campaigns. So long as these people do not simply seek a share of the payoffs, such disappointed politicians can be potent forces for change.

Conclusions
Reforms that move a country toward democracy can limit corrupt incentives, but the result is not inevitable. The costs of electoral campaigns may produce a new reason for politicians to extract economic rents from firms and wealthy individuals. Candidates may collect illegal payoffs and then dispense them in favors to voters. Office-holders who expect to lose may be corruptible because of the insecure tenure in office that is the hallmark of a well-functioning democracy. In contrast, career politicians who seek reelection will be deterred from taking payoffs so long as their constituents disapprove. The independent sources of authority characteristic of most democratic systems help limit payoffs both by multiplying the checks on government behavior and by increasing the transaction costs for some types of corrupt deals. A democratic electoral system, standing alone, is an insufficient deterrent to corruption. Also important are vigorous outside checks, a division of power within the state and enforcement of the rule of law in commercial and political life.

ORGANIZED CRIME AND CORRUPTION IN RUSSIA: IMPLICATIONS FOR THE UNITED STATES AND INTERNATIONAL LAW

By Scott P. Boylan*

Introduction
During my "exile" to Siberia, I experienced Kleptocracy versus Democracy. My time there convinced me that Russia was still a feudal society. As long as the feudal lord delivered whatever was expected to Moscow, that person could do whatever he or she wanted in the region. Here in the United States, governments can put clauses in contracts to further social goals. For the most part courts enforce the law. But it is a mistake for Americans and Western Europeans to expect a similar legal mentality in Russia. In the Soviet days when officials put up a sign, "Don't Feed The Bears," everyone obeyed, but today nobody trusts any law. In one week alone, two visitors were mauled by bears at a Russian zoo because they no longer obey the signs—law has no legitimacy.

Russian police officers are not paid well, so bribery is understandable. In fact, when laws on bribery were recently passed, it became a crime to take a bribe, but not to offer one. The latter was felt to be unenforceable because of the volume of bribery attempts known to occur.

Currently, I am working on a project on parliamentary immunity for the American Bar Association’s Central and East European Law Initiative (CEELI). In Russia, parliamentary ministers can commit common crimes of force and claim immunity. Six parliamentary members have been gunned down since the creation of the “new” Russian Duma; crime is rampant. The Russian people feel things are out of control. To me, it is no worse than street crime here in Washington, D.C., but previously, without media coverage, the Russian (Soviet) people were not aware of most crime, while today they are because they have a free press that writes about crime.

Another important issue has been privatization, which I see as a political failure. In Russia, it has been a nightmare. We made a big mistake by assuming people looked at laws the same way we do. Only one country of the former Soviet Union, the Czech Republic, has a conflict of interest law. The Czech law passed in November 1995 and

* Senior Projects Coordinator, American Bar Association–CEELI. This is an extract from a longer article.
took effect in January 1996. The selling of stock and common ownership has just not occurred on a large scale in Russia because government and quasigovernment officials have worked the system to their own benefit.

People in power positions survive revolutions. The President of Russia today was a central figure in the Communist party. Now there is concern over the Communist Party taking over Russia again. I believe many Communists have retained power because they have retained their ties with black marketers who flourished under communism. The Communist Party has been described as the world’s biggest mafia. I do not think that is far from the mark. Recently, the central government in Moscow sent funds for food purchases to an outlying area. Within hours of the money arriving at the regional distribution point, it was in the Swiss bank account of a local strongman. With that introduction, I will turn to my formal presentation.

Organized Crime and Corruption in Russia

Corruption has become a way of life for government officials in Russia.1 Bribe-taking is, in fact, a widespread practice in the Russian bureaucracy.2 A number of American and other Western businesses are routinely paying bribes to Russian government officials in order to conduct their businesses in Russia.3 Indeed, the most prevalent crime in Russia is bribery.4 Of those charged with bribery and corruption in Russia, over 42 percent are government officials and over 25 percent are law enforcement officers.5 Not only do Russian officials routinely accept and even demand bribes,6 they have also entered into an illicit partnership with organized crime and illicit business groups.7 Former Communist apparatchiks who have continued in the Russian bureaucracy have exploited previously made black marketeer relationships to profit in the new system that has emerged during this new Russian Revolution. A partnership that was formed long before the attempted coup of 1991 by organized crime and communist government officials is now stifling the growth of democracy in Russia.8

Not only is the Mafiya killing and stealing in Russia, they are doing it in America as well.9 The Russian Mafiya is increasingly engaged in crime in the West.10 They are involved in “theft, extortion, money-laundering, gun-trafficking, drug running, prostitu-

