

LEGAL HOOLIGANISM—IS THE YUKOS SHOW TRIAL FINALLY OVER?



SEPTEMBER 29, 2010

Briefing of the
Commission on Security and Cooperation in Europe

Washington: 2015

Commission on Security and Cooperation in Europe
234 Ford House Office Building
Washington, DC 20515
202-225-1901
csce@mail.house.gov
http://www.csce.gov

Legislative Branch Commissioners

SENATE

BENJAMIN L. CARDIN, MARYLAND,
Chairman
CHRISTOPHER DODD, CONNECTICUT
SAM BROWNBACK, KANSAS
SAXBY CHAMBLISS, GEORGIA
RICHARD BURR, NORTH CAROLINA
ROGER WICKER, MISSISSIPPI
JEANNE SHAHEEN, NEW HAMPSHIRE
SHELDON WHITEHOUSE, RHODE ISLAND
TOM UDALL, NEW MEXICO

HOUSE

ALCEE L. HASTINGS, FLORIDA,
Co-Chairman
EDWARD MARKEY, MASSACHUSETTS
LOUISE McINTOSH SLAUGHTER,
NEW YORK
MIKE McINTYRE, NORTH CAROLINA
G.K. BUTTERFIELD, NORTH CAROLINA
JOSEPH PITTS, PENNSYLVANIA
ROBERT ADERHOLT, ALABAMA
DARRELL ISSA, CALIFORNIA

EXECUTIVE BRANCH COMMISSIONERS

MICHAEL POSNER, Department of State
ALEXANDER VERSHBOW, Department of Defense

ABOUT THE ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE

The Helsinki process, formally titled the Conference on Security and Cooperation in Europe, traces its origin to the signing of the Helsinki Final Act in Finland on August 1, 1975, by the leaders of 33 European countries, the United States and Canada. As of January 1, 1995, the Helsinki process was renamed the Organization for Security and Cooperation in Europe (OSCE). The membership of the OSCE has expanded to 56 participating States, reflecting the breakup of the Soviet Union, Czechoslovakia, and Yugoslavia.

The OSCE Secretariat is in Vienna, Austria, where weekly meetings of the participating States' permanent representatives are held. In addition, specialized seminars and meetings are convened in various locations. Periodic consultations are held among Senior Officials, Ministers and Heads of State or Government.

Although the OSCE continues to engage in standard setting in the fields of military security, economic and environmental cooperation, and human rights and humanitarian concerns, the Organization is primarily focused on initiatives designed to prevent, manage and resolve conflict within and among the participating States. The Organization deploys numerous missions and field activities located in Southeastern and Eastern Europe, the Caucasus, and Central Asia. The website of the OSCE is: <www.osce.org>.

ABOUT THE COMMISSION ON SECURITY AND COOPERATION IN EUROPE

The Commission on Security and Cooperation in Europe, also known as the Helsinki Commission, is a U.S. Government agency created in 1976 to monitor and encourage compliance by the participating States with their OSCE commitments, with a particular emphasis on human rights.

The Commission consists of nine members from the United States Senate, nine members from the House of Representatives, and one member each from the Departments of State, Defense and Commerce. The positions of Chair and Co-Chair rotate between the Senate and House every two years, when a new Congress convenes. A professional staff assists the Commissioners in their work.

In fulfilling its mandate, the Commission gathers and disseminates relevant information to the U.S. Congress and the public by convening hearings, issuing reports that reflect the views of Members of the Commission and/or its staff, and providing details about the activities of the Helsinki process and developments in OSCE participating States.

The Commission also contributes to the formulation and execution of U.S. policy regarding the OSCE, including through Member and staff participation on U.S. Delegations to OSCE meetings. Members of the Commission have regular contact with parliamentarians, government officials, representatives of non-governmental organizations, and private individuals from participating States. The website of the Commission is: <www.csce.gov>.

**LEGAL HOOLIGANISM—IS THE YUKOS SHOW TRIAL
FINALLY OVER?**

SEPTEMBER 29, 2010

COMMISSIONER

	Page
Hon. Alcee Hastings, Co-Chairman, Commission on Security and Cooperation in Europe ...	1

WITNESS

Vadim Klyuvgant, Lead Defense Attorney for Mikhail Khodorkovsky	1
---	---

PARTICIPANTS

Kyle Parker, Policy Advisor, Commission on Security and Cooperation in Europe	7
Robert Herman, Freedom House	7
Ron McNamara, Policy Advisor, Commission on Security and Cooperation in Europe	11

LEGAL HOOLIGANISM—IS THE YUKOS SHOW TRIAL FINALLY OVER?

