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**VERMONT-KARELIA RULE OF LAW PROJECT**

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April 28, 1998

Mr. William Hammink  
American Embassy Moscow  
USAID/Russia  
PSC 77  
APO AE 09721

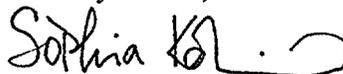
Dear Mr. Hammink,

Enclosed, please find the Vermont-Karelia Rule of Law Project Final Report submitted in accordance with Cooperative Agreement Number 118-A00-97-00092-00. We apologize for the delay in getting this hard copy of the report to you. This final report should be attached to the liquidation form SF 1034 which we submitted to your office in February, 1998.

As you can see from the report, 1997 was a very productive year for us and the results of our projects were even greater than expected. In addition to the Final Report narrative, we are also enclosing several examples of work-product from the year for your information.

Please let us know if you require any additional information. We appreciate the support of USAID in our Rule of Law efforts, and hope that you are satisfied with the work we have done. We look forward to an even more productive 1998!

Sincerely Yours,



Sophia Kolehmainen  
Director, Vermont-Karelia Rule of Law Project

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**VERMONT-KARELIA RULE OF LAW PROJECT**  
**Final Report**  
**January 1, 1997 - December 31, 1997**

The following Final Report is submitted in accordance with 22 CFR 226.51 and Schedules (E)(2) and (F) of Attachment 1 to Cooperative Agreement No. 118-A00-97-00092-00.

1. Cumulative expenditures for the reporting period, which is the entire period of the agreement, are shown on the attached liquidation form SF 1034.
2. The following are goals and accomplishments the Rule of Law Project met within the period of the Cooperative Agreement, January 1, 1997 through December 31, 1997.

**A. Establish a New Legal Community Partnership Between Archangel Oblast and the State of Maine** -- One of the challenges faced by the Vermont-Karelia Rule of Law Project in 1997 was the initiation and support of a new legal partnership between the state of Maine and the Archangel Oblast. The V/K Project successfully met this challenge, and the Maine-Archangel partnership is moving forward in 1998 with broad support in the legal communities of both partners. The following steps describe the development of the partnership in 1997:

(1) Initiation of the New Partnership in Maine: On request of Justice John Dooley of the Vermont/Karelia Rule of Law Project, Chief Justice Daniel Wathen of the Maine Supreme Court organized a Maine steering committee to build upon the preexisting Portland City/Archangel City sister-city relationship. The initial steering committee included a Justice of the Supreme Court of Maine, two trial judges of the State of Maine, the Dean of Maine Law School and one professor, and five members of the bar of Maine, including the President of the Maine Bar Association. The steering committee was briefed by Justice Dooley and chose Neale Duffett of the Maine bar as its initial representative to establish contact with the Archangel legal community. Mr. Duffett has been active in the Portland/Archangel relationship and has visited Archangel on three former occasions. Representatives of the Vermont/Karelia Rule of Law Project twice met with the Maine steering committee in the Spring to provide advice on developing its partnership relationship. Both meetings occurred in Portland. One meeting, held before the May trip, was attended by Jan Eastman, Esq., former President of the Vermont Bar and a principal in the Vermont/Karelia Rule of Law Project. The second meeting, held immediately after the May trip, was attended by Mark Oettinger, Esq., a Burlington lawyer and principal in the Vermont/Karelia Rule of Law Project

(2) Initiation of the New Partnership in Archangel: Alexander Petrovsky, Minister of Justice of Karelia, and Rostislav Doussaev, Dean of Petrozavodsk State University Law Department, established initial contact with the Archangel legal community for purposes of their choosing representatives to meet with Mr. Duffett in Petrozavodsk. The Archangel legal community chose the Chief Judge of the Regional Court, Michael Averin, one other member of the Regional Court and the Dean of Pomor State University Law School, Tatiana Zykina.

(3) Maine and Archangel Attend May Conference in Karelia: On May 28-30,

Mr. Duffett and the representatives of the Archangel legal community met in Petrozavodsk for purposes of observing events there and beginning to plan the building of the relationship between the Maine and Archangel legal communities. As discussed infra, Dean Zykina participated in the clinical legal education program that was put on by Jim May of Vermont Law School and the staff of the Petrozavodsk State University Law Department Legal Clinic. The Archangel judges participated in the Human Rights Conference. Neale Duffett monitored both to see how these events were organized and to learn about the subject of the conferences.

(4) May Trip to Archangel: Following the Human Rights Conference, Mr. Duffett, accompanied by Justice John Dooley, Professor James May and Professor Carl Yirka, traveled to Archangel to begin meeting with representatives of all components of the legal community to start planning future events. They were met in Archangel by Douglas Myers, a member of the Maine Bar Association and Senior Staff Attorney for ARD/Checchi, who has been involved in rule of law activities in Russia for the past two years. They met with the entire Regional Court, the Chief Judge of the Commercial Court, the Director of the Office of Justice, the faculty of the Law School, and various advocates and other lawyers. They explained the Vermont/Karelia legal relationship and the programs that have been done pursuant to it. Unanimously, the Archangel legal representatives support the creation of such a relationship between Maine and Archangel. Under the leadership of Chief Judge Averin, discussions began on a fall commercial law program in Petrozavodsk, with an extension in Archangel, and other programs to build the relationship. Archangel chose a steering committee that includes all the leadership of the legal community: Tatiana Zykina, Dean of the law school; Oleg Naumov, Chairman of the Commercial Court of the Archangel Oblast; Michail Grigorovich Averin, Chairman of the Archangel Oblast court; Victor Shiraev, Head of the Justice Administration for Archangel Oblast; Michail Anbreit, Chairman of the Presidium of the Oblast College of Advocates; Valentin Fedorovich Derbin, Director of the developing legal clinic at the law school; and Sergey Orexanov, procurator of the October Region of the City of Archangel.

(5) Law Dean Trip to Maine: At the end of August, Law Dean Zykina visited the United States to attend the ABA-CEELI training event on clinical education. Following the event, the Maine delegation paid to have her visit the University of Maine Law School for five days to view the clinic to discuss how the Maine Law School could help Pomor State University Law School and to plan future events in the Maine/Archangel partnership.

(6) Maine Co-Sponsorship of Fall Program in Karelia, and Follow-Up Program in Archangel: Following the trip to Archangel by Attorney Duffett, the steering committee met and chose three representatives to participate in the Fall program on taxation to be held in Karelia. Retired Justice Caroline Glassman of the Maine Supreme Court, commercial lawyer George Burns, and law professor and founder of the University of Maine Legal Clinic Judy Potter represented the Maine delegation at the conference. They actively participated in the seminar by attending the lectures and taking part in round-table discussions. George Burns presented an overview of the American personal income tax system, and fielded numerous questions. Two members of the legal community of Archangel, the dean of the law school, Tatiana Zykina, and the head of the law school's new legal clinic, Valentin Fedorovich Derbin, also attended the conference, enabling both sides of the Maine/Archangel partnership to observe

and participate in the Vermont-Karelia activities.

The Maine delegation then traveled to Archangel accompanied by one of the principals of the Vermont-Karelia project, commercial lawyer Mark Oettinger. They were also joined in Archangel by Neale Duffett. The primary purpose of the Archangel trip was to present a seminar on taxation similar to that in Karelia. As in Karelia, the primary presenters were Russians (Archangel lawyers and tax officials), but comparative presentations were made by Attorney Burns and Justice Glassman. About 100 persons attended this seminar.

In connection with the trip, the group met with the leaders of the legal community and the government. They had a personal meeting with the governor of the Oblast, and made new contacts in the government. They met with the Archangel steering committee to begin planning activities for 1998.

(7) Follow-up Activities in Maine and Archangel: The Maine steering committee met with Justice John Dooley in Portland in November to plan 1998 activities. Attorney George Burns published an article in the Maine Bar Journal describing the Fall trip and promoting the relationship. The Maine steering committee remains in regular contact with the Archangel steering committee through e-mail contact with the law dean. Both partners are actively seeking money from other sources, public and private, to continue their activities.

(8) Prospects for the Future: The prospects for the future of this partnership are excellent. Professor David Cluchey of Maine Law School has assumed the chairmanship of the Maine steering committee. Professor Cluchey is a specialist in Russian law who annually in the Spring teaches a course in comparative commercial law (Russian and US) at Saint Petersburg University Law School. The two steering committees have planned three main activities for the future. The first is the development and implementation of a legal clinic at Pomor State University Law Department, organized similarly to the clinic at Petrozavodsk State University Law Department. Professors from the University of Maine Law School will serve as consultants and mentors for the development of the clinic, a role similar to that assumed by James May of Vermont Law School. The law schools will pursue sister law school funds from USIA to support the clinic activities.

Justice Glassman of Maine and Chief Judge Averin have developed a proposal to establish a system of precedent for decisions in the Oblast and Commercial courts in Archangel. This proposal has been presented to the Council of Judges with the hope that it can find national funding from the Russian Foundation for legal Reform or another source.

The steering committees have also developed a program of seminars similar to the seminars done by UJRK and V/K in Karelia. If future funding is available from USAID, it is expected that the funds will go to these seminars.

In summary, the partnership is broadly supported in both legal communities and contains volunteers who will devote the necessary time to its development. The partnership has developed plans for the future and is actively seeking resources to fund them. The prospects that this partnership will continue are excellent. The goals and objectives for this partnership have been fully realized.

