TITLE: PERESTROIKA AND THE PROCURACY:
Organizational Resistance and Adaptation to Change

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EXECUTIVE SUMMARY

Despite all the upheaval within the Government of the Russian Federation in the past three years, the Procuracy has managed to protect and maintain its preeminent position within the Russian legal system. Given the centralized and hierarchical nature of the Procuracy, the law-and-order orientation of most prosecutors, and the bureaucratic inclination to preserve the broad-ranging powers of the Procuracy, the institution has tended to retard the pace of legal reform in Russia. However, the efforts of procuratorial officials to protect their agency's jurisdiction and powers has come at a high cost: in recent years the agency has become increasingly embroiled in high-level political controversies that have politicized its work and ultimately threaten to undermine its authority.

This research, conducted over a period of June 1991 to December 1993, draws on an extensive review of Russian legal writing and intensive interviews with Russian prosecutors, legal scholars, advocates, judges, and court administrators. The research project examined several broad areas of procuratorial change. The results are summarized below for each set of questions.

Resistance to Reform and Adaptation to Change

This research found that during the period 1985 to 1989 the policies of perestroika and glasnost had only a marginal impact on the functioning of the Procuracy. Prosecutors referred to changes in their operations during this period as largely "cosmetic." To some extent, procurators indicate they were following the lead of the Procurators-General Rekunkov and Sukharev, neither of whom were outspoken in favor of reform within the Procuracy. The change that occurred in procuratorial activity in late 1988 or 1989 was most often associated with (1) the reduction of interference by party officials in procuratorial activities, (2) reorientation of procuratorial attention from enforcing plan fulfillment by factories to the defense of citizens' rights and protection of the environment, and (3) Gorbachev's speech to the 19th Party Conference which stressed the need to institute "rule of law" in the USSR.

Individual prosecutors appear to have had considerable flexibility in promoting reforms within their organizations and they commonly categorize regional procuratorial offices as either "restructured" or "not restructured." Some prosecutors on their own initiative traveled to Kemerovo and other more reform-minded regions to investigate how local procuratorial offices were restructuring their work.
As we hypothesized, the most effective mechanism for changing the orientation of the Procuracy toward reform was personnel turnover. In those regions reputed to be especially progressive and pro-reform, we see a pattern of forced retirements of many older procurators. Several regional and central procuratorial officials confirmed the strategy of using "cadre policy" as a means of eliminating opposition from "old school" prosecutors that were resisting changes within the Procuracy. By contrast, in more conservative regions we found much lower levels of personnel turnover.

**Center/Periphery Relations and the Procuracy**

The break-up of the USSR presented the Procuracy with a fundamental dilemma. The Procuracy, since its inception in 1922, had always been a unified, hierarchical organization. Yet, the USSR was in form (if not in substance) a federal state. Valentin Stepankov, Procurator-General of the RSFSR, took advantage of the demands for power-sharing to push for devolution of power from the All-Union level to the republic-level. In so doing he openly challenged the power and authority of USSR Procurator-General Nikolai Trubin. The Trubin-Stepankov struggle mirrored the conflict between Gorbachev and Yeltsin.

With the collapse of the USSR, the issue of devolution of procuratorial authority has not been resolved, however. For example, in Tatarstan, a new constitution has been adopted that does not mention whether the institution is independent of the Russian Procuracy or not.

Stepankov and other prosecutors acknowledge that public distrust of the Procuracy to a considerable extent derives from public perceptions of it as a centralized institution of repression and coercion, much like the former KGB, police and armed forces. The fact that Russians and other Slavs dominated posts within the agency also heightened this perception in non-Russian regions.

**Politicization of the Procuracy**

Since the August 1991 attempted coup d'etat against Gorbachev, there has been a growing tendency for the Procuracy to become embroiled in high-level political controversies. The Procuracy of the RSFSR was charged with the prosecution of the coup's organizers and also the prosecution of the case against the Communist Party.

The Procuracy also was the target of liberal legal scholars who wished to use the momentum following the collapse of the coup to strip the Procuracy of its powers and transfer
most of those powers to the courts. These reformers argued that as long as the Procuracy remains predominant in the legal system, the courts will never be able to develop. The Procuracy's interests throughout the debates over a new constitution from 1991 to late 1993 were focussed on this question of the role and jurisdiction of the Procuracy within the Russian legal system, since the constitution would help to define these issues.

The Procuracy's position of wishing to defend its powers and jurisdiction increasingly aligned it with conservative forces in the Russian Parliament. Prosecutors also appear nearly unanimous in their skepticism about the ability of Russian courts to handle the volume of cases. They also express reservations about the introduction of jury trials, as an inappropriate "grafting of an American institution" on to the Russian legal system.

The conservative, law-and-order orientation of the Procuracy has been reinforced by prosecutors at all levels issuing protests against the actions and decisions of executive officials on the grounds that they have exceeded their legal authority. Laws and legislation are lagging far behind policy changes in Russia, yet the prosecutors have taken it upon themselves to insure that policy changes conform to the laws.

The new Constitution, approved by voters in December 1993, retains the central, unified structure of the Procuracy, presumably with all of its power intact. The election victory of conservatives in the Russian Parliament also seems likely to further solidify the Procuracy's position at the heart of the Russian legal system. The result will be not the termination of legal reform, but a marked retardation of such reforms in the foreseeable future.
PERESTROIKA AND THE PROCURACY:
A STUDY OF ORGANIZATIONAL RESISTANCE AND ADAPTATION TO CHANGE

RESEARCH DESIGN

Gorbachev's reforms of glasnost', perestroika, and democratization encountered extensive resistance after their introduction in 1985 and 1986. Much of that resistance was centered in powerful, bureaucratic organizations whose entrenched interests were threatened by the reforms. Among those organizations attempting to delay, redefine and subvert the reform efforts, the Procuracy stood out because it was the most powerful institution in the Soviet legal system. By mid-1991, however, the Procuracy, particularly the Procuracy of the RSFSR, began using its power and influence to accelerate the pace of reform and eliminate bureaucratic resistance to change.

Since its founding in 1922, the Soviet Procuracy has existed as a single, unified, hierarchical body charged with watching over "the establishment in reality of a uniform conception of legality" in the USSR.1 The Procuracy's powers are wide ranging. They include: criminal investigation and prosecution, supervision (review) or criminal and civil court cases, supervision of prisons and places of detention, supervision of the police and KGB, and supervision of the work of commissions on juvenile affairs. Under its power of general supervision, the Procuracy is also charged with supervising the proper and uniform execution of all laws by ministries, enterprises, institutions, local and regional soviets, social organizations, officials, and citizens.

The Procuracy was late in responding to the challenges of Gorbachev's reforms of glasnost', perestroika, and democratization. As an institution, it initially reflected a conservative bias, resisting both change and public challenges to its authority. The Procuracy's reactions to glasnost' and perestroika were shared by the police, the KGB, and the armed forces. By 1989, however, the Procuracy began to respond to growing political and public pressure to direct its attention to supervising new legislation relating to economic policy and organizations, including the Law on State Enterprises and the Law on Cooperatives. Greater attention also began being paid to guaranteeing the rights of citizens, especially in addressing some of the most blatant violations of criminal procedure. In response to public concern, the Procuracy also stepped up its supervision of enforcement of environmental protection legislation.
By mid-1991, the fragmentation of the USSR along ethnic and regional lines had confronted the Procuracy with the necessity of undertaking major structural changes. Some Soviet scholars even questioned whether a single, unified Procuracy could continue to exist in the new climate of nationalism. The Procuracy was founded as one of a few organs of state power that was strictly subordinated to the center. For 69 years the centralized Procuracy was able to coexist comfortably with the fiction of federalism in the USSR. However, with the emergence of nationalism and demands for genuine power-sharing, the Procuracy had to adjust. For many procurators that adjustment proved to be difficult.

This research, conducted with support from the National Council for Soviet and East European Research, examined the impact of Gorbachev’s reforms and the subsequent breakup of the USSR on the structure and operation of the Procuracy. The research investigated four broad areas of procuratorial change:

1. The response (or lack of responsiveness) of the Procuracy to reforms during the period of 1985-1989 was examined as a case study of the internal dynamics of organizational resistance to reform. The case of the Procuracy illustrates a particular pattern of resistance to change and how it was eventually overcome. As we will see, personnel turnover was instrumental in bringing about a reorientation of the Procuracy’s work.

