

## TRANSCRIPT

### CORRUPTION IN THE NAME OF “DEMOCRACY”: THE USA AND RUSSIA IN THE 1990s<sup>†</sup>

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Ladies and gentlemen, dear colleagues –

Initially, I was thinking about speaking about the Bank of New York (“BONY”) case, and about the Bank of New York scandal involving the laundering of as much as \$10 billion. However, I’d like to expand that topic. There are two reasons why I decided to do that.

On the one hand, when getting ready for this presentation, I came across a very interesting book which was written by two authors and which is dedicated to this case. The book is called *All Is Clouded by Desire: Global Banking, Money Laundering and International Organized Crime*.<sup>1</sup> As I understand, it’s the only book in the catalogue of the U.S. libraries that has a new special subject: “Bank of New York — Corrupt Practices.” As a review of the book by Frank Scarpittii, Professor of Sociology from the University of Delaware says, the authors’ “exhaustive research documents the role of the Bank of New York in the theft of billions of dollars of Russian assets. From New York to Moscow and other points around the world, this is organized crime at its worst, perpetrated not by street-level hoodlums, but by bankers, businessmen, politicians, and others willing to bankrupt a nation for personal gain.”<sup>2</sup>

The second reason is more substantial. When you speak just about one case, it can send a wrong message to the audience, as if the case was just a kind of exception, or as if it was somehow unique. Well, it wasn’t.

I teach two courses at the University Iowa College of Law during this semester. And when I teach in America, I try to teach law in “context.” Law doesn’t exist in a splendid isolation — that’s one of those things that we believe about law in Russia. Law exists in a broader social “context.” It’s not enough just to take a look at a case and analyze that case. You need to see what was there around the case, how it came into existence. It’s not

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1. ALAN A. BLOCK & CONSTANCE A. WEAVER, *ALL IS CLOUDED BY DESIRE: GLOBAL BANKING, MONEY LAUNDERING AND INTERNATIONAL ORGANIZED CRIME* (2004).

2. *Id.*

right just to take a look at a statute or a Constitution and analyze it — you need to know how it was adopted and why. You need to see earlier drafts; you need to see the legislative history. That’s exactly how one of my courses at Iowa is called: “Contemporary Russian Law in Historical Context.” So instead of speaking about the BONY case and some other cases, let me discuss them within a broader context.

As you know, in December of 1991, the leaders of three Soviet republics — Russia, Ukraine and Belarus — decided to pull their republics from the USSR, which in practical terms meant the dissolution of the Soviet Union. Following the advice of their Western consultants, on January 2, 1992, the Russian “reformers” began economic changes in the country generally known as “shock therapy.” In reality, shock therapy proved to be shock without therapy.

American people still remember the Great Depression of the late 1920s — early 1930s. In all senses, the devastation of Russia’s economy in the 1990s was far worse.

By 1932, the U.S. gross national product had been cut by almost one-third. But within just six months of the 1998 financial meltdown, Russia’s economy had fallen by more than two-thirds. From \$422 billion in 1997, Russia’s gross domestic product fell to \$132 billion by the end of 1998. At the end of 1929, following America’s stock market crash, unemployment in the United States reached 1.5 million, representing 1.2% of the total population. Compare that figure to 11.3 million Russians who were jobless at the end of 1998 — 7.7% of the nation’s total population. In the Crash of 1929, stock prices fell 17% by year end, and 90% by the depth of the Great Depression four years later. By contrast, the Russian stock market lost 90% of its value in 1998 alone. By March 1999, the ruble — and with it, every Russian’s life savings — had lost fully 75% of its value.<sup>3</sup>

When coming to power in 2000, Vladimir Putin inherited a crushed, looted and humiliated country struggling to survive the liquidation regime of the “reformers.”<sup>4</sup> The country, whose industrial product had shrunk by about a quarter more than during the Great Patriotic War of 1941–45,<sup>5</sup>

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3. For more on a comparison between the Great Depression and collapse of Russia’s economy in the 1990s, see, e.g., MEMBERS OF THE SPEAKER’S ADVISORY GROUP OF RUSSIA, U.S. HOUSE OF REPS., 106TH CONGRESS, *RUSSIA’S ROAD TO CORRUPTION: HOW THE CLINTON ADMINISTRATION EXPORTED GOVERNMENT INSTEAD OF FREE ENTERPRISE AND FAILED THE RUSSIAN PEOPLE* (Sept. 2000), available at <http://www.fas.org/news/russia/2000/russia/>.

4. The definition is used in publications of Moscow authors A. Anisimov and A. Kalinin concluding that Yeltsin’s regime cannot be characterized as an “occupation regime” because the term “occupation” still presumes a certain degree of care and protection. A more adequate definition of the rule of Yeltsin “reformers” is a “liquidation regime”, *i.e.* a regime liquidating the Russian state, people and culture. Interview with Alexander Kalinin, Moscow, Russia (May 4, 2001).