**B. Continue to Support the Development of the Leningrad Oblast - Maryland Partnership** -- Throughout 1997, the Vermont-Karelia Project continued to support the development of the Leningrad Oblast / Maryland partnership, to bring it up to the level of the Vermont/Karelia partnership. The Maryland/Leningrad Oblast partnership achieved this goal through the successful completion of an educational program in fiscal year 1997, and two programs in October and December 1997 (fiscal year 1998).

(1) Jury Trial Seminar in St. Petersburg in May: On May 26, 27 and 28, four representatives of the Maryland legal community put on a program on jury trials in St. Petersburg for a diverse audience of judges, procurators and advocates. The presenters were Justices Howard Chasanow and Alan Wilner of the Maryland Court of Appeals, Assistant Attorney General Melanie Lubin, and Professor Jennifer Lyman of George Washington University Law School. Also included as a presenter was Judge Natalia Gregorejva of the Moscow Regional Court. Judge Gregorejva has participated in many jury trials in the Moscow Court and also participated in the Vermont/Karelia Rule of Law Project training in Petrozavodsk in May of 1995. The audience for the program consisted of 30 judges from Leningrad Oblast, thirty prosecutors and thirty advocates.

(2) Fall Program in Maryland: In October, 1997, three members of the Leningrad Oblast legal community traveled to Maryland for a week. The delegation included the Vice-Governor of the Leningrad Region on Administrative and Legal Affairs (who is also a commercial lawyer), Anatoly Smirnov, and two Leningrad attorneys who specialize in commercial law: Svetlana Gusarova, and Nikolay Filippov. The primary purpose of the visit was to develop an agenda for joint seminars on commercial law. The three Russians arrived October 27 and spent the next five days involved in legal workshops focusing on various aspects of commercial/business law: business entity organization, corporate laws, partnership laws, limited liability companies, business taxation, trade secrets, alternative dispute resolution of business disputes, enforcement of civil judgments, organization of law firms, regulation of securities, and consumer protection. Several of Maryland's largest law firms participated in presentations and hosted receptions. The Leningrad lawyers stayed in the homes of Maryland lawyers. Following the presentations, representatives of the Maryland project and the Leningrad lawyers developed an agenda of joint seminars of most use to commercial lawyers and judges in the Leningrad region.

(3) December Program in St. Petersburg: Three representatives from Maryland traveled to St. Petersburg on December 12 to begin implementation of the agenda of commercial law seminars. Deputy Securities Commissioner Melanie Lubin, Maryland Court of Appeals Judge Alan Wilner, and Attorney Jan Guben, head of the commercial law department of Maryland's largest law firm participated in a three days of seminars focused on three principal topics - Alternative Dispute Resolution, Creditors' Rights and Judgment Enforcement, and Anti-Trust. The first two seminars were aimed at commercial lawyers and judges and were each attended by an audience of 50 persons. The latter seminar was aimed primarily at officials of the Leningrad Oblast Anti-Monopoly Committee, a group of about 20 persons. The Maryland representatives continued planning of joint activities with representatives of the Leningrad

government and legal community.

(4) Prospects: The Maryland/Leningrad partnership has continued to grow and develop, but in a direction different from either Vermont and Karelia, and Maine and Archangel. This partnership developed out of the sister-state committee, which unlike the committee between Vermont and Karelia, has centered on economic ties in the two regions. After a period of inaction, the Maryland/Leningrad sister-state committee has flourished in the past year, in part because of the rule of law activities. Although the leader of the rule-of-law effort will continue to be Judge Alan Wilner of the Maryland Court of Appeals, activities will be focused in the commercial and business law area where legal programs can facilitate the development of closer economic ties.

The direction of legal partnership suggests that it can become self-sustaining in the coming years. In fact, only about half of the cost of the seminar programs was born by USAID funds in 1997. Most of the rest was supplied by Maryland lawyers and law firms, including some of the largest firms in the state. The program continues to broaden its base of support in Maryland and develop strong ties with the Leningrad Collegium of Advocates.

As a result of the joint planning process, the partnership legal communities are pursuing funding for a demonstration program in the use of alternative dispute resolution in the regional arbitrazh court. Seminar programs in 1998 are expected to focus on tax policy and administration, and tax planning for businesses. Again, V/K believes that the goals and objectives for this partnership were realized in 1997.

**C. Conduct Educational Programs For Lawyers, Judges and Law Professors in Northwest Russia in Order to Spread the Work of the Vermont-Karelia Program** --- The third objective of the 1997 year was to conduct educational programs in Petrozavodsk for lawyers, judges and law professors from Northwest Russia, to spread the work of the Vermont-Karelia project. The Vermont-Karelia project conducted three programs which worked towards this goal in 1997, all of which were also used as demonstration projects for initiating the Maine-Archangel partnership (see above).

(1) Spring Program on Legal Clinics at Petrozavodsk State University: On May 28th and 29th the Vermont-Karelia Rule of Law Project sponsored a regional program on the general operation of legal clinics with a focus on the particular operations of the Petrozavodsk State University Clinic to representatives from other surrounding law schools. Deans and faculty from thirteen law schools came to this event; the furthest away was from Djakistan. The main presentations were made by Professor James May of Vermont Law School, and Professor Irina Sukhova and the remainder of the legal clinic faculty in Petrozavodsk. Included in the audience was Dean Tatiana Zykina of Pomor State University Law Department in Archangel. After the group activities, Professor May further consulted with law school representatives one-on-one on what it might take to establish a clinic in their particular law schools.

Professor May then traveled on to Archangel for the purposes of helping to establish a clinic at Pomor State Law School. As a result of his actions, the Archangel Law School has made initial arrangements for creating a clinic, and faculty at the University of Maine Law School, particularly Professor Judy Potter, has assumed the role of advisors and mentors.

(2) Spring Program on Human Rights: The second major event under this objective was a Human Rights Conference held on the same dates as the legal clinic program in Petrozavodsk, with an audience of about 200 persons. Although most of the audience was from Karelia, there were representatives in attendance from all the surrounding regions, including two representatives from Archangel. Among the presenters at the conference were a judge of the Russian Federation Constitutional Court (Judge Anatoly Kononov), and a judge of the Russian Federation Supreme Court (Judge Gennady Zhilin). Justice John Dooley made a presentation on human rights observance in the United States, in comparison with the Russian experience. The conference received extensive exposure in print and television media. A report of the conference was carried on Russian radio throughout the country.

The topic of human rights was chosen because it is very current in Karelia and in the surrounding areas. The Karelia legislature has recently established a Human Rights Committee which has responsibility for supervising the observance of human rights within the Republic and on reporting of any breaches of human rights. Members of committees in other regions were at the conference for purposes of information sharing on the operation of such committees.

The conference, and its success, continues to build the stature of the Union of Jurists of the Republic of Karelia, the official sponsor of the conference. This conference was particularly notable in that regard because it was organized and staffed almost entirely by the law student branch of the Union. The availability of many hours of law student time gives the Union the capacity to put on programs such as this on a very limited budget. It goes a long way toward making a UJRK self-sustaining.

(3) Fall Program on Taxation: The third program focused on taxation. Presenters included an expert on the new tax code from the Duma of the Russian Federation, three judges from the Supreme Arbitrazh Court of the Russian Federation, various Karelia judges and tax officials and American commercial lawyers from Vermont and Maine. As discussed above, the delegation from Maine also participated in this conference, and delegates from Archangel observed. The importance of the subject, particularly with broad interest in the new code pending in the Duma, and the high quality of speakers made this a most successful program. The program lasted two full days, and was attended by approximately 100 persons each day.

We consider the objectives under this goal to have been fully met. The clinical legal education program in Petrozavodsk, the first in Russia, is an important model for such programs to meet the great need for legal services in the people, while developing practice skills in the law students. Because of the subjects and the scope, and the use of national experts, the seminars attracted large audiences and were well received. The national publicity for the human rights conference increased the stature of UJRK.

**D. Maintain The Karelia Programs at a Lower Level for Demonstration Purposes--** Much of the activities for this goal are described above. One other activity occurred, which bears discussion. Professor Carl Yirka, Librarian of Vermont Law School, was included in the May trip to Petrozavodsk and to Archangel for purposes of instructing on the use of Internet

resources for legal research. At the end of 1996, using USAID resources under the subcontract with ARD/Checchi, V/K purchased for the Petrozavodsk State University Law Department an internet connection to the main University campus, with associated hardware. The internet connection became fully operational in March. Because of the internet connection, ten computers that were supplied by the Soros Foundation were moved to the Law Department for computer instruction at the Law Department.

Carl Yirka led classes on using the internet for legal resources. One of these instructional sessions was conducted for all of the representatives of law schools who were at the clinic conference and generated wide interest in the use of the internet in their law schools. Professor Yirka traveled on to Archangel and provided assistance on how an internet connection could be used at the Archangel Law School. The Law School currently has a computer classroom, but without an internet connection, and plans are underway to attempt to achieve that connection. If the connection is achieved, Professor Yirka will continue to assist in developing the legal resources curriculum in Archangel.