2. With the rise of ethnic nationalism in the former USSR and increased autonomy of subnational units of government, the Procuracy had to adjust its operations. The research examines how the Procuracy tried to cope with this challenge to its centralized, unitary structure. This portion of the research helps us to address larger issues such as the redefinition of center-periphery relations within the context of a hierarchical, centralized organization.

3. In the wake of the attempted ouster of Gorbachev in August 1991, the RSFSR Procuracy took the lead in investigating and prosecuting those who supported the coup d’etat. This research examines the Procuracy as an organizational weapon—that is, as an instrument of regime change. Of particular importance is an attempt to assess whether this function of the Procuracy is consistent with its newly professed goals of developing a legal system governed by norms of due process and rule of law, or whether it represents a reversion to past patterns of using the Procuracy as an instrument of political repression in which legal norms and procedures are often sacrificed in the name of safeguarding the regime. This portion of the research has broader relevance for understanding the process of power consolidation in Russia, especially within the context of one of the country’s leading legal institutions. It will also shed some light on the legal values that are likely to predominate in the future, as Russia goes through the process of restructuring its legal apparatus.
4. A fourth set of research questions was developed and added to the research project as it developed. These questions concerned the politicization of the Procuracy leading up to the clash between President Yeltsin and the Russian Parliament in October 1993. The Procuracy became embroiled in the conflict between the Presidency and the Parliament. As a result of the disbanding of the Parliament, Procurator-General Stepankov lost his post. The more important question we will explore is whether the commitment to radical reform of the Russian legal system translates into policies that threaten to restrict the Procuracy’s powers.

DATABASE AND METHODOLOGY

The research draws on an extensive review of the secondary literature by Russian legal experts on the Procuracy, legal reform, and law enforcement. The majority of this literature was obtained directly from Russian legal scholars and procurators, although other background works were obtained from the Library of Congress and the University of Illinois Library. Because of the contemporary focus of this research project, and because many of the issues explored related to "behind the scenes" dynamics of change within the Procuracy, most of the information underpinning the research was obtained from in-depth interviews conducted in the USSR and Russia. Over the period June 1991 to November 1993, the author undertook 28 intensive (90-120 minute) interviews with procurators, legal scholars and legislative officials. Eighteen of the interviews were conducted with practicing procurators ranging in rank from the Procurator-General of the Russian Federation, Valentin Stepankov, to city procurators in Moscow, St. Petersburg, Nizhnyi Novgorod, Vladimir, and Kazan. The interviews were loosely structured, generally following a survey instrument developed specifically for this research project (see Appendix, page 28).

PERIODIZATION OF REFORM IN THE PROCURACY

The first task of this research was to focus on the periodization of the reform process within the Soviet/Russian Procuracy and to chart procuratorial attitudes toward legal reform across these periods. We begin with the period of initial resistance to reforms, through the critical 1989 time frame, to the August 1991 attempted coup d’état.

Background to Procuratorial Activity, 1985-1991:

The Procuracy was late in responding to the challenges of President Mikhail Gorbachev’s reforms. Initially, procurators, like other officials in the centralized organs of the police, security forces, and the military, reflected a conservative bias toward glasnost' and
perestroika, resisting both institutional change and public challenges to their authority. A series of articles by Arkadii Vaksberg and Olga Chaikovskaiia in Literaturnaia gazeta exposed serious violations of investigatorial procedure and attempts by powerful party officials to influence procuratorial handling of criminal and civil cases. Procurator-General Alexander Rekunkov, appointed under the Brezhnev regime, reacted angrily to "sensational journalism" that criticized irregularities of procuratorial performance. The Procuracy was roundly criticized at an October 2, 1986 meeting of the Politburo, where Gorbachev noted that the Procuracy needed to be restructured. On June 4, 1987, the Central Committee passed a resolution again criticizing the work of the Procuracy and demanded that the agency redirect its activities toward the protection of citizens' rights.

In the face of this criticism, Rekunkov was dismissed on May 27, 1988, and replaced by Alexander Sukharev, the former Minister of Justice of the Russian Republic (RSFSR). Sukharev's background was most unusual for a Procurator-General in that the bulk of his career had been spent in the Ministry of Justice--thus, he was a virtual outsider brought in to clean up the work of the Procuracy.

The 19th Party Conference of mid-1988 placed a heavy emphasis on developing the "rule of law state" in the USSR. In his address to the gathering, Gorbachev proposed transferring the bulk of criminal investigations from the Procuracy to the Ministry of Internal Affairs. Confronted with a threat to one of its central functions, namely criminal investigations, procurators begrudgingly began to voice support for the reforms, while actively resisting any substantive diminution of the Procuracy's authority.

It was about this time that the Procuracy reverted to its pre-1969 policy of issuing more protests than representations, and the majority of those actions concerned protecting the rights of citizens. But it also became evident during this time that the majority of the public did not trust the Procuracy. The Procuracy was widely perceived as an organ of state coercion. Instead, citizens preferred expanded access to judicial review of their grievances. The 1987 Law on Appeals (with subsequent amendments) expanded judicial review of citizens' complaints.

The reorientation of the Procuracy under Sukharev stirred up considerable resistance within the organization. Similarly, the notorious Gdlyan-Ivanov case exacerbated internal morale. On December 11, 1990, Sukharev was relieved as Procurator-General. He was replaced by Nikolai S. Trubin. The appointment of Trubin, a moderate with strong ties to Gorbachev, was consistent with Gorbachev's swing to a more conservative position in late 1990. Trubin had been most outspoken on the need to preserve the Procuracy as a unitary,
hierarchical, and centralized organ of state control and supervision. In his speeches and interviews he frequently alluded to the fact that the Procuracy was patterned on the French model. (However, France is not a federal state; it has a strong, centralized, unitary government and administrative apparatus.)

Trubin's leadership of the Procuracy began to encounter resistance almost immediately from more reform-minded procurators, especially at the republic level. For example, in the Russian Republic, President Boris Yeltsin appointed an aggressive reformer, the 39-year-old Valentin G. Stepankov, Procurator-General of the RSFSR on April 6, 1991. Prior to his appointment, Stepankov had served a prosecutor in Yeltsin's home city, Sverdlovsk (Ekaterinburg). At the time of his appointment, Stepankov noted that power was gravitating to the republics, and the USSR Procuracy, if it survived at all, will exist only as a coordinating body, having primary jurisdiction only in prosecuting violations of all-union laws.

Stepankov angered Trubin when he signed a separate protocol on May 27, 1991 recognizing the independent Procuracy of the Latvian Republic. This action caused a storm of controversy in the USSR Procuracy, where Stepankov was charged with violating the centralized, unified system of the Procuracy. But Stepankov responded that this unified system was breaking down anyway and that he needed to regularize relations with the prosecutor's office that was functioning in Riga to facilitate extraditions and other areas of cooperation in the fight against crime.

Stepankov also took the initiative to draft a new RSFSR Law on the Procuracy that granted the Republic procuracy sole authority in supervising the execution of all laws of the Republic. Under the provisions of the new law, the authority of the USSR Procuracy would be limited to enforcing all-union laws on the territory of the Republic "in coordination with the Procurator-General of the RSFSR." Even matters of personnel, training, and budget were removed from central determination.

Stepankov's stated objective was to use the Russian Procuracy as a tool for enforcing reformist legislation enacted by the Russian Parliament, which was a considerably more progressive body than the USSR Supreme Soviet or the Congress of People's Deputies. In this sense, Stepankov may be seen as a progressive. Yet on issues challenging the authority and jurisdiction of the Russian Procuracy (e.g. human rights, rights of accused persons, and expansion of court jurisdiction), he was quite conservative.

The Stepankov-Trubin struggle prior to the August 1991 coup attempt, created an uncomfortable situation for many regional and local procurators. For example, Dmitri Verovkin, Procurator of Leningrad, was by career service and temperament a conservative in
line with Trubin. He noted that the Leningrad prosecutor’s office had encountered problems because legal changes had not kept pace with political changes. For example, the criminal code still recognized speculation—the making of illegal profits. Verovkin indicated that he would like to continue to prosecute cases of speculation, but this is "out of favor" politically. Clearly, he was a man caught in the middle—more inclined toward Trubin’s orientation, but afraid of alienating his immediate superior, Stepankov.