5. Russia’s industrial product has plummeted by about 53%. Back in 1941–45, when Hitler troops were occupying about a half of the European part of the USSR, when

whose increase in mortality rates (60% since 1990) had been "historically unprecedented,"<sup>6</sup> whose population was shrinking by up to half percent a year, the country which stood in the 134th place among all states in terms of male life expectancy (by 1997, death rate among Russian males had equaled that of war-ravaged Liberia)<sup>7</sup> and in the 100th in terms of female life expectancy,<sup>8</sup> whose men had a smaller chance to survive to age sixty than a century ago,<sup>9</sup> and which had more homeless children than after the Bolshevik revolution of 1917.<sup>10</sup>

What was proclaimed by Strobe Talbott, then Deputy Secretary of State, as the beginning of "national rebirth" in Russia<sup>11</sup>, turned to be an unprecedented social catastrophe, "a catastrophe of historic proportions,"<sup>12</sup>

more than 1,700 cities and 70,000 villages were destroyed in warfare, and about 26.5 million Soviet citizens lost their lives, the reduction of the Soviet industrial product was only about 30%.

6. See Nicholas Eberstadt, *Russia: Too Sick to Matter?*, 95 POL'Y REV. (1999), available at <http://www.hoover.org/publications/policyreview/3551987.html> ("No industrialized country has ever before suffered such a severe and prolonged deterioration during peacetime."). The American scholar draws our attention to another important detail: "Remember: The Russian crisis has erupted in a country in a formal state of peace. In origin, duration, and character, Russia's mortality crisis is fundamentally different from those others," like in Spain (1936–39), Western Germany (1943–46), Japan (1944–45), and South Korea (1950–53), which had "record cruel plunges in countrywide life expectancy around the middle of the twentieth century. Merely to note those dates, however, is to see a contrast between these cases and the case of Russia. The mortality crises in Spain, Western Germany, Japan, and South Korea were direct consequences of wars or civil war." *Id.*

7. See this comparison at the World Bank Transition Newsletter. The World Bank Group, *Beyond Transition: The Newsletter About Reforming Economies*, April 1997, <http://www.worldbank.org/html/prddr/trans/apr97/pgs24-28.htm> (last visited Nov. 10, 2009).

8. See TASS, Mar. 16, 2001.

9. This index is 1.5 times smaller than in developed countries.

10. In the end of the 1990s, there were between 625,000 (an official figure) to 2 million (a more adequate figure) abandoned homeless children in Russia. See Anna Bazhenova, *Russia Has 625,000 Abandoned Children*, TASS, June 29, 1999. Newspaper stories about kids living in card boxes among garbage cans or about a six-year-old Vanya Mishukov who was raised by stray dogs no longer looked like a gross dramatization of life in Yeltsin's Russia and most other former Soviet republics. Tom Whitehouse, *Russian Boy, 6, Lived Wild with Dogs for 2 Years*, GUARDIAN, July 16, 1998; see also Sergei Rykov, *In Free Russia Children Are Raped, Robbed and Murdered*, KOMSOMOLSKAYA PRAVDA - RIA NOVOSTI, Apr. 17, 1997. The authors of a new study *Young People in Changing Societies* estimate that about half a million children aged 5–14 who lived in Eastern Europe and USSR in 1989 have already died, almost half in Russia alone. INNOCENTI RESEARCH CENTRE, UNICEF, *YOUNG PEOPLE IN CHANGING SOCIETIES* (2000) available at [http://www.unicef-irc.org/cgi-bin/unicef/research/main.sql?file=scheda\\_products.sql](http://www.unicef-irc.org/cgi-bin/unicef/research/main.sql?file=scheda_products.sql) &idprod=383. The mortality rate among young people rose in 11 (out of 27) post-Communist countries, particularly within the CIS. *Id.* The danger of a young person dying was three times greater in Russia than in Slovakia, the Czech Republic or in Hungary. *Id.* And these deaths are explained by the report by mainly social causes and could have been avoided under different social conditions. *Id.*

11. *Senate Hearing on Russia and Former Soviet Union*, 103rd Cong. (1993) (statement by Strobe Talbott, Deputy Secretary of State).

12. Eberstadt, *supra* note 6.

which was largely ignored by the Western community,<sup>13</sup> “a human crisis of monumental proportions,” as it was subsequently defined by the U.N. Development Program in its *Transition 1999: The Human Cost of Transition*, the Human Development Report for Central and Eastern Europe and the CIS.<sup>14</sup>

Senior U.S. officials are certainly wrong when they try to give their post-factum assurances that the U.S. foreign policy since the Cold War has included such “overriding goals” as “to work with *Russia* internationally” and “to support *Russia’s* effort to transform its political, economic, and social institutions at home.”<sup>15</sup> In reality, since Margaret Thatcher’s infamous endorsement of Gorbachev in December 1984 through the latest period of contemporary Russian history, the Western governments have been promoting a “strategic alliance with Russian *reform*” rather than an alliance with Russia herself. A guiding principle of the U.S. foreign policy was not to support Russia, but to support “Russian *reforms*” which “were considered to be *critical to U.S. objectives*,”<sup>16</sup> not to help Russian people to overcome consequences of the Communist rule, but to help Russian “reformers” which is not the same.