We believe that this objective for 1997 was fully accomplished. The Karelia programs remain in operation, although at a lower level. The continuing presence of Sergey Pavshukov, staff for the Vermont/Karelia Rule of Law Project and for UJRK, has enabled UJRK to continue to grow as the service provider and advocate for the legal community in Karelia. The operation of a healthy UJRK enables the Karelia demonstration to be used for spreading the model to other regions.

3. Conclusion: During 1997, the Vermont/Karelia Rule of Law Project transitioned from a program primarily aimed at developing legal institutions in Karelia to a program primarily aimed at developing new partnerships between the legal communities of American states and Russian regions. Although activities have continued in Karelia, they are primarily as a demonstration of the range of possibilities for new partners. Both of the new partnerships have picked out some activities from the Vermont/Karelia model. Although very different, both of the new partnerships are healthy and effective and can be expected to continue and develop new activities in the coming years. Both are beginning to develop their own resources outside USAID support. Based on this experience, V/K recommends that new partnerships be initiated in the coming years.

**VERMONT-KARELIA RULE OF LAW PROJECT**  
**FINAL REPORT**  
**TABLE OF ATTACHMENTS**

1. Maryland - Leningrad Partnership:
  - report on May 1997 seminar in St. Petersburg
  - summary of proposal for fall 1997
  - schedule of events for October, 1997 seminar with description of participants
  - topics for December, 1997 seminar
  - schedule of events for December, 1997 seminar
  
2. Vermont-Karelia Partnership:
  - schedule for May 1997 conference on Human Rights
  - list of attendees at May 1997 conference on legal clinics
  - materials used in presentation made by US delegation
  - schedule of events for Fall 1997 seminar in Karelia
  - materials from Fall 1997 seminar, in russian
  
3. Report on Professor Dycus' six week teaching trip to Karelia
  
4. Maine Arkhangel Partnership:
  - steering committee names
  - information about the Arkhangel law school
  - proposal written by Maine partnership to secure funds in USIA NISCUPP Program
  - bios for four Maine people who attended the Fall 1997 conference in Karelia
  - article written by Maine delegate on his experience at the fall 1997 conference



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July 29, 1997

Honorable John J. Dooley  
Vermont Supreme Court  
109 State Street  
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Dear Justice Dooley:

I am pleased to report to you on the recent seminar that we put on in St. Petersburg.

First, I am enclosing an accounting of the funds given to us for the May, 1997 seminar. We received a total of \$13,050 of the \$22,000 allocated for the project. Through careful management, we were able to keep our expenses well below the budget and have an unexpended balance of \$2,238.56. As I had indicated to you, we would like to be able to use that balance for the Fall, 1997 project. If that is not possible, we shall, of course, return the funds.

The seminar, in our view, and, more important, in the Russians' view, went very well. As you know, it focused on the impending reinstatement of jury trials in the Leningrad oblast in serious felony cases. The seminar was planned for an audience of 30 judges from the Regional Court, 30 prosecutors, and 30 advocates. We prepared and distributed to the audience papers, in Russian, explaining the American criminal justice system, including (1) a 14-page synopsis of the American criminal justice system, covering topics such as the sources of criminal law, the police and prosecutorial functions and how they are organized in the United States, and the criminal justice process from arrest through appeal; (2) a 7-page synopsis of jury trial procedure, (3) the juror questionnaire form used in Federal courts, (3) the jury selection plan used in Baltimore County, Maryland, (4) a synopsis of the Federal law on electronic surveillance, and (5) two chapters from Professor William Burnham's Book, *Introduction To The Law And Legal System Of The United States* (1995).

The seminar took place on May 26, 27, and 28, 1997. The first session, held at the Regional Court, ran from 1:00 to 5:30 p.m. It was introduced by Vice-Governor Smirnov, Presiding Judge Sudilovsky, Procurator-General Porukov, and Collegium President Denisova. Judge Natalya Grigoryeva, from the Moscow Regional Court gave a presentation on her experiences with jury trials in Moscow. There was, obviously, considerable interest in her presentation, and she fielded many questions. Professor Jennifer Lyman, from the

George Washington University Law School, gave a short presentation on the adversary system, and Professor Robert Percival, from the University of Maryland Law School, made a brief presentation on the history of jury trials. Judge Howard Chasanow, of the Maryland Court of Appeals, and Professor Lyman then demonstrated for the audience the contrast between the Russian practice of commencing a trial by reading portions of the indictment and the American practice of making opening statements.

The second session, on May 27, was trifurcated. Judge Grigoryeva and I met with about 30 judges from the Regional Court. Judge Chasanow and Ms. Melanie Lubin, Deputy Securities Commissioner of Maryland, met, at the procurator's office, with about 30 prosecutors, and Professors Lyman and Percival met at the Collegium with about 15 advocates. We had videotaped a mock American jury trial, produced a Russian transcript of that trial, and had the videotape dubbed into Russian. We also obtained a file from a mock Russian criminal case. At the judges' seminar, Judge Grigoryeva discussed in some detail the file from the Russian case, pointing out how some of the documents were legally flawed and would not be admitted in a jury trial. The point she emphasized (and fielded questions on) was that the judge must be more careful in enforcing the laws relating to investigations and evidence-gathering in jury cases than they seem to be in non-jury cases. I then played the tape of the American trial in segments, pausing to elucidate and entertain questions on each segment. The objective was to explain how our jury system works, how it differs from and is similar to the system envisioned by the 1993 Russian law, and some of the special problems and some of the positive benefits that arise from having juries.

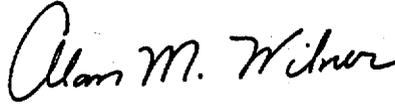
Essentially, the same format was followed in the seminar for the prosecutors, although Judge Grigoryeva was unable to make her presentation there. Judge Chasanow and Ms. Lubin went through the tape of the American trial and discussed the issues in the Russian case. Professors Lyman and Percival, meeting with the advocates, focused primarily on the Russian case, stressing the role of defense counsel as an advocate and as challenger of the Government's evidence.

The third day of the seminar, held in a courtroom, was devoted to a mock trial of the Russian case. Judge Grigoryeva presided. Two prosecutors and two advocates, selected by their respective groups, picked a jury from among the judges, prosecutors, and advocates, in accordance with Russian law. The prospective jurors had assumed other identities, to present a realistic panel. The indictment was read, and the prosecutors presented the victim as their witness. He was examined and cross-examined, the judge ruling on objections and explaining to the audience the basis of her rulings. The defense then called the defendant, who underwent direct and cross-examination. After closing arguments by counsel, the judge instructed the jury, and it retired to consider its verdicts. Those verdicts — acquittal on some charges, conviction on others — was generally regarded by both sides as fair. The morning session of the trial was taped by a local TV station for use in a program to be broadcast a week hence.

The next day, May 28, we met with Vice-Governor Smirnov, International Relations Committee Head Bulakh, Judge Sudilovskiy, Procurator-General Porukov, and others to discuss a continuation of the program. They were anxious to have it continued and to begin focusing on problems in the commercial law area. They also wanted to negotiate an extension and an expansion of the general Sister-State relationship between Leningrad and Maryland. They presented a draft of a new agreement and an invitation for Maryland Governor Glendening to visit St. Petersburg, which I gave to the Governor's Office on my return.

With kindest regards, I am,

Sincerely,



Alan M. Wilner

pc



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August 5, 1997

Honorable John J. Dooley  
Vermont Supreme Court  
109 State Street  
Montpelier, VT 05609-0801

Dear Justice Dooley:

This is to bring you to date on our plans for a project in the Fall of 1997 and to request specific approval for that project.

As I noted in my letter to you of July 29, 1997, Vice-Governor Smirnov, Mr. Bulakh, Judge Sudilovskiy, and Procurator-General Porukov were anxious that our next program address issues in the commercial law area. We discussed a range of such issues, including, but not limited to, contract dispute resolution, enforcement of judgments, banking relationships and financing, land development, and business organizations, including, at some point, the organization of law firms and Bar Associations.

Unlike a matter such as jury trials, which lent itself quite well to a seminar and demonstration approach, these are areas in which we need to learn a great deal from the Russians before we can be of much help. I see no value in our going over there to tell them what kinds of laws we think they should have or how we, operating with a very different legal system, go about forming business relationships and resolving disputes arising from them. Other groups have attempted that approach, with only marginal success.

What I propose is more focused and, I believe, has a much better chance of success in both problem-solving and in deepening and expanding the Maryland-Leningrad relationship. Specifically, I have asked Mr. Bulakh, through Ms. Malinovskaya, to identify three or four Russian lawyers from the oblast who are active in the commercial area and who are knowledgeable about the current state of Russian commercial law and the problems that are impeding economic development, both domestically and internationally. Once those persons are identified, I would propose that they develop a specific agenda of problems or issues within the areas noted above of concern to them and that they would be willing to discuss with knowledgeable American lawyers. Once the agenda is prepared, we would make every effort to obtain all relevant laws and regulations dealing with those areas, so they could be studied in advance by the American lawyers.