September 29, 2010

**Commission on Security and Cooperation in Europe
Washington, DC**

The briefing was held from 2:00 to 3:30 p.m. EST in 1539 Longworth House Office Building, Washington D.C., Congressman Alcee Hastings, Co-Chairman, presiding.

Mr. HASTINGS. Ladies and gentlemen, on behalf of the U.S. Helsinki Commission, I want to thank you for joining us this afternoon in a very important briefing.

Today we look at what is now the second Yukos trial of Mikhail Khodorkovsky. My hope is that by shedding a light on this case, we will not only see the gross injustice committed against Mr. Khodorkovsky, but also against the entire Russian judicial system. The trial against him and Yukos began in 2003 as what many saw to be a politically motivated attack by the Kremlin. After almost a decade, the case against Mr. Khodorkovsky has evolved into a complete show trial where the accusations against the defendant have become absurd. Although we would entertain the arguments of the prosecution, today, we find ourselves unable to do so.

Despite recent rhetoric on human-rights reform from the Russian president, very little has yet been accomplished. So it is with concern we look towards Russia's future with concern for a fair hearing for Mr. Khodorkovsky and concern for a society based on the rule of law. It is my belief that the case against him is not only the trial of one man, but a trial of the integrity of Russia's courts and judges.

With that, my thanks to Freedom House, who is assisting and sponsoring this briefing with the Helsinki Commission. But I'd like to welcome our esteemed guests, Vadim Klyuvgant and Anton Drel. Vadim has served as the lead trial lawyer on the defense team for Mr. Khodorkovsky. Before practicing law, he served as a member of Russia's upper house of parliament. Mr. Drel has also served as Mr. Khodorkovsky's lawyer and is a graduate of Moscow State University Law Department.

Thank you, and with that, Vadim, you have the floor.

Mr. KLYUVGANT. Please allow me, on behalf of Mikhail Khodorkovsky's team of lawyers. We thank you for the kind invitation extended to us to brief the high commission and those interested in what's going on at the trial. We see this as a very high honor.

And also, at the outset, I would like to thank the distinguished human rights organization, Freedom House, both for us and organizing this briefing; and, much more impor-

tantly, for the assistance they generously provided to us as we have sought to defend the interests of our house.

Later in my remarks I intend to, once again, mention why we need assistance, why such assistance is important to us, have long come from human rights organizations, whether multinational—U.S.-based, European or Russian human rights organizations.

Ladies and gentleman, I've been greatly impressed by the title assigned to this meeting today. I would like to give credit to the optimism of the others who seem to believe that this trial will actually come to an end at some point. Hence, our vision—when I say “our,” I'm referring to those participating on trial on a pretty much daily basis in Russia—is unclear, and we, quite frankly, do not quite see this trial coming to any kind of end whatsoever.

What can be referred to as a “second trial” for both. It's a formality, if you will. The reason I'm saying that the second trial is not a genuine second trial is that the Yukos case, more broadly which can be described as a legal massacre, is something that started as the distinguished co-chairman said almost seven years ago in 2003, has been going on. Whether it's trial number one or trial number two does not really matter that much, because this case has only been gathering momentum and, at this point it's not really clear to see it will ever come to an end. So far, it's only been gathering momentum and getting deeper and worse.

A number of those who become hostages to this legal massacre, and those who've been sacrificed, I'm not referring to any kind of physical situations, but, be that as it may, many, many lives, and an increasingly large number of lives have been broken in this legal massacre.

So what is formally referred to as a second trial is slowly moving, dragging. It's a legal proceeding, a courtroom procedure. Whether or not there will be a third trial, or even another one, is not yet known. But we've seen this so-called second trial as part and parcel of what was unleashed more than seven years ago, and what constitutes a legal massacre.

We don't yet know the outcome and the possible implications of the second trial. Speaking of the specific results of this trial, in legal terms, as far as our defendants are concerned, the worst-case scenario, under the Russian law, is that a new sentence may be handed down that can leave them behind bars for another 15 years.

It was driven by politics and for Russian considerations, the case remains the same. What is happening in that courtroom now is, as before, driven by political considerations and those of Russia.

There is yet another factor and there is yet a third motivation for what is going on, and that concerns individuals who took office together and started all this many years ago. I'm quite sure that right now they are sitting down and thinking as to what the implications might be for them, personally, of this case finally coming to its end. Each of these is crying and hedging their bets and figuring out what the implications will be.

However, it is already increasingly clear what the world thinks of what is happening, has transpired in the decisions made by and statements made by various political bodies, and governmental bodies. Which may lead to, again, more human rights. Probably the Russian public and the Russian Federation will offer a similar assessment to those already voiced.