---

2 See Nothing for Nothing, ROSSISKAYA GAZETA, Jan. 6, 1993, at 2. The author often heard that when American businesses negotiate commercial contracts, they are often, indeed always, requested to pay government officials for their acquiescence to the deal. These officials run from the low-level bureaucrat to the highest levels of the Russian government.
3 See Von Der Heydt, Russia's Spiritual Wilderness, POLICY REV., Fall 1994, at 12.
5 Since virtually all activities were controlled by the government in the former Soviet Union, there are now a large number of government officials in what would in the United States be private activity. See Journalists Hit TV “Mafiya,” MOSCOW TIMES, Oct. 5, 1994, at 10.
7 According to Russian police sources, there has been a gradual alliance formed between mafiya organizations, Russian government bureaucrats, and legitimate and illegitimate businessmen. As a result of this alliance, 70 percent of the privatization auctions where shams were the buyer was selected well in advance. IZVESTIA, Jul. 20, 1994 (final edition), at 1 & 5. Corruption “risks causing political unrest or—no better—a backlash against free-market reform.” MONEY TALKS, NEWSWEEK, Nov. 14, 1994, at 10.
9 “Just a few years ago, the FBI denied there even was a Russian mob.” Friedman, The Organizatsiya: Brooklyn’s Booming Russian Mob is Slicker, Smarter, and Much Meaner than La Cosa Nostra, N.Y. MAGAZINE, Nov. 7, 1994, at 50.
tion, smuggling, loan sharking, contract killing and more.\textsuperscript{11} The U.S. Department of Justice has established task forces to deal with the Russian Mafiya in New York, Los Angeles and Miami. The U.S. and Russian governments are cooperating in combating criminals who operate in the United States and Russia.\textsuperscript{12} The FBI has agents assigned to the Embassy in Moscow, and Department of Justice prosecutors are resident in Moscow. It is an easy conclusion that United States law enforcement agencies will be seeking to find various ways to combat crime imported from Russia.\textsuperscript{13} American businesses that pay bribes and protection money in Russia may be unwittingly financing Russian criminal activity back in the United States and may be opening their companies and themselves to criminal prosecution. According to Ulrich Schmid,

\begin{quote}
... [businesses] who pay protection money to the Russian Mafia are helping to cement anarchy for years to come and prevent the establishment of the rule of law in Russia. And those who hope that their compromises will in the long run promote the penetration of a less corrupt "Western Culture" are lying to themselves. If Russia recovers, it will be despite and not because of the Mafia—despite and not because of passive collaboration by foreign businessmen.\textsuperscript{14}
\end{quote}

It is apparent that it is not in the best interests of the United States for Russia to become a criminal oligarchy. Following the demolition of the Berlin Wall and the collapse of the Soviet Union, there was much euphoria about a potential future partnership among the United States, other Western democracies and a new democratic Russia. In some ways this partnership has resulted, but it has not been without its troubles. The initial euphoria has been tempered by the sobering reality. Optimism has surrendered to pessimism as the reality of Russia's difficult transition from a command government, economy and society to a liberal government, economy and society has presented Russia and the world with enormous difficulties and the Communist Party with opportunities. It has now become apparent that a major hurdle for Russia on the road to democracy is the problem of crime and official corruption.

Recent visits to Russia by American law enforcement officials have made it clear that the United States government is concerned about crime and corruption in Russia.\textsuperscript{15} The Director of the Federal Bureau of Investigation has said that the growth of organized crime in Russia and Eastern Europe is a "threat to the integrity of government."\textsuperscript{16} The Russian people also have expressed their deep concern about crime and its negative impact upon reform in Russia. President Boris Yeltsin has expressed concern about "maf-\textsuperscript{i}ya" influence in government and has said that "organized crime is persistently trying to gain access to Big Politics and the machinery of state."\textsuperscript{17}

The bribery of Russian government officials is undercutting efforts to create an open and democratic government in Russia. The United States government should not permit the American business community in Russia to work at cross-purposes with American foreign policy and indirectly finance criminal activity in Russia and the United States. The current administration in Washington is searching for means to combat the rise of

\textsuperscript{12} Russian Businessman Accused of Extortion, \textit{Moscow Tribune}, May 18, 1992, at 3.
\textsuperscript{13} The Director of the FBI's visit to the former Soviet Union and Eastern Bloc emerging democracies is but one example. \textit{How To Police an Ex-Police State, The Legal Times}, July 11, 1994, at 12.
\textsuperscript{15} Louis J. Freeh, Director of the FBI, visited Russia "to focus attention on increased threats from international crime groups, terrorism and drug trafficking." \textit{Int'l Herald Trib.}, July 9, 1994, at 2.
\textsuperscript{16} \textit{How To Police an Ex-Police State, The Legal Times}, July 11, 1994, at 12.
\textsuperscript{17} Izvestia, Jul. 20, 1994 (final edition), at 1 & 5.
crime and criminal elements in Russia.\textsuperscript{18} It is a cornerstone of U.S. foreign policy and the key to the post–Cold War era that democracy take root and flourish in Russia. Support of corrupt officials and organizations by private businesses in contradiction of this policy should not be tolerated.