We would invite the delegation to come to Maryland at a convenient time in October, 1997 to meet in intensive, closed-door session with a small group of Maryland lawyers highly competent in business and commercial law. Those lawyers, from three major Baltimore firms, have already

been identified and are willing, and indeed eager, to participate. The format would be a frank exchange of information, the Russians explaining the problems as they see them and the Americans, dealing with as many of those problems as time allows, trying to offer some concrete suggestions and alternatives. The goal of this phase would be not only to bring American practical problem-solving expertise to bear but also to create solid working relationships that would survive and grow after this one project. I have discussed with some of the lawyers the prospect of having the Russians stay with them in their homes, which would not only reduce the cost of the program but, more important, help cement the relationship. As we did with the group that was here last October, we would attempt, through dinners and other social events, to introduce the Russians to a wider group of American lawyers and business and government people. I envision the Russian delegation being here about five days, with three days devoted to intensive meetings.

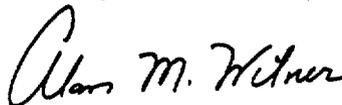
Phase Two would be a seminar in Leningrad in November, in which some or all of the American and Russian-lawyers who participated in Phase One would jointly discuss the problems, issues, and possible solutions with a wider audience of Russian lawyers, judges, and government people. During this return trip, we would explore (1) the success of the technique, and (2) if the parties desire, plans for further programs on that or some other basis.

To make this work, we would need a budget of at least the \$22,000 budgeted for the last program plus the ability to use the \$2,238 left over from that program. The major cost, of course, is the air fare and the per diem expenses. I understand the constraints imposed by AID, but it would certainly be helpful if some appropriate way could be found to reduce the air expense. We would make every effort to have the State provide transportation and other resources for Phase One and, as noted, to reduce the per diem expenses of the Russian delegation.

Because time is short, I will need an answer as to approval of funding fairly quickly. I can then press the Russians to identify their delegation and correspond with that delegation in terms of setting up an agenda. The lawyers on our end are willing to move into high gear as soon as that is done. Please let me know as soon as possible whether this is a "go."

With kindest regards, I am

Sincerely,



Alan M. Wilner

pc

PROPOSED SCHEDULE

**Visit Of Delegation From Leningrad Region  
October 27 - November 3, 1997**

**Monday (October 27):**

- 3:25 p.m.** Delegation arrives Dulles Airport, Washington, D.C. Met by Melanie Lubin, Esq., Deputy Securities Commissioner of Maryland, and transported to Pikesville Hilton Hotel in Baltimore.
- 6:30 p.m.** Private dinner at Pikesville Hilton Hotel hosted by Ms. Lubin and Judge Wilner.

**Tuesday (October 28):**

- 9:00 a.m.** Discussion of program and consideration of modifications; then free time for cultural and recreational activities; Ms. Lubin and interpreter accompany delegation.
- 6:00 p.m.** Reception and dinner hosted by Venable law firm at home of Jan Guben, Esq. After dinner, Vice-Governor Smirnov will be escorted back to Pikesville Hilton Hotel; Mr. Philippov will remain as guest of Mr. and Mrs. Guben; Ms. Gusarova will become guest of Sandra Gohn, Esq., partner at Piper and Marbury law firm.

**Wednesday (October 29):**

- 9:30 a.m.** Morning discussion session at Piper and Marbury law firm; discussion will center on business entity organizational structures; nature and governance of corporate, general and limited partnership, limited liability company entities; advantages, disadvantages, tax consequences.
- 12:30 p.m.** Lunch hosted by Piper and Marbury
- 1:30 p.m.** Continuation of discussion, including protection of trade secrets
- 5:30 p.m.** Reception and dinner at Center Club hosted by Miles and Stockbridge law firm

**Thursday (October 30):**

- 9:30 a.m.** Morning discussion session at Piper and Marbury; discussion will center on resolution of business disputes, including alternative methods of dispute resolution (arbitration, mediation, neutral evaluation and fact-finding)
- 12:30 p.m.** Lunch hosted by Piper and Marbury
- 1:30 p.m.** Free time for cultural and recreational activities; Ms. Lubin and interpreter will be available to accompany delegation
- 5:00 p.m.** Reception at State House (Governor's Conference Room) in Annapolis
- 6:30 p.m.** Dinner at Annapolis Yacht Club hosted by Maryland Sister State Committee

**Friday (October 31):**

- 9:30 a.m.** Morning discussion session at Office of Attorney General; discussion will center on enforcement of civil judgments, organization of law firms and bar associations, role of lawyers in creation and development of business entities, business deals, and business dispute resolution; presentation by Roberto Maclean, counsel to World Bank, on judicial reform efforts in Russia, and Charles M. Preston, President-Elect, Md. State Bar Association, on organization of law firms and bar associations
- 12:30 p.m.** Lunch hosted by Attorney General J. Joseph Curran
- 1:30 p.m.** Continuation of discussion on organization of law firms and bar associations and regulation of lawyers; also on regulation of securities (presentation by Melanie Lubin, Deputy Securities Commissioner), and consumer protection (presentation by Rebecca Bowman, Attorney General's Consumer Protection Division)
- 6:30 p.m.** Reception and dinner hosted by Piper and Marbury; Mr. Philippov and Ms. Gurasova will return with Vice Governor Smirnov to Pikesville Hilton Hotel

**Saturday (November 1):**

**10:00 a.m.** Discussion of program and detailed planning of Leningrad seminar in mid-December

**12:30 p.m.** Free time; transportation will be provided

**7:00 p.m.** Reception and Dinner hosted by Gordon, Feinblatt law firm

**Sunday (November 2):**

**10:00 a.m.** Free time; cultural and recreational activities; Ms. Lubin will accompany delegation; transportation will be provided

**6:00 p.m.** Dinner at Pikesville Hilton Hotel hosted by American delegation

**Monday (November 3):**

**9:00 a.m.** Tour of Washington, D.C. Ms. Lubin will act as host and guide

**4:30 p.m.** Transportation to Dulles Airport

**TO: ALAN M. WILNER  
JUDGE  
COURT OF APPEALS OF MARYLAND**

**FROM: MALINOVSKAYA OLGA  
INTERNATIONAL RELATIONS COMMITTEE  
LENINGRAD REGION GOVERNMENT**

**DATE: SEPTEMBER 17, 1997**

**SMIRNOV Anatoliy Aleksandrovich:**  
*Vice-Governor of the Leningrad Region on administrative and legal affairs*

Was born on the 15th of December, 1950, in Leningrad. In 1976 graduated from the Leningrad State University, the faculty of law. From 1976 to 1992 was in military service of the security services ( Head of the department on the prevention of organized crimes in the economic sphere). After discharge from the military service became the head of the administrative board of the St.Petersburg Mayor's Office (from 1992 to 1994). From 1994 to 1996 worked as a lawyer. Was at the head of a law-office specializing in the field of the legal support of business activities.

Since October 1996 has been the Vice-Governor of the Leningrad Region. Among functional responsibilities there are matters of interaction between the executive power and the bodies of justice and enforcement, law-courts etc. Since 1993 - professor of the faculty of law of St. Petersburg Humanitarian University of Trade Unions where his field is "Business security".

Has never been to the USA.

TO: ALAN M. WILNER  
JUDGE  
COURT OF APPEALS OF MARYLAND

FROM: MALINOVSKAYA OLGA  
INTERNATIONAL RELATIONS COMMITTEE  
Leningrad Region Government

DATE: SEPTEMBER 11, 1997

GUSAROVA Svetlana Petrovna:

Was born in 1964 in Sosnogorsk (Komi Autonomous Soviet Socialist Republic). In 1988 graduated from the Perm State University, the faculty of law. 1988 - 1991 worked as a legal adviser in the Department of the Housing and Communal Services of the Leningrad Region Executive Committee. Since 1991 has been working as a lawyer - member of the Leningrad Region Bar Association. Specializes in the field of commercial and business law and on the matters of real property. Speaks English on basic level.

FILIPPOV Nikolay Alekseevich:

Was born in 1949 in Leningrad. In 1980 graduated from the Leningrad State University, the faculty of law. From 1981 worked as a lawyer in the Leningrad Region Bar Association. Since 1996 has been a member of St. Petersburg United Bar Association. Specializes in the field of business and corporate law. Speaks English on basic level. Visited the United States many times as a lawyer with delegations of businessmen and with official delegations. The last visit was in January 1997 as a member of delegation from St. Petersburg in the framework of the Festival "Vivat St. Petersburg" (New York).

Maryland-Leningrad  
Oct 1997 & Dec. 1997



ALAN M. WILNER  
JUDGE  
COURT OF APPEALS OF MARYLAND  
COUNTY COURTS BUILDING  
401 BOSLEY AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-2677

November 17, 1997

Honorable John J. Dooley  
Vermont Supreme Court  
109 State Street  
Montpelier, VT 05609-0801

Dear John:

Please excuse the delay in sending this letter. Court was in session last week, and this is really the first opportunity I have had to compose this letter.

As I mentioned to you on the telephone, the visit here of the delegation from Leningrad went quite well and mostly according to the schedule that I had sent you. I received on Friday the official invitation for the seminar in St. Petersburg, a copy of which is enclosed. We will be addressing three principal topics — Alternative Dispute Resolution, Creditors' Rights and Judgment Enforcement, and Anti-Trust — and we will be focusing on three groups — lawyers from the collegium, judges, and government personnel. I have made contact with the World Bank, which recently approved a substantial grant for judicial reform in Russia, and will be meeting tomorrow with one of the officials connected with the administration of that grant.

Our delegation, listed in the invitation, will leave for St. Petersburg on December 12, 1997, arriving there on the 13<sup>th</sup>. The seminar will run from Monday, December 15 through Wednesday, December 17. Thursday we will use to plan the next program, and we will depart for home on December 20.