And as the defense—and by defense I mean not only the attorneys, but also the defendants themselves, as we try to fight in the courtroom in Moscow for lives that have largely been already ruined, but lives that others are trying to continue to ruin and sustain a defense against those efforts.

As we're doing that, we're setting yet another goal, which in a way transcends and which reaches beyond the efforts to salvage the human rights goal, and that goal is our efforts to expose and to not leave unpunished the corrupt and criminal behavior of those government officials and public servants who, through using a vast array of these methods which have involved threats of all kinds of criminal action, falsification, forgery, and of torture, have used all of that to try and execute the plan to legally massacre.

We—and when I say we, include Mikhail Khodorkovsky—view this kind of behavior as criminal. We also believe what we're doing in court is we're not defending the innocence, we're not holding the innocence of the defendant. Rather, we are trying to prove the criminal nature of the actions taken against them.

That this case, this situation is not going to be domestic error of the Russian Federation. The reason being that what's at stake here is universal, fundamental human rights values, values that underlie the very foundation of Western civilization. Among those values, I would primarily call your attention to the freedom of the individual, and the law, as the body of laws and as a major component of human civilization.

As my personal opinion to emphasize that what we have in mind is not what is referred to as legal hooliganism, because in Russian and Russia the word "hooliganism" refers to the radical instances of extreme—mistreatment. Those that are sporadic not systemic. What we have here is a systemic effort to trample underfoot the very fundamental values of civilization.

And we have been mentioned by the veterans the more courageous and more lawyers—on these efforts of the country.

What is especially tragic and traumatic is that such insistence grave as they are, have been made against a background of rhetoric and lip service paid to the rule of law. Fortunately, the authorities started talking about the rule of law, and seeing it as supreme value was hailed by the rest of the world, and they were praised for trying to establish the rule of law in Russia. It is especially alarming—that what's happening is happening in that very background.

That is exactly why we believe that the case at hand is not a domestic affair for Russia, but rather it is an issue, a problem that should be put on the agenda of an international context, and international relationships, one party to which is the Russian Federation, the other being other countries at every and all levels of international context.

We have referred to the trial of the city of Moscow as a sham trial, a pretend trial, if you will, because while appearances are being and things are allegedly occurring in the context of a trial, it is in fact just a smokescreen, a cover-up for people's lives being destroyed.

To begin with, the charges are fake and pretend charges, because essentially they accused the defendants not only of something that they never did, but, as a matter of fact, they're self-defeating because what they have accused the defendants of is something that was simply impossible, to never having done.

I'll be happy to give you a certain level of detail and explain specific questions of why I'm saying this. I will say that the sham nature of the charges that was quite consistent with the quality of the so-called evidence produced by the prosecution, which had been produced using forgery, falsifications, distortion on the facts and the forgery of documents.

The methods that the prosecution has employed to gather this so-called evidence have involved threats, blackmail, torture and prosecution, and threats of prosecution towards just about everybody that they—including, of course—accountants, lawyers and witnesses so as to force these individuals to provide information that could be used by the prosecution in building their false case.

By that token, this case is yet again not a domestic affair of the Russian Federation. Because the methods in putting pressure on those arrested and all kinds of similar techniques are not only being used against Russian citizens, but against foreign nationals, including U.S. business and against foreign corporations.

I will only cite one example out of a vast number, so it is available. I will simply mention the name of the well-known company, Pricewaterhouse, and what happened to it in Russia. When the management of the Moscow—some individuals—Pricewaterhouse, most of those individuals, who were foreign nationals, had their arms twisted in a very, very cruel way and under threat of criminal prosecution, and the threat of destroying the company's business in Russia to get them to sign what the prosecution needed them to sign. The statement that ended up being signed was a false statement and we have plenty of evidence to prove that the statement was forced out and that it was given under tremendous pressure.

There has been many propaganda train employed if you will, that has been used to justify what is being done to Khodorkovsky, and that is that he is being equated with a rich protector the likes of whom would be Madoff; and the authorities will claim that individuals like that have been and are prosecuted everywhere in the world.

The statement is untrue. Again if the right question as to why it is untrue, I'll be happy to explain the details. It's a completely different situation, one in which there's not a single inference of not only criminal behavior, but even unlawful behavior—even misdemeanor type of behavior on the part of our defense. These so-called facts have been copied and falsified.

Therefore, the consequences and implications of the Khodorkovsky case and the Yukos are very far reaching. Of course, they operate what will happen to the victims and the hostages of that trial for Mikhail Khodorkovsky.

