in London on February 13, 2003 (Melnychenko 2003).

In his dealings with the Berezovsky group, Melnychenko became a close friend of Alexander Litvinenko, who in 2006 was murdered by polonium poisoning in London (*BBC* 2007). The former Russian secret agent, who now worked for Berezovsky, was an uncompromising critic of President Putin, accusing him of organizing hit squads to kill his critics. Melnychenko had stayed for long periods at Litvinenko's London home, where he told him, as he told Kupchinsky, how the recordings were made and that he had worked under the command of Marchuk.

With funds from the Berezovsky camp dried *up*, Melnychenko turned to selling his recordings to President Kuchma. His go-between was Volodymyr Tsvil, the very same person who helped him leave Ukraine.

Tsvil had made his peace with Kuchma. He had contacted the SBU to make amends for transporting Melnychenko out of Ukraine. In August 2001, Tsvil met with the new head of the SBU, Volodymyr Radchenko, at his office in Kyiv. The SBU chief wanted to know what recordings Melnychenko had taken to America, a question Tsvil said he could not answer. He revealed to Radchenko that Melnychenko had left his recording collection on forty CDs with Boldanyuk. Radchenko offered $100,000 for the collection (Tsvil 2007, 41). Tsvil offered to return the collection Melnychenko had left behind. The problem was that Melnychenko had enclosed

them with unbreakable passwords.

In an attempt to persuade Melnychenko to sell the passwords to the SBU, in December 2001, Tsvil flew to New York City at SBU's expense. Melnychenko refused, but promised Radchenko in a phone conversation not to make public any state secrets found on the recordings. Apparently Melnychenko didn't consider the Kolchuga recordings a state secret. A year later he released it.

Following the Kolchuga scandal, in May and June of 2002, the head of SBU's counter-intelligence, Petro Shatkovsky, met Boldanyuk and Tsvil on three occasions in the Czech Republic. For his cooperation, Tsvil received a certificate of thanks from the SBU and had two private meetings with President Kuchma.

With his financial relation with Berezovsky ended in 2003, Melnychenko decided to reconnect with Tsvil and sell his collection to Kuchma. In January 2004, he went to see Tsvil in Germany who contacted Ukraine's secret service. They met with two SBU agents in Strasbourg where Melnychenko told them that he had never betrayed Ukraine and wished to return under a guarantee of immunity from prosecution. He blamed Zhyr and Shvets for releasing the Kolchuga recording to the public and providing Ukraine's state secrets to the FBI

A few weeks later, on February 11, 2004, he and Tsvil met the same two SBU officers at a ski resort in Austria. As a sign of good will, Melnychenko provided them with a CD containing a selection of state secrets found on the recordings that included the president's conversations about Ukraine's foreign agents.

On February 19, 2004, Tsvil and Melnychenko went to Berlin to directly negotiate with President Kuchma who was there on a state visit. They met Kuchma's chief adviser Serhei Lovochkin [who from March 2010 became the head of President Yanukovych's office]. The canny Melnychenko agreed to sell the collection he left with Boldanyuk along with the passwords for half a million dollars. This deal failed, as Boldanyuk once again refused to return the collection to Melnychenko (Tsvil 2007, 168-170.).

Lovochkin invited Melnychenko to come to Moscow to continue the negotiations to sell all copies of the recordings. Fearing that this was a trap to abduct him, Melnychenko contacted the Russian secret service, FSB, to obtain guarantees for his personal security. As an additional precaution, he took along the former

parliamentary deputy Oleksandr Yelyashkevych, who had also received political asylum in the U.S., and who wanted compensation for a serious assault on him that he blamed on Kuchma.

Yelyashkevych had been attacked on the evening of February 9, 2000, as he was returning to his room at the Hotel Moskva now Hotel Ukrayina, located in the center of Kyiv. At the hotel entrance, a man approached him and hit him with a pro fessional karate like-blow to the face, causing severe injury and pain. Yelyashkevych survived the attack only to find that the police inves tigators ignored his charge that it was a political crime and regis tered the attack as hooliganism. Yelyashkevych accused Kuchma of giving the order to attack him, basing his charge on Kuchma's conversation with the SBU chief Derkach on Feb. 8, 2000. Yuri Shvets claimed that Kuchma had not given such an order and that Melnychenko and Yelyashkevych had fabricated a transcript of the conversation.

Melnychenko came to Moscow to negotiate in July, August and September of 2004. Photographs show him standing in front of the Kremlin holding the July 21, 2004 issues of the newspapers Vremya and Nezavisimaya Gazeta (Naiyem 2011).

Melnychenko had provided no details on his three trips to Moscow, except to confirm he met with met Kuchma's envoys, the president's chief adviser, Lovochkin, the oligarch Bakai and deputy head of the SBU, Satsyuk (Lauyer 2005b). Following the Orange Revolution. Bakai and Satsyuk fled Ukraine to Russia while in 2010, Lovochkin became head of the president's office. President Yushchenko accused Satsyuk of poisoning him with Dioxin at a meal in his house on September 5, 2004. This was just a week after he had met with Melnychenko in Moscow on August 28.

On his return to Ukraine, Melnychenko made public that these three people had approached him but failed to buy his silence and his recordings (Kabud 2005). Strangely, he admitted to holding in his hands a few million dollars (Tsiptsyara 2011). According to an unconfirmed source, Melnychenko and Yelyashkevych received two million dollars each from Bakai, as the first installment of a larger amount (Shevchuk 2005).

Melnychenko's behavior following his meetings in Moscow suggested he was keeping to an agreement made with Kuchma's representatives. He didn't testify against Kuchma in the trials of the undercover policemen who

kidnapped Podolsky and killed Gongadze. He made strange pronouncements on the eve of the October 2004 presidential elections. He said he was giving his recording collection to Kuchma, not for money, but for a promise from him to allow the 2004 presidential elections to be fair and honest (Ibid.). At the beginning of August 2004, he accused the British journalist Askold Krushelnytsky of attempting to blackmail Kuchma (Melnychenko 2004) for releasing documents on the secret police unit headed by Gongadze's killer Pukach.

Krushelnytsky (2004) had obtained a collection of documents produced by the prosecutor general's office on the CID officers who followed Gongadze. It also contained documents on the police officer, Ihor Honcharov, whom the authorities accused of being the head of a gang of killers for hire. He alleged he knew who killed Gongadze. While awaiting trial, he was murdered in his cell.

The Orange Revolution interrupted Melnychenko's negotiations with Kuchma's representatives. Melnychenko didn't return to join the protesters occupying central Kyiv. It could have been his opportunity to bask in public as Ukraine's hero. After all, the president's conversations on Gongadze had ignited the anger that fuelled the movement, which erupted into the Orange Revolution.

"I can't see - I don't know myself without Ukraine. Every day, my absence from Ukraine is a tragedy for me," he said in a radio interview on Jan. 17, 2005 (Melnychenko 2005). Melnychenko didn't honor this statement. He came back to Ukraine only eleven months after the Orange Revolution and this statement. As Berezovsky commented, Melnychenko wasn't afraid to go to Putin's Russia, but feared Yushchenko's Ukraine (*UP* 2005l).

In the months before his return, Melnychenko continued to behave as if he had agreed to protect Kuchma. In February 2005, he threatened publications in Ukraine with legal action if they published any more of his recordings or made reference to them. He claimed he owned the copyrights over them (*UP* 2005a; *UP* 2005n).

The apparent suicide of the Minister of Interior, Yuri Kravchenko, on March 4, 2005, gave Melnychenko a fright. On that day he was in Warsaw. Fearing that Kravchenko had been assassinated and that he might be next, he telephoned Berezovsky for help. The oligarch sent his private plane to evacuate him to London. Despite this gesture, very soon afterwards, Melnychenko was calling Berezovsky the head of a gang of international criminals.

In a telephone call, the new SBU chief, Oleksandr Turchynov, assured Melnychenko that Kravchenko had committed suicide, and he had nothing to fear if he returned. If he still was afraid to return, Turchynov suggested he give evidence against Kuchma at any Ukrainian embassy. Melnychenko refused both proposals (Lebid 2005).

The events leading to Kravchenko's death – it still has not been determined whether it was suicide or an assassination – began on March 2, 2005, when Prosecutor General Syatoslav Piskun announced to the public that he was inviting Kravchenko to come to his office on March 4 for questioning on Gongadze's murder. In response to Piskun's announcement, the new head of parliament's commission on Gongadze, Hryhoriy Omelchenko, said that Kravchenko should immediately be detained to protect his life either from suicide or assassination (Omelchenko 2005).

Piskun's public announcement was either a sign of his incompetence or an attempt to provoke Kravchenko to take his own life. On the morning of his expected arrival at the general prosecutor's office, journalists began to gather. Kravchenko didn't arrive. Instead at the hour of his appointed interview, he was found dead in his shed.

The official version was that he committed suicide by shooting himself twice in the head. Ukraine's leading expert on gun shot wounds, the former minister of health of Ukraine, Mykola Polishchuk, concluded that suicide was not possible because the first gunshot would have rendered him unable to shoot a second time (Prymachenko 2006).

Piskun had a motive to humiliate Kravchenko as had promised to protect Kuchma from prosecution. In return, Kuchma, just before he left office, had re-appointed him as general-prosecutor. In a recorded telephone conversation, most likely by dissident SBU agents, Piskun had promised Kuchma's son-in-law, Viktor Pinchuk, to safeguard the interest of the Kuchma family in return for being re-appointed as prosecutor general.

> [Piskun] Vitenka [diminutive for Viktor Pinchuk], I beg you on my knees, and with every, you know that … go there [to Kuchma] and take this question in hand. … [Pinchuk] In short, assure us, that you are a friend. [Piskun] Not only. [Pinchuk] A great friend? [Piskun] Yes. And tell him that we, as our family have been friends, we will continue. And everything will be normal. (Piskun and Pinchuk December 9, 2004; Boiko 2005).

Next day, December 10, 2004, the outgoing president re-appointed Piskun as prosecutor general. The incoming president Yushchenko kept Piskun, as he also had no intention of putting Kuchma on trial. Melnychenko's refusal to testify against Kuchma also ensured he would not be prosecuted at least during Yushchenko's presidency.

The attempt by the Berezovsky camp to pressure Melnychenko to return to Ukraine to testify against Kuchma ended in mutual denunciations. On March 14, 2005, at a meeting in Frankfurt, Germany, Berezovsky's representatives met with Ukrainian officials, who provided guarantees for Melnychenko's return (Felshtinsky 2005). Melnychenko still refused to go. On March 18, Felshtinsky and Goldfarb, appeared on Ukrainian TV to denounce Melnychenko for refusing to return, accusing him of not wanting to testify against Kuchma in the Gongadze case (*UP* 2005k).

Melnychenko responded on March 30, in an open letter, he denounced his former benefactor, Berezovsky, Litvinenko, Goldfarb and Felshtinsky, as a gang of international criminals. This must have been music to the ears of the Kremlin, who were demanding that Berezovsky be extradited from Britain. Melnychenko muddled the controversy with extraordinary accussations. He accused Berezovsky of offering a cut of the billion dollars from a deal he supposedly negotiated with Kuchma's son in law Pinchuk. In return for the money, he claimed he was supposed to give up the recordings and to declare that Kuchma was not responsible for Gongadze's death. Furthermore, he accused the former head of parliament's Gongadze commission, Zhyr, and his American representative in the U.S., Shvets, of selling his recordings to Berezovsky, falsifying them, and stealing his recording equipment (Melnychenko 2005b).

The Berezovsky team replied with a broadside of attacks on Melnychenko, describing him variously as a Putin's agent, insane (Goldfarb 2005a), an agent for a foreign country (Ilchenko 2005), a liar (Shevchenko 2005), or a forger of Kuchma's conversation (Shvets 2005).

The conflict heated up again on April 13, 2005, when Goldfarb and Felshtinsky, arrived in Kyiv in the glare of the media to hand over to the prosecutor's office everything Melnychenko had given to BEK-TEK in 2002 for the authenticity tests. It included a CD-ROM disk with two DMR files containing the conversations on Gongadze; a Toshiba DMR recorder; and a remote control for the Toshiba, a 16 MB Smart Media card, containing the Kolchuga conversation, and other materials (*UP* March 2005i; *UP* 2005j).