Melanie is concerned about some new rules governing expenses that might prove unworkable. I will call you separately about that matter. Otherwise, we are busy planning for the seminar. Please let me know if there is anything else you need from me.

With kindest regards, I am

Sincerely,

A handwritten signature in cursive script that reads "Alan".

Alan M. Wilner

Enclosure

English and became very interested in arbitration while at Yale. I met her at the office of the above-mentioned Arbitration Court in November. Elena has an e-mail address: 70372.2541@compuserve.com

I do not know where the event in St. Pete are taking place, so I couldn't tell any of the people mentioned herein. If you want any of them to attend and have trouble reaching them, feel free to send me information and I'll pass it on to them on Monday.

Sorry I can't be there. Best of luck and let me know if there's anything I can do.

Sincerely,  
Patrick Murphy

---

From: Patricia Carter <Patricia.Carter@courts.state.md.us>, on 12/10/97  
3:35 PM:

I was sorry to learn from John Dooley that you and Keith would be unable to join us in St. Petersburg. I was looking forward to having you observe the seminars and discussing future plans. I am including an outline of our program on creditors' rights and alternative dispute resolution. The outline for the anti-monopoly material is not on my computer, and I therefore can't send it e-mail but will mail or fax you a copy if you wish.

There is a great interest in Maryland over extending our relationship with the Leningrad oblast. There are a number of business people here who are actively engaged in business transactions in both the city of St. Petersburg and the oblast, and, indeed, one of them will be there during our visit.

I hope that you have a happy holiday season and a good new year. Please give my best to Mark Ward.

Alan M. Wilner

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## CREDITORS' RIGHTS AND JUDGMENT ENFORCEMENT

### I. PROTECTING ONESELF BY GETTING INFORMATION IN ADVANCE ON PROSPECTIVE CUSTOMERS, SUPPLIERS, AND OTHER BUSINESS PERSONS

- A. Information Available in United States
  - 1. Land and court records
  - 2. Credit Reporting Services (sample)
  - 3. Government Agencies
  - 4. Banks, customers, creditors
- B. Information Available in Russia

### II. SECURITY FOR OBLIGATIONS USED IN UNITED STATES

- A. Personal guaranties
- B. Corporate bonds/sureties
- C. Letters of Credit
- D. Escrows and trust arrangements
- E. Liens
  - 1. Land: mortgages, land installment contracts
  - 2. Personalty: Uniform Commercial Code secured transactions
  - 3. Other

F. Confession of Judgment notes

### III. IMMEDIATE ENFORCEMENT/PROTECTION IN UNITED STATES

- A. Attachment of property before judgment
- B. Injunctive relief against disposition of property prior to judgment
- D. Lis Pendens
- E. Federal Bankruptcy/State Insolvency Proceeding

### IV. POST-TRIAL ENFORCEMENT IN UNITED STATES

- A. Kinds of Judgments
  - 1. Money \_ enforceable against property
  - 2. Injunctive/Specific Performance \_ enforceable by contempt and through court-appointed trustee
- B. Money Judgments
  - 1. Recorded in court records
  - 2. Immediate lien on land
  - 3. Supplementary Proceedings to discover assets
  - 4. Execution on personal property
  - 5. Authority of sheriff/marshal
  - 6. Procedure
    - a. Foreclosure on land
    - b. Execution on personalty
      - i. Debtor in possession
      - ii. Garnishment/attachment

### V. FEDERAL BANKRUPTCY/STATE INSOLVENCY PROCEEDING

## ALTERNATIVE DISPUTE RESOLUTION

### I. LITIGATION PROCESS IN UNITED STATES

- A. Pleadings
- B. Complaint
- C. Motion testing legal sufficiency
- D. Answer
- E. Discovery
- F. Trial
- G. Judgment
- H. Appeal

### II. DISADVANTAGES OF LITIGATION

A. Expensive and Time Consuming: cost of lawyers, discovery, witnesses, paper shuffling, getting to trial

B. Public: in sensitive cases involving business practices, trade secrets, confidential information \_ parties may not want public hearing

C. Disruption of relationship: bitterness of litigation can destroy cordial business relationship

D. Court remedies often incomplete: usually limited to money damages, which may be uncollectible

E. Most cases in U.S. (90%) settled; don't need trial  
(unless legal principle needs to be established)

### III. PRINCIPAL METHODS OF ALTERNATIVE DISPUTE RESOLUTION

#### A. Arbitration

1. Process under Federal and State Arbitration Statutes
2. High/Low Arbitration
3. Baseball Arbitration

#### B. Mediation

#### C. Neutral Evaluation/Fact Finding

#### D. Mini-Trials/Summary Jury Trials

### IV. CONTEXTS

A. ADR Clause in contract: future disputes arising from  
contract to be submitted to ADR in conformance with clause

B. Agreement to submit existing dispute to ADR

### V. ADVANTAGES/DISADVANTAGES OF DIFFERENT PROCESSES

### VI. MEDIATION SIMULATION

The list of participants  
of Russian-American  
seminar on "Human rights  
protection in Russia",  
section "Organization of  
Legal Clinics in Russia".

Petrozavodsk, May 27-29, 1997.

1. The affiliation of Petrozavodsk State University in Appatity:  
The Dean of Humanitarian Faculty, professor,  
Doctor in Philosophy Tripolsky Roman Izrailevich;  
184200, Murmansk district., Appatity, Kosmonavtov  
st., 3.  
phone: (881555)31500  
Fax: +81555 30924
2. Mari State University:  
The Dean of the Law Faculty, PhD in Law,  
Lomonosov Anatoly Michailovich;  
Associate Professor at the Chair of Law Egorov  
Valerian Alexandrovich;  
4th year student Inorodtsev Alexey Charitonovich;  
424000, Republic of Mari Al, Joshkar-Ola city,  
Lenin square, 1.  
phone: (8362)123241, 125471  
e-mail: postmaster@margo.mari.su
3. Polotsk State University:  
Faculty of Economics and Law, speciality of  
jurisprudence, the head of the section of criminal  
law, criminal procedure and criminalistics, Gamoito  
Zinaida Aléxeevna;  
211440, Republic of Belorussia, Novopolotsk city,  
Blochin st., 29.  
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4. Pomorian International University:  
Law Faculty, The Dean of the Law Faculty, PhD in  
Law, Zykina Tatjana Alexeevna.  
163006, Archangelsk city, Lomonosov st., 58.  
phone: (8182)440306  
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5. St.Petersburg Legal Insitute:  
St.Petersburg, Gavanskaja st.,3.

Director of the Institute Revnova Maria  
Borisovna.

phone: (8812)3566298

6. Petrozavodsk State University:  
Law Faculty, 185640, Lenin prospect, 33,  
Petrozavodsk, Republic of Karelia, Russia.

phone: (8142)552190

Fax: (81427)771021

e-mail: postmaster@law.pgu.karelia.ru

7. Affiliation of St.Petersburg Legal Institute  
in Kizlyar. Representative Shkatov Michail Jurjevich.

8. Affiliation of St.Petersburg Legal Institute  
in Murmansk. Representative

LINDA SMIDDY, 02:51 PM 5/21/97 , Linda Smiddy's conference pape

Date: Wed, 21 May 1997 14:51:23 -0400  
From: Sherri Richardson (LINDA SMIDDY) <LSMIDDY@vermontlaw.edu>  
To: reznikov@sidor.karelia.su  
Cc: lisman@together.net, cyirka@vermontlaw.edu  
Subject: Linda Smiddy's conference paper  
Content-Disposition: inline

Below is Section I of the conference paper that Linda Smiddy has prepared for translation. I will need to send it to you in sections since it is too long for email.

Sincerely,  
Sherri Richardson  
Secretary to Dean Smiddy  
srichard@vermontlaw.edu

CONFERENCE ON HUMAN RIGHTS

THE RIGHT TO INFORMATION ABOUT U.S. BUSINESS CORPORATIONS

I. Introduction

The U.S. business corporation developed in a legal tradition in which the individual stands at the center. The United States Constitution protects the rights of natural persons, their individual liberties and personal autonomy. Similarly, in the common law tradition, the individual is the norm. This focus on the individual person as the norm has influenced the development of U.S. corporate theory and the rights of individuals to information about U.S. corporations.

LINDA SMIDDY, 02:55 PM 5/21/97 , Section II of the conference p

Date: Wed, 21 May 1997 14:55:37 -0400  
From: Sherri Richardson (LINDA SMIDDY) <LSMIDDY@vermontlaw.edu>  
To: reznikov@sidor.karelia.su  
Cc: lisman@together.net, cyirka@vermontlaw.edu  
Subject: Section II of the conference paper  
Content-Disposition: inline  
X-MIME-Autoconverted: from quoted-printable to 8bit by  
sequoia.together.net id OAA13930

## II. The Concept of the U.S. Corporation

In the U.S., the term \*business corporation\* refers to a legal structure imposed on the collective activities of individuals associated in a business enterprise. Through the process of \*incorporation\*, a legal term which literally means to create a body, individuals form an organization with a legal identity separate and distinct from the people who comprise it. In its most common form, a U.S. business corporation has centralized management, free transferability of interests, perpetual succession, limited liability for owners, and the power to conduct business in the corporate name, rather than in the names of the individual owners. Centralized management is present when the company\*s owners elect a management group with authority to set company policy and manage company operations. Free transferability of interests means that company owners have an unrestricted right to sell their ownership rights in the company. Perpetual succession means that a corporation will continue to operate as an entity and to conduct business in the corporate name even when there is a change in the identities of the individual owners. Limited liability is present when only the company\*s assets will be used to pay the company\*s debts. The personal assets of the owners will not be used to satisfy corporate claims.