The position of the IMF was hardly different in that respect from the position of the U.S. Agency for International Development (“US AID”). Jeffrey D. Sachs, Director of the defunct Harvard Institute for International Development and an economic advisor to Yeltsin’s Government, may blame IMF for “so many technical mistakes.”<sup>17</sup> Yet, even the most devoted supporters of “market fundamentalists,” as George Soros names Russian

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13. In the words of a British observer, “the only two things that are certain are that there will be more unrecorded, unlamented Russian deaths and that the triumphal pageant of western-inspired “reforms” will pass the heaps of corpses by, noses aloft.” *Johnson’s Russia List*, May 27, 1997, <http://www.cdi.org/russia/johnson/jrl-ras-archive.cfm>. Other Western observers actually welcome depopulation of Russia, because, in a cannibalistic conclusion of a Canadian newspaper, “mortality will provide the solution to many of Russia’s transitional problems.” Editorial, *The Soviets in Russia*, THE GLOBE AND MAIL, Aug. 11, 1999.

14. See UNDP, TRANSITION 1999: THE HUMAN COST OF TRANSITION (1999) <http://78.136.31.142/en/reports/regionalreports/europthecis/name,2799,en.html>.

15. Thomas R. Pickering, *Russia: Sleeping Superpower?*, Address at Meridian House/Smithsonian Seminar Washington, D.C. (Mar. 28, 2000) (transcript available at [http://www.state.gov/www/policy\\_remarks/2000/000328\\_pickering\\_russia.html](http://www.state.gov/www/policy_remarks/2000/000328_pickering_russia.html)) (last visited Nov. 8, 2009) (emphasis is added).

16. GAO, FOREIGN ASSISTANCE, HARVARD INSTITUTE FOR INTERNATIONAL DEVELOPMENT’S WORK IN RUSSIA AND UKRAINE 2 (1996) (emphasis is added).

17. Interview with Jeffrey D. Sachs, Director, Harvard Institute of International Development, on *The Crash*, <http://www.pbs.org/wgbh/pages/frontline/shows/crash/interviews/sachs.html>.

"reformers,"<sup>18</sup> have to admit now that the IMF was acting "like another political arm of the U.S. government."<sup>19</sup>

Only in the earliest period of legal and political reforms in the USSR, did the U.S. national interests ("objectives") coincided with the historical necessity of the Soviet transition to democracy and the rule of law. As soon as the slogan "Down with Article 6"<sup>20</sup> and the never realized slogan "All Power to the Soviets" catapulted Yeltsin and radical "democrats" to power, the correlation between national interests of the U.S. and Russia became less evident. With disintegration of the USSR and especially after the initiation of liberal economic "reforms," turning Russia into a mineral appendix of Western corporations and throwing Russia in her social and economic development into the group of third-world countries, the values of the Russian transition to the rule of law were finally forgotten and supplanted by the interests of the ultimate economic and political subordination of Russia.

This is certainly not true either that Russia's socioeconomic catastrophe was "largely unanticipated," that deindustrialization of the Russian economy was an "unintended consequence" of liberal "reforms" (Thomas Graham) or that "when the liberal experiment began, no one, either in Russia or in the West, anticipated . . . this strange and troubling outcome" (Martin Malia).<sup>21</sup> Warnings about inevitability of such collapse and about suicidal character of monetarist experiments with the Russian economy were repeatedly voiced by the Russian Parliament already in 1992–93 and became one of the main reasons of its violent dissolution by President Yeltsin. Dissolution which was unconditionally supported, if not encouraged, by the Western "international community" in general and by both branches of the U.S. Government in particular. As it was later

18. George Soros, *Who Lost Russia?*, NY REV. OF BOOKS, Apr. 13, 2000.

19. *Russia's 2000 Presidential Elections: Implications for Russian Democracy and U.S.-Russian Relations*, Testimony before the U.S. Senate Committee on Foreign Relations (Apr. 12, 2000) (Statement of Michael A. McFaul) [hereinafter McFaul Statement]; *Johnson's Russia List*, #4247, Apr. 14, 2000.

20. The Communist Party hegemony clause.

21. Thomas E. Graham, Jr., *Putin's Russia. Why Economic Reform Requires Political Support. Reflections on U.S. Policy Toward Russia*, 9 E. EUR. CONST. REV. 1–2 (2000); Martin Malia, *The Haunting Presence of Marxism-Leninism*, 10 J. OF DEMOCRACY 2, 41 (1999). Thomas Graham corrected himself, however, when making the following comment:

The [Clinton] administration backed an economic course — the so-called 'Washington Consensus' — that did not take sufficient account of Russian political realities, including a widespread elite and popular opposition to that course. Critics were generally dismissed as communists, hard-liners, or economic illiterates. In the end, the administration found itself backing a small, unpopular group of radical reformers. Not only was the economic program not implemented, but the way it was pursued cast into doubt American support for the democratization of Russia.