Interviews with procurators confirmed that the reforms initiated by Gorbachev did not begin to affect procuratorial activity in a major way until 1989. Vladimir Eremenko, Procurator of Vladimir and later Procurator of St. Petersburg, indicated that from 1985-1986, the reforms were mostly "just talk," and from 1986 to 1988 they consisted only of minor changes in operating procedure. Aleksandr Bastrykin, Director of the Procuracy’s Institute for the Training of Investigators in Leningrad, noted that until 1988 procurators were expected to call factory and state farm directors to complain about underfulfillment of their plan production quotas. This changed in late 1988 and early 1989, not due to a directive from the center, but by a "changed orientation toward work" among individual procurators. During the period 1986-1988 minor changes began to be felt, particularly "in the public sphere" as glasnost' opened procuratorial activity to public and journalistic scrutiny. In Vladimir, however, Eremenko indicated that the process of restructuring the work of the Procuracy began somewhat earlier at his own initiative. After the 19th Party Conference in mid-1988, he called a meeting of all procurators under his supervision. He credits the 19th Party Conference, which emphasized the need to create a "rule of law state," and the passage of a new Law on the Procuracy in 1988 with reorienting the work of the Procuracy.

Procurators in provincial cities confirmed that changes began to be felt in the work of their offices only in 1989 and 1990. Saifkhan Nafeev, Procurator of Tatarstan, dated the changes in the Procuracy with the diminishing level of Party interference in its work. As of 1989-1989, he indicated, procurators no longer needed the approval of local party chiefs to do anything. In 1990-1991 party organizations ceased to exist within the office of the Procuracy. Aleksandr Fedotov, Procurator of Nizhnyi Novgorod, confirmed that the period of most rapid change in procuratorial activity came after the 1988 19th Party Conference which established procuratorial independence from the CPSU.

In Moscow, Vladimir Goncherov, Senior Assistant Procurator of the City of Moscow, reported that the Party maintained its control over personnel appointments within the Procuracy (nomenklatura) until the end of 1987 and that party organizations continued to exist in procuratorial offices until the summer of 1991. However, even with the formal elimination of
the nomenklatura system, party control over personnel matters continued to operate informally in many offices of the Procuracy. Bastrykin, director of the Procuracy’s institute for training investigators, indicated that he would lose his job if he dropped out of the Party.\textsuperscript{16}

To some extent, procurators agreed that changes (or resistance) within the Procuracy was a reflection of the general orientation of the Procurator-General toward political, legal and economic reforms. Rekunkov was a hold-over of the Brezhnev era, who was widely seen as a conservative, interested only in preserving the unitary and centralized structure of the Procuracy and its dominant role in the legal system. Sukharev was an academic jurist with no prior experience in the Procuracy. Although he was respected by many of the prosecutors interviewed for this project, he was viewed as an "outsider" and that limited in effectiveness within the Procuracy.

In 1991 procuratorial offices were reorganized by topic areas (e.g. departments for economic violations, ecological violations, criminal investigations, violations of social rights of citizens, etc.). The focus on ecological violations was entirely new. Along with this new focus on protecting the environment, many of the procurators indicated a much greater emphasis on protecting citizens’ rights, in contrast to the previous emphasis on economic violations.

At least one of the regional procurators, indicated that it was easier to enact reforms in the provinces than in the capital. Eremenko noted that while he was still procurator of Vladimir he had heard about the progressive reforms that Procurator Tseleznev, in Kemerovo, was carrying out. He visited the central Siberian city to see what they were doing. Eremenko observed that in the center it is harder to introduce change, not due to greater centralized control, but because the scope and number of the problems are greater and the environment is more politicized. In particular he noted the much greater role of the press and political factions in attempting to influence procuratorial work in St. Petersburg than had been the case in Vladimir.\textsuperscript{17}

Eremenko noted that most of the initial resistance to reform within the ranks of the Procuracy came in the form of passive resistance rather than active sabotage. By refusing to act on reform policies conservative procurators were able to stop or retard the reform process within the Procuracy.\textsuperscript{18}

\textbf{PERSONNEL POLICIES AND REFORM OF THE PROCURACY}

The most effective mechanism for changing the orientation of the Procuracy toward reform was personnel turnover. According to Eremenko, the single most important factor in
changing procuratorial activity has been personnel change.\textsuperscript{19} He indicated that the personality of the Procurator-General and other top-level officials in the agency had less effect than changing personnel in the ranks of the organization. The press also plays an influential role because it reflects public opinion.

Those regional prosecutors who were reputed to be especially reform-minded and progressive in the early 1990s generally forced the retirements of many of the older generation of procurators. The Procurator of Nizhnyi Novgorod, Aleksandr Fedotov, acknowledged that turnover in personnel was the most effective mechanism for changing the direction of procuratorial supervision in his city. He noted that since 1985 there has been substantial turnover within the Procuracy, although "old style" procurators still exist, especially among raion (local) prosecutors.\textsuperscript{20} In Moscow, rapid personnel turnover has resulted in a younger generation of prosecutors coming into the majority.\textsuperscript{21} N.A. Karavaev, Head of the Administration for Legal Security, in the central offices of the Procuracy, confirmed that there has not been much resistance to reforms within the Procuracy. He acknowledged that there were a few people of the "old school," but most of them have retired.\textsuperscript{22}

In procuracies marked by less reform orientation, personnel turnover has been marginal. For example, in Tatarstan, 13 of the 54 prosecutors (24\%) in the republic are serving their third terms (i.e. they have served between 10-15 years).\textsuperscript{23} The majority are of prosecutors in Tatarstan are in their second terms of service, having served between 5 to 10 years. In Tatarstan personnel changes were few in number under Gorbachev, but accelerated after the August 1991 coup. Saifkhan Nafeev, Procurator of Tatarstan, claimed that few if any of the procuratorial appointments in his republic were influenced by political considerations.\textsuperscript{24}

Part of the turnover in the ranks of the Procuracy is explained by the relative decline in procuratorial salaries and prestige. The prosecutors interviewed for this project were unanimous in the opinion that procuratorial salaries had not kept pace. Other reasons cited for procurators leaving were unpleasant work conditions, and declining status of procuratorial positions. Most procurators who leave are taking jobs in commercial ventures: joint ventures or private cooperatives and advokatura. Professor Vladimir Daev, Head of the Department of Criminal Law at St. Petersburg University Law School, confirmed that once procuratorial posts were the most highly prized job placements for new law school graduates. However, the popularity has fallen in recent years.\textsuperscript{25} Now, most law school graduates want to work as advocates or legal counsel to private coops or foreign corporations in Russia.
CHANGES IN PROCURATORIAL SUPERVISION

During the period of time of this study, the subjects of procuratorial supervision changed markedly. Prior to 1989, the Procuracy demonstrated a preoccupation with issuing representations against a variety of economic violations—falsification or padding of production reports, theft of state property, and substandard production. Representations far outnumbered procuratorial protests which are designed to address grievances of individual citizens when their rights have been violated. Beginning in 1989, however, procuratorial attention turned to citizens’ rights and protection of the environment. Deputy Procurator-General Karavaev indicates that since 1989 there have been more protests and fewer representations.26

With the election of new, more representative regional and local soviets in 1990, many people with no previous experience in party of government administration came into office. The level of legislative work of many local soviets was marred by procedural and substantive errors due to insufficient legal expertise. For example, of the 400 deputies on the St. Petersburg city soviet, only 26 (6.5%) had a legal education.27 In many instances, these political newcomers overestimated their political and legal authority, by issuing illegal acts, or improperly attempting to influence the work of the Procuracy. Although the Procuracy is structured as a unified, centralized organ answering only to the Procurator-General, deputies on the St. Petersburg Soviet often viewed the prosecutor’s office as a local organ, part of city administration and subject to the supervision of the mayor and city soviet.28 Eremenko argued that the "Law on Deputies," which granted them the power to demand disclosure of documents and to answer inquiries, does not apply to offices of the Procuracy. Deputies in the soviet have disputed this contention and this has led to conflict in the past.