The United States currently has the means to combat the payment of bribes by American citizens to corrupt Russian government officials through the Foreign Corrupt Practices Act (FCPA), which prohibits the payment of bribes or other illicit payments. The law was enacted by Congress to prohibit the payment of bribes to foreign government officials and to prevent any adverse effects such illicit payments would and could have on American foreign policy, foreign governments and American businesses operating abroad.\textsuperscript{19} Unfortunately, there has not been a vigorous enforcement of the FCPA vis-à-vis corrupt practices in Russia and the former Soviet Union.

Despite extensive Congressionally mandated lobbying by the foreign relations arms of the U.S. government,\textsuperscript{20} no other governments currently prohibit bribery of foreign officials. This situation may change should member countries enact a foreign corrupt practices act that has been drafted and recommended for adoption by the Organization of Economic Co-operation and Development (OECD).\textsuperscript{21} The OECD code would seek to make all the industrialized nations prohibit bribery of foreign government officials.\textsuperscript{22} While all industrialized nations prohibit bribery of their own officials, only the United States prohibits the bribery of foreign government officials.

The American business community in Russia should be aware that the U.S. government will likely seek to enforce this law with all due diligence. U.S. law enforcement agencies have already begun to cooperate with Russian authorities in combating organized crime and corruption. It is only a matter of time—and perhaps another Russian election—before Russian and U.S. law enforcement agencies recognize the potential of the FCPA in fighting official corruption in Russia. American businesses should take care that they are operating in Russia in a manner that does not work at cross-purposes with U.S. foreign policy. American businesses should take steps to ensure that their Russian operations are in full compliance with the FCPA so as to avoid crushing losses to their company in the future.\textsuperscript{23}

There has yet been no FCPA case to come out of Russia. American businesses should not, however, be lulled into laxity or a false sense of security. Crime has become the number one political issue in Russia, and the U.S. government has been seeking ways to assist Russia in her fight against crime.\textsuperscript{24}

Those instances of successful prosecution under the FCPA have come when foreign
governments have been cooperative in the investigation of acts of corruption in their own governments. Russia and its current administration have been asserting that they desire to root out corruption in government, although some legislators and ex-members of the Yeltsin administration have claimed this is not the case. Nevertheless, a change in leadership in Russia in the next few years could pave the way for vigorous enforcement of the FCPA. If a new Russian administration were to make combating official corruption a priority, cooperation with the United States on FCPA investigations would be one way to hit and severely hurt a source of bribe money.

It is apparent that by working together, the Russian and United States governments could use the existing FCPA to attempt to root out and punish corrupt Russian government officials and American businessmen who are making illicit payments to facilitate business deals. The two governments may already be working on such a cooperative effort.

It appears from discussions by the author with U.S. businesses that there is a cavalier attitude about doing business in Russia. Bribery of Russian government officials is viewed as necessary and not out of the ordinary. Many young MBA graduates who are working in Russia have never heard of the FCPA and this may spell potential disaster for the future of some U.S. corporations doing business in Russia.

Because of the handicap imposed on U.S. business by U.S. law, the U.S. government must be willing and able to support and assist American businesses abroad in their efforts to penetrate developing markets such as Russia.

The FCPA should be amended to provide for a private right of action. Furthermore, jurisdiction in such private actions should be extended to foreign nationals, partnerships, corporations and organizations that do business in the United States and that make a bribe or other prohibited action under the FCPA that adversely affects the business interests of a U.S. citizen, partnership or corporation or a foreign national, partnership, corporation or other organization doing business in the United States. This would be a clear extraterritorial extension of U.S. law and would certainly raise some protests from abroad.

If, however, the United States is serious about ending bribery of foreign government officials, the FCPA should be amended to provide for a private right of action. Furthermore, jurisdiction in such private actions should be extended to foreign nationals, partnerships, corporations and organizations that do business in the United States and that make a bribe or other prohibited action under the FCPA that adversely affects the business interests of a U.S. citizen, partnership or corporation or a foreign national, partnership, corporation or other organization doing business in the United States. This would be a clear extraterritorial extension of U.S. law and would certainly raise some protests from abroad.

If, however, the United States is serious about ending bribery of foreign government officials, the FCPA should be amended to provide for a private right of action. Furthermore, jurisdiction in such private actions should be extended to foreign nationals, partnerships, corporations and organizations that do business in the United States and that make a bribe or other prohibited action under the FCPA that adversely affects the business interests of a U.S. citizen, partnership or corporation or a foreign national, partnership, corporation or other organization doing business in the United States. This would be a clear extraterritorial extension of U.S. law and would certainly raise some protests from abroad.