This provoked more angry words from Melnychenko. On April 29, 2005, he released transcripts of secretly recorded conversations between Berezovsky and Litvinenko (Melnychenko 2005c). Litvinenko, who within a year will be poisoned in London by suspected Russian agents, surmised that Melnychenko could not have recorded the conversations between him and Berezovsky, as they took place when Melnychenko was in Moscow. He concluded that the Russian secret service, the FSB, must have intercepted his telephone calls and given the recordings to Melnychenko to publicize. (Litvinenko 2005). He also described him as mentally unstable (Garkusha 2005).

On July 6, 2005, Melnychenko, still refusing to return to Ukraine and to testify against Kuchma, released a recording intended to destabilize the already strained relationship between Prime Minister Tymoshenko, President Yushchenko, and the Secretary of the National Defense and Security Council, Petro Poroshenko. In the conversation with Kuchma, Poroshenko denigrated Tymoshenko and swore his loyalty to Kuchma. He related to Kuchma what he told Yushchenko about Tymoshenko: "Why have you tied yourself to this idiot? Give her *up*!" In turn Kuchma told Poroshenko that Yushchenko was having an extra-marital affair and that his wife was "from the CIA." After Ukrainska Pravda decided not to publish this transcript, Melnychenko and Yelyashkevych demanded an apology (*UP* 2005m).

Melnychenko returned on November 31, 2005, exactly five years after had fled Ukraine. On arrival at Kyiv's airport Borospil , Melnychenko and Yelyashkevych were met by journalists demanding to know why they had not returned during the Orange Revolution, and why they had flown from Washington via Moscow. Yelyashkevych, acting as Melnychenko's press spokesman, claimed they had only taken a transit flight through Moscow, and that their aim was to see Kuchma receive his just punishment.

After his return, Melnychenko continued to refuse to testify against the accused policemen and Kuchma. He gave absurd reasons why he couldn't provide the original recordings of Kuchma's conversations on Podolsky and Gongadze: "I will not give *up* the original recordings and recording instrument to the prosecutor general on the territory of Ukraine without the permission of the victims: Lesya Gongadze, Oleksandr Yelyashkevych, Myroslava Gongadze, Oleksi Podolsky" (Melnychenko 2007). None of these individuals had ever objected to him giving this evidence to the prosecutor's office. As a matter of fact Gongadze's wife Myroslava urged him to cooperate (Telychenko 2006).

Melnychenko didn't give evidence in the trial of the three officers accused of murdering Gongadze. On March 15, 2008, the Appeal Court for the city of Kyiv found the three policemen guilty of the kidnapping and killing of Gongadze. Mykola Protasiv received thirteen years in prison, while Valeri Kostenko and Oleksandr Popovych twelve years each (Ukraine v Kostenko et al 2008). The verdict accused Oleksi Pukach of directing the killing and suffocating Gongadze. It postponed his sentence until his capture.

Both the Podolsky and Gongadze trials took place during President Yushchenko's term in office and were held mostly in secret. This was a violation of the country's constitution. Article 129, point 7, of Ukraine's Constitution states the "openness of a trial and its complete recording by technical means."

Neither did Melnychenko provide evidence in the pre-trial investigation of Pukach, the commander of the secret policeman and who took part in kidnapping Podolsky and who choked Gongadze with a belt to death. The SBU captured Pukach on July 21, 2009 in the last months of Yushchenko's presidency (*UNIAN* 2009a). He confessed to his interrogators that the Minister of Interior Kravchenko had ordered him to kill Gongadze at the request of President Kuchma (Naiyem 2009). His trial began only at the end of 2011 and finally ended in 2013. Like his subordinates, he was found guilty. The constitutional court ruled that Kuchma had no case to answer because Melnychenko had illegally recorded him (see Chapter 18 – Yanukovych's revenge).

The Council of Europe's adviser on the Gongadze case, Sabine Leutheusser-Schnarrenberger, concluded that under the Yushchenko presidency that there was a conspiracy to protect Kuchma. In her July 2008 report on the Gongadze case, she wrote: "I have come to the conclusion that both prosecutors general in office during the period in question – Mr. Piskun and Mr. Medvedko [in Oct. 2005, Medvedko replaced Piskun] – did not do everything in their power to enable the recordings to be used as evidence" (Leutheusser-Schnarrenberger 2008).

16 “We can put anyone against the wall”

May 14, 1997 marks the day Viktor Yanukovych came to national prominence. President Kuchma appointed him governor of Ukraine’s most important industrial oblast, Donetsk. The appointment apparently was at the instigation of the oligarch Rinat Akhmetov (Taylor 2011). Together they created a power base that within five years propelled Yanukovych to the post of prime minister and Akhmetov to become the richest oligarch in Ukraine. However, there is a lack of transparency as to how they became rich and powerful.

What is not in dispute is that Yanukovych was born on July 9, 1950 in the Donetsk oblast village of Zhukivka near the industrial town of Yenakiyeve, dominated by its iron and steel works. His father Fedor came from a Polish Roman Catholic village in Belarus called Yanuki [hence the name Yanukovych], while his mother, Olga Leonova, came with her family from the Orlov region in Russia. At the age of twenty-one, in November 1972, he married Lyudmyla Nastenko. They had two sons: Oleksandr born in 1973 and Viktor in 1981. In 1974, Yanukovych registered for an external degree at Donetsk Polytechnic and completed it in 1980.

He made a career in the management of car pools and transportation in major state companies. He headed the Donetsk transport company, “Donetsavtotrans,” [DonetsAutoTransport] prior to becoming deputy governor of the Donetsk oblast in August 1996, and governor in May 1997.

Only in 2002 when Kuchma selected him for the office of prime minister, did the first of his secrets became public. The intrepid journalist Volodymyr Boiko discovered that in his late teens, Yanukovych had served two prison terms. In 1967, at the age of 17, a Soviet court sentenced him to three years imprisonment for robbery with violence. Thanks to an amnesty on the 50th anniversary of the October Revolution, the sentence was halved. Following his release on June 30, 1969, he worked at the Yenakiyeve Iron and Steel Works. Two months later, on August 16, 1969, he was arrested again and sentenced to two years imprisonment for grievous bodily harm. The candidate for prime minister belatedly admitted his convictions, but argued that in 1978 a

court had quashed his criminal records because they were miscarriages of justice (Boiko 2006a, 2006b).

It transpired that the 1978 court judgment had been forged. In 2006, the Minister of Interior Yuri Lutsenko remarked: "An investigation unequivocally established that the [1978 court] decision was fabricated, and, as far as I know, the secretary who signed the decision of that court at the time was about seven years old. They forgot to ask someone older" (Lutsenko 2006).

Allegations have appeared that he had ties with the Donetsk underworld following his release from prison in 1971. A photograph has surfaced on the Internet showing Yanukovych with a group of prisoners that included Akhat Bragin, destined to become the Don of the Donetsk mafia. Articles have also appeared about his close relationship with alleged mobsters from his home town of Yenakiyeve (Chornovil 2010a and 2010b).

Akhmetov's biography before 1996 is just as obscure as Yanukovych's. The facts on Akmetov are that he was born on Sept. 21, 1966 in Donetsk to a father who was a coal miner and a mother who was a shop assistant. The parents were Tatars from the Volga region. What he did before 1996-7 remains controversial.

> When asked about what he did in the years after he graduated from school in 1983, Akhmetov usually becomes elusive, saying only he learned to work at some unspecified jobs by learning from others, according to an article in *Obozrevatel* [Ukrainian news Internet site]. His official work history starts 12 years later in 1995, when he is listed among the founders of the Donetsk-based Dongorbank. (OSSRP 2008)

Akhmetov appeared on the public stage for the first time after the death of his mentor Akhat Bragin. On Oct. 15, 1995, a remote controlled bomb inside the Shakhtar football stadium ripped Bragin and his six bodyguards to pieces. In Bragin's memory, the mosque in Donetsk was named in his honor.

Bragin's assassination was the continuation of gang warfare that began with the killing of his rival Yanush Krantz in Donetsk on Nov. 20, 1992. Bragin's killing was preceded by the assassinations of his close associates: the brothers Artur and Yakov Bogdanov. It ended with the assassinations of Krantz's proteges, Yevhen Kushnir and Anatoly Rabin, in 1998 and 1997 respectively.

In Donetsk after Ukraine's independence, organized crime and the political establishment was like either side of a coin. Bragin became part of the establishment and Krantz's successors didn't. Ethnic links might have been a reason why Bragin was successful. Both gangs were rooted in relatively small ethnic groups – the Jewish, led by Krantz and Tatar headed by Bragin. Individuals from these two ethnic groups had a disproportionate effect in the gang warfare over the privatization of the state property in the Donetsk region, considering that each group numbered less than 20,000 in a population of about three million Ukrainians and two million Russians.

At the time of his assassination, Bragin was considered to be the second richest person in Donetsk. His fortune included the Shakhtar football team and stadium, a bank and many businesses. He lived at the smartest address in Donetsk, the "Lyuks [opulent]." The palatial structure stands on ten hectares in what was the city's botanic gardens (Chornovil 2006b).

The details of how Bragin made his fortune in Donetsk are shrouded in gang warfare and ethnicity. Broadly it is understood that after the fall of the USSR, Bragin, in alliance with the politician Yevhen Shcherban created licit and illicit businesses. Following Bragin's assassination, his first lieutenant, Akhmetov, took over his business empire, which included "Lyuks." What tied Akhmetov, Shcherban and Bragin together was their Tatar ethnicity and their determination to be richest persons in the Oblast.

By 1996, Yevhen Shcherban was the dominant politician in the Donetsk Oblast, though he didn't hold any political position in the region. His power stemmed from being the wealthiest person in the oblast, if not Ukraine, and being a prominent national politician. As member of Ukraine's parliament, he was the leader of the small but influential Liberal Party. In its ranks was the former SBU chief and prime minister Yevhen Marchuk. Following Marchuk's dismissal as prime minister on May 26, 1996, Shcherban called for him to become the next president. This must not have gone well with Kuchma, who disliked anyone who suggested he should be replaced.

Yuri Dedukh, who worked with Yevhen Shcherban, Bragin and Akhmetov, was asked if they had acquired their wealth legally? He responded with: "Who wasn't a bandit? More or less all successful people were bandits. At this time Rinat [Akhmetov] travelled in a car with guards, he knew how to make money, and would not allow anyone to pay him less or cheat him" [Dedukh 2013].

Five weeks before Bragin's slaying and two years before Shcherban's, a new political player appeared on the national scene who would have a profound effect on Donetsk for the next two years. Lazarenko's take over of the supply of natural gas to the Donetsk region provoked even more assassinations, and finally led to his downfall, and to the rise of Yanukovych and Akhmetov.

On Sept. 5, 1995, President Kuchma appointed the Dnipropetrovsk governor to the post of deputy prime minister in charge of energy. Lazarenko moved quickly to extend his kickback scheme to the rest of Ukraine and especially to its most industrialized oblast, Donetsk.

For the year of 1996, he appointed the newly formed United Energy Systems of Ukraine (UESU) headed by Yuliya Tymoshenko as the main gas distributor for Donetsk Oblast. The Donetsk addition could more than double his kickbacks, as Donetsk enterprises consumed even more gas than Dnipropetrovsk's. There was the added benefit of taking over profitable enterprises if they couldn't pay their debts. Among the desirable plants were the steel maker Azovstal and the Khartsyzsk Tube Factory [KhTZ], which made large diameter pipes for Russia's oil and gas industry.

Lazarenko's drive to make money off the Donetsk enterprises created many enemies. Firstly, the plant directors feared increased gas prices from being forced to buy from the government appointed UESU and not from the market. Secondly, Russian interests were at stake, as Gazprom and Itera would not be able to sell gas directly to factories as they did before. Thirdly, the Donetsk oligarchs would have to share their kickbacks with Lazarenko and UESU, or even worse, they could be excluded altogether.