We think also the consequences and implications of this case are also of very direct relevance for the prospects of my country—the Russia Federation—whether we'll use the buzz word organization to refer to those prospects or you can just say the future of Russia. The choice of words is not important in this case.

This case has ramifications for the business community, for investors, for Russian international partners and, of course, for the United States as one of Russia's international partners.

Again, the Khodorkovsky and Yukos case presents an impediment and an obstacle for what is long overdue in the Russia-U.S. relationship. I prefer more to talk about improving and enhancing the relationship. This case creates a major impediment—to be

done. Simply, I cannot visualize a successful effort to improve this relationship with this case remaining what it is and where it is.

And yet, another role that this case plays is that of an indicator as to what is happening in Russia and which direction it is moving. Whether this case will end justly or unjustly will be a very clear signal of where Russia is headed.

That is why we have said that it is of great importance that the national—public voice its opinions in the sense that the issue must be put on the agenda of international context in Russia and the rest of the world at any and all levels. It should be on the agenda of both public and private diplomatic interactions. A report from human rights NGOs all over the world—Europe, in the Americas, everywhere—is very badly needed.

These things are critically important if the problem that we are discussing here today is to see some kind of a fair ending. We believe that the United States, as a major partner of Russian Federation, is in a position to make a significant contribution to this. Both through parliamentary action and through the channels used by the executive branch of the United States and on the part of the civil society of the United States, which is very well known for being vigilant, active and invariable—intolerant—to the fundamental human rights violations.

As the Helsinki Act was signed in 1975, yours truly was still a fairly young individual. Yet, I was very aware and watchful of this kind of development. As a matter of fact, in 1975, I enrolled in law school and all those things I found extremely interesting and important.

And I remember the great importance—including in my then country, the USSR—attached to the so-called third basket, which of course, incorporated human rights issues that was very heavily discussed as part of the framework of the Helsinki Act. I remember very vividly how things were moving and improving along the lines of the Helsinki process and was a better human rights situation in what was then a superpower—not just a superpower, but an evil power, an evil empire, on that felt extremely strong. Yet, it was listening to what was being said as far as the Helsinki process and improving its track record on human rights.

I have to be completely sincere and honest—why what happened—what was capable of happening back in the 1970s did not—set—itsself in the context of the 21st century. Now that we are in Congress—in U.S. Congress—has the context of this still fairly new initiative—that of presenting the Russian-U.S. relationship.

I believe it will serve our national interests and we need it very badly and it is very important to us.

Thank you very much for your attention.

Mr. HASTINGS. Thank you all so very much.

First, to underscore what you have said about the international implications, when Yukos was taken over, there were investors from around the world and a lot of them from America. It's estimated that upwards of \$7 billion was lost by international investors, including those in the United States. That, in my judgment, underscores your feelings regarding what I believe true too, to be that this is an international matter of substantial consequence that should have continued to be addressed, as it has been in other governments—two that come to mind are the Swiss courts and the Dutch courts have indicated that they felt it was illegal.

You know, Vadim, either 15 or 16 years ago would have been my second visit to Russia. Like you, I felt the effects of glasnost and the changes that were taking place. Like many Americans and other citizens around the world, I felt that there would be progress in that third basket from the Helsinki Accords.

Not by myself, but with three other colleagues—one a Democrat and two other Republicans—we had a meeting with Yury Luzhkov, who was then and until two days ago, the mayor of Moscow. When I met you today, I told you that I was personal friends with Gennady Solozhko. Gennady Solozhko was in the Duma and I became good friends.

And over the course of that time, I personally have witnessed—having met regional officials and countless others—and recognize now the government has changed and I think for the worse.

I want to say two further things: In reviewing the testimony of an earlier hearing held by Sen. Wicker and attended by the chairman that I'm co-chairman of the CSCE, Sen. Cardin, remarks were made by Sen. Wicker wherein he quoted your client. Footnote right there for you and Freedom House and for the brave and courageous lawyers that are in pursuit of fairness and justice. You are now noticed and you are supported by all of us that believe that all citizens of the world are entitled to human rights.

Sen. Wicker quoted Mr. Khodorkovsky, which is almost poetry. He says, and I quote your client: "I really do love my country—my Moscow. It seems like one huge apathetic and indifferent anthill, but it's got so much soul. Inside I was sure about the people and they turned out to be even better than I thought."

I read recently, that in spite of that glass enclosure that he is in during this trial, with those of you that are there, that at least having served several years in a Siberian prison, that his spirit is not broken.

Please convey to him that the law is our will to continue to point out the injustice that he and Mr. Lebedev and your other clients are experiencing.

