



AMERICAN  
BANKRUPTCY  
INSTITUTE

## 2020 Rocky Mountain Bankruptcy Conference

### **For Better Government: Working with the Russian Judicial System**

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*Denver*

AMERICAN BANKRUPTCY INSTITUTE

**Russia: Rise and Fall of the Rule of Law**

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- I. Personal Background, Views and Experiences with Corruption in Russia.
- II. Corruption in Russia, History and Context.
- III. Conclusions and Comments.

## **BACKGROUND**

- Business and bankruptcy law
- Pre 1991 USSR Visits: 1979, 1983, 1985
- Judge 1988-2016

## BIAS

- Personal experiences and observations
- Personal opinions
- Great affinity for Russia and Russians
- Great friendships over the years

## CONTEXT

- 1991: Focus working with Russian judges, first and foremost
- Work with government officials and academia/law schools
- Serve as representative of USAID and many NGOs including World Bank, IMF, ABA, Judicial Conference of U.S. Courts, Denver University Sturm College of Law, U.S. Russia Foundation

“Russia is a mystery wrapped in a  
riddle inside an enigma.”

“Russia is inconsistencies wrapped in  
contradictions inside a paradox.”

**1991**

- Visit to the Russian Law Academy













## **1990's – 2012**

### **Dynamics of Legal Reform**

- Broad structure of Russian Courts
- Corruption in Russian Courts . . . and elsewhere
- Supreme Commercial Court: Significant progress in improving Russian Courts and business/property law systems
- Exchanges of judges and judicial personnel

### **Examples of Supreme Commercial Court Reform**

- Automation
- Publishing Opinions/Minority Opinions
- Some Use of Case Precedent
- Fighting Corruption
- Public Notice/Public Access
- Independence of Judges/Court
- Training and Exposure of Judges to Rule of Law and Western Judicial Principles

## 2020 ROCKY MOUNTAIN BANKRUPTCY CONFERENCE



## **2013 – Things Change!**

- October – December 2013
- 2014 Award . . . withdrawn
- Legislation to abolish the Supreme Commercial Court
- August 2014 abolition of SCC
- Reforms largely deterred; reformers largely eliminated

## **Elimination of Foreign Influences/NGO's a/k/a “Foreign Agents”**

- New law
- Enforcement

### **The More They Stay the Same:**

- Secret Ballot?
- Bank Collection Practices "Special Administrative Resources"
- Removal by Governor: Buy a Position in Moscow?
- Removal of city placards

## **II. Corruption in Russia, History and Context.**

"The phenomenon of corruption is strongly established in the historical model of public governance in Russia and attributed to general weakness of rule of law in Russia. Transparency International's 2016 Corruption Perception Index ranks the country 131th place out of 176 countries."



“There are many different estimates of the actual cost of corruption. According to official government statistics from Rosstat, the ‘shadow economy’ occupied only 15% of Russia’s GDP in 2011, and this included unreported salaries (to avoid taxes and social payments) and other types of tax evasion. According to Rosstat’s estimates, corruption in 2011 amounted to only 3.5 to 7% of GDP. In comparison, some independent experts maintain that corruption consumes as much of 25% of Russia’s GDP. A World Bank report puts this figure at 48%.”

“An anticorruption campaign in modern Russia began on April 4, 1992, when President Boris Yeltsin issued a decree entitled ‘The fight against corruption in the public service.’ This document prohibited officials from engaging in business activities. Moreover, state employees were required to provide information about their income, personal property and real estate holdings, bank deposits and securities, as well as financial liabilities. The implementation of the decree, which formed the basis of the laws on combating corruption and on civil service, was vested in the presidential control directorate. Russia passed the first package of anti-corruption laws in 2008 in response to its ratification of the UN’s Convention against Corruption and the Council of Europe’s ‘Criminal Law Convention on Corruption.’ ”

“Medvedev has made fighting corruption one of the top agendas of his presidency. In the first meeting of the Council on 30 September 2008, Medvedev said ‘I will repeat one simple, but very painful thing. Corruption in our country has become rampant. It has become commonplace and characterizes the life of the Russian society.’ ”

“Russian President Vladimir Putin approved a new national anti-corruption plan for the period from 2014 to 2015. The president ordered executive and legislative authorities by July 1, 2014 to make relevant amendments to their anti-corruption plans and to ensure control over their execution. A relevant order was included in the National Plan to Counter Corruption for 2014-2015.”

### III. Conclusions and Comments

- A. The promising and extraordinary opening of Russia adopting a more democratic government, a market economy, and a more open and vibrant relationship with the West has become less viable, increasingly diminished and likely a problem at home and abroad.

- B. Corruption and authoritarian government seem to be symbiotic and complementary, in Russia—not unlike other countries around the world.

C. Corruption in one form or another seems to be alive and well in Russia—not unlike many other countries in the world. Only in Russia it appears to be entrenched and accepted to the degree that eradicating it will be a long and very difficult process.

D. Don't give up on Russia. Russians are smart, clever, talented—particularly in the arts and sciences, resilient, fiercely independent, and they have a thousand year history of autocratic governance. They have only had the last 25 years to adopt democracy and principles of liberty and the rule of law, and we have not yet perfected this in 225 years!