In reaction to Lazarenko's decree that UESU should supply gas to Donetsk factories, Donetsk's three leading oligarchs, Yevhen Shcherban, Akhmetov [in place of the assassinated Bragin] and Oleksandr Momot [who headed the Danko industrial group that controlled many steel plants] created the private company, the Industrial Union of Donetsk (IUD). The new company had the backing of the Donetsk Governor Volodymyr Shcherban [not related to Yevhen Shcherban].

IUD reached a compromise with Lazarenko. Donetsk's six largest plants would buy their natural gas from IUD, which in turn would buy it from UESU. In this way both Lazarenko and the Donetsk oligarchs would share the

kick-backs. This was a classic example of oligarchs using their political muscle to make money off enterprises.

Itera, who previously supplied the gas along with Gazprom, was the biggest loser. It would continue to sell to the Donetsk factories, but with small portion compared to UESU, and also through IUD. From having the majority share, Itera now had the minority share in Donetsk's gas market. Itera was a dangerous beast to offend, as behind it lurked Semyon Mogilevich (Taylor, 2008), who had the reputation of being the most dangerous gangster to have emerged from the former USSR, and who had Gazprom backing him.

The new division of spoils of the Donetsk gas market provoked assassinations and attempted killings of the oligarchs involved. Following the assassination of Bragin on Oct. 15, 2005, on March 28, 2006, Oleksandr Shvedchenko, the new head of Itera Ukraine, was shot dead. Two months later, on May 16, 1996, the director of IUD, Momot, was assassinated in Donetsk.

On May 28, 1996, Kuchma fired Marchuk as prime minister and appointed Lazarenko in his place. The new prime minister was now in an even stronger position to determine how corruption would take place in Donetsk.

On July 16, 1996, as the prime minister was on his way to Boryspil airport for Donetsk, a remote-controlled bomb narrowly missed killing him (Kolomayets 1996). Lazarenko speculated that the attempt might have been "connected with events in the Donbas region" (Pikhovshek 1996).

Who did President Kuchma blame for the attempt on his prime minister? Judging by the president's reaction, he blamed the Donetsk Governor Volodymyr Shcherban [no relation to Yevhen Shcherban]. Two days after the attempt on Lazarenko, the president dismissed him and replaced him with Lazarenko's protege, Serhei Polyakov. The new governor in turn appointed the unknown Viktor Yanukovych as his deputy.

The attempt on Lazarenko was followed by one of the most resonant assassinations that took place in Ukraine, the killing of Yevhen Shcherban. On November 3, 1996, assassins shot Shcherban dead on the tarmac of Donetsk airport, along with his wife Nadezhda and two airport employees.

At Shcherban's funeral, the main eulogies were given by two people who in previous months had been

dismissed by President Kuchma because of their conflicts with Lazarenko: the former Prime Minister Marchuk, and the former Donetsk Governor Shcherban.

In the space of thirteen months, assassins had murdered four leading Donetsk oligarchs: Bragin, Shvedchenko, Momot and Shcherban, and missed killing Lazarenko. Of the three founders of IUD, only Akhmetov, remained alive, and went on to become the richest oligarch in Ukraine.

Who were the killers? In 2003, a court ruled that a gang organized by Kushnir and Rabin had assassinated Bragin, Momot and Shcherban, and that Lazarenko had paid for the killings. The court verdict could be acceptable if the judges in Ukraine were not tools of politicians.

Judging from his actions, President Kuchma seemed to have blamed Lazarenko for Yevhen Shcherban's murder. Following the killing, Lazarenko thought Kuchma would dismiss him as prime minister (Leshchenko 2012e). In May of 1997, Lazarenko suffered a nervous breakdown and was confined to a hospital. Taking advantage of his illness, on May 14, Kuchma dismissed Lazarenko's protege, Governor Polyakov, and appointed Yanukovych in his place. Two weeks later, on July 2, 1997, the president got rid of Lazarenko as prime minister.

Yanukovych's appointment brought stability and riches mainly for Akhmetov and his circle of oligarchs. "Restoring order, however, did not mean restoring rule of law; in Donetsk the law of the strongest reigned" (van Zon 2007).

Akhmetov's opponents were murdered and no one was ever even charged for the killings. In the first two years of Yanukovych's governorship, about thirty-one members of the Kushnir-Rabin gang were "wiped out." This included twenty-three killed and eight imprisoned. Serhei Roman, said to be a Kushnir associate, was shot dead on May 23, 1997, after returning from Switzerland where he fled after the killing of Bragin. On Oct. 31, 1997, Anatoly Rabin, along with his two gunmen, Vyacheslav Volkov, and Volodymyr Lyubarsky, and his driver were attacked and killed. A gun attack on Yevhen Kushnir seriously wounded him, and a few weeks later, on May 2, 1998, he died from his wounds. His partner in crime, Magomet Aliev disappeared, presumed to have been murdered. Two other partners, the brothers Grigori and Gennadi Dolidze were assassinated. Fifteen of Kushnir's gunmen - including Andrei Akulov, Ihor Filipenko, Gannadi Zangilidi, and Leonid Fishchuk - were

killed between March and September 1998. No one was charged with their killings. Table 16.1 has a summary of the leading murdered members of the Kushnir-Rabin gang.

Table 16.1
Kushnir-Rabin gang killed during Yanukovych's governship

May 23, 1997	Serhei Roman, a Donetsk businessman, shot dead in Donetsk soon after returning from Switzerland where he fled after the assassination of Akhat Bragin.
Oct. 31, 1997	Anatoly Rabin shot dead along with two associates – Vyacheslav Volkov and Volodymyr Lyubarsky – and driver.
Feb. 3, 1998	Grigori Dolidze, crime boss of Yenakiyevo shot dead. His brother, Gennadiy, also killed.
March 25, 1998	Yevhen Kushnir seriously wounded in an attack and died from his wounds on May 2, 1998. Afterwards fifteen of his gunmen were murdered, including Andrei Akulov (March 28, 1998), Ihor Filipenko (Sept. 22, 1998), Gannadi Zangilidi (Sept. 1998), and Leonid Fishchuk (Sept. 1998).

There is a hint of evidence that some of the killings were carried out by the police. It comes from the policeman Vyacheslav Synenko who claimed that in 1997, after he refused to take part in a police-led operation to assassinate some of the Kushnir-Rabin gangsters, an attempt was made on his life. He fled to Greece, from where he was extradited on the charge that he took part in the assassination of Bragin. He claimed the authorities in Donetsk had framed him. In 2006, a court in Donetsk convicted him for taking part in the assassination of Bragin.

Whatever the truth about the Synenko case, the fact is that not a single person was brought to justice for the killing of the Kushnir-Rabin gangsters. The Donetsk authorities under Yanukovych's governorship did bring to court the remaining members of the Kushnir-Rabin gang, but none of their killers.

On April 16, 2003, a court in Luhansk sentenced eight surviving members of the Kushnir-Rabin gang to long prison terms for killing Bragin, Momot, Shcherban, and the banker Vadim Hetman. In court the prosecution accused Lazarenko of hiring the Dnipropetrovsk gangster Oleksandr Mylchenko [Aleksandr Milchenko in Russian] to organize the killings.

Mylchenko, Kushnir and Rabin, as well as many others, were not in court to defend themselves against the charges of assassinating Bragin, Momot, Shcherban and Hetman, as they were dead before the trial opened in 2002. Mylchenko died on November 22, 1997, supposedly from natural causes just as he reached border to flee Ukraine. Kuchma speculated that Lazarenko had him killed, as his body was not in his mausoleum when it was inspected for an autopsy (Kuchma and Lytvyn, et al. June 27, 2000).

In interviews from America, Lazarenko denied having anything to do with any of the killings. His supporters got a court order to require Ukraine's most popular TV channel, Inter, to broadcast Lazarenko's rebuttal of the accusations. The program was broadcast on June 30, 2005 (Lazarenko 2005).

Meanwhile in America, in the trial of Lazarenko, his deputy in crime and now a witness for the state, Petro Kyrychenko, told prosecutors that Lazarenko paid Mylchenko more than $1.6 million to organize the killing of Momot, Shcherban, and the banker Vadim Hetman. Mylchenko then hired Kushnir to carry out the killings. The amount of money alleged to have been paid to Mylchenko coincided with the sum deposited on his account at Lazarenko's Eurofed Bank in Antigua [see Chapter 7 – Haunted by Lazarenko]. Kyrychenko said he had paid Mylchenko $350,000 to kill Shcherban (Doy 2003), and $850,000 to kill Hetman (Korchynsky 2008). But Kyrychenko failed to explain why Lazarenko wanted Hetman dead. Hetman was the founder and first head of Ukraine's national bank.

Attempts to investigate the killings and the rise of the oligarchs in Donetsk have been met with killings, imprisonments in Ukraine and court trials. The case of Borys Penchuk illustrated the punishment awaiting those who publish articles on the Donetsk oligarchs. Penchuk with Kuzin published Donetskaya Mafia – Antologiya [Donetsk Mafia – Anthology] (Penchuk and Kuzin 2006). The book contains articles by them and other journalists. It describes the Donetsk region as a criminal mini-state with a Don. A year later, the book was republished in Ukrainian as Donetska Mafia – Perezavantazhennya (Penchuk 2007), with many more articles by other journalists, in effect doubling the number of pages compared to the first edition from 304 to 664 pages. The overall impact a reader gets from these books is that the Donetsk region is a criminal mini-state, not controlled by the central state, but increasingly dominating Ukraine as a whole.

The editor of the book, Penchuk, said he and his family, like all successful businesses in the region, had been

victims of the "Donetsk mafia." He and his family had been part owners of Donetsk's largest department store, "Bilyi Lebid [White Swan]." After he refused to sell his share in the family store to Borys Kolesnikov, the then head of Donetsk Oblast Council (Rada) [Yanukovych was the oblast governor. When Yanukovych became the president in 2010, Kolesnikov was the deputy prime minister.], two gunmen shot at him on November 25, 1999 (Boiko 2007). He blamed the attempted murder on Kolesnikov and the richest oligarch, Rinat Akhmetov, who he regarded as Kolesnikov's superior. He also blamed them for the assassinations of numerous businessmen and the appropriation of their businesses.

In 2005, following the Orange Revolution, Kolesnikov was arrested for the charges made by Penchuk. After a few months in jail, Kolesnikov was released and sued Penchuk for defamation. On Nov. 7, 2006, a Donetsk district court ruled that *Donetskaya Mafia – Anthology* infringed Kolesnikov's constitutional rights and reputation, and ordered Penchuk to apologize, and to remove all copies from bookshops and destroy them (Partiya Regioniv 2007). In a further legal case, in March 2009, a court in Donetsk sentenced Penchuk to eight years in prison for "blackmailing" Kolesnikov and "consciously lying."

The region's leading oligarch, Renat Akhmetov, has threatened to sue anyone in the West who re-published the book:

> The book *Donetskaya Mafia* … I want this book to be [published] maybe in England and other countries where it [the publisher] will be held legally responsible for the distribution of this book!
>
> (Korrespondent 2007)

He has sued in English courts to silence publications in Ukraine. At the behest of Akhmetov, solicitors in London successfully sued two Ukrainian publications with Internet sites for libel:

In 2007, Ukrainian businessman Rinat Akhmetov brought a libel suit in England against the Internet news site *Obozrevatel*, over articles published about his younger years. The web site is based in Ukraine and has a very small readership in the UK. Akhmetov was awarded damages of £50,000 and costs. That same year, Akhmetov also sued the *Kyiv Post*, a paper with around 100 UK subscribers, over allegations of corruption. The

newspaper apologized as part of an undisclosed settlement in 2008. In 2010, the *Kyiv Post* blocked access to all web traffic originating from the UK in protest against the English libel laws (Libel Reform Campaign 2009).

From 2013, a new libel law will make it difficult for Akhmetov to pursue Ukrainian journalists in English courts, as it will not allow "libel tourism." Akhmetov is Ukraine's richest oligarch as well as one of the richest in the world. The Forbes' 2012 rich list places him as the 39th richest person in the world. For the same year, Bloomberg reported that he had $18 billion in assets and employed 260,000 people.

