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2019

### One Rule of Law Project in Post-Soviet Russia

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#### Recommended Citation

Scherr, Albert E., "One Rule of Law Project in Post-Soviet Russia" (2019). *At Home Abroad: Friendship First - A Look at Rule of Law Projects and Other International Insights*. 427.  
[https://scholars.unh.edu/law\\_facpub/427](https://scholars.unh.edu/law_facpub/427)

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# Chapter 9

## One Rule of Law Project in Post-Soviet Russia

Attorney Albert E. Scherr

### I. Introduction

Often ignored in an appreciation of a rule-of-law project, is the matter of context – the cultural context within which the project occurs. And in particular, the legal culture. This chapter focuses on two different sources for measuring the culture within which our project occurred between 1999 and 2004 in Vologda, Russia. That period was a time of particularly great transition in Russia from the Soviet era to the non-Soviet era. Such as it was, the Soviet era was one of cultural stability. For example, people who wanted to be lawyers knew what to expect and citizens knew what to expect from the legal system.

This chapter examines the culture in a provincial capital outside of the Moscow St. Petersburg axis. It uses two sources – our rule-of-law project and oral history of that time in Russia – to assess the context within which the project operated and to offer some interesting comparisons.

Svetlana Alexievich, the Nobel Prize winning author, has written compellingly of the Soviet people's transition to a post-Soviet era in her most recent book, *Secondhand Time: The Last of the Soviets*. In a unique reporting style that combines journalism and oral history, she documents the voices of former Soviet citizens as they make the transition to a new world of unpredictable dimensions.

Our rule of law project occurred primarily during the first ten years of this transition. Shortly after the end of our project, Vladimir Putin began to consolidate his power more assertively. Through their own words then, those in Alexievich's account capture well the intellectual,

psychological, and financial turmoil of those transitional years. They provide a rich context for appreciating the efforts, successful and less so, of our 1999-2004 project.

It was a time of transition to the unknown. Hopes were high for some; money and capitalism meant more for some than it ever had; and both nostalgia and hatred for the Soviet era was common. Two in *Secondhand Time* spoke eloquently and directly about the transition:

– Yeltsin’s nineties ... how do we remember them? They were a happy time ... a crazy decade ... terrifying years ... the age of fantastical democracy ... the fatal nineties ... hands down, a golden age ... the age of self-denunciation ... mean and hard times ... a bright dawn ... aggressive ... turbulent ... That was my time ... It wasn’t for me.

– We pissed away the nineties! We’re not going to have an opportunity like that again, at least not any time soon. Everything started out so well in ’91! I’ll never forget the faces of the people I stood with in front of the White House [the Russian government building at the center of a failed coup against Boris Yeltsin]. We were triumphant, we were powerful. We wanted to live. We were intoxicated by freedom. But now ... now I see it all in a different light ... We were so naïve, it’s disgusting! Brave, honest, and naïve. We believed that salami was spontaneously generated by freedom. We too are to blame for everything that happened afterward ... Of course, Yeltsin is also responsible, but so are we.<sup>1</sup>

The post-Soviet era began with the sort of soaring hopes expressed above. And, at least by the accounts of many in the book, the result, and perhaps value of that ‘freedom’, quickly became the pursuit of money in a new, wildly capitalistic, economic world. The resulting dynamic of disappointed hopes and new money is apparent throughout *Secondhand Time*. It

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<sup>1</sup> Svetlana Alexievich, *Secondhand Time: The Last of The Soviets*, (translated by Bela Shayevich), p. 287, Random House, New York, 2016

operates as the foundational context through which all else flowed:

When I was young, I liked to toy with my fate, to tempt it. Not anymore; I've had enough. My daughter is growing up, I need to think of her future. And that means money! I want to make it myself. I don't want to ask anyone else for it, or to take it from anyone. I have no desire for that! I quit the newspaper and went to work for an advertising agency, the pay is better. It's good money. People are interested in the beautiful life, that's the most important thing happening today. It's what's on everyone's mind.<sup>2</sup>

Several recurrent and overlapping themes in particular resonate in the context of our rule-of-law project. Whether one's formative years – loosely ten to twenty-five years old – were during the Soviet era or during the post-Soviet transition, appears as a somewhat reliable predictor of attitudes about money, politics, and the past and future, at least for Alexievich's people:

My sons were little boys back then [at the time of the end of the Soviet era], they've grown up since. One of them is even married. Several times, I tried ... I want to tell them about 1991 ... 1993 ... but they're not interested. Their eyes would glaze over. The only question they have for me is, "Papa, why didn't you get rich in the nineties, back when it was so easy?" As though the only people who didn't get rich were the armless and dumb. Your cretin ancestors ... kitchen impotents ... We were too busy running around to protests. Sniffing the air of freedom while the smart ones divvied up the oil and gas ...<sup>3</sup>

And:

There's one thing I know for sure: Capitalism is not what my parents ordered. No two ways about it. It's what I

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<sup>2</sup> *Id.*, at 348–49.

<sup>3</sup> *Id.*, at 289–90.

ordered, it's made for people like me, who didn't want to stay in the cage. The young and the strong. For us, capitalism was exciting ... adventures in enterprise, risk ... It's not just about money. The mighty dollar! Now I'll reveal my secret: For me, capitalism, I mean modern capitalism, not Dreiser, is more interesting to read about than the gulag or Soviet shortages. The informants. Oh! Oh! Gosh, I've trod on the sacred. I wouldn't dare breathe a word of this to my parents. My lips are sealed. How could I! My father remains a Soviet romantic.<sup>4</sup>

What to make of the Soviet past mattered notably to many of those in *Secondhand Time*, just as it seemed to matter in Vologda, at least amongst those we encountered. Some of Alexievich's people spoke of disdain and some of nostalgia for that time:

[In the Soviet era,] [w]e read, we went through tons of books. We talked. We thought we were coming up with new ideas. We dreamt of revolution, but we were scared we'd never live to see it. In reality, we were completely sheltered, we didn't know a thing about what was actually going on in the world. We were like houseplants. We made everything up, and as it later turned out, everything we thought we knew was nothing but figments of our imaginations: The West. Capitalism. The Russian people. We lived in a world of mirages. The Russia of our books and kitchens never existed. It was all in our heads.<sup>5</sup>

By contrast:

What did I feel? Did I believe in the Party? To tell you the truth, I did. And I still do. Come what may, I will never throw out my Party membership card. Did I believe in communism? I'll be honest with you, I'm not going to lie: I believe in the possibility of life being governed fairly. And today ... as I've already told you ... I still believe in that.

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<sup>4</sup> *Id.*, at 339.

<sup>5</sup> *Id.*, at p. 19.

I'm sick of hearing how bad life was under socialism. I'm proud of the Soviet era! It wasn't 'the good life', but it was regular life. We had love and friendship ... dresses and shoes ... People hungrily listened to writers and actors, which they don't do anymore.<sup>6</sup>

Finally, the different worlds of St. Petersburg/Moscow and everywhere else in the post-Soviet world is tangible throughout *Secondhand Time*, and throughout every day of ours as we traveled to Vologda through St. Petersburg and Moscow.

[To Alexievich:] You're on the right track, leaving Moscow. You could say that you've come to the real Russia. Walking around Moscow, you might get the impression that we're a European country: the luxury cars, the restaurants ... those golden cupolas gleaming ... Moscow is the capital of some other nation, not the country beyond the ring road. A tourist paradise. Don't believe Moscow ...<sup>7</sup>

And:

Capitalism isn't taking root here. The spirit of capitalism is foreign to us. It never made it out of Moscow. We don't have the proper climate for it in the rest of the country. And we're not the right people.<sup>8</sup>

That is not to say that these are rigidly defined themes either in Alexievich's accounts or in our experience. The rich, layered complexity of the worlds her people recount is not easily captured in tidy thematic boxes. Here post-Soviet people are people trying to understand and grasp for themselves, the meaning of the profound transition in which they have found themselves with little prior notice. And, our rule of law project confronted much the same transitional complexity, but by

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<sup>6</sup> *Id.*, at 53.

<sup>7</sup> *Id.*, at 42. The ring road is the major road that encircles Moscow.

<sup>8</sup> *Id.*, at 293.

choice and with the perspective of outsiders amidst people in an unfamiliar world.