Thomas Graham, *US Ignores Russia's Elite At Its Own Peril*, CHRISTIAN SCI. MONITOR, Oct. 26, 2000, available at <http://www.carnegieendowment.org/publications/index.cfm?fa=view&id=541>.

cynically explained by an American scholar, if the “international community” gives its support to a “traditionally undemocratic act,” as it did in Russia in September 1993, then this act is actually “democratic,” albeit “unconstitutionally democratic.”<sup>22</sup> As we see, in the coming era of globalization and unipolar world, Clinton Rossiter’s classic formula “even if a government can be constitutional without being democratic, it cannot be democratic without being constitutional” is very easily abandoned.<sup>23</sup>

The day after Yeltsin’s issuance of his notorious anti-constitutional Decree 1400 (about “dissolution” of the Russian Parliament), Rep. Steny H. Hoyer (D-MD) admitted that Yeltsin’s decree was “technically speaking” “illegal” but insisted that Yeltsin “acted in the spirit of democracy by breaking the letter of the law.” However, the “primary reason for continued Western backing for Yeltsin,” in Hoyer’s words, was not even that he “acted in the spirit of democracy,” but that “Yeltsin is explicitly pro-American, pro-Western, pro-market,” whereas the Parliament “has accused the West of seeking to undermine and weaken Russia” and “opposes Yeltsin’s privatization program.” According to the Congressman, “it is imperative” “for our own interests,” that Yeltsin’s government “implement necessary reforms and keep Russia on a pro-Western track.”<sup>24</sup> For obvious reasons, the question whether this was “imperative” for the interests of Russia herself was never asked.

The same day Senator Claiborne Pell (D-RI) welcomed “the swift, unequivocal show of support that the Clinton administration has shown for President Yeltsin’s move to consolidate democratic reform in Russia” and appealed to the Senate to vote for \$2.5 billion in “assistance” to Russia and other former Soviet republics in order to “to show the reformers in the NIS that we are in their corner.”<sup>25</sup> Thus again, the senator unambiguously demonstrated that U.S. aid was intended not for Russia and the countries of the region, but for the “reformers.”

The speeches and proposals of Rep. Hoyer and Sen. Pell were quite typical. Another prominent Congressman, Rep. Gerald B. Solomon (R-NY), for instance, expected that the new Federal Assembly “would almost certainly be more democratic and friendly to the West than the previous parliament,”<sup>26</sup> “truly representative,” and concluded that the December 1993 elections “have a direct bearing on our national security and should be

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22. Donna R. Miller, *Unconstitutional Democracy: Ends vs. Means in Boris Yeltsin’s Russia*, 4 *TRANSNAT’L L. & CONTEMP. PROBS.* 876 (1994).

23. See CLINTON L. ROSSITER, *CONSTITUTIONAL DICTATORSHIP: CRISIS GOVERNMENT IN THE MODERN DEMOCRACIES* viii (1948).

24. *Yeltsin Moves to End Chaos*, Congressional Record, P. E2219 (1993) (statement of Rep. Steny H. Hoyer) (extension of remarks).

25. *Support for Democratic Reform in Russia*, Congressional Record, P. S12239 (1993).

26. Letter from Gerald B. Solomon, Congressman, to President Bill Clinton (Oct. 26, 1993).

treated as a top foreign policy priority by the administration." "The democrats are in desperate need of outside assistance," Solomon said, "[w]e believe it is imperative for the West to provide as much assistance as possible to democratic candidates in Russia," and called on Congress to "divert from existing programs whatever resources necessary to achieve the objective of ensuring" victory for the reformers in Russia.<sup>27</sup> At least one of Rep. Solomon's expectations came true: the new Russian Federal Assembly did in fact become a "truly representative parliament," but without most of those "reformers."

The list of similar speeches on the Capitol Hill and in the White House in the days of Yeltsin's constitutional coup of September–October 1993 could be continued, but what is really important for us here is an open recognition by the U.S. officials of not only a possibility but a desirability of use of American "aid" as an instrument of interference into Russian internal affairs.<sup>28</sup>

U.S. support for such undemocratic and anti-constitutional decisions as the violent dissolution of the Russian federal parliament, closure of regional legislatures throughout Russia, and suspension (for about 18 months) of the Constitutional Court made it clear better than ever before that despite its verbal assurances in its interest to see Russia as a prosperous, respected and democratic "partner," the U.S. government was quite satisfied with making her a client state controlled by a corrupt dependent authoritarian leader, ("a corrupt but friendly drunk," as he is called by *The Washington Post* today,<sup>29</sup> a new version of Theodore Roosevelt's "our son of a bitch"). It's highly indicative that it was in 2000 only when the former Secretary of State James Baker publicly appealed to the U.S. "leaders" to finally "recognize that Russia will have its own foreign policy, independent of ours."<sup>30</sup>

Yet, Baker contradicted himself when saying that new "Russian leaders" allegedly "reject 'partnership and friendship'" with the West. This statement, just like a similar Thomas Graham's lament that "a constructive U.S.-Russian partnership now appears a distant dream," is not convincing, because a "partnership" with *Russia* was never an issue. In fact, Graham recognized it himself in his testimony before the Senate Foreign Relations Committee (April 12, 2000) when saying that "the Administration's earlier

27. *Elections in Russia*, Congressional Record, P. E2534, E2536 (1993) (statement of Rep. Gerald B.H. Solomon) (extension of remarks).