During the period of Yanukovych's governorship, "Donetsk's Gongadze," the journalist Ihor Alexandrov, director of the TV channel TOR in the Donetsk city of Slavyansk, was murdered for investigating the relationship between criminals and politicians.

In 2001, Alexandrov interviewed two former policemen, Mykhailo Serbyn and Oleh Solodun, on his TV program "Bez retushi [Without blemishes]." They claimed to have been dismissed from the police after reporting that the prominent Slavyansk businessman, Oleksandr Rybak, had assassinated some of his rivals. On the morning of July 3, 2001, as Alexandrov was about to conduct another interview with the former policemen, two assailants attacked him with baseball bats in front of the TV studio. On that day, he had promised his audience to screen a video made by the former policemen showing Rybak and others discussing how much they should pay the police and prosecutors in bribes. Hospitalized with serious injuries, Alexandrov died a few days later on July 7.

The prosecutors covered *up* the crime by charging a homeless person called Yuri Veredyuk with Alexandrov's killing, who a court sentenced to prison. Officials from all levels, including Governor Yanukovych, visited Alexandrov's wife to convince her that the killing was not political and had been committed by Veredyuk. After much public protest in his hometown of Slavyansk, on May 17, 2002 a court found Veredyuk's conviction unsafe and called for the prosecution to re-investigate. A month later, Veredyuk was killed in prison. Finally, in 2003, after more public protests, the Donetsk prosecutors ordered the arrest of Oleksandr Rybak, his brother Dmytro and others for Alexandrov's murder. It took three more years before courts sentenced them to prison.

As governor, Yanukovych made the Donetsk Oblast, with its ten percent of the voters of Ukraine, a bastion of

electoral support for President Kuchma's re-election in 1999. In December 1998, the governor had created a popular front of over 120 Donetsk civic organizations "For unity, solidarity and revival," to re-elect Kuchma. Yanukovych's political machine succeeded in producing more votes for Kuchma than for the oblast's native son, the communist candidate Petro Symonenko. In the final round of the election, Kuchma received 1.6 million votes compared to 1.2 million for Symonenko. Yanukovych's political machine became a byword for election fixing (Zimmer 2005).

Following the presidential elections, Yanukovych bragged to Kuchma about his total control of the oblast and how his team was prepared for the parliamentary elections in 2002.

> As to newspapers, Leonid Danylovych [Kuchma], it is as it should be, they are all controlled … we have created a company for the mass media. In this way, today we publish about 1.5 million copies per day. All these newspapers are ours. Once we did this, even those who strongly doubted now are all lined *up* in a row. This is why today, we can put anyone against the wall. We have completely readied ourselves for the coming [parliamentary] elections. Such a level of preparation has not existed before. (Kuchma and Yanukovych, Aug. 1, 2000)

An incident that took place during the presidential elections illustrated how the governor and the president controlled the judiciary. On Nov. 1, 1999, the day after the first round of the presidential elections, the police arrested the lawyer Serhei Salov, who was a supporter of the socialist candidate Moroz. He was charged with spreading lies about the president. Salov's defense was that he had found five copies of the parliament's newspaper Holos Ukrainy [Voice of Ukraine] in his mailbox. The newspaper turned out to be a fabrication containing an article claiming that Kuchma had been ill and died from alcoholism. The prosecutor kept Salov for eleven days in a windowless police cell in an attempt to force him to confess that Moroz had provided him with the incriminating newspapers to distribute (Mozhayev 2005).

On March 30, 2000, the Prosecutor General Mykhailo Potebenko informed Kuchma that the Donetsk judge Oleksandr Tupytsky wanted the president to appear at Salov's trial (Kuchma and Potebenko, Yanukovych March 30, 2000). The judge ruled that Salov might had committed libel, and for this the president had to appear in person to make a complaint against him.

> [Potebenko] Now we have this case. Well. You know, in November 1999 the case was filed in Donetsk, where the so-called Salov, a lawyer. We filed an investigation under Article 127 [against him] - that is "Spreading disinformation about the president". He was saying all sorts of rubbish there. We got him arrested. [Kuchma] Why did it take so long? [Potebenko] Well, right, we got him arrested in November and sent the case to court in November. The court was dragging it out until March [2000] and in March they sent it for analysis. They charged him with insulting your image, and not spreading disinformation. [Kuchma] What's the difference? [Potebenko] If it was spreading – we don't have to question you. If it was [insulting] the image, you are a victim, and we must question you. [Kuchma] Who made this decision? [Potebenko] Donetsk district court. I said, let us appeal against it. [Kuchma] Fuck, I will rip their guts out. That is in Donetsk? [Potebenko] Yes. Salov, a lawyer, Salov. [Kuchma] Tell Yanukovych to come here, find him. Donetsk district? [Potebenko] Donetsk. [Kuchma] Salov? [Potebenko] Yes, Salov. That was a very high-profile case, Yanukovych knows. (Kuchma and Potebenko, Yanukovych March 30, 2000; *IPI* 03-30-00-ZL3003.WAV.)

When Governor Yanukovych entered the president's office, Kuchma confronted him with the Salov case.

> [Kuchma] Greetings. How are you? Do you have this case on Salov? A lawyer. [Yanukovych] Yes. He made some fuss there. [Kuchma] He did. There is a criminal case against him for spreading disinformation. [Yanukovych] Yes. [Kuchma] That is, since December your courts were turning it around and then returned it, saying: this should be considered as insulting the president's image, not spreading [lies]. So I have to go there and give evidence? So, get this judge and fucking get him hanging by his balls, let him hang like that. [Yanukovych] I understand. We'll sort it out. [Kuchma] Fucking judges you've got, they are such bastards. [Yanukovych] We have to replace the head of the court. He is not reliable. We should replace him. [Kuchma] Well, you see, as long as we have this system. [Yanukovych] Well, we'll sort it out. We'll put the right judge there. (Ibid.)

The Donetsk Oblast prosecutor Viktor Pshonka appealed to the court for President Kuchma not to testify and instead punish Salov for interfering with the election. On July 6, 2000, Judge Tupytsky found Salov guilty and handed down a five year suspended sentence. Although not in jail, the judge banned him from practicing law for three years and five months.

[After becoming president, Yanukovych on Nov. 4, 2010 appointed Pshonka the prosecutor general of Ukraine, and in May 2013, he selected Tupytsky to the Constitutional Court of Ukraine. The judge who allegedly was responsible for the disappearance of Yanukovych's criminal records in the town of Yenakiyevo (Leshchenko 2010a), Vyacheslav Ovcharenko, became the head of the Supreme Court on July 18, 2013].

After discovering from the Melnychenko recordings that the president and the governor pressured the judge who complied, Salov appealed to the European Court of Human Rights. On March 22, 2005, the court found in his favor. It ruled that Ukraine had violated the following articles of the European Convention on Human Rights: right to liberty and security; right to a fair trial; and freedom of expression. It ordered the government to pay him €10,000 in compensation (European Court of Human Rights 2005).

Yanukovych probably knew from Azarov, his man inside the president's office, regarding Kuchma's disdain for Prime Minister Yushchenko and his deputy Tymoshenko. Consequently he was on safe grounds to tell Kuchma that Yushchenko was a "nobody" without Tymoshenko. "Correct! She has a colossal influence on him," responded Kuchma. Kuchma bragged to Yanukovych that he had thrown down the telephone receiver several times during telephone conversations with the prime minister (Kuchma and Yanukovych June 5, 2000).

The president welcomed the governor's plan to disrupt a demonstration by Tymoshenko's Batkivchyna [Fatherland] party in front of the Donetsk Oblast Rada building. Yanukovych told the president that his "boys" would undermine the protest by creating a disturbance:

> Yes, "Batkivchyna," sixteen on Friday [referring to June 16, 2000], is supporting the reforms by the [Yushchenko] government with a picket of the [Donetsk] oblast Rada. … I will prepare ten of my boys for this group. They will prepare a scenario and we will put on a show for them… We will show them. (Kuchma and Yanukovych June 5, 2000)

While giving support to Yanukovych's strong-arm tactics, the president agreed to help his newly created Party of Regions to increase its numbers in parliament. The president advised him to weaken the parties led by Moroz, Symonenko and Tymoshenko: "This is the time to demolish Fatherland, and the communists, of course. Take three [deputies] from Moroz, and he will collapse" (Ibid.).

By July 2000, Yanukovych's relationship with Yushchenko had escalated into insubordination, with Kuchma backing the governor against the prime minister. On July 13, 2000, Kuchma had asked Yanukovych about the prime minister's complaint that his oblast was withholding tax revenues from the central government. Yanukovych defended his move by accusing the prime minister of attempting to "kill" the oblast's economy by closing down its mines, substituting expensive gas for coal and not allocating enough subsidies.

Furthermore, he accused Yushchenko and Tymoshenko of corruption, claiming they had taken state revenues to enrich themselves. Rhetorically he asked Kuchma: "why should we give money to our enemies?" He accused Tymoshenko of pocketing state revenues: "Yuliya has only one aim; to immediately concentrate all the money, as they say, through [natural] resources [gas, coal, steel, etc.], through resources to make 'bucks' for herself." He called upon the president to "wipe" her out from the government (Kuchma and Yanukovych July 13, 2000).

An attack on Yushchenko and Tymoshenko was music to Kuchma's ears, as he felt the same way. A week earlier in a conversation with Bakai and Volkov, he had said that Tymoshenko was enriching herself by exploiting her political position, and now Yanukovych was saying the same thing.

Kuchma told Yanukovych of his plan to extradite Tymoshenko to Russia to face accusations of bribing officials at the Russian Ministry of Defense in order to get a $350 million contract for her company in 1997. However, he would delay any action against her and Yushchenko until the IMF loans were renewed, as they had gained the image of "reformers" in the West.

Yanukovych in his conversations with the president complained about Yushchenko and Tymoshenko. He accused them of hurting his dignity by cancelling meetings and having him wait to see them. Worse still, they insisted he spoke to them in Ukrainian: "I speak Ukrainian very well, but with them on principle I will only speak Russian."

The truth was that Yanukovych feared being ridiculed for his Ukrainian. He told the president that at a conference of governors, the Dnipropetrovsk Governor Mykola Shvets had been laughed at because of his poor Ukrainian (Kuchma and Yanukovych June 5, 2000). [Articles on the Internet mocked Yanukovych for making twelve mistakes in Ukrainian on his application to the central election commission to stand in the 2004

presidential elections. It included the misspelling of the words prime minister and professor (Genshtab 2011)].

Yanukovych told Kuchma that he would retaliate against Yushchenko for hurting his personal feelings. He recounted what he said to the prime minister:

> Viktor Andreyevich [Yushchenko], I want to tell you one thing. Firstly, you stop, I said, humiliating me. You – I said – humiliate me. You do not need to make me look bad, [and] to insult me. I told him, believe me, I will answer you. The reply, I said, will be very serious (Kuchma and Yanukovych July 13, 2000).

Such was Yanukovych's personal insecurity that he purchased fake academic degrees and honors to improve his public image. He bought a "person of the year" award from a non-academic institution located in Cambridge, England (Shara 2004a), and claimed to be an academic of the unrecognized "International Academy of Science, Education, Industry and Arts" in California (Shara 2004b).

In 2001, Ukraine's Academy of Economic Sciences awarded Yanukovych a doctorate and a professorship. "A whole institute had to work for Yanukovych to receive the title of professor!" (Shulha 2013) Academics wrote two dissertations and published articles under his name so he could receive the academic titles.

By 2002, when Yanukovych became prime minister, he had deceived the public about his criminal records, his academic degrees and honors, and concealed his role in the killing of the Kushnir-Rabin gang. He left behind the Donetsk Oblast as a mini-gangster state, and now would try to do the same to all of Ukraine. His first attempt to take national power would end in disgrace, and in normal countries in prison. He and Kuchma had their minions fix the results of the 2004 presidential elections in Yanukovych's favor, provoking large scale street protests and what became known as the Orange Revolution.