## **II. The Project**

We received U.S. State Department funding for a rule of law project in northern Russia from 1999–2004. The grant had three parties: The University of New Hampshire (UNH), Franklin Pierce Law Center (FPLC) (now University of New Hampshire School of Law (UNH Law)), and Vologda State Pedagogical University (VSPU), in particular the law faculty at VSPU. The co-directors from the U.S. side were a tenured UNH historian of Russia, who was fluent in Russian and a tenured law professor at FPLC. That combination provided the project with a deep background in Russian history, culture and institutions, and in legal education. Originally, the project had a three-year funding cycle. It received two one-year, no-cost extensions.

Vologda is a provincial capital of around 300,000 people in northern Russia, about halfway between Moscow and Archangelsk. The Vologda Oblast, as a whole, has about 1.2 million residents. The principal economic drivers in Vologda and the region are ferrous metallurgy, power engineering, and timber, as well as it being a substantial transportation hub. The region is also known for its ‘Vologda butter’ and its lace-making.

VSPU was founded in 1918 and is formally accredited by the Ministry of Education and Science of the Russian Federation. At the time of the project, it had about 3,500 students in the university as a whole. The law school itself, however, was much younger, founded in the late Soviet era.

## **III. The Vision – Pedagogy as a Mechanism for a Change in the Rule of Law Culture**

The grant sought to further the growth of the rule of law in Russia. Furtherance of that goal had already taken many forms since the end of the Soviet era. Scholars, government officials, and others counseled lawmakers and governmental executives, on everything from constitutional principles to the drafting of new laws. Lawyers, law professors, and others advised

legislators and administrators on the development of new legal processes and structures. Judges and others exchanged ideas and practices with their counterparts on the bench, about decision-making and doctrine.

Changing legal principles, processes, and institutions in the furtherance of the rule of law is important and difficult. Those changes are the front-end of a much longer-term process of changing the legal culture in the broadest sense. A legal culture in which lawyers, judges, and citizens trust the system to operate well and effectively is the essence of the term 'rule of law'. The premise underlying the activities of this grant took the challenge of changing legal principles, processes, and institutions one step further, by focusing on a different aspect of cultural change – legal pedagogy. The focus on pedagogical practices presumed that the existence of a rule of law society – a civil society – depended not only on the development of principles, processes, and institutions, but also on the development of a rule of law *culture*. And, a rule-of-law culture is best developed using the tools of education, writ large.

To press the point a bit, legal culture and cultural attitudes about law, influence human behavior in the realm of law at least as much as the presence of legal principles, processes, and institutions do. In part, of course, culture and its attitudes owe their existence to the presence of principles, processes, and institutions. An aggrieved citizen will not have the instinct to use the legal system to address her complaint without the existence of a viable system, i.e., a culture of seeking redress in a system that produces reliable results.

Yet, the existence of a viable legal system – one based on sound principles, processes, and institutions – is not enough. Unless the aggrieved citizen trusts her instinct to use the system to address her complaint, a rule of law society does not exist. And, unless lawyers within the system – particularly a changing legal system – trust the principles, processes, and institutions enough to take advantage of it, a rule-of-law society/culture does not exist.

The issue of legal culture and cultural attitudes towards law was particularly significant in post-Soviet Russia. The rule-of-law literature and conversations with judges and lawyers in Russia, confirmed that a legal system based on principles,

processes, and institutions existed even in the Soviet era, at least in theory. But, the perception that it was a functioning system – that one could trust in the instinct to use it – did not exist. One’s relationship – financial, familial, or otherwise – with the local party boss still determined more as to the outcome of one’s grievance than did the legal system. If not always actually true, this appeared to be the general perception of most in Soviet Russia.

In Soviet Russia, then, the existence of the principles, processes, and institutions did not give rise to a functioning system automatically. Put simply, the common assumption – “if you build it, they will come” – was false. The result in post-Soviet Russia – at least as revealed anecdotally in conversations with practicing lawyers seeking clients – was that an aggrieved citizen remains unlikely to seek out legal assistance to address the complaint. And, this was the case even with a better functioning rule-of-law system.<sup>9</sup>

Change in the legal culture and cultural attitudes about law become important in this context. Such change would increase the likelihood that changes in legal principles, processes, and institutions will endure beyond the current investment of time, energy, and money. The complex and diffuse origins of cultural attitudes towards law, however, make such change difficult and slow. Likely, such change develops over several generations, if ever.