There are several theoretical bases for incorporation. Under the entity theory, incorporation creates an artificial, legal person. The corporation\*s identity is separate from the persons who are its members. The application of this theory has caused the corporation to be taxed independently of its owners. A second theory is the \*concession theory\*. It characterizes the corporation as an entity that exists only because of a concession by the government. Under this theory, a corporation may justifiably be subject to governmental regulation not applicable to private contractual arrangements. Both the entity and concession theories conceive the corporation as having a legal identity distinct from its members.

A third theory that has gained recognition is the contractual theory of the corporation. Proponents of this theory describe the corporation as a collection of interconnected contracts rather than a separate jural entity. Rejecting the entity view as providing a justification for state interference in corporate relationships, [t]he contractual theory views the corporation as founded in private contract, where the role of the state is limited to enforcing contracts. In this regard, a state [grant of a charter to a corporation] merely recognizes the existence of [an interconnection or] \*nexus of contracts\* called a corporation. Each contract in the

\*nexus of contracts\* warrants the same legal and constitutional protections as other legally enforceable contracts. Moreover, freedom of contract requires that parties to the \*nexus of contracts\* must be allowed to structure their relations as they desire. In this context, a corporation consists of interconnected, essentially private arrangements that are based on contract. Corporate codes provide some of the terms of the contractual arrangements by establishing the basic governance structure and the standards of conduct for owners and managers of the corporate enterprise.

A related view focuses on the collective interests of the aggregate of individuals associating in corporate form. From this perspective,

persons associated together in a business enterprise have legal personalities different from their legal personalities in their other jural relations, and ... the law authorizing incorporation permits the incorporated associates to limit their liabilities, to own their property in a common name, to sue and be sued in such name, to transfer their interests without the necessity of a dissolution and accounting, and to have the business managed by the board of directors as their representatives. (emphasis in original)

Although this perspective considers the corporation as an aggregation of individuals, it also recognizes that the process of association creates a legal personality distinct from the legal personalities of the association's members arising in other jural contexts.

The theme common to all theories is that when individuals associate in a business enterprise, the association creates something more than simply a collection of the individuals involved. U.S. law has recognized that \*something more\* by treating the association as a legal unit or entity separate and distinct from its individual members. By using the entity concept, the law can distinguish the legal relationships of members of a corporate group from the legal relationships of the same individuals operating independently of the group.

U.S. law, however, goes further. It not only treats the corporation as a separate legal entity, it characterizes the corporation as a legal person. The concept applies \*whether the focus be on the corporation as an artificial legal person or on the corporate personality of the natural legal persons who compose it.\* This approach enables an association of the members of a business enterprise to fit into a legal system whose norm is the individual person. If an emphasis on community rather than on the individual were at the center of our jurisprudence, an aggregate theory might be more successful.

LINDA SMIDDY, 02:56 PM 5/21/97 , Section Three of the conferenc

Date: Wed, 21 May 1997 14:56:41 -0400  
From: Sherri Richardson (LINDA SMIDDY) (LINDA SMIDDY)  
<LSMIDDY@vermontlaw.edu>  
To: reznikov@sidor.karelia.su  
Cc: lisman@together.net, cyirka@vermontlaw.edu  
Subject: Section Three of the conference paper  
Content-Disposition: inline  
X-MIME-Autoconverted: from quoted-printable to sbit by  
sequoia.together.net id OAA14191

### III. Constitutional Protection of the Corporation

The characterization of the corporation as a legal person has influenced, in a significant way, the status of the corporation under the U.S. Constitution and the country's statutory and decisional law. Under U.S. law, the definition of \*person\* includes both individuals and entities. As a legal person, a corporation has many of the same protections afforded individuals.

The United States Constitution has been interpreted to provide many constitutional protections to corporations. State officials may not search or seize corporate property without first obtaining a search warrant. A corporation may not be tried for the same crime twice. It may not be deprived of its liberty or property without due process of law; and it may not be deprived of the equal protection of the laws. Although a corporation may sue and be sued in all courts, it may appear in court only through representation by a licensed attorney. A corporation, however, is not protected against self-incrimination and generally the right of privacy does not apply to corporate books and records. Retaining access to corporate information, \*ensures government the information needed to regulate corporations. While government agencies have a legitimate right to make inquiries to assure the corporation's behavior is consistent with the law and the public interest, the government must be mindful that the Fourth Amendment does protect the corporation from unreasonable searches and seizures.\*

One consequence of the constitutional protections extended to corporations is that a private citizen may obtain information about a corporation only in certain situations. The individual must be a shareholder in the company as determined by state law, a party in a court proceeding involving the corporation, or, as a member of the public, the beneficiary of state or federal corporate disclosure requirements. In each situation, individual access to corporate information is limited by state or federal law or court evidentiary and procedural requirements.

LINDA SMIDDY, 02:57 PM 5/21/97, Section Four of the conference

Date: Wed, 21 May 1997 14:57:36 -0400  
From: Sherri Richardson (LINDA SMIDDY) (LINDA SMIDDY)  
<LSMIDDY@vermontlaw.edu>  
To: reznikov@sidor.karelia.su  
Cc: lisman@together.net, cyirka@vermontlaw.edu  
Subject: Section Four of the conference paper  
Content-Disposition: inline  
X-MIME-Autoconverted: from quoted-printable to 8bit by  
sequoia.together.net id OAA14547

#### IV. State Regulation of Corporations

In the United States, corporate law originated as state rather than federal law. State law defines the procedures for corporate formation, management, and dissolution. It also defines the extent of a corporation's purposes and powers. Typically, the authorized purposes are defined broadly and permit the corporation to engage in any lawful business unless the corporate charter establishes a more limited purpose. The powers are equally broad, with the following provision being typical:

Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs... Corporations may sue and be sued in the company name, create bylaws, own and transfer property, lend, borrow and invest money, enter into contracts, provide for employees, make charitable donations, transact any lawful business, and \*do any other act, not inconsistent with law, that furthers the business and affairs of the corporation.\*

Under the Model Business Corporation Act, all corporations are required to keep certain business records. They include: the minutes of shareholders\* and directors\* meetings; records of all actions taken by directors, shareholders, and committees of the board of directors; shareholders\* lists and appropriate accounting records. Under state corporate law, a shareholder in a corporation has the right to obtain certain types of corporate information. Under the Model Business Corporation Act, these include: corporate books and records, lists of shareholders, and financial statements.

The procedures for obtaining this information depends on the type of information requested. Some corporate records must be provided to shareholders; others can be obtained upon the request of the shareholder; still others are available only if the shareholder establishes that the records are being requested for a proper purpose, such as communicating with other shareholders in connection with the election of directors.

A corporation is required to provide financial statements to its shareholders on an annual basis. It is also required to inform shareholders of director indemnification expenses, and information about corporate shares issued in exchange for promissory notes or for promises to provide future services. Upon request, a shareholder is entitled to inspect and copy the following: list of shareholders; corporate charter and bylaws; directors\* resolutions regarding the

issuance of shares; records of shareholder action and shareholders' meetings; written communications to shareholders for the past three years including financial statements furnished to shareholders during that period of time; names and addresses of directors and officers; and the most recent annual report filed with the Secretary of State. A shareholder demonstrating a proper purpose may also inspect and copy the company's accounting records and the minutes of the meetings of the board of directors. These rules are intended to serve two purposes: 1) to provide shareholders' with information needed to secure their financial interests in the company, communicate with other shareholders, and elect management; and 2) to prevent the shareholders' from disrupting the transaction of company business by excessive requests for information. Shareholders may enforce these requirements by suing the directors.

Under state law, business corporations must also file information about the company with the Secretary of State in the state of incorporation. At the time of formation, the company must file Articles of Incorporation containing the company's name and address, the number of shares it is authorized to issue, and the name and address of its registered agent. It may also include the names and addresses of the initial directors, special provisions regarding the management of the business, and the liability of directors. Every corporation must also file an annual report with the Secretary of State where the company is incorporated. The report must contain the name and address of the company, the name and address of its registered agent, the names and business addresses of its directors and principal officers, a description of the company business, the total number of shares authorized to be issued, and the total number of shares that have been issued. The annual reports are available to the general public. The charters of companies failing to file their annual reports may be revoked by the Secretary of State.

LINDA SMIDDY, 02:58 PM 5/21/97 , Section Five of the conference

Date: Wed, 21 May 1997 14:58:11 -0400  
From: Sherri Richardson (LINDA SMIDDY) (LINDA SMIDDY)  
<LSMIDDY@vermontlaw.edu>  
To: reznikov@sidor.karelia.su  
Cc: lisman@together.net, cyirka@vermontlaw.edu  
Subject: Section Five of the conference paper  
Content-Disposition: inline

#### V. Federal Regulation of Corporations

Unlike other countries, in the United States state law, rather than federal law, regulates the formation, governance, and dissolution of corporations. Both federal and state law are also concerned with protecting unsophisticated investors from becoming the victims of companies selling worthless securities. These laws regulate the sale of company securities (stocks and bonds) to investors. State law typically governs sales that are either small in amount issued or local in nature.