17 Fixed election sparks Orange Revolution

President Leonid Kuchma selected Prime Minister Viktor Yanukovych as his successor. The former governor of Donetsk had qualities that he admired – decisiveness, ruthlessness, financial means, no fear of violating the law to survive politically, and the believe that oligarchs have a right to become rich at state expense. Above all, Kuchma trusted Yanukovych to guarantee him a peaceful life in retirement, in which the law would not pursue him for corruption, for violating the constitution and for the kidnapping and murder of Gongadze.

In the run-*up* to the October 31, 2004 election day, the relatively unknown prime minister was given national exposure at state expense. The mass media celebrated him as a leader who raised state pensions, student stipends, and civil servants' wages. In contrast, the mass media shun his chief opponent for the presidency, Viktor Yushchenko. The state bureaucracy prevented Yushchenko from holding election rallies, and the police allowed gangsters to intimidate his supporters.

Foreign election monitors noted: "Prior to the first round [the October 31, 2004 vote], Mr. Yushchenko's airplane was refused permission to land in six cities, preventing him from campaigning" (OSCE/ODIHR 2005). Donetsk officials prevented him from holding a rally in Donetsk. The head of the Donetsk Oblast Rada, Borys Kolesnikov, organized a drunken mob to occupy a hall to prevent Yushchenko from speaking to his supporters (Boiko 2008). Hoodlums threatened Yushchenko and his entourage with violence when they appeared in the city. Other incidents of gangsters attacking Yushchenko's supporters took place across the country (Kuzio 2010). One of most infamous attacks took place Kyiv on October 23, when in view of the police and in front of the national election commission's headquarters, a gang of fifty thugs, some with chains, attacked Yushchenko backers (*UP* 2004b; IMI 2004). Other similar incidents took place in Transcarpathia Oblast. In Muchachevo and Uzhhorod gangsters, without fear of the police, harassed and attacked voters (Havrosh 2004).

The most dramatic incident in the 2004 election was the poisoning of Yushchenko. The purity and strength of the

Dioxin poison suggested it could only have come from a laboratory and deliberately administrated. The incident was reminiscent of the throwing of grenades at the presidential candidate Nataliya Vitrenko in the 1999 presidential election campaign.

Following an evening meal at the dacha of the deputy SBU chief Volodymyr Satsyuk on Sept. 5, 2004, Yushchenko complained of feeling ill. He had come to discuss with Satsyuk and the SBU chief Ihor Smeshko about the need for the secret service to be neutral in the coming elections and to prevent the use of violence. Soon he became so ill that on Sept. 9, he was flown to Vienna's Rudolfinerhaus clinic, where Dr. Michael Zimpfer concluded that Yushchenko had been poisoned with TCDD [tetrachlorodibenzoparadioxin]. Abraham Brouwer, professor of environmental toxicology at the Free University in Amsterdam, said that the TCDD found was in a pure form and with no commercial purpose (*AP* 2004b). The dioxin left Yushchenko with a pocked marked disfigured face (*AP* 2004a), as the photograph on the cover of this book shows. It turned out he had the second highest concentration of dioxin ever recorded in a human being (Geusau 2001).

The prosecutors failed to charge anyone for the poisoning. Yushchenko, blamed his host Satsyuk, who denied having anything to do with it and then fled to Russia (Beletskiy 2004), and accused Putin's government of obstructing the investigation by giving asylum to Satsyuk (*Kyiv Post* 2009).

On Nov. 21, 2004, the day of the second round of the election, an attempt was made to assassinate Yushchenko and his election team. Police in Kyiv arrested two Russians with three kilograms of plastic explosives. The two confessed to having been paid to kill Yushchenko and Tymoshenko (Areyev 2004c). Like the poisoning, the authorities failed to discover who hired them.

In the two election rounds, the normal methods of cheating were employed that included fabricating the election turn out, manipulating the home votes and having people vote repeatedly, the so-called "carousels." To guarantee a victory, the president permitted the fixing of the national election results by Yanukovych's election team on the computer of the Central Election Commission [CEC].

The president's office head, Viktor Medvedchuk, supervised the election fixing. He was one of Ukraine's top lawyers and oligarchs. He headed the president's office from June 12, 2002 taking over from Lytvyn, and earned

a reputation for the tight censorship of the mass media with the secret issuing instructions to the media, the so-called “temnyki.”

Yanukovych’s campaign manager, the Deputy Prime Minister Andrei Klyuyev, and the prime minister’s top adviser, Edward Prutnyk, supervised the implementation. Andrei’s younger brother, Serhei Klyuyev, managed the fixing. He along with the members of parliament, Serhei Larin and Oleh Tsarev, and the computer technician Serhei Katkov, fixed the Oct. 31, 2004 election results.

The head of Ukraine’s state telephone company, Ukrtelecom, Hryhoriy Dzekon, organized the hacking of the computer at the Central Election Commission [CEC], located in Kyiv on Boulevard Lesya Ukrayinka. The CEC’s head, the lawyer Serhei Kivalov, permitted Ukrtelecom to connect into the national election computer. Dzekon’s engineers connected a cable from CEC to Serhei Klyuyev’s office, located in Yanukovych’s election headquarters inside Kyiv’s Zoryana Cinema.

In order to match the fixed electronic returns with ballot papers, Yanukovych’s team organized the printing in Russia of a million ballot papers, and their distribution in “safe” election districts. The printing of election ballots in Russia brings into disrepute the often repeated statement by Russia’s Ministry of Foreign Affairs that the Kremlin does not interfere in the internal affairs of other countries.

Halyna Madrusova, the director of the computer company ProCom, which was in charge of the CEC computer, explained that her staff was powerless to stop the manipulation and only watched it on their monitors. She testified before the Supreme Court that three weeks before the first round of the elections, the CEC head Kivalov appointed a new head of computer security, Serhei Katkov, and obtained the passwords to the CEC computer. She went on to say that on the day before the first round of the elections, Katkov and an unidentified computer operator appeared and fiddled with the computer. On the day of the first round, the poll results came to the computer infrequently and sometimes in very large batches, and not continuously as was the norm. After the results were finally announced on the tenth day following the election, the files holding the returns of the 229 election districts were deliberately corrupted. (Yanukovych v. Ukraine)

In preparation for the second round of the election on Nov. 21, Madrusova told the court she had changed the

passwords and installed a camera in the computer room. But the day before the second round, Kivalov dismissed the ProCom operator maintaining the computer. In his place appeared an unidentified person who removed the camera, introduced new passwords, and tampered with the computer. As in the first round, the second round results came infrequently with long delays. Madrusova said that the 7.7 million votes from the oblasts of Donetsk, Luhansk and Dnipropetrovsk [3.7 million, 1.8 million, 2.2 million votes respectively] came two hours later than expected. ProCom employees suspected that the regional returns were being intercepted, manipulated and then sent to the CEC. They reported their concerns to the Kivalov who ignored them.

Neither Kuchma nor Yanukovych envisaged that state security personnel would make public the telephone conversations of the election fixers. Dissident security officials gave recorded conversations of Yanukovych's team manipulating the returns to Yushchenko's chief advisor Oleh Ribachuk. "In an interview, Mr. Ribachuk [Yushchenko's chief adviser] said he gave the transcripts to [Ukrayinska] Pravda after receiving them from the SBU, which had bugged the Yanukovych campaign [headquarters] (Chivers 2005)." On Nov. 24, 2004, the same day that CEC declared Yanukovych the winner of the presidential race, Ukrayinska Pravda began publishing the telephone transcripts of the election fixers (*UP* 2004c).

An analysis of the conversations showed that in the first round of the elections on October 31, 2004, the two MPs, Larin and Tsarev, and the computer technician Katkov, failed to adjust the millions of electronic election returns to give Yanukovych an outright victory of more than fifty percent in the first round. The CEC head Kivalov had delayed the publication of the election results for ten days to give the fixers enough time, but the task proved to be too complicated for the three fixers. The results for the first round announced on Nov. 10 gave Yushchenko 39.3 per cent against 39.9 per cent for Yanukovych. As neither of the two top candidates received more than fifty percent of the vote, a second round between the two candidates took place three weeks later on Nov. 21.

In the second and final round of the presidential elections, the MPs were replaced by Kuchma's 1999 election adviser, Yuri Levenets, and the computer expert Yevhen Zimin. They took such desperate measures to ensure Yanukovych's victory, that the falsification looked obvious, and in turn created public anger and protests.

On Nov. 21, 2004, at 20:41, twenty minutes before the polls closed, the head of the president's office,

Medvedchuk, telephoned Levenets to ask if there was any reason to worry about the results. Levenets assured him that everything was going to plan.

> [Levenets] Greetings on the festival of democracy! [Medvedchuk] The same to you. Yura, that friend [Kivalov] whose place we were at yesterday evening is panicking and saying that nothing at all is coming through to him there. [Levenets] Nothing can come through to him at the moment. The boys are now finishing here. Everything will be all right there. There are just 15-20 minutes to go [before the close of the election]. [Medvedchuk] He says that something isn't working. [Levenets] No, everything's all right. Nothing can happen at the moment. He hasn't got any information at all there. I'm at the helm. [Medvedchuk] Thank you. (Levenets and Medvedchuk Nov. 21, 2004)

Levenets aimed to have Yanukovych win the presidential election by three percent. This depended on vastly increasing the turnout. Consequently, it became obvious that the results were being manipulated. For example, Donetsk Oblast had a fantastic 97 percent turnout, with 96 percent voting for Yanukovych. The fixed final results gave Yanukovych 49.4 percent of the national vote and Yushchenko 46.6, amounting to the promised three percent.

On Nov. 24, the Central Electoral Commission headed by Kivalov declared Yanukovych the winner. Observers from the Commonwealth of Independent States, mostly from Russia, praised the election as "democratic," while western election observers denounced it as fraudulent. The heads of the former Soviet republics led by President Vladimir Putin congratulated Yanukovych on his victory.

In response to the official announcement that Yanukovych had won, tens of thousands of Kyiv residents spontaneously came to the capital's central square, *Maidan*, to protest against Yanukovych's victory. Thus began the Orange Revolution, named after the color of the Yushchenko presidential campaign. Demonstrators from across Ukraine piled into Kyiv, especially from its western oblasts. For the next eleven days, tens of thousands of demonstrators, at its height maybe *up* to a half-million, occupied the center of Kyiv in freezing weather – blockading the president's and prime minister's offices and calling for Kuchma and Yanukovych to be imprisoned (see an account of the Orange Revolution in Wilson 2005).

In the first days of the street protests, Kuchma isolated himself in his dacha outside Kyiv, fearing being attacked by demonstrators in the capital. The former president of Poland, Alexander Kwasniewski, persuaded him to return to Kyiv to negotiate an end to the conflict (Kwasniewski 2004).

Altogether three days of negotiations took place at the Marinsky Palace in Kyiv to end the Orange Revolution: Nov. 26, Dec. 1 and Dec. 7 (*UP* 2005c, *UP* 2005d, *UP* 2005e, *UP* 2005f, and Campbell, Binnendijk and Wilson, 2007). The foreign intermediaries present at the negotiations, besides the former Polish president, Kwasniewski, were the European Union council of Ministers representatives, Javier Solana, the Lithuanian president Valdas Adamkus, the head of OSCE, Jan Kubish. President Putin sent Boris Gryzlov, the speaker of the Russian Duma, to the negotiations (Pifer 2007).

The first meeting on Nov. 26, 2004 began with Yushchenko agreeing for Kuchma to chair the negotiations, though a week earlier in parliament he had blamed the president for his poisoning. The conference began with Kuchma and Yanukovych demanding the removal of the protestors who were blockading the offices of the president and prime minister. Yushchenko responded by referring to the election fixing and reminding the round table that "a terrible crime has taken place." He then became conciliatory and promised the unblocking of the government offices that very evening. Yanukovych replied that his followers in eastern and southern Ukraine would return to work, and in this way the conflict would end peacefully. Yushchenko reminded Yanukovych that the central issue was the falsification of the election results. Yanukovych replied that he, too, was for honesty: "Viktor [Yushchenko], I want fairness, nothing more. I want transparency, I want honesty, you understand."