But then, Sen. Cardin closed with what I close with here today—just quoting him—he says, "I think that Sen. Wicker and I both believe"—and I'll now add myself to the list; I was not at the hearing with them that day—"believe in the Russian people. We believe in the future of Russia. Well, the future of Russia must be a nation that embraces its commitments under the Helsinki Final Act. It has to be a country that shows compassion for its citizens and shows justice. Russia can do that today by doing what is right for Mr. Khodorkovsky and his co-defendant. Release them from prison; respect the private rights and human rights of its citizens. Russia then will be a nation that will truly live up to its commitment, to its people, to respect human rights and democratic principles."

I don't know any way to say it anymore concisely or in a manner to convey why it is that the United States Commission on Security and Cooperation in Europe continues to put a lamp on this particular trial, show trial—shameless trial—and will continue our efforts in that regard in the future, both in Russia, elsewhere around the world and here in the United States as well—lest you think we don't criticize this group from time to time when injustices occur. Please note that we do and will continue.

You have my best wishes and I'm hopeful that you will stay as strong as you have been and I deeply, deeply appreciate Freedom House.

Mr. KLYUVGANT. Thank you.

Mr. HASTINGS. Thank you.

Mr. PARKER. Thank you, Mr. Chairman.

And thank you, Vadim, for a very moving and informative statement. We're certainly very grateful to be able to put you on the record here today.

Over the years—over these trials since 2003—we have certainly heard from a number of very qualified people on the team. We certainly very honored here to have Anton Drel in attendance; Mr. Drel is the personal attorney—the first attorney to meet with him following his arrest in 2003.

At this time, I would like to recognize my colleague Bobby Herman from Freedom House. Freedom House contacted us about this a month ago. We certainly were very happy and excited to hear that one, most importantly, Vadim, you would be here in town. I know when we met last year in Moscow, I was very much hoping that this would be possible. I'm very glad to see it come to fruition.

We're certainly honored, in a sense share a podium with Freedom House. We go back to 1976; Freedom House goes back to 1941. Certainly quite pleased at the announcement of new executive director who happens to have been a recent, former and very active member of our commission. So we were very happy to have those wires crossed, as it were. I'd like to recognize you for a statement.

Mr. HERMAN. Thank you very much, Kyle. I appreciate it.

And the co-organizing that we did this time was great, because we co-organized, but you did all the work. So we like that.

Let me thank you and offer a couple of comments on what is a very timely and important briefing. You've said, on behalf of Freedom House, where I'm the director of programs in support of fundamental rights and freedoms worldwide.

The subject of this session is of particularly intense interest to us, because it focuses the attention on the critical question of whether a citizen of the Russian Federation is able to access justice to the extent guaranteed in the Russians' constitution.

The case that we're discussing today is but one data point, albeit a high-profile one. The manner in which the defendant, Mr. Khodorkovsky, has been subjected to a barrage of new charges, deliberately timed to prolong his incarceration beyond the six years he's already served, has with good reason raised concerns in Russia and internationally about the sad state of the rule of law in present-day Russia.

Last year, Russian President Dmitry Medvedev himself expressed concern about what he called legal nihilism in his country. He was right to raise it. Notwithstanding some modest gains in a few areas in reforming Russia's judicial system, the overall picture is quite grim.

In Freedom House's annual survey of democratization in Central and Eastern Europe and the former Soviet Union, nations in transit, Russia continues to receive a low score for its legal framework and judicial independence for several reasons: The troubling lack of independence among judges, about which we've heard quite a bit, remains a serious shortcoming of the Russian legal system; political interference by high-level—high-level government officials is commonplace. There are numerous reliable reports of judges being pressured or coerced until rendering a particular decision and then generally conforming to Kremlin preferences.

At the same time, the culture of impunity prevails in Russia. One manifestation of this is that the mastermind behind the murders of prominent Kremlin critics have yet to be brought to justice.

The inability of the courts to enforce judgments is another systemic failure. Nearly half of the European Court of Human Rights judgments against Russia pertain directly to the failure to comply with the court's decisions. Pretrial detention often on baseless legal grounds is also a major weakness of Russia's judicial system—as was tragically highlighted by the death of Sergei Magnitsky last year. The use of torture or other forms of coercion to extract confessions from those in custody is wide spread.

Delayed legal proceedings—the matter with which Mr. Klyuvgant is no doubt frustratingly familiar—is yet another obstacle to obtaining justice in contemporary Russia. Finally, the lack of public information about the court cases seriously erodes citizens' confidence in the judicial process.