Federal law, which is designed to regulate larger transactions and dominates the field, will be the focus of this discussion.

Although federal securities law includes several important pieces of legislation, the most important for the purposes of this paper are the Securities Act of 1933 and the Securities Exchange Act of 1934. Each of the acts, in itself, is an extensive and complicated piece of legislation. This paper will summarize the purposes of the federal acts and the provisions providing protections to investors.

The Securities Act of 1933 (the 1933 Act) attempts to protect buyers by requiring companies selling securities to disclose certain information about the company and the securities being sold. The disclosure requirements are intended to provide investors with the information they need to make informed decisions about buying or selling securities. The information must be contained in a registration statement filed with the Securities and Exchange Commission, an administrative agency, before the securities are offered for sale. The information must also be provided to prospective buyers. The Securities and Exchange Commission (SEC) does not review the merits of the investment. It only requires that information be properly disclosed. The general public has access to filings with the SEC. Buyers of the securities may sue the company and anyone signing the registration statement if the information in the registration statement either omits or misstates important information.

Printed for Lisman <lisman@together.net>

1

The disclosure requirements of the 1933 Act, which relate to the issuance of securities, are complemented by the disclosure requirements of the Securities and Exchange Act of 1934 (the 1934 Act). The 1934 Act requires disclosure of information about companies whose shares are traded on a national securities exchange. These companies periodically must file reports with the SEC. These reports are available to the general public. Civil penalties are also available under the 1934 Act.

The disclosure requirements of both the 1933 and 1934 Acts are extensive. The information required may vary according to whether a company is filing periodic reports or registering securities for sale. Regardless, the following represents the types of information required to be disclosed. Required information about securities being sold includes:  
a description of the securities being sold; risk factors; information about company earnings; use of proceeds of the sale of securities; how the sale price was determined. Information about the company includes: financial information for the past five years; analysis of the company's financial condition; events adversely affecting the company's operations; changes in accounting and financial disclosure; identity, compensation and business experience of directors and officers; identity of owners of more than 5 percent of the company's shares.

**Union of Jurists of the Republic of Karelia  
Seminar on Current and Proposed Russian Tax Legislation  
Petrozavodsk, Karelia, Russia  
September 1997**

**Monday, September 22, 1997**

- 0650 Vermont/Maine group arrives
- 0715 Hotel registration
- 0830 Breakfast at Severnaya Hotel (distribute and discuss schedule)
- 0930 UJRK - e-mail
- 1000 ~~Meet Alexander Petrovsky, Minister of Justice RK~~ KSC
- 1100 Meet Nikolai Malyshev, Chief Judge, Arbitrazh Court RK
- 1300 Lunch at PedroPizza
- 1400 Meet Aleftina Timochenka, Dep. Ch. Judge, Arbitrazh Ct. RK; Pres., UJRK
- 1600 Meet Boris Taratunin, Chief Justice, Supreme Court RK
- 1800 Hotel
- 1900 Dinner at Caucus Restaurant

**Tuesday, September 23, 1997**

- 0730 Breakfast at Severnaya Hotel
- 0830 Leave for White Springs
- 0900 Arr. White Springs (Ludmilla Zharkova, Judge, Const. Ct. RF; 1st Pres., UJRK)
- 0930 Start of Constitutional Court Symposium (observe)
- 1100 Depart White Springs
- 1130 Tax Department (administration)
- 1300 Lunch
- 1430 Tax Police (enforcement)
- 1600 Seminar preparation meeting
  - Zamvel Ivazan, Comm. of Budget, Taxes, Banks & Finances, Duma RF
  - Anatoly Babkin Judge, Arbitrazh Court RK RP
  - Tatiana Andreeva, Judge, Arbitrazh Court RK RP
  - Nina Morozova, Judge, Arbitrazh Court RK
  - Anatoly Buldakov, Chief of Tax Inspeç, Petro; Chair, Comm. on Budget & Taxes, Legislature RK

Union of Jurists of the Republic of Karelia  
Seminar on Tax Legislation  
Petrozavodsk, Karelia, Russia  
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**Wednesday, September 23**

09:45 - 10:15	Opening of the Seminar. Greetings of the Government of Karelia, Union of Jurists of Karelia, Union of Lawyers(Moscow) Vermont Bar Assosiation.
10:15 - 11:20	Expert of Duma of Russian Federation on the new Tax Code Draft - Samvel Aivazian
11:20 - 11:45	Coffee-break.
11:45 - 13:00	Supreme Arbitrazh Court Judge Tatiana Andreeva on Defense of the Rights of Taxpayers in Arbitrazh Courts
13:00 - 14:30	Lunch. Petrovsky restaurant.
14:30 - 15:30	American presentation.
15:30 - 15:45	Coffee-break.
15:45 - 17:00	Supteme Arbitrazh Court Judje of Karelia Nina Morozova on the Tax Disputes in Karelian Court
19:00	Friendly Dinner and celebrations of Constitutional Court Judge Liudmila Zhorkova at Lighthouse Restaurant

**Thursday, September 24**

10:00 - 11:00	Petrozavodsk Tax Inspection Chief on the Implementation of Tax Code in Karelia and on the New Draft of Tax Code.
11:00 - 11:30	Coffee-break.
11:30 - 13:00	Supreme Arbitrazh Court Judje Anatoliy Babkin on the Tax Legislation and Taxation of Legal Entities.
13:00 - 14:30	Lunch.
14:30 - 15:30	American presentation.
15:30 - 15:45	Coffee-break.
15:45 - 17:00	Round Table.
19:00	Overnight Boat trip on Onega Lake with the visit to a Monastery

**Friday, September 25**

16:00	Return to Petrozavodsk
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**СОЮЗ ЮРИСТОВ РЕСПУБЛИКИ КАРЕЛИЯ  
АССОЦИАЦИЯ ЮРИСТОВ ШТАТА ВЕРМОНТ**

**НАЛОГОВОЕ ЗАКОНОДАТЕЛЬСТВО РОССИЙСКОЙ  
ФЕДЕРАЦИИ: НАСТОЯЩЕЕ И БУДУЩЕЕ**



**МАТЕРИАЛЫ ДОКЛАДОВ АМЕРИКАНСКИХ УЧАСТНИКОВ СЕМИНАРА**

**24-25 сентября 1997**

**Петрозаводск**

## Содержание

1. *Джордж Бёрнс*. Федеральный подоходный налог с граждан в США.
2. *Марк Оттинджер*. Налогообложение предприятий в США.
3. *Джон Дули*. Подоходный налог: налоговые органы, сбор налога и штрафные санкции.

## ФЕДЕРАЛЬНЫЙ ПОДОХОДНЫЙ НАЛОГ С ГРАЖДАН В США

### Введение

Американцы говорят, что есть только две неизбежные вещи - это смерть и налоги. Я попытаюсь показать вам, как работает система подоходного налога и при этом не наскучить вам до смерти.

Существует четыре основные особенности системы федеральных налогов с граждан в США, которые на мой взгляд заслуживают упоминания, и каждая из них отражает раздвоенность американской личности (мой приятель, преподаватель права в штате Мэн, считает, что я уделяю слишком большое внимание концепции раздвоенности личности в данной статье, но как бы то ни было, этой метафорой удобно пользоваться):

1. Предоставление данных самими гражданами. Американская система налогообложения граждан представляет собой предоставление данных самими гражданами, что предполагает честность каждого американского гражданина, который указывает точные данные в своей ежегодной налоговой декларации. Система бы рухнула, если бы подавляющее большинство американцев не были бы честными и открытыми людьми. И в то же время существует жесткий механизм устрашения, что делает последствия неуплаты налогов суровыми, вплоть до уголовной ответственности. Я полагаю, что большинство американцев боится налоговую службу больше, чем любой другой орган. Честность - это прекрасно, но у нашего правительства есть способы борьбы с нечестностью, которые заставляют даже бесчестных людей подчиняться закону.

2. Налог является прогрессивным, так что богатые платят больше. Ставки налога представляют собой шкалу, что означает что люди с большими доходами платят и большую ставку налога, по крайней мере теоретически. Поскольку существует целая индустрия консультативных услуг по выплате налогов (юристы и бухгалтера), то фактически не всегда более богатые налогоплательщики платят налог по такой высокой ставке, как это может показаться на первый взгляд, что является также несколько странным, но это факт.

3. Считается, что налоговая система поощряет усердный труд и накопление богатства, и в то же время служит социальной справедливости. Система должна поощрять бережливость, трудолюбие и накопление богатства. Система подталкивает налогоплательщика тратить больше денег, чтобы насадить большую наживку на крючок, так что правительство сможет собрать больше налогов, когда вы поймаете большую рыбу. В то же самое время политики хотят использовать налоговую систему для достижения других политических и социальных целей: здоровье и благополучие семьи, возрождение городов, образование и благотворительность. Система призвана следить и за тем, чтобы, образно говоря, в насосе было достаточно воды, и за тем, чтобы вода распределялась поровну, хотя эти две цели, мягко говоря, не сочетаются. Мой приятель-преподаватель права говорит: "Да брось ты, Джордж! Главная цель системы - собрать деньги на содержание федерального правительства!"