The conflict between procurators and local and regional officials escalated in 1992 with the appointment by President Yeltsin of "prefects" or "governors" to each region, answering to him and charged with insuring the implementation of presidential decrees in their respective regions. Given the fact that many of these "prefects" were highly regarded young politicians with close ties to the President, they often felt they could act independent of local authorities and the law. In Nizhnyi Novgorod, the governor, Boris Nemtsov, undertook a bold plan for the privatization of small-scale shops and enterprises. The Procurator of Nizhnyi Novgorod, Aleksandr I. Fedotov, protested Nemtsov’s initiatives as contrary to the "Law on Privatization" passed by the Russian Supreme Soviet. "There was simply no legal basis for his [Nemtsov’s] actions."29 Fedotov reported that in 1992 the procurator’s office issued more protests against actions of the governor than against actions of the mayor and the city soviet combined. The Procurator’s office issued 15 protests against the acts of he provincial
governor and 10 against the soviet and/or mayor. All 25 protests related to economic reforms in the region and the city. In all but four cases, the protests were accepted and the action withdrawn or terminated. In the four cases where the procurator’s protests was not accepted, appeals were made to the court and in all four cases, the court sided with the Procuracy. Fedotov, although reportedly a staunch supporter of economic and political reforms, maintained that the reforms had to be carried out within the strict framework of the law and he took considerable pride in the success of his office’s aggressive enforcement of that view.30

Moscow displays a similar pattern. Vladimir K. Goncherov, Senior Assistant Procurator for the city of Moscow, reported that newly-elected deputies often tried to influence procuratorial supervision. In his view, their intrusions into procuratorial affairs were worse than the previous interference of party officials.31 In 1992 the Procuracy of Moscow protested more than 100 illegal acts of the Moscow city soviet. Perhaps the most noted case, was the procuratorial protest against Mayor Gavriil Popov’s reorganization of the city into prefectures. Approximately one-half of the protests issued by the Moscow city procuracy were satisfied. If the city soviet did not accept the procuratorial protest, the matter went to court, where, as in Nizhnyi Novgorod, the Procuracy won 100 percent of the cases.32

Goncherov attributes many of the illegal acts of prefects to the vague description of their legal powers. The presidential decree creating the positions of regional prefects or governors granted these officials the power to make specific decisions affecting individual parties, but did not grant them the power to issue normative acts of a general nature. He indicates, however, that many governors do not recognize the distinction and have been issuing decrees that exceed their power.33

Consultations with prosecutors in five regions of Russia displayed a remarkably uniform pattern of procuratorial protests issued against local and regional authorities who were pushing privatization of enterprises and state farms in the absence of proper decrees or legislation emanating from Moscow. In some cases, it appeared that local procurators were sympathetic with the direction of the reforms, but insisted that they be carried out within the framework of the law. In other cases, most notably in Kazan, it was apparent that the procurator did not favor the general direction of Yeltsin’s policy on privatization and was using the power of the Procuracy to retard it. Saifkhan Nafeev, Procurator of Tatarstan said: "Maybe we don’t always like the policies of reform, but we always supervise the full observance of the law."34 Nafeev, like his more liberal counterpart in Nizhnyi Novgorod, protested several proposed privatization schemes for state farms in Tatarstan. The grounds for the protests were that the privatizations were contrary to both republic and Russian Federation laws.
In a survey of 200 procurators conducted in eight regions of northwestern Russia, we noted indications that the Procuracy, as an institution, was in a state of transition. Procurators indicated that they were unsettled by insufficient legal definition of their powers and inability to enforce their decisions. Two-thirds (67.6%) of the procurators felt that existing legislation insufficiently defined the organs that are subject to general supervision. In particular, it had been long-standing practice that organs of internal security (KGB), Communist Party organs, and local and regional soviets were immune from procuratorial scrutiny. However, procuratorial supervision has now been broadened to include these bodies. For example, in St. Petersburg one officer has assigned to supervise the legality of activities of the KGB in the city, but that position is considered a dead-end post for one's career.

An even greater number of the respondents (92.5%) felt that their powers and responsibilities were insufficiently defined in law. As the status of procurators has fallen, many career officers have been saddled with menial jobs. The survey found that 87.1 percent of the prosecutors felt that everyday duties prevented them from effectively carrying out their general supervisory functions.

The survey also recorded frustrations that procuratorial actions are sometimes ignored by organizations and officials. Prosecutors were almost unanimous (94.4 percent) in favor of granting procurators the right to impose fines or other administrative penalties on parties for non-compliance with an order of the Procuracy. In the absence of the power to unilaterally impose fines, prosecutors have had to rely on securing political support from higher administrative authorities, party organs, labor unions or soviets to insure compliance with their representations. In issuing representations, 63.9 percent of all procurators found it useful to send a copy of their representation to a higher administrative organ, while 43.5 percent favored informing corresponding party organs, and only 36.1 percent sent copies of representations to corresponding executive committees of soviets, and 20.4 percent sent representations to labor unions.

The line between procuratorial supervision and meddling in administrative matters has always been fuzzy in Russia and the Soviet Union. Almost three-fourths (73.1 percent) of the responding procurators indicated that when they uncover evidence of legal violations in the operations of an organization, they make recommendations to officials in that organization. In 48.2 percent of the cases, they consider their recommendations to have a "legal character," and in 35.2 percent of cases their recommendations are not "legal" but have a legal effect. They
acknowledged, however, that only in 35.2 percent of all cases do administrative officials follow through on those recommendations.

If an official or organization ignores the representation of a procurator, procurators most often (60.9%) repeat the representation to the responsible official. Follow-ups to confirm that administrative officials are actually undertaking the corrective actions they indicated they would in their response to the procuratorial representation is most often carried out in the context of a special audit (56.6%), routine audit of plan records (31.5%), or follow-up communication with the official(s) (14.8%). In 12 percent of all cases, there is no follow-up to insure compliance with the representation.

Prosecutors frequently handled protests informally by issuing them orally over the telephone. 87.9 percent of all procurators surveyed indicated that they frequently issue oral protests. This is somewhat surprising since 85.9 percent of the procurators felt that a written protest is more effective. However, two-thirds indicated that a telephone protest is the quickest way to halt a violation and favor it for that reason. Less than one-third (31.4%) of the procurators asked the responsible official to appear at procuratorial offices to receive an oral protest, while more than one-third (35.1%) favored issuing a written protest, even when they wished to take speedy action in halting illegal actions.

The vast majority of procuratorial actions (both protests and representations) arise in response to a specific illegal actions of an official or agency. Only one-third of the procurators surveyed had ever issued a protest against the refusal of an official or agency to act.

A third power of the procurator is the order (predpisanie). Asked how frequently they issue orders, procurators responded: often 13.9 percent; 59.2 percent seldom; 12.9 percent never. About one-third of the respondents felt that the order was an insufficiently authoritative means of combating violations. When asked which instrument procurators prefer most often to challenge an administrative official they responded as follows: in a protest 2.9%, in a representation 85.9%, and in a resolution 37%.

Although procuratorial supervision is often portrayed as a form of external audit and administrative control, in reality procurators pursuing suspected violations often call on lawyers within the agency under scrutiny for assistance. More than two-thirds of the procurators surveyed indicated that they routinely utilize the assistance of jurisconsults. Most often procurators seek the assistance of legal specialists within the agency under review to assist in carrying out inspections (36.1%), checking out "signals" of violations received by procuracy offices (32.4%), and in consulting with procurators on measures to be undertaken to correct their agency's legal functioning (21.3%).
During the period of popular participation in the administration of justice during the 1950s and early 1960s it became common practice for offices of the Procuracy to enlist the support of "social helpers", teams of citizen-activists, to assist them in investigating complaints about legal violations and disseminating information about measures to prevent violations. This practice waned during the Brezhnev era. Only 16.6 percent of the prosecutors surveyed still use "social helpers," although slightly more than half of the prosecutors considered their use effective.

CENTER/PERIPHERY RELATIONS AND THE PROCURACY

One of the most fundamental challenges to the Procuracy's stature in the legal system has resulted from the fragmentation of power to subnational units of government. The devolution of authority began to occur in 1989, beginning in the Baltic republics, but accelerated with the regional and local elections of 1990. The danger of dissipating procuratorial authority preoccupied procurators at this time, especially procurators attached to the central offices of the Procurator-General in Moscow.

In 1991 Valentin Stepankov, Procurator of the RSFSR and later to become Procurator-General of Russia, observed that power was gravitating to the republics and the USSR Procuracy would become only a coordinating body, if it survived at all. To some extent, the struggle between Stepankov and Trubin mirrored the split between President Yeltsin of the Russian republic and Gorbachev, President of the USSR. In early 1991 Stepankov signed an agreement of cooperation with the independent Latvian Procuracy, which resulted in a storm of controversy for violating the centralized, unified system of the Procuracy. "It is a contradiction having a unitary, centralized Procuracy in a federal state," Stepankov observed.