Despite the recorded evidence that fixing of the election results took place, Yanukovych's maintain that a conspiracy had denied him to become president. He shared with Kuchma the characteristic of denying a crime in the face of irrefutable evidence. At no point at this and subsequent discussions did the prime minister or the president apologize for the fixing of the election results, and neither were they ever charged with the crime.

For the next three weeks, the blockade of government buildings continued despite Yushchenko's promise to Kuchma and Yanukovych. Yushchenko had lost control of the demonstrators to his more radical compatriots, Yuliya Tymoshenko and Yuri Lutsenko and others, who called for the blockade to continue until he became president. Tymoshenko even wanted the demonstrators to take over government buildings (Pifer 2007). Despite

Yushchenko, events began to move in his favor. They began on Nov. 27 when parliament voted that Yanukovych's presidential victory was illegitimate and called for a re-run of the elections.

Kuchma and Yanukovych made last ditch attempts to implement the fixed election results. On Nov. 28, he called his political supporters to an "All-Ukraine Congress of deputies" to the town of Severdonetsk in Luhansk Oblast. At the congress, Borys Kolesnikov, the head of the Donetsk Oblast Rada, proposed "the creation of a federal southern-eastern republic with its capital in Kharkiv" and Yanukovych as its president (*UP* 2004f). The congress rejected his call which would have split the country. Instead it opted for a united Ukraine with Yanukovych as president, and accused Yushchenko of splitting the country by attempting to use mob force to impose himself as president.

Following the conference, the night of Nov. 28, circumstantial evidence suggests President Kuchma ordered troops of the interior ministry to clear the demonstrators off the streets of the capital. High-ranking security and military commanders intervened and forced the commander of the interior troops, Lt. General Serhei Popkov, to rescind the order (Chivers 2005).

In the chain of command, the order to Popkov would have come from his superior, the Minister of Interior, Mykola Bilokin. He in turn would have received it from the commander-in-chief, the president.

When the interior troops moved to assault the demonstrators, the U.S. administration telephoned President Kuchma to stop the attack:

> On the night of November 28, U.S. Ambassador John Herbst heard from both the opposition and from government sources that Interior Ministry troops were being sent to clear the *Maidan* [the main square in Kyiv] by force. There was serious potential for violence. Herbst called Washington, and Secretary of State Colin Powell attempted to reach President Kuchma to communicate the message that he would be accountable for any violence that might ensue [Kuchma didn't answer the Powell's night time phone call, according to an interview with U.S. secretary of state in the *BBC* TV documentary on Putin (*BBC* 2012), while Ambassador Herbst passed the same message to Kuchma's son-in-law Viktor Pinchuk and Chief of Presidential Administration Viktor Medvedchuk, who many

> regarded as the chief advocate of a crackdown. It is impossible to know what factors, in what proportion, tipped the balance in getting the troops to stand-down – there were also flurries of messages from Ukrainian Army and secret service officials warning against a crackdown, as well as opposition figure Yuliya Tymoshenko meeting with the Army commander. A senior diplomat believes that 'perhaps the Army was more important'. (Council for a Community of Democracies (CCD) 2010)

Later, in an interview with the *BBC*, Kuchma didn't deny or admit to giving such an order. In his habit of answering questions by posing questions, he asked whether an American president would not have given such an order if protestors had surrounded the White House (*BBC* 2012)?

The Interior Minister Bilokin denied he gave the order to Popkov for interior troops to clear the capital of demonstrators. But he added that if the president had given the order he would have carried it out (Bilokin 2008).

Following the failed threats from Yanukovych and Kuchma, the three key protagonists came together for a second round of negotiations on Dec. 1, 2004. Kuchma began by calling for both sides to respect the expected decision by the Supreme Court on the validity of the Nov. 21 election. The president repeated his complaint to Yushchenko that his side continued to blockade the government buildings, including the president's office, and even his private residence.

Kuchma then turned to Yanukovych and unexpectedly admonished him for attempting to split Ukraine by calling the "All-Ukraine Congress of deputies of all levels" in Severdonetsk. On the same day, parliament had passed a resolution condemning the congress and called for Yanukovych to resign as prime minister. The criticisms of Yanukovych pleased Yushchenko but he failed to ask about the president's responsibility for the attempt by the interior troops to disperse the street demonstrators by force.

Yanukovych ignored Kuchma's criticism about splitting Ukraine. Instead, he accused Yushchenko of using the threat of mob violence against parliament that led it to make the "anti-constitutional decision" to call for new presidential elections. He also demanded the unblocking of government buildings by the demonstrators. Suddenly, Yanukovych gave the first sign that he was retreating from his position that he was the elected

president. He said that he too awaited the Supreme Court decision on the validity of the election, but that he would only agree to a recount in disputed districts and not to a new election. Yushchenko replied that the problem was not with recounts but with the falsification of the election as a whole, and called for a re-run.

The speaker of parliament, Lytvyn, joined in criticizing Yanukovych. He defended the parliament's decision to call for new elections as its constitutional right, but said that the decision on the validity of the presidential election must rest with the Supreme Court. Lytvyn then added a new dimension to the discussion. He called for changes in the constitution, so that parliament with the prime minister could share state powers with the president, and for these changes to be made before the holding of a new presidential election (*UP* 2005e).

Kuchma ended the meeting by repeating his call to end the blockade of the government buildings. The European Union representative, Javier Solana, backed him. Yushchenko again promised to lift the blockade, a promise he could not fulfill. Kuchma taunted him that he had lost control of the demonstrators.

On Dec. 3, 2004, Ukraine's Supreme Court invalidated the Nov. 21, 2004 election, and called for a repeat election between Yanukovych and Yushchenko to be held on Dec. 26, 2004 (*BBC* 2004). The judges had concluded that the 2004 election had not been free and fair because the body in charge of the elections, the Central Election Commission [CEC] headed by Kivalov had violated the law on a number of accounts. It had refused to consider fraud complaints; to balance the one-sided access to the media given to Yanukovych; to stop government officials from preventing Yushchenko rallies to take place in many cities and regions; and to protect the rights of election observers. It also blamed the CEC for allowing individuals to vote repeatedly by not ensuring that the voter registers were accurate, and by not supervising the issuing of 1.5 million absentee ballots. It ordered the law enforcement agencies to investigate the manipulations to the CEC computer. (Yanukovych v. Ukraine).

The third and final round of the negotiations took place on Dec. 7, 2010. President Kuchma again in the chair opened the gathering stating that its purpose was not to debate the Supreme Court's decision, but how to implement its decision to have the repeat election on Dec. 26, 2004. Again the Rada speaker Lytvyn proposed that before the re-run election, parliament vote a package of laws, regulating how to hold the repeat election and to divide state powers between the president and parliament. Yushchenko protested that Lytvyn was focusing too

much on giving more power to parliament than on making sure that the repeat election was not falsified.

Yanukovych admonished Yushchenko for harping on falsification because he had lost the election on Nov. 21 (*UP* 2005f). Despite calling the Supreme Court decision illegal, he agreed, under protest, to take part in the repeat election (Yanukovych 2004). His final capitulation brought the political crisis and the Orange Revolution to an end. It was a revolution, as for the first time in Ukraine, an election wasn't imposed on the population.

In the re-run election, Yanukovych campaigned on the platform that the Orange Revolution was a plot to deny him against him victory in the November election. In the Dec. 26, 2004 election, Yanukovych lost to Yushchenko by eight percent, 41 per cent to 52 per cent.

Yanukovych continued to maintain the myth that he was a victim of a conspiracy to deny him the presidency. A year after the Orange Revolution, a U.S. State Department dispatch reported Yanukovych's meeting with the Lithuania's ambassador to Ukraine. It relayed his outburst: "You [referring to Lithuania's president] participated in last December's putsch. You allowed yourself to be used as part of Kuchma's machinations" (U.S. State Department 2006).

President Yushchenko forgave everyone who took part in the fixing of the 2004 elections, including the thousands of "little people." Initially, the courts sentenced 1,297 people to imprisonment for taking part in the fixing. On May 31, 2005, the president amnestied them (Melnyk 2005).

Despite Yushchenko's magnanimity, a number of officials took refuge in Russia, including the oligarch Bakai, the SBU deputy chief, Satsyuk, the Odesa mayor Bodelan, and the Minister of Internal Affairs, Bilokin. The Sumy governor, Volodymyr Shcherban fled to Miami, Florida, from where he returned in 2006 (Lysenko 2006). After Yanukovych became president, all who fled to Russia were welcomed back to Ukraine.

The Orange Revolution ended Kuchma's political career in shame, but it also served him well. Though he failed to install Yanukovych as president, Yushchenko gave him the security from prosecution that he wanted in his retirement. In contrast, when Yanukovych became president in 2010, Kuchma almost ended his life in prison on the charge of ordering the killing of Gongadze.

18 Yanukovych's revenge

Following his humiliating defeat in the 2004 presidential elections, Yanukovych bounced back to power during President Yushchenko's five-year term in office. Only a year after the Orange Revolution, the Party of Regions came first in the 2006 parliamentary elections, causing him to become prime minister from Aug. 4, 2006 to Dec. 18, 2007. His electorate kept loyal to him despite the falsifying of his criminal and educational records; putting anyone in the Donetsk Oblast "against the wall"; overseeing the extermination of a rival gang; the initial cover up of the murder of journalist Alexandrov; the illegal jailing of the lawyer Salov; and the fixing of the 2004 presidential elections. According to a study, the "collective solidarity and regional identity" of the Donetsk population might explain why the population rejected the Orange Revolution and supported Yanukovych and his criminal behavior (Osipian and Osipian 2006).

In contrast, Yushchenko's supporters turned away from their previously idealized hero in large numbers. This began in the first weeks of his presidency when he defended his son, Andrei, against criticism that he had received very expensive gifts worth hundreds of thousands of dollars from unidentified well-wishers (Yushchenko 2005; Amchuk 2005). He came into conflict with his prime minister, Yuliya Tymoshenko, over RusUkrEnergo, which she claimed was controlled by the alleged mobster Semyon Mogilevich (*BBC* 2006b). Others were angry with the president over his reluctance to put Kuchma and Yanukovych on trial for fixing the 2004 elections and for Kuchma's and Lytvyn's roles in the murder of Gongadze and its cover-*up*.

Probably the most important reason for the decline of Yushchenko's popularity was that he had the misfortune of being president in 2008-2009 when the economy nosedived as a consequence of the world banking crisis. It undermined the national currency and bankrupted the state and millions of households who had loans pegged to the dollar. "The Ukrainian hryvnia plummeted by 38% in 2008 against the dollar" (Copsey and Shapovalova 2010). In 2009 Ukraine's GDP fell by 15%. By the time of the 2010 presidential elections, Yushchenko's popularity rating had fallen to under ten percent.

The first ballot for president was held on Jan. 17, 2010, with none of the eighteen candidates winning more than fifty percent of the vote, triggering a second round between the two leading candidates, Yanukovych and Tymoshenko. Yushchenko came fifth with less than six percent of the vote.

In the second round held on Feb. 7, 2010, Yanukovych narrowly beat Tymoshenko: "The final result gave Mr. Yanukovych 48.95 percent of votes cast and Ms. Tymoshenko 45.47 per cent. Some 4.36 percent votes were cast 'against all candidates', which was double the number in the first round" (OSCE/ODIHR 2010) and double the number in previous elections.

At first Tymoshenko would not accept the election results, accusing Yanukovych's supporters of rigging the votes in several election districts. Unlike the 2004 presidential elections, foreign election observers from NATO countries, regarded Yanukovych's victory as "mostly free and fair."

Upon becoming president, Yanukovych's inferiority complex, the need to take revenge and his dictatorial personality became state policy. His first major victims were the two former presidents. The prosecutor's office headed by Viktor Pshonka announced that Yushchenko had not after all been poisoned with dioxin during the 2004 presidential campaign (*BBC* 2011). It also threatened to re-open a corruption case against him dating from 1998, when he headed the Bank of Ukraine (Komsomolskaya Pravda 2011). Yushchenko got off lightly compared to Kuchma, Yanukovych's former sponsor and mentor.