28. And not just "financial" aid. Richard Nixon's foreign policy advisor wrote in her book that Nixon was shocked to hear that the Clinton administration had considered the idea of sending American troops to Moscow to support Yeltsin's government in his confrontation with the Parliament. "'What is the matter with the goddamned State Department assholes? . . . You can't send troops to *Russia*, for God's sake. They already have a huge military with its own agenda, and when we went against the Bolsheviks, it was a disaster. Besides, we can't be in a position to interfere in their internal affairs - and *militarily*?' he shrieked. 'Oh, my God!'" MONICA CROWLEY, *NIXON IN WINTER* 132 (1998).

29. Jim Hoagland, *Worse Than Yeltsin*, WASH. POST, Sept. 12, 1999.

30. James A. Baker III, *Repairing Relations with Russia*, N. Y. TIMES, Feb. 5, 2000.

talk of “strategic partnership” created expectations in Russia that we were never prepared to meet.”<sup>31</sup>

The new Russian Constitution is usually more favorably viewed by Western experts than similar constitutions of some other former Soviet republics. It is claimed that “the Constitution of the Russian Federation created a true federation,” that after the adoption of the constitution in December 1993 “all basic civil rights” exist in Russia “not only in theory as they did in the past, but in practice as is true in western democracies,” and, finally, that “the Constitution of the Russian Federation creates a genuine western democracy.”<sup>32</sup> The 1996 Constitution of Belarus, on the other hand, is usually seen as not meeting “democratic standards of human rights,” granting “sweeping powers” to President and establishing “dictatorship” and “totalitarian state.”

The problem is that often correctly criticized Lukashenka’s Constitution of Belarus<sup>33</sup> is just a stronger version of Yeltsin’s Constitution.<sup>34</sup> The real reason why Western official figures and, what is more regrettable, many foreign experts react so differently to these constitutions can be explained mainly by the fact that one of them was endorsed by an “explicitly pro-American, pro-Western, pro-market” president,<sup>35</sup> whereas the other one was introduced by a more independent national leader.

U.S. official support to the dissolved Belorussian parliament and orchestration of anti-Lukashenka’s “active measures” from overseas,<sup>36</sup> on the one hand, and, at the same time, demonization of the Russian Supreme Soviet as “nationalist-Communist bloc,” a “nationalist, crypto-Soviet opposition, a band of Communist apparatchiks,” a “band of Communists

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31. *Johnson’s Russia List*, #4244, April 13, 2000.

32. Ronald C. Monticone, *A Brief Comparative Analysis of the Russian Constitution*, in CONSTITUTION OF THE RUSSIA FEDERATION: WITH COMMENTARIES AND INTERPRETATION BY AMERICAN AND RUSSIAN SCHOLARS 7, 9, 14 (1994).

33. *See, e.g.*, New York Lawyers Committee for Human Rights, *Presidential Powers and Human Rights under the Draft Constitution of Belarus*, Oct. 1996.

34. Indeed, if, for instance, according to the Russian Constitution, the decision on President’s removal from office must be adopted by a vote of two-thirds of the total membership of each chamber of the Federal Assembly, and the whole impeachment process is to be accomplished within three months after filing the charge against him (Art. 93), the Constitution of Belarus has the same provision regarding voting in the lower chamber (House of Representatives), but raises the threshold for the Senate to three-quarters of its total composition, and limits the time frame to one month (Art.88). Yet, the Russian Constitution provides for five stages in the impeachment process (including participation of both the Supreme and Constitutional Courts of Russia), which makes the process more time-consuming, whereas the impeachment process in Belarus is to be accomplished in four stages without involvement of the Constitutional Court. In practical terms, however, the Constitutions of both countries make their Presidents technically unimpeachable.

35. *Yeltsin Moves to End Chaos*, House of Representatives, Sept. 22, 1993 (statement by Steny Hoyer, Rep., extension of remarks).

36. *See, e.g.*, Press Release, U.S. State Dept., *Belarus: Deputy Secretary Talbott Meets with Belarusian Opposition Leaders* (Feb. 4, 2000), available at <http://secretary.state.gov/www/briefings/statements/2000/ps000204a.html>.

and fascists," and even "communist fascists masquerading as parliamentarians"<sup>37</sup> bespeaks of a policy of double standards, which is quite typical for the U.S., but hardly healthy for democratic developments in both Russia and Belarus.

The participation of American consultants in the Russian presidential election of 1996 once again illustrated that proud words of U.S. officials about the necessity of strict observance of laws in a law-governed state and about "the promotion of democracy as a key feature of American foreign policy"<sup>38</sup> are very easily forgotten when the U.S. national interests — at that moment, preservation of "the only horse [in Russia] we can ride," as Yeltsin was called by Joe Biden<sup>39</sup> — are at stake.