Although some subnational units of government were assuming more power than others, little devolution of power was evident throughout the USSR. Konstantin Skvortsov, Deputy Director of the Institute of the Procuracy, noted that the central Procuracy was reluctant to give more power to republic procurators and that personnel matters were still tightly controlled from the center. Skvortsov was critical of Stepankov's efforts to "undercut" the powers of the central Procuracy. The struggle for predominance was placing local prosecutors in the uncomfortable position of having to choose sides between two superiors.

At the same time, Skvortsov acknowledged the need for a federal prosecutor's office, like in the United States, which would supervise the execution of federal laws in each region of
the country. In addition, in each republic there would be republic prosecutors to supervise republic laws.

Inter-procuratorial rivalries were compounded by conflicting legislation emanating from republic and central legislative bodies. This "war of laws" or "anarchy of laws" was a dominant concern of prosecutors throughout the period 1990 to 1992. Dmitri Verovkin, Procurator of Leningrad until 1992, was associated with USSR Procurator-General Trubin. He decried the threat of nationalism with "everyone pursuing the false hopes of sovereignty." Verovkin stressed the traditional structure of the Procuracy as a unified, centralized organ. Lidiia A. Nikolaeva, a professor at Leningrad University law school and leading specialist on procuratorial supervision, reiterated the view of the Procuracy as a unified, hierarchical organ of state power strictly subordinated to the center. Since 1922 the centralized nature of the Procuracy was able to coexist comfortably with the fiction of a federal state. However, with the emergence of nationalism and demands for genuine power-sharing, the Procuracy has had to adjust and for many that adjustment has been difficult.

In the Baltic republics there developed in 1991 parallel procuracies, one reporting to Moscow and another reporting to the republic. In Leningrad, Procurator Verovkin said he answered to both the Procuracy of the RSFSR and the Leningrad city soviet under the doctrine of dual subordination. However, Lenin explicitly rejected dual subordination for the Procuracy when he restored it in 1922.

In Tatarstan, the Procuracy of the Tatarstan "recognizes the influence" of the central Procuracy in Moscow, but maintains itself apart as a unified system within the republic. Saifkhan Nafeev, Procurator of Tatarstan, noted that in the period 1988-1989 a nationalist movement started in Tatarstan with the goal of total independence from the USSR. In 1990 the newly-elected Tatar Supreme Soviet passed a law on republic sovereignty. That law, among other things, established the Tatar Procuracy, but made it subordinate to the Procuracy of the Russian Federation and to the Supreme Soviet of the Tatar Republic.

The big issues in Tatarstan are legal and economic sovereignty. "The vast majority of the republic's resources were sold and the republic received little in return." Nafeev declared, "We want more control over our own resources." The pace of reform in Tatarstan has been slower than in the USSR, but more orderly. President Mintimer Shaimeev insists that everything proceed according to the law, Nafeev says. So far, President Shaimiev has been able to build a compromise with the parliament so that they have not experienced the gridlock that developed in Moscow. But neither have they
progressed very far to reform the former political and economic system. Shaimeev's power is personal, he has influence with many "fractions" in the parliament.

President Shaimeev took an active part in drafting a new constitution for the republic. That document, which was enacted and went into effect on November 30, 1992, makes no mention of the Russian Federation. Instead, the constitution states that Tatarstan is a "sovereign democratic state." The constitution establishes a Procuracy of Tatarstan, with no mention as to whether this post is independent of the Procuracy of the Russian Federation or not. Presumably, it is independent. Nafeev, muddies the waters by saying that while he is independent of the Procuracy of the Russian Federation, he naturally is influenced by decisions emanating from Moscow. In fact, Nafeev was named to his current post by Procurator-General Stepankov. He also noted that the chief procurators of cities and regions within Tatarstan are also named by the Russian Procurator-General. Only subordinate level procurators are appointed directly by Nafeev at the republic level. Similarly, the operating budget for the Procuracy of Tatarstan come almost exclusively from revenues provided by the government of the Russian Federation.

**POLITICIZATION OF THE PROCURACY**

From the 1991 attempted coup d'etat against Gorbachev's government through the events of October 1993, when President Yeltsin disbanded the Russian Parliament, there has been a growing tendency for the Procuracy to become embroiled in high-level political controversies. With the disbanding of the all-union level Procuracy of the former USSR, Trubin lost his post and was succeeded by Valentin Stepankov. The central offices of the former USSR Procuracy on Pushkin Street in downtown Moscow were taken over by Stepankov and his assistants, most of whom came from his offices in the Russian Procuracy. Personnel changes were especially evident in the regional and local procuracies after the attempted coup in 1991. Prosecutors who remained neutral or sided with Committee on the State of Emergency were purged, while those who vocally threw their support for Gorbachev and Yeltsin were allowed to keep their posts. According to several procurators interviewed for this project, their decision to oppose the organizers of the attempted 1991 coup was the only sensible course of action. Eremenko, who was Procurator of Vladimir at the time, viewed the actions of the Committee on the State of Emergency to be clearly illegal. He met with the executive committee of the Vladimir soviet during the early hours of the coup and convinced them of the need to uphold the Constitution and the legitimacy of duly elected officials of the USSR.
In the aftermath of the collapse of the coup, the responsibility for investigation and prosecution of the case against members of the Committee on the State of Emergency was assigned to Stepankov’s office in the Russian Federation Procuracy. Stepankov’s first deputy, Yevgeny Lisov, headed up the investigation. Inevitably, the prosecution of the case generated criticism and opposition as the defendants prolonged the process with numerous petitions and requests for medical postponements. Charges of bias were raised by the publication of a book, The Kremlin Conspiracy: The Investigation’s Version, by Stepankov and Lisov. The entire proceeding took on the atmosphere of a farce, which undercut the position of both the court and the Procuracy.

With the collapse of the USSR and the replacement of the former USSR Procuracy with the Procuracy of the Russian Federation, not all of the internal rivalries within the Procuracy were resolved. Initially, the failure of the coup dramatically weakened those elements that opposed the direction of the reforms—in politics, in the economy and in the legal system. The momentum had shifted to the “radical reformers.” Whereas Stepankov had earlier been viewed as "on Yeltsin’s team" and had proclaimed his intention of using the power of the Procuracy to eliminate opposition to reforms, including privatization, the Procuracy as an institution came to be viewed like the KGB, the CPSU and the armed forces. Soon after the 1991 coup the Communist Party was suspended and its assets frozen. The KGB was purged and reorganized. There were those that also wanted the Procuracy to be abolished or its functions limited to the prosecution of criminal cases. Leading the charge against the Procuracy was a group of academic jurists most of whom are affiliated with the Institute of State and Law. Included in this group were such notable constitutional scholars as Valery M. Savitsky, B. M. Lazarev, Aleksandr M. Larin, Marshchinkova, I. L. Petrukhin, and Zolotukhin. These scholars favor the creation of strong courts and have argued that such a court system cannot develop as long as the Procuracy occupies a dominant position in the legal system. According to high-level officials in the central Procuracy, these scholars greatly admire Western judicial systems and wish to emulate them in Russia, regardless of whether those systems are appropriate for Russia.47

The status of the Procuracy also became embroiled in the controversies surrounding the adoption of a new constitution and the delineation of powers between the President and the Parliament. The draft of a new Russian Federation Constitution, published on October 11, 1991 called for limiting the Procuracy to the prosecution of criminal matters in courts. The procurator’s power of general supervision would be assumed by a newly established People’s Ombudsman (Pravozashchitnik), appointed by the Russian Parliament to investigate actions of
government agencies, enterprises, local organs, and officials when those actions violate the rights of citizens. The investigatory powers of the Procuracy were to be taken away and vested in a special agency for criminal investigation. Supervision of the courts—a power long resented by judges—was to be granted to the Supreme Court of the Russian Republic.

The drastically scaled-back Procuracy envisioned in the 1991 draft Constitution of the Russian Republic coincided with the views of Russian Minister of Justice Nikolai Fedorov. In a speech before Russian judges in late October 1991, Fedorov noted that the Procuracy as a higher supervisory body of state power was a uniquely Soviet institution, a "sacred cow" created by Stalin and Vyshinsky. He denounced procuratorial supervision of the performance of the courts as a "legal atavism" and general supervision as a "totalitarian press" (zagliadyvanie). He argued that the only proper role of the Procuracy is to prosecute criminal cases in court. Limiting the role of the Procuracy, would, in his view, strengthen the court system and bring the Republic's legal system into closer conformity with established European norms and legal experience.