Legislation limiting the types of cases that go to jury trials has also moved in the wrong direction. The fact that, according to independent Russian research organizations, a full one-third of Russians believe that the current raft of charges brought against Mr. Khodorkovsky are political in nature—while another 50 percent say they don't have enough information to form an opinion—underscores the need for Russian authorities to be more, not less, transparent about the machinations of the legal system if anyone inside Russia or beyond its borders is to see it as a legitimate instrument of justice.

Let me close by observing that it's too easy to criticize from afar. Mr. Klyuvgant works within the Russian legal system in an effort to obtain justice for his client. We've listened intently to his account of the challenges that that entails.

Going forward, I think we share—we all share an interest in supporting those dedicated and courageous men and women in Russia who are working to establish the rule of law and to make the judicial process more transparent, accessible and fair.

Thank you very much.

Mr. PARKER. Thank you, Bobby.

The way we planned this briefing, we have a little bit of time, certainly, for some interactions, some audience questions. That's one of the features I like most about the briefing is we're able to get a little deeper into the topic. We are able to take public questions—which, by the way, will be transcribed and printed in our official hearing record.

Before we do that, I'd like to take a few comments and then open it up.

One of the things I was quite happy to see come out in your testimony was the human cost, the human dimension of this trial. It is a legal process that's being carried out, but it has a real profound human cost, certainly on the families of Mr. Khodorkovsky and Lebedev and certainly others involved. That for us is really a priority.

Here at the Helsinki Commission we have three dimensions as were set up in the Helsinki process: security dimension, the economic and cultural and the human dimension. But we were mandated by Congress, when we were set up, to focus on the human dimension.

And also, just to mention that this is not just a domestic affair. This is not something that just concerns Russia. Attention to it cannot be construed as interference in internal affairs. As the Russians would say, "kak ne stranno." The 1991 Moscow document that was unanimously agreed to by all the participating states in the OSCE enshrines that

messages that human rights are of sufficient importance and attention. That this type of interest cannot be construed or dismissed as the old interference in internal affairs.

This time of year, the OSCE usually holds the annual Human Dimension Implementation Meeting where everybody gets together in Warsaw, talks about how things were going last year, how commitments are being implemented. It's a large event, very interesting and lively, with lots of NGOs. It's also a forum where NGOs are able to speak on an equal basis with states. We line up in the morning and if the U.S. may be behind Freedom House or Tajikistan or whoever participates.

This year, because we have a summit for the first time since the 1999 Istanbul Summit, it has taken the form a review conference. I believe these issues—rule of law, access to justice—will be discussed on Monday, October 4th. I certainly expect the Yukos case and situation involving because it's obviously the case against Yukos oil, the conflict in The Hague and then there's also the personal prosecution of—might even say persecution of Khodorkovsky and Platon Lebedev.

One other thing I wanted to mention just along the lines of the human cost. One of my favorite pieces on this whole case, in the many years it's been written about, is an interview that Khodorkovsky did through an exchange of letters with Boris Akunin of the Russian Esquire.

I continue to go back to this piece and just mine it for the very moving, again, illustration of the human cost of it. Also, in a sense, the remarkable—the transformation, as it were, of Mikhail Borisovich from Russia's richest oligarch—someone who, as is commonly said, may have been no saint—to what appears to me as possibly the freest man in Russia: having had it all, having lost it all and remaining unbroken and being able to say those words that are really quite optimistic and almost seem incongruent with the situation.

I remember when he was transferred to Matrosskaya Tishina for the beginning of his trial, there was a picture, carried in the newswires, as he got out of a cramped prison van—he gets out and he gives a smile to the cameras. It's not a cynical smile. It's not an in-your-face smile. It's a warm smile to his country. Just a couple quotes and then we can open it up to question-and-answer.

Mikhail Borisovich says here, "I could have left, but after Platon's arrest, I regarded it as a betrayal. At the end of the summer, I took a trip and said my good-byes to my colleagues who were already beyond the border, and returned to Russia." Akunin asked, were there minutes when you regretted that you hadn't left? A very human answer: I don't know. There are probably two modest answers. Yes, I regret it every day; no, I don't regret it, because having left, I would not be able to live.

He's asked about his parents. And we have had the great privilege of meeting his mother when she was in town. "For them, honor was always dearer than their own life, definitely, and maybe even mine. So here I had no doubts." He talks about his children. "I very much hope that my children, too, knowing well since preschool that papa was in jail, will grow up understanding why I could not have done otherwise. My wife promises that she'll be able to explain this to them."