On March 21, 2011, the prosecutor general's office accused the former president of issuing orders that led to the murder of Georgi Gongadze and the kidnapping and assault on Oleksi Podolsky. The prosecutor's office also declared that the Melnychenko recordings concerning Gongadze and Podolsky were authentic and would be used in court as evidence (Kuzmin 2011).

Yanukovych did what many Orange Revolution supporters had wanted Yushchenko to do. The accusations of kidnapping and murder were Yanukovych's revenge for Kuchma's betrayal during the Orange Revolution.

On April 4, 2011, the aging Kuchma looked shocked upon entering the prosecutor general's office to be questioned as a murder suspect. He experienced the indignity of a five-hour face-to-face confrontation with

Melnychenko. The transcript of their meeting was not made public, but Melnychenko said it consisted of him listing crimes found on the recordings and Kuchma denying them (Tsiptsyara 2001).

In the midst of the media frenzy on Kuchma, Yevhen Marchuk rose like a phoenix with the article "The truth, which cannot be hidden" in his newspaper *Den* [The Day] on April 22, 2011. Having not criticized Kuchma in public since the 1999 presidential elections, the arch-conspirator Marchuk came out with a blistering attack against his former boss. After spending more than half of the article defending himself against accusations of being involved in Gongadze's killing, he accused Kuchma of organizing the murder. He denied hiring Melnychenko to record the president, but said it was necessary to record the president in order to expose his criminality. The former head of national security denounced those who considered the president's office to be too "holy" a place to secretly record.

> How could it be that the "holy" place – the office of the President of Ukraine – was wiretapped! This "holy" place appeared not only sinful, but a place where for a considerable time criminal orders were given and their execution discussed. Plans were made for subsequent actions. This concerned human life, the faith of innocent people. This was like an organized crime syndicate. In this orgy of crime top state officials took part at the time. What were the state secrets? (Marchuk 2011)

Marchuk admitted for the first time that he had met Melnychenko before he joined Kuchma's administration in Nov. 1999 as the country's top national security official. He recalled Melnychenko approaching him during the 1999 presidential campaign to warn him of an impending incident involving an explosion [a reference to the grenade attack on the presidential candidate Vitrenko]. Marchuk apologized for not making this warning public, saying that it would have put Melnychenko's life in jeopardy. He failed to explain why he didn't worry about the lives of the intended victims.

He then recalled how for a decade the government had misled the public on the Gongadze case. He mentioned the numerous attempts by Kuchma's representatives to buy the recordings from Melnychenko in order to destroy them. He wished well the investigators who were preparing the case against Kuchma, as well as the judges who would try the case.

Some found Marchuk's belated attack on the former president a bit rich coming from someone who had been silent on Gongadze while in public being a loyal supporter of President Kuchma. From 1999 to 2004, Marchuk had been Kuchma's national security advisor and his minister of defense; he had also remained silent during President Yushchenko's presidency. The journalist Mustafa Naiyem asked why Marchuk had been silent for a decade about "the truth that cannot be hidden?" (Naiyem 2011). Soon Marchuk fell silent again as the law turned in Kuchma's favor and against Melnychenko.

By June 2011, President Yanukovych had succumbed to the lobbying on Kuchma's behalf. As he had done after the appearance of the Melnychenko recordings in 2000 (Koshiw 2004), Kuchma's son-in-law Viktor Pinchuk launched an expensive high profile public campaign to defend Kuchma and discredit Melnychenko. A batch of Ukrainian and foreign lawyers, political consultants from Euro RSCG Worldwide, Penn, Schoen & Berland, and publicists like the brash Harvard academic Alan Dershowitz, banged away in Kuchma's favor (*Kyiv Post* 2011b). The Russian filmmaker Andre Kochalovsky made the TV documentary Battle for Ukraine, just like the FT correspondent Charles Clover in 2001 with the TV documentary PR, in which Kuchma was portrayed as a victim of a foreign conspiracy. A leading journalist, Kost Bandarenko, wrote a sympathetic review of Kochalovsky's documentary to reinforce the view that Kuchma was a victim of an ideological war between America and Russia over Ukraine (Bondarenko 2011).

Pinchuk's expensive efforts paid off. On June 23, 2011, Judge Rodion Kiryeyev reinstated the criminal charges against Melnychenko for disclosing state secrets, falsifying recordings and abusing his state position (*UP* 2011a). On July 29, 2011, Kyiv's Court of Appeals upheld the lower court's decision. On Sept. 23, Prosecutor General Viktor Pshonka issued a secret order to arrest Melnychenko (*UNIAN* 2011a). The state security service, SBU, could not find him, as Melnychenko had once again escaped from Ukraine.

On Oct. 21, 2011, Ukraine's Constitutional Court nullified the Melnychenko recordings as evidence, ruling that the recordings had been made illegally and could not be used in court as evidence because "they were obtained by violating the person's rights and their fundamental freedoms" (*UNIAN* 2011b). In effect the highest court decided that a president's privacy took precedence over corruption and murder. On Dec. 14, 2011, Judge Halyna Suprun of the Kyiv Pechersky district court dismissed the charges of kidnapping, murder and abuse of power against Kuchma.

Kuchma welcomed the court rulings. In a moment of triumph, he called for those who had organized the recordings and the killing of Gongadze to be punished for the "worst anti-Ukrainian provocation in the modern era" (*UP* 2011b).

Now that the Constitutional Court had placed the former president above the law, the trial of Oleksi Pukach, the head of the secret police unit that killed Gongadze, could be completed. On Jan. 29, 2013, a judge sentenced Pukach to life imprisonment (Vyrok Pukachu 2013).

In its verdict, the judges ignored Pukach's testimony that the killing of Gongadze was carried out on the order of the former president Leonid Kuchma, and that the former head of the president's office, Volodymyr Lytvyn, and the former deputy minister of internal affairs, Mykola Dzhyha, had congratulated him for killing Gongadze. The trial of Pukach, like the earlier trial of his accomplices Kostenko, Protasiv, and Popovych, illustrated how the courts punish only the rank and file and not the political directors. The court also ignored the cover-*up* of murder by state officials led by Kuchma, as well as the attempt to destroy Gongadze's corpse and the destruction of the first autopsy carried out by the Tarashcha coroner Ihor Vorotyntsev.

The ironic outcome of the thirteen-year-old Gongadze affair was that President Yanukovych allowed Kuchma to escape justice for murder, while he imprisoned his leading political opponents, Yuliya Tymoshenko and Yuri Lutsenko on spurious charges.

Tymoshenko's trial was preceded by criminal charges against civil servants and ministers involved in her exclusion of RUE [RosUkrEnergo] from supplying natural gas to Ukraine. RUE was excluded in the January 2009 agreement brokered by Putin and Tymoshenko, which ended the confrontation over gas prices between Russia and Ukraine. During the argument, Russia had switched off its gas supplies to Ukraine for two weeks, causing an energy crisis for Europe (Pirani, Jonathan and Yafimava 2009). Tymoshenko said RUE was a parasitic company that paid kickbacks to Ukrainian officials.

After Yanukovych became president, he reinstated RUE as a provider of gas for Ukraine, and compensated it to the tune of five billion dollars for the losses caused by the Tymoshenko-Putin agreement. "Viktor Yanukovich, the president of Ukraine, served the commercial interests of an oligarch with whom he has close ties – at the

expense of his own country," wrote the Spiegel correspondent Christian Neef (Neef 2010). In 2010, prosecutors imprisoned a number of the civil servants who took part in excluding RUE from Ukraine's gas market, among them the former first deputy head of Naftogaz, Ihor Didenko, who signed the agreement between Naftogaz and Gazprom on behalf of Tymoshenko; the former customs chief of Ukraine, Anatoly Makarenko, and another official from the same office, Taras Shepitko; and two civil servants from the State Treasury, Tatyana Slyuz and her deputy Tatyana Hrysun.

Tymoshenko's former minister of economy, Bohdan Danylyshyn, fled to the Czech Republic where on Aug. 5, 2010, he received asylum. On Aug. 21, 2010, the former Minister of Defense, Valeri Ivashchenko, was arrested. After two years, on April 12, 2012, a court sentenced him to five years for "abuse of power", but on Aug. 14 freed him on probation.

The arrest and imprisonment of Yuri Lutsenko, a leading organizer of the Orange Revolution and former minister of interior in Tymoshenko's cabinet was a major attack against the opposition. Yanukovych's biggest financial supporter, the oligarch Renat Akhmetov, once described Lutsenko as one of the most dangerous political opponents. When Lutsenko held the post of interior minister, he had ordered the arrest of Boris Kolesnikov, a close political ally of Akhmetov and Yanukovych, accused Yanukovych of forging his criminal records, and used riot police to raid Akhmetov's "Lux" residence looking for evidence of wrongdoing.

The prosecutor's office detained Lutsenko on Dec. 26, 2010. On Feb. 27, 2012, Judge Vovk of Kyiv's Pechersk district court sentenced him to four years imprisonment plus a three year ban on holding any government office, and ordered him to pay $80,000 compensation [Judge Vovk had also sentenced Tymoshenko's other former ministers and civil servants.]

On the eve of his sentencing, Lutsenko gave a defiant speech. He accused Yanukovych and his Party of Regions of taking revenge against him for investigating their criminal backgrounds, and for preventing the falsifying of the 2010 presidential elections. He claimed his actions as interior minister had stopped Yanukovych from having a victory of 15 per cent instead of three per cent over Tymoshenko. He accused Yanukovych of punishing him in order to show that anyone could be imprisoned for opposing him. Finally, he regretted that some of the deputies in the parliamentary faction he led had joined Yanukovych's coalition, and said his biggest political

mistake was failing to foresee their betrayal (Lutsenko 2012).

Many of Lutsenko's as well as Tymoshenko's "biggest political mistakes" could have been predicted, as their criteria for choosing political allies rested more on how much money they could bring to their political campaign than on other attributes. For example, Tymoshenko's party selected President Kuchma's former treasurer, Oleksandr Volkov as a candidate in the October 2012 parliamentary elections. As soon as he won his seat under the flag of Tymoshenko's Fatherland party he declared his allegiance to Yanukovych's Party of Regions.

The trial and imprisonment of Yuliya Tymoshenko will probably stand out as the defining moment of Yanukovych's presidency. The prosecutors accused her of exceeding her authority as prime minister in ordering Ukraine's Naftogaz negotiators to sign a contract with Russia's Gazprom on January 19, 2009 (Nechvolod 2011). Tymoshenko's defense was that she had the right as prime minister to make the agreement with Putin.

She claimed that she was being tried for excluding RosUkrEnergo [RUE] from the agreement as the provider of gas for Ukraine. She claimed RUE had paid kickbacks to previous presidents (Chyvokunya 2009), and that it was a front for the alleged criminal Semyon Mogilevich (Naiyem 2008). Tymoshenko knew what she was talking about, as she had personal experience with a kickback scheme when she headed UESU in 1995–1997, except that she paid kickbacks to Lazarenko, who paid off relevant politicians and officials for her company to have the monopoly in the market.

One of the major owners of RUE, Dmytro Firtash, gave his view of his conflict with Tymoshenko to the American ambassador to Ukraine, William B. Taylor on Dec. 8, 2008. Taylor's summary of the conversation appeared in a State Department dispatch. Defending himself against the charges of serving Russia's political interests and fronting for Mogilevich, Firtash instead accused Tymoshenko of being a Russian stooge:

> He argued that the Prime Minister [Tymoshenko] was seeking Russian support to get rid of RUE, and was making concessions to Russia to accomplish this goal. He specifically cited what he said was her silence on the August events in Georgia, her avoidance of a stand on the Holodomor [the 1933 famine] and the issue of the Black Sea Fleet in Crimea, as examples of the political concessions she

was making to Moscow. (Taylor 2010)

While accusing Tymoshenko of being unpatriotic, Firtash didn't explain why he supported Yanukovych and his Party of Regions who endorsed the Russian government's position on the 1933 famine, the Russian invasion of Georgia, the Ukrainian Partisan Army, the stationing of the Russian Black Sea Fleet in the Crimea, and much more. As for his ties with Mogilevich, Firtash admitted to Ambassador Taylor that in the past, he had needed Mogilevich's approval to get into the energy business, but claimed that since forming RUE, he had broken all ties with him. Firtash was adamant that he had not committed a single crime, that he truly cared about Ukraine, and saw Russian business and criminal interests as the biggest threat to the country's security.