The activities of the grant constituted an effort to use a focus on legal pedagogy to begin to effectuate a change in the cultural attitudes of law professors and future lawyers towards law. If one teaches law in a participatory, active, and engaged environment, students perceive their role as lawyers differently and more positively. If one teaches with role-playing exercises

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<sup>9</sup> For example, interestingly, albeit anecdotally, law students in Vologda, when questioned about what they would do if they were in a car accident or the victim of a crime, most often answered that they would rely on the informal, process-free, pseudo-black-market justice system to resolve the matter rather than use the formal justice system.

and simulations, future lawyers will, by habit and instinct, become more active participants in the legal system. If one creates a learning environment in which law students are respected and valued for their challenges to a teacher's authority, they become more effective advocates for their future clients' rights.

We also came to the project with substantial concerns about the risk of being perceived as legal imperialists. It was, and is, a risk that travels with any rule-of-law project. Intended or otherwise, rule-of-law projects are quite easily perceived as conveying a message of: "We know the right way to do things and we will now tell you the best way to do it." We perceived that risk to be particularly acute in a post-Soviet Russia, in which many of the more senior positions in the local and regional legal systems outside the Moscow/St. Petersburg axis were still filled with holdovers from the Soviet era. And, this was likely true of most of the practicing lawyers who had been trained in the old Soviet system.

In that vein, a focus on legal pedagogy as a vector for change in the legal culture of post-Soviet Russia, was more nuanced and less top-down. We wanted to expose law professors to alternatives for engaging students, and even more fundamentally, at least considering the engagement of students as of value. We aspired to provide them with an expanded set of pedagogical options rather than a list of rules to follow. Our fundamental belief was that evolution of techniques in legal education held great promise for sustainable cultural change in rule of law attitudes.

#### **IV. Implementation of the Vision**

Broadly, the framework for project implementation centered on visits of various lengths on the part of UNH/UNH Law and VSPU faculty. Over the grant's five years, ten VSPU faculty, including the Dean of the law school, visited UNH and UNH Law. Two of them spent almost a full academic year at UNH/UNH Law and four more spent a full academic semester there. The remainder spent anywhere from one to four weeks on campus in New Hampshire.

A total of five UNH/UNH Law senior faculty, two graduate students, and one evaluator made visits to VSPU, ranging from

one to three weeks during the grant's five years. Several of the senior faculty members made a number of trips to Vologda. In addition, three UNH/UNH Law faculty visited the law school in Saint Petersburg to engage in discussions with a number of faculty there about Russian and U.S. legal education.

More specifically, the VSPU faculty engaged in a wide range of activities designed to further the pedagogical focus of the project's vision. For example:

- they observed classroom instruction at UNH and UNH Law to consider different pedagogical approaches;
- they attended classes regularly at UNH Law and UNH whose content contributed to their research and teaching specialization;
- they consulted with UNH and UNH Law professors about course content, pedagogical methods, judicial and legal practices in the U.S. and research interests;
- they lectured in UNH Law and UNH courses (in one case, team-taught a full course);
- they pursued independent research in FPLC and UNH libraries to gather materials for their teaching in Vologda and their research projects;
- they learned how to use information technologies and databases to access materials for their research and teaching;
- they learned how to use PowerPoint and other technology tools for teaching;
- visited law offices, courts, and government agencies in New Hampshire and Maine;
- they made public presentations in New Hampshire and Maine about Russian law and its legal system;
- they traveled to Washington to meet with members of the NH Congressional delegation, observe the Supreme Court in session, and tour the Capitol; and
- they attended conferences of the American Association for the Advancement of Slavic Studies.

The UNH/UNH Law faculty also engaged in a wide range of activities. For example:

- they provided mini-courses or lectures on subjects in U.S. law requested by Vologda instructors (international human rights law, consumer protection law, criminal procedure in the jury system, DNA/scientific evidence in criminal cases, environmental law, media role during election campaigns, terror, and civil liberties);
- they assisted in the establishment and development of the legal clinic in Vologda (the only legal clinic in the Vologda region);
- they attended a national conference in St. Petersburg in year two on the development of legal clinics, in the company of the grant participant designated to establish and direct the Vologda legal clinic;
- they observed classroom instruction and end-of-the-year student exams and thesis presentations;
- they met with groups of students to discuss their attitudes toward the rule of law;
- they ran workshops on pedagogical methods;
- they made several public presentations to local government officials; and
- they purchased instructional technology and library books for the law school.