Another comment that struck me here: "Scoundrels are often more successful than decent people, but are they happier? That's the question. If they were happier, then we'd be living among nothing but scoundrels. In the world would triumph strength and meanness, but it's not at all like that after all. Strength loses out to courage, meanness to

honesty, hatred to love—not at first, but always in the end. The world becomes a better place.”

And he talks about what’s going on. “What is taking place is the advancement of the whims of the ones projecting downwards and into society their distorted moral principles. Well, what can you say about them? Pitiful, miserable people who, in their old age, will be scared of death.”

These, to me, are just profoundly moving words from someone who is, on one level, a vulgar businessman, in the business of making money. What could be more crass, particularly in the crazy ’90s in Russia? And yet, they sound similar to a Russian literary thinker, to someone who—circumstances, history, fate has chosen him for a different role. He’s in good company, frankly, having sat—as the Russians say—in Siberia.

Again, I’m very struck by it and I think it’s possibly one of the most interesting aspects of this case. To me, it’s far more interesting than rebutting ridiculous, absurd legal charges, particularly in the second case. I know, obviously, Vadim, you have to litigate those absurdities, so you must get involved in that drudgery.

But I’ll just finish on this vein, to quote the famous words of a beloved Russian Silver Age poet, Anna Akhmatova, and her “Requiem” that was written around the crucible and the tragedy and the nightmare of the Stalin era. Her son, Lev Gumilyov, was imprisoned. To me, there’s so much, sort of, appropriate in this comment that begins “Requiem”: “Not under foreign skies, not under foreign wings protected. I shared all this with my own people, there where misfortune had abandoned us.”

It’s obviously far more beautiful in Russian, but I think of a Mikhail Borisovich who doesn’t leave Russia and wage a proxy war from a foreign country, who returns and faces his fate with his people, through severe, turbulent and difficult years. With that, I don’t want to take any more time that we have for question and answer. I’d like to open it up to anything—comments, questions. Josh, you said there’s a mike. If you could come up to the mike, that would make it easier for the transcribers. Who wants to start?

If no one has a question, I will start with a question. I wonder what your take is on this—is there any sense or any speculation on the part of the architects of this fiasco that maybe it was a mistake? That the damage to Russia’s reputation has been too big and we’re beginning to have someone who is unbroken, is not admitting guilt. It makes it difficult even to pardon him. Or is this not the case, and will there be more? Could Luzhkov be next? Could Medvedev be next?

Mr. KLYUVGANT. I can say the following. We have no doubt whatsoever that there is quite a number of individuals among the Russian authorities, in the Russian government, who understand that this was a tragic, huge mistake, and one that needs to be amended and rectified anonymous individuals who make the final decision.

These individuals cannot make a decision themselves, but they are in a position to help the president make the decision, should the president wish to receive their help. As far as the actual architects of this situation, you’re exactly right. We are not in touch with them, but there is indirect evidence that even among them, there is not as much cohesion as there was two or three years ago, let alone seven years ago.

As far as the pipeline goes, I have no intention to try and forecast the future. What I can say is that in a situation where an individual cannot find justice in his or her own country, the judicial system is such that anybody and everybody can be next. It also means that people are not free and do not feel free when they live in such a society like that,

and with a government like that, because they are driven by fear. People who are not free cannot engage in genuine modernization.

Mr. PARKER. Thank you. We have probably 20 minutes. I will offer another question because I have quite a few. As I imagine what it must be like to defend a client like Mikhail Borisovich, have you faced any type of harassment in Russia?

Obviously, it's very high-profile, so the other question is, as an attorney, I assume it must be impossible for you to plot out a confidential legal strategy with your client. You can't go through a walk-talk with him. Is there anything that might be able to, sort of, shed some light for us on the daily grind of representing what the Moscow Times called Medvedev's Sakharov?

Mr. KLYUVGANT. Sorry, what was the point about Medvedev's Sakharov?

Mr. PARKER. Well, I said, representing a client who was called, a year or so ago in the Moscow Times, Russia's most famous political dissident.

Mr. KLYUVGANT. Thank you for this question. There was a USSR movie where a school student, a boy wrote that, quote, "happiness is when they understand you," unquote. In that sense, I feel happy right now, which almost sums up the entire answer to your question.

I don't think it would be appropriate to go into any kind of detail as to the difficulty of attorneys working with their clients. This having said, we—and I am referring to all members of the team—have been subject to pressure and harassment. Unfortunately, some of the members of the team cannot even live in their own country.