Although there is no reason to overestimate the role of Richard Dresner's group in Yeltsin's victory in 1996, what is really important, is the practical lesson given to us in Russia by the U.S. consultants, their attitude to legal norms and political "necessity." When asked, "if he had any compunction about the extent to which the Yeltsin campaign was violating election spending laws by many orders of magnitude," Dresner's answer was "no," because "Yeltsin was for democracy, and whatever it takes to win is OK."<sup>40</sup> According to a well-informed American observer, the U.S. Embassy was expecting pro-Yeltsin falsifications in the 1996 presidential elections and "warned" the Moscow US AID Mission to keep a "distance from monitoring efforts that might actually uncover fraud."<sup>41</sup>

As Strobe Talbott, Deputy Secretary of State in Clinton administration, would say next year: "We are not simply neutral by-standers . . . . Quite simply, we want to see the ascendancy of Russia's *reformers*."<sup>42</sup> Clearly, the end justifies the means.

37. Editorial, *Russia Without Rules*, BOSTON GLOBE, Sept. 23, 1993; Celestine Bohlen, *An Old Georgian Story: Dancing with the Devil*, N. Y. TIMES, Oct. 24, 1993; William Safire, *On Dying Hard*, N. Y. TIMES, Sept. 30, 1993; Editorial, *Detours to Russian Democracy*, BOSTON GLOBE, Sept. 30, 1993; Thomas Oliphant, *Another Clash with the Beast*, BOSTON GLOBE, Oct. 6, 1993.

38. Strobe Talbott, *The Crooked Timber: A Carpenter's Perspective*, address at All Souls College, Oxford University, Oxford, England, Jan. 21, 2000, available at [http://www.state.gov/www/policy\\_remarks/2000/000121\\_talbott\\_oxford.html](http://www.state.gov/www/policy_remarks/2000/000121_talbott_oxford.html).

39. STROBE TALBOTT, *THE RUSSIA HAND: A MEMOIR OF PRESIDENTIAL DIPLOMACY* 59 (2002).

40. See Jonathan's Weiler, *Designing Boris Yeltsin's Victory*, report about a panel discussion at Duke University, Mar. 26, 1997, featuring Richard Dresner, in *Johnson's Russia List*, March 29, 1997. As revealed by Dresner himself, he was on a regular basis reporting about the work of his group in Moscow directly to President Clinton's aide Dick Morris.

41. Sarah E. Mendelson, Democracy and Rule of Law Project, Carnegie Endowment for International Peace, *Western Assistance and the Development of Parties and Elections in Russia*, 30, 31 (1999).

42. Strobe Talbott, *The End of the Beginning: The Emergence of a New Russia*, address at Stanford University, September 19, 1997, available at [http://www.fas.org/news/russia/1997/97092206\\_wpo.html](http://www.fas.org/news/russia/1997/97092206_wpo.html) (emphasis is added).

A similar approach was used in the activities of at least two of the US AID-funded programs aimed at “developing parties and elections” in Russia: those of the National Democratic Institute (“NDI”) and the International Republican Institute (“IRI”). Overall, according to US GAO, between 1992 and 1997 those programs received \$17.4 million, as a series of US AID grants, to “help reformist political parties strengthen their organizational structures and their role in elections.”<sup>43</sup> Needless to remind of the disastrous defeats of radical “democrats,” the main US AID “assistance”-consumers,<sup>44</sup> in every parliamentary elections in Russia since 1993.

In the summer of 1995, the US AID Moscow Mission commissioned a report to analyze the “effectiveness of U.S. government assistance to the Russian Parliament.”<sup>45</sup> An independent expert evaluated the three main AID-funded programs working with the Russian Federal Assembly: those of NDI, IRI, and of the U.S. Congressional Research Service (“CRS”). The report revealed that the activities of the NDI and IRI were based on favoritism. It found that “most efforts” by both the NDI and IRI “were channeled to the education and training of staff workers and MPs in the *Vybor Rossii*”<sup>46</sup> (Russia’s Choice) faction. *Yabloko* was not forgotten either. A former NDI program officer in Moscow has admitted lately that in the 1990s, Yegor Gaidar and Grigory Yavlinsky “appeared to favor trips to the West vastly more than they did trips to the regions.”<sup>47</sup>

The same report also concluded that “some of the IRI activities have been marked by unsystematic and over-demonstrating style,” and that the seminars of NDI and IRI “leave an impression of some political show rather than profound regular work.”<sup>48</sup> Ironically, the group of approximately 3,000 “reformist-minded political activists” trained by the U.S. programs in 1992–96 also included Vladimir Putin (“trained” by NDI), who is now described by Michael McFaul (an NDI consultant in Moscow in the mid-1990s), as a potential “Russia’s Milosevic,” someone “willing to use the power of the

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43. GAO, *supra* note 16, at 37.

44. Peter Stavrakis was certainly right in his criticism of the U.S. Agency for International Development: “AID programs have failed miserably in helping NIS states develop the limited, competent administrative institutions that are essential for the breakthrough to civil society . . . . Russia and other successor states have inadvertently done the United States a great favor by exposing the fundamental incapacity of US AID to achieve assistance goals that promote American interests abroad. The lesson to be drawn from US AID’s encounter with the NIS is that reform is insufficient; if America aspires to provide assistance that promotes the development of free-market, civil societies, there is no alternative to eliminating AID and replacing it with a leaner, more efficient and competent structure.” Peter J. Stavrakis, *Bull in a China Shop: US AID’s Post-Soviet Mission*, 4 DEMOKRATIZATSIYA (THE JOURNAL OF POST-SOVIET DEMOCRATIZATION) 2, 249, 248 (1996).