On Oct. 11, 2011, Judge Kiryeyev, the same judge who had reinstated the criminal charges against Melnychenko, found Tymoshenko guilty of exceeding her authority and sentenced her to seven years imprisonment, plus three years without the right to hold a state office, and a fine of UAH 1.6 billion, about $126 million dollars (Ukraine v Tymoshenko 2011). Following Tymoshenko's sentencing, her husband Oleksandr fled to the Czech Republic.

The charges against her seemed so absurd that even Putin said he couldn't understand them: "to be honest, I can't quite understand why she got those seven years" (*Kyiv Post* 2011c). Putin added that he was making this criticism though he opposed her pro-NATO orientation. [While Putin couldn't understand why Tymoshenko was sentenced, many people failed to understand why he had the oligarch Mikhail Khodorkovsky imprisoned.]

While Putin said the accusations against Tymoshenko were ridiculous, her former partner in the Orange Revolution, President Yushchenko remarked: "I don't see a show trial, but rather a normal judicial process" (Follath 2011). He had testified against her in the trial.

By incarcerating his leading political opponent because of fear of losing power, Yanukovych had sacrificed Ukraine's future as a democracy. U.S. and European pressure failed to free Tymoshenko. Even the European leaders' boycott of the Euro 2012 football games in Ukraine didn't alter Yanukovych's determination to keep her behind bars.

In jailing political opponents, President Yanukovych had crossed the line into dictatorship. In this new political situation, the opposition probably will not win another presidential or parliamentary election. The Oct. 30, 2012 parliamentary election confirmed this conclusion.

In the months prior to the election, a bribery scandal linked to the president revealed the amount of money the new regime was willing to spend to win over opposition candidates. On Feb. 8, 2012, the parliamentary deputy Roman Zabzalyuk appeared at a press conference with recorded conversations on how he had been bribed to align with the Party of Regions in parliament. He had received $450,000 to leave Tymoshenko's party, Fatherland, and a promise of bonuses for any special actions against the opposition. On joining, he was reassured that in any disputes, he would receive full administrative support from his regional governor, prosecutor, tax officials, police and secret service. The MP offering the bribe, Ihor Rybakov, said he was making the offer after meeting with President Yanukovych. To back his accusation, Zabzalyuk played the recording of the conversation with Rybakov at the press conference (Zabzalyuk 2012). He announced that the half-million dollar bribe would be donated to charity. As expected, the prosecutor's office didn't prosecute Rybakov for bribery.

The October 2012 parliamentary election was a return to the election fixing practiced before the Orange Revolution, according to the OSCE's Office for Democratic Institutions and Human Rights:

> ... while voters had a choice between distinct parties and election day was calm and peaceful overall, certain aspects of the preelection period constituted a step backwards compared with recent national elections. In particular, these elections were characterized by the lack of a level playing field, caused primarily by the abuse of administrative resources, lack of transparency of campaign and party financing, and the lack of balanced media coverage. While the voting and counting processes on election day were assessed positively overall, the tabulation of results was negatively assessed in nearly half of the electoral districts observed. Post election day, the integrity of the results in some districts appeared to be compromised by instances of manipulation of the results and other irregularities, which were not remedied by the Central Election Commission (CEC) or the courts. (OSCE/ODIHR 2012).

Overall, the 2012 parliamentary election gave the president's coalition (Party of Regions, Communist Party and so-called independents) the majority in the 450 seat parliament. Yanukovych's supporters achieved this by setting *up* the election so that half of the parliament's 450 MPs would be selected by parties according to their percentage of the national vote, and the other half by parliamentary districts. In the national vote, Yanukovych's coalition came second with nine million votes, compared to ten million votes for the three opposition parties – Fatherland (Tymoshenko), Udar (Vitaly Klychko or Klitschko) and Freedom (Oleh Tyahnybok). However, in the 225 parliamentary districts, Yanukovych's party combined with so-called independents did far better, giving them an overall majority in parliament. The fixing in the parliamentary districts was widespread on both sides, but in five districts the fraud carried out by Yanukovych's side was so appalling and obvious, that new elections will have to take place.

As president, Yanukovych has embarked on becoming Ukraine's most corrupt head of state. At what looks like government expense, he has built for himself a palatial country estate in Mezhyhirya, a former monastery complex north of Kyiv on the Dnipro River. The 137 hectare country estate is an oligarch's dream home. Along with a grand house, it has a heliport, golf course, yacht harbor, a garage for 60 cars, bowling alley, woods for hunting, and much more (Leshchenko 2013a). A high perimeter fence patrolled surrounds the estate and is managed and guarded by an estimated 500 strong staff. Not since serfdom was a landlord so well served.

Like an international tax avoider, the president has hidden the ownership of the estate behind a series of front companies located in Vienna, London and Luxembourg. The director of the Vienna company proved to be an embarrassment to Yanukovych. Johann Wanovits was sentenced by an Austrian court on April 5, 2013 to five years in prison for manipulating the stock market to increase bonuses for company executives (*Reuters* 2013; Leshchenko 2013). Since his father became president, Yanukovych's son Oleksandr has become a multi-millionaire. Out of nothing he magically created a string of companies that include a bank, coal mines, factories and a TV station, and shows off his wealth with four luxury yachts.

With foreign and internal pressures mounting for Yanukovych to behave like a normal European president, he amnestied Lutsenko on April 7, 2013 (Yanukovych 2013). He was released nine months after the European Court of Human rights found his detention unlawful. On July 3, 2012, the court ruled that his human rights under articles 5 and 18 of the European Convention on Human Rights had been violated:

> The Court held in particular that Mr Lutsenko's arrest had been arbitrary; that no valid reasons had been given for his detention; that he had not been duly informed of the reasons for his detention; and, that the lawfulness of his arrest and detention had not been properly reviewed.
>
> The Court also found that, given that the prosecutors had referred to Mr Lutsenko's communication with the media as one of the reasons for his arrest, his right to liberty had been restricted for other reasons than those permissible under Article 5. (Council of Europe press statement and Lutsenko v. Ukraine 2012, ECHR 2012)

Eight months later, the European Court of Human Rights concluded that Yuliya Tymoshenko's human rights had also been violated under articles 5 and 18.

> On April 30, 2013, the European Court of Human Rights found in particular: that Ms Tymoshenko's pre-trial detention had been arbitrary; that the lawfulness of her detention had not been properly reviewed; and, that she had no possibility to seek compensation for her unlawful deprivation of liberty. ECHR 2013

Yanukovych and Pshonka probably hold the European record for being the instigators of court cases that the European Court of Human Rights has criticized. Both were involved in the Salov case, Yanukovych as governor and Pshonka as oblast prosecutor, and in the Lutsenko and Tymoshenko case, Yanukovych as president and Pshonka as Prosecutor General.

In a desperate attempt to deflect internal and external criticism for imprisoning Tymoshenko, the prosecutor's office accused her of paying for the murder of the parliamentary deputy Yevhen Shcherban, his wife and two others (Tymoshenko i ubyvstvo Shcherbanya 2013). The prosecutor's office organized a pre-trial public hearing that was a show trial. The presiding judges seemed to be indifferent to he fact that witnesses for the prosecution presented unsubstantiated evidence.

Ihor Marinkov, who had personal ties with the murdered gang leaders Kushnir and Rabin, testified that he saw Tymoshenko meeting with them and the deceased gangster Mylchenko at a hotel in Kyiv in 1996, and that Rabin

had told him that Tymoshenko had hired him to kill Shcherban (*UP* 2013). Marinkov failed under cross-examination to explain why, when he testified in the 2002-3 trial against those accused of shooting Shcherban, he failed to accuse Tymoshenko of providing the money, or even mentioned her name.

The prosecution's star witness was Petro Kyrychenko (Kiritchenko), who testified only after the office of prosecution released millions of dollars of his property in Ukraine to him In America, he had testified against the former parter in crime, Pavlo Lazarenko, after receiving immunity from prosecution along with $30 million in-ill gotten gains. Speaking over a video link from San Francisco, he accused Tymoshenko of paying for the murder of Shcherban. Under cross-examination by Tymoshenko's defense council, Serhei Vlasenko, the only evidence he could offer to back his accusation was the word of the deceased Mylchenko.

Yesterday's hero, Mykola Melnychenko, joined the chorus of accusers. At a press conference on Sept. 12, 2012 in Washington DC, he also accused Tymoshenko of paying for the assassination of Shcherban (Melnychenko 2012). He failed to offer any evidence from his recordings to back it *up*. Soon afterwards, Melnychenko returned to Ukraine where the prosecutor-general's office welcomed him despite having an outstanding arrest warrant for him.

The trial against Tymoshenko and the first three years of Yanukovych's presidency suggests the future does not bode well for the people of Ukraine. Yanukovych has and will "put anyone against the wall" to hold on to the office of the president.

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Acknowledgements

The research for this book took place while I was a visiting scholar in Washington DC at the Kennan Institute in the Woodrow Wilson International Center for Scholars, and at the Institute for European, Russian and Eurasian Studies in George Washington University.

I would like to express my gratitude to the many individuals from these institutes, including Blair Ruble, the director of the Kennan Institute, the deputy Margaret Paxson and the institute's staff for their support. Also to Lee Hamilton, director of the Wilson Center, and the center's staff for providing both a scholarly and friendly atmosphere to work in. Thanks to Stergos Kaloudis, the research assistant assigned to me, who created a sound and text database for the conversations of President Kuchma.

In addition I would like to thank Nadia Diuk of the National Endowment for Democracy, Taras Kuzio of IERES, and Andrew Wilson of the School of Slavonic & East European Studies, University of London, for recommending me to the Kennan Institute.

I also want to express my thanks to Hope Harrison, director and the staff at the Institute for European, Russian and Eurasian Studies for having me to continue the study and Professor James Goldgeier for recommending me to the institute.

Thanks also go to Dominique Arel, director of the Ottawa center of Ukrainian studies, for inviting me to present talks on my research at McGill University and the Third Annual Danyliw Research Seminar on Contemporary Ukraine at University of Ottawa; and Larysa Iarovenko, Program Manager at the Jacyk Center of the University of Toronto, for organizing a talk at the university.

Finally, I want to express my appreciation to my wife Lucy for editing this book.

A note on the author

The author J.V. Koshiw is a specialist on Ukraine. *Abuse of Power – corruption in the office of the president* is his most recent book. His first book, *Workers Against the Gulag* (Pluto Press, London 1978), which he co-authored under the pseudonym Viktor Haynes, dealt with a group of Donetsk coal miners who attempted to organize an independent trade union. This was followed by *The Chernobyl Disaster* (Hogarth Press, London 1988), also co-authored with the same pseudonym. After the fall of the Soviet Union, he visited the Chernobyl exclusion zone on three occasions to make documentaries for HTV Wales.

Between 1998 and 2001, he worked as a journalist in Ukraine, first with the *Kyiv Post*, and then other publications. He investigated the disappearance of the journalist Georgi Gongadze, whose headless body was discovered outside the capital. The research formed the basis for his book, *Beheaded, the killing of a journalist* (Artemia Press, Reading 2003). An updated version of the book was published in Ukraine (2004). On May 20, 2004, the book was launched inside Ukraine's parliament building. A further updated version was published in Moscow the following year.

In 2007-8, the author was a visiting scholar in Washington DC at the Woodrow Wilson International Center for Scholars and George Washington University, during which time he analysed the hundreds of hours of recordings of President Kuchma's conversations secretly made by his guard Melnychenko, and the recordings of the group of people who fixed the 2004 presidential elections – the catalyst for the Orange Revolution. The recordings presented a wealth of new information, which became the impetus for this book.

Books by JV Koshiw

Beheaded, *The killing of a journalist,* Artemia Press Ltd, Reading 2003,

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Gongadze, ubiystvo kotoroye izmenilo Ukrayinu, Izdatelstvo, "Prava cheloveka", Moskva, 2005

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