Perhaps most productively, the participating faculty of UNH Law, UNH, and VSPU all produced articles for a volume about legal pedagogy in Russian law schools. The volume was published by a Vologda printer and circulated to all the law schools in Russia. It included an introduction written by a justice on the Constitutional Court of the Russian Federation, who previously had been a law professor at the law school in St. Petersburg.

What remains most vivid about these activities are the personal encounters with students, young faculty, and senior faculty and administration. On innumerable occasions, I met with individual students as well as groups. Invariably, their thirst was less for substantive knowledge and more along the lines of ‘how to be a lawyer’. They quickly understood that the lawyer models in Soviet Russia were different than those which we offered up through our teaching and our simulations.

For example, each time I visited VSPU, I conducted a simulated jury trial with students playing the role of witnesses and jurors as my colleagues and I played the role of lawyers. In the debriefing following the simulation, students were endlessly curious about both the details and the broad concepts. Some were focused on how one made the many in-trial litigation decisions; while others were focused on why you would ever want a jury that might contain ‘peasants’ as opposed to a trial before an ‘expert’ judge. Always, questions about substance and procedure took a back seat to questions about, loosely, psychology and strategy<sup>10</sup> – thinking and talking about behaving like a lawyer and what the many models of lawyering looked like.

Conversations and teaching demonstrations with young faculty were similarly vibrant and engaging. Again, the focus was less on the substantive and procedural content of what we were discussing.<sup>11</sup> They were much more riveted on the simple decision to actively engage students in the classroom; to encourage them to challenge the professor or each other; or to cede control of the classroom in some measure to the students.

These moments occurred, year after year, during the project, and seemed to be a reflection of a feeling of being unshackled on the part of participating students and faculty, at least from our perspective. In private conversations with younger faculty, they frequently complained about the leveling or narrowing effect of having to meet the curricular demands imposed by the Ministry of Education nationwide. They also felt pressure from the VSPU administration and older ‘Soviet’ faculty to toe the line.

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These experiences with students and younger faculty were very much in line with the results of a survey we conducted of

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<sup>11</sup> if only because German law was the jurisdiction outside Russia to whom they looked for substance and procedure in the first instance

VSPU law students in the last year of the project, 2004. The survey was designed to begin to discern what the nascent legal culture of those coming of age in the post-Soviet era looked like. For example:

- Why did they choose to study law?
- What did they expect to do with their law degree?
- What do they think of lawyers and the place of law in society?

We wanted to get some sense of what kind of nascent legal culture might exist amongst those who had just decided to go to law school, ten years into the post-Soviet period of transition.

We surveyed a total of 73 students. 61% of those surveyed were female and 39% male. 46% were in their first year, 32% in their second year, and 21% in their third year. 70% of the group was born in the Vologda region. Their average age was 19.9 years old, and the age at which they decided to study law averaged 15.7 years old. About 20% of the group believed they were fluent enough in a foreign language to read its legal materials.

Their expectations upon completing their study of law seemed unsurprising and quite practical.

- Pursue a job as a lawyer – 66.7%
- Pursue a job in a government office of some kind – 31.9%
- Pursue another degree in law – 16.7%
- Pursue a job in a business company – 16.7%
- Pursue a job teaching law – 1.4%
- Pursue another degree in an area other than law – 13.6%
- Pursue a job in a bank – 12.5%

Remember that this group, on average, was born around 1985. They were about eight years old when the Soviet Union fell, and they came of age in the most chaotic part of a societal transition to an unknown post-Soviet future – the remainder of the 1990s. As the century turned, many were

reaching their decision to study law. We asked them what were their reasons for going to law school.<sup>12</sup>

The themes we saw in Alexievich's *Secondhand Time* appear differently here. In terms of their teenaged aspirations, this group was not primarily concerned about how much money they could make, about their self-interest, or about social/political status. Rather, the reasons for attending law school with which they most strongly agreed involved: (1) the importance of a strong legal system; (2) helping family, friends, injured people, and those who can't help themselves.<sup>13</sup> Notably less frequent reasons for attending law school included: (1) family influences; (2) gaining political power; (3) modeling Putin's background; and (4) the ease of studying law.<sup>14</sup> As a group, they were in agreement or more neutral as to: (1) making or overcoming obstacles to making money; (2) gaining influence; and (3) gaining respect.<sup>15</sup>

At the least then, on the threshold of the study of law, this rural group of teenagers seemed to reflect optimism and idealism – perhaps typical attitudes for aspirational teenagers, but nonetheless noteworthy in a rural capital outside of the Moscow/St. Petersburg axis during a time of dramatic social/psychological, economic, and political change.