45. U.S. AID REPORT, 1995, (on file with the author).

46. *Id.*

47. Mendelson, *supra* note 41, at 24.

48. U.S. AID REPORT, *supra* note 45.

state and ignore the democratic rights of society in the pursuit of his objectives," whose election as a new Russian President was not a "positive step" for the U.S. interests in Russia.<sup>49</sup>

Although certain aspects of the CRS program were criticized as well, overall the CRS record was recognized to be "much better because all of its activities are actually connected with the parliament as such." As stated by Duma authorities, "within one year of cooperation with the CRS, the Duma has been equipped with modern technologies for 10–15 years ahead;" according to a Federation Council respondent, "cooperation with the CRS resulted in the unique computer network having no analogues even in the executive structure."

Equally important is the fact that when in the December 1995 parliamentary elections none of the "reformist" parties, except *Yabloko*, cleared the 5% threshold to bring its members to the Duma (by the party lists), the NDI and IRI lost about 90% of their contacts in the Federal Assembly, whereas CRS, whose credo was to work on an unbiased and non-partisan basis with all factions and committees in the Russian Parliament, maintained all their contacts. Paradoxically, it was the low-budget (\$2.5 million) CRS Program which was abruptly stopped by the U.S. authorities in 1996, whereas multimillion NDI, IRI and similar Western programs still promote the "reform-minded liberals" in Russia and train "pro-Western, liberal-minded political activists following strategies developed in Western capitals."<sup>50</sup>

Interruption of the CRS—Russian Federal Assembly Parliamentary Program became a part of a more general U.S. policy aimed at circumventing Russian parliamentary processes.<sup>51</sup> When it became apparent that the new Russian Federal Assembly was as resistant to the experiments of "bolshevist monetarists" (Peter Stavrakis)<sup>52</sup> with Russian economy as the disbanded Supreme Soviet, U.S. "assistance" to Russia gave precedence to decree-making over long-term legal institutional development in the country. Much of the work of Western consultants and USAID-funded programs has gone towards executive decrees rather than parliamentary

49. *Johnson's Russia List*, #4247, April 14, 2000.

50. Mendelson, *supra* note 41, at 4, 5.

51. See, e.g., Peter Stavrakis, *Bull in a China Shop*, 3 DEMOKRATIZATSIYA 3 (1995); Janine R. Wedel, *Clique-Run Organizations and U.S. Economic Aid: An Institutional Analysis*, 4 DEMOKRATIZATSIYA 4 (1996); JANINE R. WEDEL, COLLISION AND COLLUSION: THE STRANGE CASE OF WESTERN AID TO EASTERN EUROPE, 1989-1998 (1998); Janine R. Wedel, *Rigging the US-Russian Relationship: Harvard, Chubais, and the Transidentity Game*, 7 DEMOKRATIZATSIYA 4 (1999).

52. It was already in 1993, when Peter Stavrakis, at that time Associate Director of the Kennan Institute, came to a conclusion that "Bolshevist monetarism adapted quite comfortably to the historical terrain of Soviet experience, as the Gaidar team exhibited the same ideological fervor that had motivated its Leninist precursors." Peter Stavrakis, *State Building in Post-Soviet Russia: The Chicago Boys and the Decline of Administrative Capacity*, 56, Occasional Paper # 254 (1993).

legislation. According to the US GAO, just one AID-funded program — the Harvard Institute for International Development (“HIID”) — in 1994–96 alone drafted “hundreds of decrees.”<sup>53</sup> As explained in the GAO report, “HIID supported the use of decrees because it believed that they advanced reforms.”<sup>54</sup>

Having an unconditional support of Lawrence Summers, first Deputy Assistant Treasury Secretary for Eastern Europe and the Former Soviet Union and then Deputy Secretary, in 1992–97, HIID was awarded \$57.7 million.<sup>55</sup> In addition to the millions it received directly, HIID helped steer and coordinate some \$300 million in US AID grants to other contractors. As Janine Wedel wrote, “using the prestige of Harvard’s name and connections in the Administration, HIID officials acquired virtual *carte blanche* over the U.S. economic aid program to Russia, with minimal oversight by the government agencies involved.”<sup>56</sup>

The energetic work of the program came to a sudden end in May 1997, when after a thorough investigation US AID came to the conclusion that key HIID players in Moscow (Andrei Shleifer and Jonathan Hay) having “gained influence over nascent Russian capital markets,” had “abused the trust of the United States government by using personal relationships . . . for private gain”<sup>57</sup> to be more precise, Schleifer and Hay used inside information to invest in Russian government bonds and canceled the Harvard project in Russia. *The Wall Street Journal* drew the attention of its readers to the fact that “the Harvard men had been assigned to promote, among other things, Western ideals of fair play.”<sup>58</sup>