Rather than wait for a resolution of the constitutional questions surrounding the status and powers of the Procuracy, Stepankov pushed through the Supreme Soviet a new "Law on the Procuracy of the Russian Federation" in January 1992. It was especially urgent that this be done since the USSR Procuracy and its governing legislation ceased to exist officially as of December 31, 1991. Furthermore, Stepankov hoped to reinforce the powerful position of the Procuracy in a new law before opponents could mount an attack on the agency.

The new legislation preserved the Procuracy as a single, unified, and centralized institution charged with "supervising the implementation of laws by local legislative and executive bodies, administrative control organs, legal entities, public organizations, and officials, as well as the lawfulness of their acts." Article 2 specified that the procuratorial supervision extends to investigatory agencies, prisons and places of detention, and military units and their administrative offices. In each case, the Procuracy does not supplant the authority of the given agency, but is charged with seeing that proper procedures and laws are followed.

While the new law retained many of the broad supervisory powers of the Procuracy, provisions were introduced to depoliticize the institution. Article 4 stated that no political party organizations are permitted within the Procuracy. Procurators could not be members of elected or other governmental bodies if they would have to supervise the legality of the acts and decisions of such bodies. In practice, however, many prosecutors who had been elected to national, regional, and local soviets did not resign their posts. Stepankov, who was elected to
the Council of Nationalities of the Russian Supreme Soviet, continued to serve as a deputy until the October 1993 disbanding of the parliament by Yeltsin.

Article 7 gave the Procurator-General and his subordinate procurators the right to be present at sessions of the Congress of People's Deputies and the Supreme Soviet, and their counterpart bodies at subordinate levels. Thus, procurators at the city level had the right to attend sessions of the city soviet. The Procurator-General and procurators of the constituent republics also had the right of legislative initiative and could address parliamentary bodies at corresponding levels concerning their interpretations of laws. Finally, the Procurator-General and procurators of the constituent republics had the right to ask the courts at their respective levels to look into the constitutionality of various normative acts and to represent the Procuracy's interpretation of such acts in court.

The most important change in Stepankov's draft "Law on the Procuracy" was the elimination of procuratorial supervision over the activities of the courts. The law was consistent with the draft Constitution of the Russian Federation and the position of the Justice Minister Fedorov, who favored enhancing judicial independence by making the courts subordinate to the Supreme Court. Article 9, however, granted the Procuracy the right to investigate citizens' requests and grievances arising from court decisions as long as those cases are not under appeal or otherwise currently under court consideration. The Procuracy also retained its long-standing power to submit cassation protests (appeals) against unlawful or unfounded court decisions.

The draft "Law on the Procuracy of the Russian Federation" retained the Procuracy's powers of general supervision over the legality of activities of local administrative agencies, ministries, departments, economic and control agencies, enterprises, institutions, organizations and associations, military administrative organs, political organizations and movements, and officials, as well as local soviets. Heavy lobbying by Stepankov and his deputies in the Russian Procuracy was apparently successful in rejecting the provision in the draft Constitution for the creation of a People's Ombudsman.

The "Law on the Procuracy of the Russian Federation" was an attempt to balance the demands for greater judicial independence with the established legal culture of a centralized, unified and powerful Procuracy with broad-ranging authority to supervise compliance with the laws of the Federation. While procuratorial authority over the courts and the conduct of criminal investigations were substantially reduced, the Procuracy retained much of its earlier scope and power. The "Law on the Procuracy of the Russian Federation" did not resolve the fundamental question of the proper position of the Procuracy within the Russian legal system,
however. In the course of drafting a new constitution in 1992 and 1993, that question was revisited and again resulted in sharp differences of opinion within the legal community.

THE DEBATE INTENSIFIES

As the debate over the role of the Procuracy developed throughout 1992 and 1993, two dominant positions emerged—one favoring the maintenance of a strong, centralized and hierarchical Procuracy with a wide array of functions and another favoring strengthening the courts. The latter group argued that as long as the Procuracy dominated the legal system, the courts could never develop the legitimacy and independence nor receive the resources they need to become strong. Consequently, proponents of expanding the role of the courts, such as Minister of Justice Fedorov, tended to favor stripping the Procuracy of all of its functions except the prosecution of cases in court.

As proponents of legal reform have stressed the need to emphasize the development of the courts, the Procuracy has urged the preservation of its central place in the Russian legal system and the importance of retaining its broad-ranging powers. In April 1993 when a draft law was circulated calling for the creation of an independent investigatory agency, officials of the Procuracy, the Ministry of Internal Affairs, and the Ministry for Security (former KGB) quickly convened a press conference to voice their opposition to this plan. The same day they filed a case with the Russian Supreme Court, challenging the reduction of their investigatory authority. The Parliament eventually passed a law creating the State Committee on Investigations, but so far it exists only on paper. The Parliament failed to provide any appropriations or staff for the committee to function. The legal challenge to the establishment of the State Committee on Investigations is still waiting to be heard by the Supreme Court.

Even greater resistance was marshaled against attempts to abolish or curtail the Procuracy's powers of general supervision and this debate goes to the heart of the future of the Russian legal system. Stepankov and numerous other procurators have argued that court review of individual grievances is too complicated and costly for average citizens. N.A. Karavaev, Deputy Procurator-General noted that at present the courts lack the necessary personnel and resources to handle large numbers of cases. In many regions and districts of Russia today there is only one judge. In some instances one judge must cover as many as three districts to hear all cases—criminal, civil, family matters, probate, etc. Furthermore, Karavaev noted that many of the newly-elected judges are very young and inexperienced. He estimated that the development of an adequate court system may take 15 to 20 years.
Currently the Procuracy receives and reviews more than 100,000 complaints from citizens, most often relating to environmental pollution, housing disputes, pension disputes, labor rights, and the imposition of administrative fines. The review of these complaints results in approximately 13,000 formal protests every year, and many thousands more cases are handled with "informal protests" by prosecutors. Permitting all these complaints to be heard by the courts would further over-load the courts, which already are experiencing a seven-month backlog of cases. In contrast to court review of citizens' complaints, general supervision by the Procuracy has the advantages of being free, fast, and people are accustomed to it.

Procurators are especially skeptical about the introduction of jury trials in Russia. Deputy Procurator-General Orlov characterized prosecutors as "uniformly opposed" to them. He noted that jury trials have not been a long-established part of Russian legal history and culture. He noted that jury trials will lengthen the hearing of court cases, and have the potential for introducing biases and non-professional attitudes of citizens in serious cases. Orlov was especially critical that jury trials are being introduced on an "experimental" basis in 10 regions of Russia.

"They say they are just an experiment, but how can you experiment with someone's life in a murder trial? If the court releases a murderer it is bad, and if the court convicts an innocent man, it is bad too. The decision of the court must be professional." 56

More fundamentally, procurators argue that the current crisis conditions in the country require a strong, centralized agency to insure legality. This role has traditionally been played by the Procuracy. Despite Stepankov's earlier reputation as a pro-reform supporter of Yeltsin, since the 1991 coup he has gravitated to a much more status quo or conservative position. Rather than promoting reforms, procuratorial powers have been used more frequently to block reformist policies of Yeltsin and others when those policies lacked proper legislative foundation. This law and order orientation of the Procuracy found many allies among conservative deputies in the Russian Parliament, most notably Parliamentary Speaker Ruslan Khasbulatov and Vice President Aleksandr Rutskoi.

We noted earlier that in Nizhnyi Novgorod (Gorky), St. Petersburg, Moscow and Kazan, local prosecutors had successfully protested actions of provincial governors, mayors, or other prominent political officials. Even high-level policies have been reversed by
procuratorial protests. For example, Stepankov’s office issued a protest against the order of the State Bank calling in all ruble notes issued prior to 1993.57

Perhaps because it is using its powers to challenge the legality (and even the constitutionality) of the acts of executive officers (most of whom are Yeltsin appointees), the Procuracy is earning the reputation as a conservative, anti-reform institution with close links to the Russian Parliament. This characterization is only partly correct.