More broadly, when asked more directly about their feelings as to a number of propositions related to a legal culture in Russia,<sup>16</sup> they responded even more interestingly. The group's optimism and idealism about the role of law and lawyers shines through even more strongly in these results. The importance (1) of the Russian Constitution (an aspirational document even in Soviet times); (2) of a strong legal system

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<sup>12</sup> See Appendix for full results for Question # 1.

<sup>13</sup> Their agreement with these reasons ranges from 1.5 – the midpoint between 'strongly agree' and 'agree' to 1.94 – almost squarely on 'agree'.

<sup>14</sup> Their neutrality as to or disagreement with these reasons ranged from 3.01 – squarely on 'neutral' – and

<sup>15</sup> Their agreement with or neutrality as to these reasons ranged from 2.44 – close to the midpoint between agreement and neutrality to 2.99 – essentially, squarely on neutrality.

<sup>16</sup> See Appendix for full results for Question # 2.

that both protected individuals and was accessible to everyone; and (3) of lawyers that helped the injured, worked to change bad laws, and used their power to help others, predominated. Those ideas were the only propositions receiving average scores between ‘agree’ and ‘strongly agree’. Even in the closer-to-agree section<sup>17</sup> of the ‘agree’ to ‘neutral’, agreement with similar propositions again predominated.

Interestingly, in the neutral-to-disagree section, the group moderates the importance of lawyers in comparison to other professions. They tend to disagree with the idea that lawyers are more respected than artists, scholars, doctors, scientists, and business people. It seems to represent a measure of practicality in their appreciation of the lawyers, i.e., they perform an important role but, as a profession, are no better than others.

More notably, the group diminishes the importance of the legal system as one designed to protect government and commercial interests, as well as, more generally, the interests of those with power. Laid against what Alexievich’s people describe as the cynicism of the late Soviet and early post-Soviet eras, these attitudes about the legal system express either a healthy dose of naiveté; an idealism and optimism not substantially reduced by the first twenty years of their life; or both. And, once again, notably absent in those propositions with which they most agreed, were those related to the desire to make money and the earning power of lawyers – a distinct contrast with the raging capitalism of the post-Soviet transition frequently noted by the voices in *Secondhand Time*.

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Much more nuanced and subtle conclusions might be drawn from this collection of data. But what stands in starkest contrast to the above results, is the much darker attitudes of the older professors and the administration at VSPU – those who came to maturity in the Soviet era. As a group, they wanted nothing to do with our project other than what money and free trips to the United States they could acquire from the project. With one exception, the more senior professors either ignored

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<sup>17</sup> i.e., below a 2.5 average

us or spoke ill of us, both behind our backs and to our faces. And, the one exception to this cold reception had been fired by the end of the project, apparently because of his leadership role in the project.

The administration of the law faculty at VSPU was even more problematic. The Dean was an ex-Soviet bureaucrat who examined every aspect of the project closely. His primary interest was to arrange for students to be part of the exchange with UNH and UNH Law. In particular, he wanted students to travel to the U.S. as part of the exchange – a practice prohibited by the terms of our grant authorization. This prohibition was of little consequence to him and we, an ABA/CEELI officer from Moscow, and a State Department consular official, all were the subject of one or more screaming, table-pounding tirades on the part of the Dean.

Beyond that behavior, and likely as a consequence of his frustration with the travel prohibition for students, he made the professional lives of his VSPU colleagues who participated in the grant quite difficult. He criticized them publicly and isolated them from more senior, Soviet-era faculty. He fired the co-director of the project for being absent for two weeks of teaching, during a time when the co-director was engaged in grant activities of which he had informed the administration. Stunningly, a judge who reviewed the firing made a finding that the grant did not actually exist, though that very judge had visited New Hampshire as a part of an ABA/CEELI project and was fully aware of the State Department rule of law project.