The repercussions of the scandal had a devastating effect. In 2000, HIID was disbanded. Four years later, U.S. District Court Judge Douglas P. Woodlock found Shleifer and Hay liable under the False Claims Act, a federal law that prescribed heavy damages for violating a contract with the government. In a settlement, Shleifer agreed to pay \$2 million (even though he faced damages of up to \$104 million for conspiring to defraud the

53. GAO, *supra* note 16, at 46.

54. *Id.*

55. All but \$17.4 million of the HIID funding was received without competitive bidding.

For example, in June 1994 Administration officials signed a waiver that enabled H.I.I.D. to receive \$20 million for its Russian legal reform program. Approving such a large sum as a noncompetitive ‘amendment’ to a much smaller award (the institute’s original 1992 award was \$2.1 million) was highly unusual, as was the citation of ‘foreign policy’ considerations as the reason for the waiver. Nonetheless, the waiver was endorsed by five U.S. government agencies, including the Treasury Department and the National Security Council, two of the leading agencies formulating U.S. aid policy toward Russia.

Janine R. Wedel, *The Harvard Boys Do Russia*, THE NATION, May 14, 1998, available at <http://www.thenation.com/doc/19980601/wedel>.

56. *Id.*

57. U.S. AID REPORT, *supra* note 45.

58. Carla Anne Robbins & Steve Liesman, *Harvard Men Built Market, But Didn’t Steer Clear of It*, WALL ST. J., Aug. 13, 1997.

government) and Hay agreed to pay between \$1 million and \$2 million depending on his future earnings. Harvard University was cleared of the fraud allegations but still faced damages for breaching its contract with the U.S. Agency for International Development and agreed to pay \$26.5 million.<sup>59</sup>

In his opening remarks at hearings on the collusion of corrupt Russian and U.S. officials in the 1990s, Jim Leach, then Chairman of the House Committee on Banking and Financial Services concluded that the "Bank of New York matter raises fundamental issues that demand Congressional review, including the extent to which the U.S. financial system has contributed to the impoverishment of the Russian people."<sup>60</sup>

In fact, as we believe, the use of the U.S. financial system for the "impoverishment of the Russian people" cannot be limited to just the BONY scandal. It has had a much stronger effect and should have much deeper consequences. The continuation of the U.S. reliance on a narrow circle of corrupt pro-Western liberal intelligentsia (mainly concentrated in Moscow and few other urban centers)<sup>61</sup> and "agents of democratic change"<sup>62</sup> in Russia proves to be wasteful, eventually unproductive for the U.S. interests (if those interests are not aimed at the ultimate subordination of Russia and further aggravation of her socio-economic problems) and detrimental to the interests of long-term institutional legal and democratic development of Russia. What Western experts should do instead of continuation of their futile (and ridiculous) attempts to "pull Russia into the West"<sup>63</sup> is to follow the advice of Charles H. Fairbanks, Jr.<sup>64</sup>: "Those of us who care about advance of democracy in the world should make it our

59. Zachary M. Seward, *Harvard To Pay \$26.5 Million in HIID Settlement*, HARVARD CRIMSON, July 29, 2005, <http://www.thecrimson.com/article.aspx?ref=508343>. Also see the most complete investigation of the HIID scandal in an award-winning essay by David McClintick, *How Harvard Lost Russia*, INST. INVESTOR, Dec. 2005/Jan. 2006, available at <http://www.iimagazine.com/article.aspx?articleID=1039086>.

60. *Hearing on Offshore Money Laundering*, Mar. 9, 2000 (statement by Rep. James A. Leach, Chairman, Committee on Banking and Financial Services), available at <http://financialservices.house.gov/banking/3900lea.htm>.

61. It's sad but true: "Americans have always seen Russian politics through the eyes of the radical Moscow intellectuals." See JERRY F. HOUGH, EVELYN DAVIDHEISER & SUSAN GOODRICH LEHMANN, *THE 1996 RUSSIAN PRESIDENTIAL ELECTION* 14 (1996).

62. McFaul Statement, *supra* note 19. Note that the web site of Carnegie Endowment for International Peace holds a thoroughly censored version of the testimony that doesn't contain some of the most typical McFaul-esque revelations (see <http://www.carnegieendowment.org/publications/index.cfm?fa=view&id=421>) (last visited Nov. 27, 2009).

63. See Michael McFaul, *Pull Russia into the West*, CHRISTIAN SCI. MONITOR, July 26, 2001.

64. Charles H. Fairbanks, Jr. of Johns Hopkins University's School of Advanced International Studies.

foremost intellectual and practical task to find out why our reform strategy went wrong in so much of the former Soviet bloc.”<sup>65</sup>

Thank you very much for your attention and understanding!

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65. Charles H. Fairbanks, Jr., *The Feudalization of the State*, 10 J. OF DEMOCRACY 2, 39 (April 1999). Paradoxically, the same scholar who correctly states that the failure of American “reform strategy” “has probably destroyed Russians’ trust in the West for generations to come,” seems to believe that American strategists of ‘reforms’ “do have a second chance” and points at China (with its possible future transition from Communism to capitalism) as a new object for Western “advice.” Hopefully, the lesson of Russia will have a sobering effect on Chinese people, and they won’t give such chance to their latter-day saviors.