And we, of course, also understand that as we interact with our clients, sometimes there are more than two parties to the dialogue. The results of this invisible hand, this invisible presence, are very obvious because not infrequently, in the court room, the prosecutors will hint at or will simply show very clearly that they are informed of our meetings with our clients, and the substance of those meetings that we have with our clients, even though they were not there, or only as a fly on the wall.

And as far as Medvedev's Sakharov, or Sakharov of the Medvedev era, at the Matrosskaya Tishina prison, where Khodorkovsky is being held, there is no telephone in his cell, either landline or a cell phone. Should Medvedev wish to make a phone call to Khodorkovsky, as Mikhail Gorbachev once famously made a phone call to Sakharov, I believe the nanotechnology in question will come in very handy and make such a phone call feasible.

And if he can get through to Khodorkovsky on the phone, I will be happy to answer the call and act as a go-between and make sure that they connect. There's just one small problem, and that is that this phone call should actually be made. I think that for that to happen, President Medvedev needs help and assistance.

Mr. PARKER. Well, we know Russia is a leader in nanotechnology, so—anyone else? Ron, please?

Mr. MCNAMARA. Thank you very much. Ron McNamara with the Helsinki Commission. It seems as though there are many dimensions to Mr. Khodorkovsky's case, and can be looked at from many different levels. Certainly it has been pledged never to forget the truly human dimension, as has been touched on here.

In a certain sense, it might be easily dismissed as sort of a political vendetta, if you will, by certain powers that be that for whatever reason may have received Mr. Khodorkovsky's support of certain elements of Russian society as potentially a threat.

There was a mention made regarding the lawsuits of investors in Yukos, and I guess I want to raise the maybe indelicate question, because one thing I've learned from working on Capitol Hill for 30 years is that when you're dealing with people in society, when there is money involved, people pay attention very quickly. Obviously, we're talking about huge sums in the case of your client's potential foreign business.

So who has really benefited in a financial sense from the legal pursuit and hounding of your client? And while we see President Medvedev and Prime Minister Putin going through sort of the normal functions of their offices, it seems to me, it strikes me, as though they're involved in a lot of other transactions and things of that nature, and perhaps their modest financial-disclosure statements don't quite reveal the true attitude of the wealth and resources that they have been able to accumulate while serving in the public sphere in the Russian Federation. I realize it's somewhat indelicate, but why not?

Mr. KLYUVGANT. Actually, this is not such a hard question to answer because there are facts that suggest an answer, and those facts are well known. The bulk of what was taken away from Yukos and the individual shareholders, all ended up in one place. That place is known as the Rosneft Company—because chairman of the board is Mr. Igor Sechin, who, at the time the prosecution was just beginning, was deputy chief of staff of the Russian president, and these days he is deputy chairman of the Russian government.

So Rosneft Oil Company, which has since emerged as Russia's largest primarily because of the Yugos assets that it inherited, wanted to give official statements by Russian government officials. This company is now being scheduled for privatization. To what extent it will be privatized has not been announced. However, the fact that it will be privatized is beyond doubt at this point.

I am not going to set out the dominoes any further in this logical game. And as far as misreporting personal income, I've just read today, in a matter of fact, in news, that the Russian president has sacked a Russian general exactly for that, for lying on his resume. So I guess if that is the general happened to be the person that this kind of sacking practice had started with, apparently he must have been a most dishonest individual. But then of course, it suggests that I am thinking is possible, because I don't really have backstory there.

If I were to be more serious, I would simply say that we have yet to find out a lot of information and facts about this, especially on transparent aspect of the Yugos case that you had just asked a question about.

Mr. MCNAMARA. Thank you. I certainly would like to thank everybody for coming, and Vadim, it has certainly been a real pleasure to have you here. We receive you with great pleasure. This is obviously a very important case, it's a historic case for the development of modern Russia. I am not so optimistic about Washington's leverage or ability to affect the outcome of the case. Maybe I'm wrong, maybe it doesn't matter, maybe somehow, as you said, it can end justly.

But certainly, for our part, we will tell the story for the record, and I can assure you that this commission will not forget your client and the importance of this whole. So with that, the briefing is adjourned.



This is an official publication of the
**Commission on Security and
Cooperation in Europe.**



This publication is intended to document
developments and trends in participating
States of the Organization for Security
and Cooperation in Europe (OSCE).



All Commission publications may be freely
reproduced, in any form, with appropriate
credit. The Commission encourages
the widest possible dissemination
of its publications.



<http://www.csce.gov> @HelsinkiComm

The Commission's Web site provides
access to the latest press releases
and reports, as well as hearings and
briefings. Using the Commission's electronic
subscription service, readers are able
to receive press releases, articles,
and other materials by topic or countries
of particular interest.

Please subscribe today.