Professor Frierson, the UNH co-director of the project has described his behavior as “the embodiment of *provisio*, that is, arbitrary and capricious behavior that is the antithesis of the rule of law.”<sup>18</sup> In more depth, Professor Frierson has used the landmark study by Konstantin Simis, *USSR: The Corrupt Society*<sup>19</sup>, as a reference point for the Dean’s behavior.

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<sup>18</sup> A. Scherr & C. Frierson, *A Rule-of-Law Project Meets ‘Arbitrary & Capricious’ Obstacles in Vologda, Russia*, 44 N.H. Bar Journal 19–24 (2003)

<sup>19</sup> Konstantin Simis, *USSR: The Corrupt Society: The Secret World of Soviet Capitalism*, Simon & Schuster, 1982.

As a former lawyer in the Soviet judicial system in Moscow, Simis gathered evidence of local abuses of power by officials who were in a position to control both their subordinates and ordinary citizens through their hold over employment, housing, and resources. Simis dubbed these officials the ‘District Mafia’ because of their similarity to neighborhood dons, who simultaneously were able to provide benefits outside the law and to control and extort outside the law.<sup>20</sup> And, she used William Tubman’s biography of Nikita Khrushchev<sup>21</sup> as an additional reference point for the Dean’s behavior.

His modus operandi was a combination of hypersensitivity to perceived slights or condescension and pugnacious, rude, aggressive behaviors designed to preempt, unsettle, and ultimately disable those inside the Communist Party or in the foreign services of western powers (most notably the U.S.) in any negotiation, indeed, in any meeting.<sup>22</sup>

The difficulties with the Dean and his superiors led to a temporary suspension of the grant as we decided whether to spend the remaining grant funds in the midst of a difficult situation. Eventually, we resumed the relationship with an intensified focus on our individual relationships with students and the younger faculty, rather than VSPU as an institution.

In retrospect, our experience in Vologda was, in at least some regards, predictable in light of what Alexievich’s people say. As a city outside the Moscow/St. Petersburg axis, change was likely coming at a different pace – deeply entrenched, old institutions, and those who run them, were perhaps changing more slowly, particularly when there is little pressure from anywhere to change, except from those who are effectively within one’s control, i.e., students and younger faculty. In the short term then, the hope for immediate, more institutional change, was illusory.

Yet, we also found students that had an optimism and idealism about their reasons for wanting to be lawyers and their

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<sup>20</sup> Scherr & Frierson, *A Rule-of-Law Project ...* p. 22

<sup>21</sup> William Taubman, *Khrushchev: The Man and His Era*, W.W. Norton, 2004.

<sup>22</sup> Scherr & Frierson, *A Rule-of-Law Project ...* p. 22–23.

view of the role of law in society. And, their commitment to learning about aggressive and proactive lawyering through participatory pedagogy was noteworthy. They represented a very small sample in one provincial region of a group of nascent professionals thinking about more than simply making money, in contrast to that which Alexievich's people hinted at as the primary focus of the non-Soviet 'younger generation'.

The younger faculty showed a similar excitement about the opportunities to try out new pedagogy; to start a legal clinic and to engage their students in class discussions. That many of them ended up leaving VSPU for other institutions or types of employment, is both unsettling and reveals a desire to seek a situation that suited that which they wanted, at least as articulated to us.

Rule-of-law projects in circumstances like ours are, at best, preliminary efforts at cultural change. One can change the rules of a legal system but, without a change in the legal culture, such changes are quite vulnerable. Endless debate surrounds the question of how best to effectuate such change in a legal culture. Do rule/law changes lead institutions, professionals to adapt and effectively change the culture over time, or does the injection of new and different voices bring about a change over time that makes institutional and rule/law change more likely?

Our project caught inklings of a great willingness for imbuing a legal system with new attitudes and perspectives, and so for progress towards a more profound legal-culture change. Those new attitudes and perspectives were not a result of our project; rather, they came to the fore as we opened the dialogue. Helping faculty and students nurture and support each other in their approaches, and over time, helping them grow into roles in the institutions themselves, was a sequence of rule of law projects for the future. One can only wonder where these 1999–2004 students and faculty are now and what they are doing.

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