26 Russian Senator Yuri Boldyrev of Saint Petersburg is a co-founder of the Yabloko faction in the Russian parliament. "Two years ago, he headed the control department of the Kremlin when his anti-corruption investigations got too close for comfort to high-ranking officials. President Yeltsin, Boldyrev says, asked him orally to halt an investigation of Moscow. When he refused, Yeltsin dismissed him." Senators Take Alternative Path to Opposition, MOSCOW TRIBUNE, Oct. 29, 1994, at 2.
27 See Reformers Face Crisis In 1995, MOSCOW TIMES, Dec. 31, 1994 at 1. Recent events in Korea in which the former President has been jailed for taking bribes is an example of political opponents punishing their former rivals for corruption. See Indictments of Ex-President, Business Chiefs Rock S. Korea, WASH. POST, Dec. 6, 1995, at A1.
28 The United States and Russia have already agreed to provide information to each other in their mutual fight against organized crime and corruption. "Russian Interior Minister Viktor Yerin said at the signing ceremony the exchange of information would be ‘very wide.’" See Ministry, FBI Sign Deal on Cooperation, MOSCOW TIMES, Jul. 6, 1994, at 3.
29 See Pines, Amending the Foreign Corrupt Practices Act to Include a Private Right of Action, 82 CALIF. L. REV. 185 (1994). The author argues that the FCPA should be amended to allow a private right of action among competing U.S. businesses. It is argued here that the Act should apply to all competing businesses, both U.S. and foreign, over which the court may have jurisdiction. The courts have been willing to apply the terms of the FCPA to foreigners and to apply the act extra-territorially. See Dooley v. United Technologies Corp., 803 F.Supp. 428 (D.D.C. 1992).
30 Although, at least among OECD member nations, there is definitely a realization that the combatting of bribery of foreign government officials should be given emphasis in the domestic laws of each member nation. Supra notes 22 and 23. Such action by the United States may be the catalyst needed to induce other nations to prohibit the bribery of foreign government officials by their nationals and prohibit favorable tax treatment for bribes under their domestic laws.
officials, it needs to take stronger action to persuade the other industrialized countries to take similar action and measures against the bribery by their citizens of foreign government officials. The private right of action with an extended jurisdiction will certainly send this message to governments around the world. The economy and business of the United States has become increasingly international. The U.S. government will need to take the leadership role in any effort to wipe out official corruption and the payment of bribes for pecuniary gain.

One of the main criticisms of the FCPA is that it has put U.S. businesses at a disadvantage. The institution of a private right of action in the FCPA should do much to diminish this perceived disadvantage. A private right of action would provide a lever in the U.S. and OECD efforts to achieve agreement among the world’s established democracies to combat the bribery of government officials and high-level corruption in the governments of their trading partners. Making businesses and businessmen in Germany, Japan and elsewhere legally responsible under U.S. law for illicit payments to foreign government officials will at a minimum create a dialogue about bribery and corruption among the world’s democratic trading nations. As was previously stated, all nations prohibit bribery of their own government officials. No nation condones bribery as a concept and the United States must take the leadership role in unifying world public opinion in opposition to the bribery of foreign government officials as well.

Change has been a constant in virtually all phases of Russian life in the past ten years. There is virtually nothing to indicate that this atmosphere of constant change will not continue for the next ten.

American business should expect and must indeed hope for the Russian legal system to become more predictable and efficient. American businesses should also expect continued cooperation between the United States and Russian governments. Such cooperation could lead to a substantial amount of corporate liability if the proper precautions are not now taken to ensure full compliance with the FCPA when conducting business in Russia.

**REMARKS BY SAHR JOHN KPUNDEH**

My focus will be on fighting and winning the battle against corruption as one of the many challenges in the transitions occurring in Africa. Indeed, this is one of the greatest challenges to the establishment and consolidation of democratic systems in Africa, where governments tend to be centralized. The lack of transparency and accountability contributes to the creation of a continent-wide breeding ground for corruption. Abuse is generally widespread in official circles. This abuse has fostered democratization by forcing groups within civil society to take reform into their own hands.

Public outrage against corruption in general and corrupt officials in particular began around 1990. Emerging pro-democracy forces not only asserted their rights to speak out and organize independently of the government but demanded accountability from their elected officials. High-level state corruption became a prominent target; its punishment and eradication were frequently demanded by those who rallied behind democratic banners. One could make the argument that in some of these countries, systematic corruption is a deadly sign that society can no longer effectively manage its resources for public purposes. The whole notion of "public" is meaningless because every resource is privatized, essentially appropriated for private gain at the expense of those members of society who can least afford it. This issue emerged particularly forcefully after some of these countries faced severe economic crises.

The argument could be made that corruption is certainly an aggravating factor for