Procurators from Stepankov down to the provincial and local levels repeatedly point out that the pace of political and policy changes is far outstripping the pace of enacting new legislation. Thus, in the case of Nemtsov’s grand scheme for privatizing state property in Nizhny Novgorod, the prosecutor’s office correctly protested on the grounds that as yet there was no legal basis for him to undertake such a program. Legislation on privatizing most large enterprises in Russia has languished in the Russian Parliament. As long as procurators are charged with seeing that all legislative and executive decrees and actions conform to the law and as long as that law lags behind political developments, the Procuracy will inevitably act as a conservative force blunting the reform process. Deputy Procurator-General Karavaev succinctly summarized the dilemma:

It may be true that the Constitution and laws lag behind public opinion and that resolving the Constitutional dilemma may be impossible without first resolving the gridlock between the President and Parliament. However, to conclude that this Constitution is no longer valid and not to defend it and other laws of the country would lead to anarchy and that is not a viable answer.58

On the other hand, this conservative orientation coupled with Stepankov’s desire to preserve the status and power of the Procuracy has also resulted in the forging of close ties to Yeltsin’s opponents in the Russian Parliament. In November 1992 Stepankov convened a special emergency conference of prosecutors to express serious concerns over the on-going confrontation between the legislative and executive branches of the Russian Government. In his opening remarks Stepankov decried the rapid rise in violent crime. He went on to argue for the maintenance of a centralized, strong and independent prosecutor’s office, calling it "the backbone of the Russian Federation."59 He denounced attempts by some deputies and members of the President’s office to limit prosecutors’ rights and reduce the Procuracy’s functions to simply prosecuting cases in court. He noted that the Procuracy had become so marginalized that it was not even mentioned in the new draft Constitution worked out by the Constitutional Commission. "Given the unstable political situation, the incipient market, the upsurge in
crime and the aggravation of relations between nationalities, only the prosecutor's office can be a reliable guarantor of law and order and legality. It follows from this that prosecutors' powers must be broadened and that they must be given real assistance in material-technical and personnel support." 60 Ruslan Khasbulatov, Speaker of the Russian Parliament and leading opponent of President Yeltsin, spoke at the conference, echoing Stepankov's sentiments.

As the dispute between President Yeltsin and the Russian Parliament worsened early in 1993, Stepankov and the Russian Procuracy appeared to side increasingly with the legislative branch. On April 22 the Prosecutor's office announced that it had brought criminal charges against two of Yeltsin's top associates, State Secretary Gennadi Burbulis and Defense Minister Pavel Grachev. The charges accused the two of illegally selling military property abroad. 61 Less than one week later, Stepankov addressed the Russian Parliament to urge them to support the creation of a special commission to investigate corruption among government officials. The commission is accountable to both the Procuracy and the Parliament. The commission was granted special powers to conduct inquiries, interrogations, searches and the removal of documents from government offices, including those of the staff of the President and the Council of Ministers. Stepankov noted that the legislative branch was not immune to corruption, but acknowledged that the commission's attention would focus on the President's office and other executive branch agencies. 62 The principal targets of the probe were two additional Yeltsin aides: First Deputy Prime Minister Vladimir Shumeiko and head of the Federal Information Center, Mikhail Poltoranin. Shumeiko is the chief architect of Yeltsin's defense conversion program, while Poltoranin was widely blamed by conservative parliamentary deputies for supposedly biased television reporting prior to the presidential referendum of April 25, 1993.

The increasingly partisan role of the Procuracy in the political dispute between President Yeltsin and his adversaries in the Russian Parliament seriously undermined the agency's credibility and jeopardized the chances of its survival under a new constitution. Initially, the presidential draft constitution, circulated during the Summer of 1993, limited the Procuracy to three functions: the supervision of the legality of criminal investigations (but not the actual conduct of those investigations); the prosecution of cases in court; and the challenging in court of illegal acts of state bodies. 63 In other words, the Procuracy would be stripped of its power of general supervision. Furthermore, the presidential draft constitution granted the courts the power and responsibility to supervise the legality of procuratorial activity, a reversal of earlier roles when the Procuracy supervised the courts.
Perhaps the biggest blow to the status of the Procuracy occurred in late May 1993 when the Military Collegium of the Russian Federation Supreme Court ruled that Procurator-General Stepankov and Deputy Procurator-General Yevgeny Lisov committed "flagrant violations of the law while investigating the criminal case involving the Committee for the State of Emergency." The court indefinitely suspended the trial, pending the assignment of new prosecutors in the case. Stepankov and Lisov had published a book, The Kremlin Conspiracy: The Investigation’s Version, that appeared prior to the trial and which the court ruled violated the constitutional principle of presumption of innocence. The court’s ruling was called courageous by political commentators. According to the Izvestia commentator, the decision bodes well for the future of Russian justice, if not for the Procuracy:

One is surprised at the scrupulousness with which the military judges are following procedural rules governing the hearing of a criminal case. And it is even more striking that, for perhaps the first time, we are seeing a court ruling that makes direct references to the Constitution, human rights, the presumption of innocence and judicial independence. It is an impressive example of Russian justice.

This ruling together with Stepankov’s apparent siding with the Russian Parliament against Yeltsin in September and October 1993 resulted in the President asking for Stepankov’s resignation, which he tendered. Within days, Aleksei I. Kazannik, a law professor from Omsk University, was named to succeed him as Procurator-General. Kazannik had no prior experience in the Procuracy; his expertise was in environmental and administrative law. He did, however, have strong ties to Yeltsin. In 1990 when regional and local elections were held to newly-established legislative bodies, Boris Yeltsin narrowly missed being elected. Kazannik volunteered to relinquish his seat so that Yeltsin could become a member of the Russian Supreme Soviet. Kazannik’s appointment was widely viewed by procurators and legal scholars as a "reward" for this display of loyalty.

However, Kazannik surprised many within the Procuracy. Within his first month in office he called for the resignation of approximately one-half of Stepankov’s top assistants. Lisov, was reassigned deputy procurator of the city of Moscow. Kazannik ordered a review of all procuratorial employees even down to the local level, to assess how well they were performing their jobs.

Although he had no previous experience in the Procuracy, Kazannik was outspoken in supporting the preservation of the Procuracy’s central role in the legal system. Deputy
Procurator-General Orlov reported on Kazannik’s first speech to the staff of the Procuracy upon assuming office:

I have never been a defender of bureaucratic interests. I have always considered the general interests of society. But now, for the first time, I will act to protect and defend the interests of the Procuracy because those interests are the interests of the general population.68

According to Orlov, the “radical reformers” see the Procuracy as an instrument of repression from the former totalitarian regime. He responds to them: "Who didn’t serve the totalitarian system then?"

During the Fall of 1993, Kazannik mounted a strenuous effort to preserve the Procuracy’s status in various drafts of a new constitution that were circulating in the capital. When the final presidential draft of the Constitution appeared to limit the Procuracy’s powers to prosecuting criminals, Kazannik lobbied Yeltsin and within one day the section delineating the Procuracy’s powers was dropped. Kazannik argued successfully to leave out any listing of procuratorial powers from the constitution, which in effect meant that the Procuracy would continue to be governed by the 1992 "Law on the Procuracy."69 When asked whether they anticipate the need for a new law on the Procuracy in light of the approval of the new Constitution, procurators responded that the newly-elected parliament will be presented with the urgent need to draft and ratify many new pieces of legislation and that a new law on the Procuracy will be relatively low priority. This suits the interests of the Procuracy, since they fear that any reopening of the question of the Procuracy’s jurisdiction and powers would result in a constriction of those powers.70

The recent disputes and partisan wrangling point out clearly the extent to which the Procuracy and the rest of the Russian legal system has become politicized. If the Procuracy is removed from its dominant position in the Russian legal system, it will fall to the courts to fill the void. It remains uncertain, however, whether the courts are up to the task, given the absence of a history of courts with the power and independence to constrain the State and the low level of public awareness of the law and the unwillingness of citizens to seek judicial protection of their rights and interests. For now it would appear that the Procuracy has managed to preserve its central place in the Russian legal system. The election victory of conservatives in the Russian Parliament is likely to further solidify that position.
Endnotes


2Soviet scholars and procurators often refer to the French system as a model upon which the Procuracy was originally designed. However, France is not a federal state; it has a hypercentralized administrative system, which was conceived as a means to diminish the danger of regionalism.

3For example, see Literaturnaia gazeta, No. 38, 1985, p. 13; No. 2, 1986, p. 14; and No. 19, 1986, p. 12.


9Order No. 12 of the Procuracy of the RSFSR, May 27, 1991

10Draft Law on the Procuracy of the RSFSR, pp. 2-3.

11Consultation with Valentin G. Stepankov, Procurator-General of the RSFSR, Moscow, June 24, 1991.


16Consultation with Aleksandr Bastrykin, Director, Institute for the Improvement of Investigators of the USSR Procuracy, Leningrad, June 11, 1991.


18Ibid.

19Ibid.

20Consultation with Aleksandr I. Fedotov, Procurator of Nizhnyi Novgorod, April 7, 1993.

21Consultation with Vladimir K. Goncherov, Senior Assistant Procurator of Moscow, April 10, 1993.

Consultation with Saifkhan Kh. Nafeev, Procurator of Tatarstan, Kazan, April 6, 1993.

Ibid.

Consultation with Vladimir Daev, Head of the Department of Criminal Law, St. Petersburg University Law Faculty, June 11, 1991.

Consultation with N. A. Karavaev, Deputy Procurator-General, Moscow, April 9, 1993.

Consultation with Vladimir F. Mironov, former Chair of the Legislative Commission of the Leningrad city soviet, June 22, 1991.

Consultation with Vladimir Eremenko, Procurator of St. Petersburg, October 12, 1992.

Consultation with Aleksandr I. Fedotov, Procurator of Nizhnyi Novgorod, April 7, 1993.

Ibid.

Consultation with Vladimir K. Goncherov, Senior Assistant Procurator of Moscow, April 10, 1993.

Ibid.

Ibid.

Consultation with Saifkhan Kh. Nafeev, Procurator of Tatarstan, Kazan, April 6, 1993.

This survey was conducted in October and November 1989 under the auspices of the Laboratory for the Study of Procuratorial Supervision of St. Petersburg University Law Faculty and directed by Professor Lidia A. Nikolaeva.


Consultation with Valentin G. Stepankov, Procurator-General of the RSFSR, Moscow, June 24, 1991.

Ibid.

Consultation with Konstantin F. Skvortsov, Institute of the Procuracy, Moscow, June 24, 1991.

Consultation with Dmitri M. Verovkin, Procurator of the City of Leningrad, June 19, 1991.


Consultation with Saifkhan Kh. Nafeev, Procurator of Tatarstan, Kazan, April 6, 1993.


Consultation with Saifkhan Kh. Nafeev, Procurator of Tatarstan, Kazan, April 6, 1993.

This was alluded to in interviews with several prosecutors.

For example, consultation with Deputy Procurator-General Marat M. Orlov, Moscow, November 23, 1993; and K. F. Skvortsov, Deputy Director, Institute of the Procuracy, Moscow, November 22, 1993.

Rossiiskaia gazeta, October 11, 1992, p. 3.


ITAR-TASS, April 29, 1993.

Consultation with N. A. Karavaev, Deputy Procuracy-General of Russia, Moscow, April 9, 1993.

Ibid.

Ibid.

Consultation with Konstantin F. Skvortsov, Deputy Director of the Institute of the Procuracy, Moscow, November 11, 1993.

Ibid.

Consultation with Deputy Procurator-General Marat M. Orlov, Moscow, November 23, 1993.

Reported on ITAR-TASS, July 26, 1993.

Consultation with N. A. Karavaev, Deputy Procurator-General, April 4, 1993, Moscow.


Ibid.

ITAR-TASS, April 22, 1993.

Reported in Izvestiia, April 29, 1993, p. 2.

Izvestiia, April 30, 1993, pp. 3-5.


Consultation with Marat M. Orlov, Deputy Procurator-General, Moscow, November 24, 1993.

Ibid.

This account came from a consultation with Professor Aleksandr M. Larin, Institute of State and Law, Moscow, November 25, 1993.

For example, consultation with Deputy Procurator-General Marat M. Orlov, Procuracy of the Russian Federation, Moscow, November 23, 1993.
АНКЕТА

Имя и фамилия
Должность
Бывшие должности

1. Как приняли перемены работники Вашей прокуратуры?

2. Какие причины особенно повлияли на изменения в работе прокуратуры?

3. Какие перемены произошли в Вашей работе сразу после 1985 года?

4. Могли бы Вы привести конкретные примеры этих изменений в Вашей работе?

5. В какой период перемены в государстве стали радикально менять Вашу работу (в начале, в середине).

6. Является причиной изменения в работе приход новых людей и замена руководства или изменение политической обстановки в стране?

7. Как изменялась работа прокуратуры при назначении новых прокуроров, и какие характерные особенности в работе происходили при каждом генеральном прокуроре?

8. Происходили ли перемены в кадровой политике в Вашей прокуратуре при каждом новом Генеральном прокуроре?
9. Какую поддержку работа прокуратуры оказывает политике реформ, происходящих в России?

10. Как конкретно, работники Вашей прокуратуры осуществляют правовой контроль за переменами, происходящими в Вашем городе?

11. Были ли случаи нарушения в работе прокуратуры, связанные с проводимыми реформами?

12. Какие перемены в будущем могут произойти в работе прокуратуры; возможно ли ограничение ее функций по осуществлению прокурорского надзора?

13. Оказывает ли влияние на Вашу работу рекомендации политических лидеров, выступления в печати. Если да, то какое?

14. Чьи конкретные рекомендации могут повлиять на методы и стиль в работе органов прокуратуры?

15. Были ли случаи вмешательства в работу прокуратуры партийных руководителей после отмены 6 статьи Конституции СССР?

16. Когда произошла деполитизация органов прокуратуры в Вашем городе?

17. Как изменилась зарплата работников прокуратуры за последние время?

18. Остались ли привилегии для руководства прокуратуры (получение квартиры, дачи и т.д.)?
19. Изменилась ли роль работы в прокуратуре 1-х отделов? Если да, то в какой степени?

Принятие Нового Закона о Прокуратуре:

20. Почему действие новой системы выборов в Прокуратуру было отложено?

21. Какие вопросы были наиболее спорными при принятии нового Закона о Прокуратуре?

22. Кто были наиболее важные руководители, вовлеченные в принятие Закона и какие позиции они занимали в вопросах, перечисленных выше?

23. Как изменился процесс выборов в Прокуратуру России со времен августовского путча?

Связь между Центром и периферией:

24. Каким было распределение власти и обязанностей между Прокуратурой СССР, республиканскими прокуратурами и краевыми и областными прокуратурами при обсуждении Союзного Договора, предшествовавшего путчу?

25. Как изменилось распределение власти и обязанностей между Прокуратурой Российской Федерации, республиканскими Прокуратурами, и краевыми и областными прокуратурами со времени августовского путча?

26. В каких вопросах Прокуратура Российской Федерации имеет основные полномочия?
27. В каких вопросах краевые и областные прокуратуры имеют основные полномочия?

28. С кем консультируются краевые и областные прокуратуры в случае неуверенности относительно их полномочия или относительно того, как продолжать определенные дела - с Прокуратурой Российской Федерации или с областными прокуратурами?

29. На каком уровне принимаются персональные решения, касающиеся областные и местные прокуратуры? Изменилось ли это с 1985 г.?

30. Кто предоставляет бюджет для областных и местных прокуратур? Изменилось ли это с 1985 г.?

31. Какими были наиболее спорные вопросы при принятии республиканских законов о прокуратуре и кто играл основную роль в дискуссиях о принятии этих законов?

32. Будут ли краевые и областные прокуратуры (согласно вновь принятому законодательству об этих прокуратурах) иметь независимую юрисдикцию по определенным вопросам, находящимся в их сферах деятельности, или они будут на прямую подчиняться Прокуратуре Российской Федерации по всем вопросам?

33. Как прокуроры предполагают обходиться с конфликтами законов и процедур между краевыми и областными прокуратурами с переводом юрисдикционной власти в эти прокуратуры?

Прокуратура и последствия попытки путча:

34. Почему основная ответственность за расследование преступного участия в попытке путча легла на офис прокурора РСФСР, а не на офис Генерального прокурора СССР?
35. Какие специфические уголовные обвинения предъявлены организаторам путча?

36. Какие специфические уголовные обвинения предъявлены тем, кто поддержал путч?

37. Какие административные меры были приняты в наказание официальных лиц, поддержавших путч? Являются ли эти меры предметом апелляции со стороны вовлеченных официальных лиц?

38. Существуют ли противоречия между потребностью Прокуратуры защищать конституционный порядок в России против тех, кто хотел бы узурпировать этот порядок и потребностью установить легальную систему, основанную на надлежащих законах?

39. Если Прокуратура агрессивно наказывает тех, кто организовал и поддерживал состоявшийся путч, не опасно ли то, что общественностью это будет рассматриваться как возвращение Прокуратуры к ее прежней роли как инструмента принуждения в руках государства?