4. В силу указанных непримиримых противоречий, налоговая система является сложной и находится в состоянии постоянного изменения. Система постоянно

изменяется в силу того, что политики пытаются примирить эти принципиально несовместимые задачи. Является ли налоговая система исключительно средством сбора средств, или же она является инструментом социальной политики со своими стимулами и сдерживаниями, и средством достижения экономического равенства? Американцы страстно желают, чтобы система была простой, но каждая группа стремится получить свои налоговые выгоды, что ведет к бесконечным компромиссам в Конгрессе США, что в свою очередь приводит к запутанности законодательства, и к "налоговым играм" налогоплательщиков и их многочисленных и хорошо оплачиваемых адвокатов. И снова мой приятель смеется: "Джордж, никто из политиков не разбирается в налоговой системе. Она является удобной мишенью, вот они и упражняются на ней."

### Структура федерального подоходного налога

Налоговая декларация, которую все американцы ежегодно заполняют не позднее 15 апреля называется Форма 1040 (см. Приложение). Налогоплательщик и любой консультант, участвовавший в заполнении декларации, должны подписать ее, тем самым удостоверяя точность и правдивость данных, указанных в декларации. Американцы вечно жалуются на то, что декларация очень трудная и запутанная, и они вечно требуют более простую декларацию. Один комик откликнулся на это требование, предложив Форму 1040 всего из двух частей. Первая часть представляет собой простой вопрос: "Каков был ваш общий доход за прошедший год?" Вторая часть представляет собой простую инструкцию: "Пошлите его целиком правительству."

Мало кто из американцев согласится заплатить за простоту столь дорогую цену. Вместо этого у нас имеется следующая схема:

- вы определяете свой общий (валовой) доход;
- после этого вы вычитываете определенные суммы и получаете уточненную цифру вашего общего дохода;
- после этого вы производите дальнейшие вычеты из уточненной цифры дохода в соответствии с определенными пунктами и нормами;
- после этого вы вычисляете, руководствуясь таблицей прогрессивного налога, какова сумма, которую вы должны заплатить;
- после этого вы вычитаете из полученной суммы налога все суммы, удержанные из вашей зарплаты в течение года. Если после этого вы все еще должны заплатить какую-то часть налога, то вы это делаете вместе с отправкой вашей налоговой декларации.

Обратите внимание на то, что налоговая служба прекрасно понимает, как важно вовремя получить наличные деньги, поэтому она и собирает налоги в течение всего года, не дожидаясь его конца. Если оказывается, что вы переплатили налоги, то вам выплачивается компенсация - конечно, при условии, что налоговая служба соглашается с данными и расчетами, которые вы представили в декларации.

Очевидно, процедура выглядит достаточно сложной. Но она покажется еще более запутанной, если сказать, что каждый из указанных пунктов сам по себе достаточно сложен, и неоднозначность их отражает ту раздвоенность, о которой я уже говорил.

Общий доход обычно не включает подарки, но включает любые доходы в виде заработной платы или жалованья; также он включает любые доходы от вложения средств; в него не включаются те деньги, которые служители церкви получают на оплату жилья; он включает все выигрыши по лотереям и иным азартным играм, но не включает стипендии.

Практически, общий доход включает доходы, полученные из любых источников, за исключением тех, которые, как уже говорилось, исключены по соображениям социальной политики. Иными словами, общий доход включает не только заработную плату и жалованье, но и средства, полученные пассивным путем в виде дивидендов, процентов и даже так называемые дополнительные льготы - то есть те льготы, которые вы получаете не в денежной, а какой-либо иной форме (например, использование личного автомобиля, предоставленного вашим работодателем).

Переходим на следующий уровень - а именно, уточненный общий доход. Здесь вы можете вычесть из суммы дохода ваши выплаты на пенсионный счет, расходы на переезд и алименты, а также в ряде случаев - и другие расходы.

После этого вы можете применить определенные пункты и нормы для дальнейших вычетов из суммы общего дохода. Эти вычеты отражают социальные и политические реальности, даже если они не отражают социальную политику. Например, вы можете вычесть деньги, внесенные на благотворительные цели, вы можете вычесть расходы на лечение, если они превысили определенный уровень, вы можете вычесть проценты, полученные по займам, обеспеченным вашим жильем (владение жильем - это святое), а также вы можете вычесть те расходы, которые связаны с целью зарабатывания денег (например, расходы на образование, оплаты услуг юристов и бухгалтеров, расходы на путешествия, расходы - в ограниченных рамках - на развлечения, расходы на аренду оборудования, но не незаконные выплаты - такие как взятки, а также пени или штрафы). Проценты от вкладов, потраченные на производственные цели, также вычитаются из облагаемой налогом суммы. Наконец, некоторые налоги штатов и местные налоги также вычитываются из облагаемой налогом суммы, что является отражением нашей федеральной системы.

После этого вы вычисляете сумму налога, используя принятые нормы, которые могут быть различными в зависимости от того, состоите ли вы в браке или нет, и если состоите - заполняет ли семейная пара декларацию совместно в лице главы семьи, или же муж и жена заполняют свои декларации отдельно. После этого вы еще уменьшаете сумму облагаемого налогом дохода за счет дальнейших исключений (например, средства на содержание иждивенцев - таких как маленькие дети или инвалиды, которых вы содержите). Наиболее благоприятное отношение налоговой службы к семейным парам, заполняющим декларацию совместно.

После того, как вы получили сумму налога, которую вы должны заплатить, вы применяете определенные льготы, которые включают, помимо прочего, расходы на содержание детей и иных иждивенцев, или расходы на содержание инвалидов и престарелых. Это дает вам возможность высчитать сумму, которую вы должны заплатить после учета того, сколько вы уже заплатили налогов.

Существует также особый налог на доходы по инвестициям, известный под названием налог на доходы от прироста капитала. Недавно ставка этого налога была снижена с 28% до 20% (в среднем). Ставка этого налога ниже, чем ставка подоходного налога с граждан. Это является отражением того мнения в американском обществе (особенно среди богатых людей), что нужно поощрять граждан вкладывать деньги и что доход по таким инвестициям должен иметь льготное налогообложение. В течение длительного времени шла бурная дискуссия, начатая республиканцами, по поводу того, что ставка налога на доходы по инвестициям должна быть радикально понижена с тем, чтобы поощрять сбережения, образование капитала и инвестирование средств. Нынешнее законодательство представляет собой компромисс, достигнутый в результате этих дебатов.

Ставки всех остальных налогов, за исключением налога на доходы по инвестициям, называются обычными ставками. Ставки действующего федерального подоходного налога возрастают по прогрессивной шкале: 15%, 28%, 31%, 36% или 39,6% (см. Таблицу в приложении).

Данное описание в основном касалось федерального подоходного налога, но в большинстве штатов есть еще и подоходный налог штата. Например, в штате Мэн ставка подоходного налога колеблется от 2% до 8,5%. Кроме того, существуют федеральные (а также часто - и на уровне штатов) налоги на доходы корпораций, а также налоги на имущество и на подарки.

### **Недавние изменения в области налогообложения**

Одна из дискуссий, получивших наиболее широкое освещение в прессе во время президентской кампании 1996, года была дискуссия, начатая республиканцем Стивеном Форбесом и его сторонниками с целью принять единообразный налог. Такой налог предоставил бы очень простой (состоящий из одной или двух операций) способ подсчета налога, причитающегося каждому гражданину. В своей крайней форме единообразный налог просто определял бы одну или возможно две ставки налога по отношению к общему доходу. В большинстве случаев этот налог резко сократил бы или аннулировал налог на доход с капитала. Особенностью (и комичной притом) нашей американской системы является тот факт, что после многих месяцев попыток принять единообразный налог во время президентской кампании 1996 года республиканский Конгресс принял налоговый кодекс, который является еще более запутанным и сложным, чем когда-либо раньше. И все же несмотря на всю его сложность есть несколько очевидных пунктов, которые просматриваются в новом кодексе. Эти пункты являются отражением того факта, что Конгресс прислушивается к мнению тех, кто голосует - то есть к мнению самого крупного среднего класса, который хотел и получил налоговые льготы на детей, налоговые стимулы к образованию, а также стимулирование к накоплению средств на индивидуальных пенсионных счетах (на фоне серьезных финансовых трудностей, с которыми сталкивается государственная система социального обеспечения).

### **Возможности налоговой службы по принудительному взысканию налога**

Что будет, если гражданин допустил ошибку в заполнении налоговой декларации? Что может сделать налоговая служба?

Во-первых, налоговая служба имеет полное право провести финансовую проверку, и без долгих предупреждений может проверить все ваши финансовые документы с целью определить, есть ли у вас (и если есть - то в какой степени) документальное подтверждение тех данных, которые вы привели в своей декларации. Если в результате проверки налоговая служба приходит к иным результатам, чем это было указано налогоплательщиком, то она сама определяет сумму налога. После этого на налогоплательщика ложится бремя многоступенчатой процедуры апелляций и протестов с целью изменить налогообложение. Это процедура дорогостоящая, требующая много времени и сил.

Если вы не подали налоговую декларацию, или же если налоговая служба пришла к выводу, что вы намеренно указали неверные данные в своей декларации, то налоговые органы могут применить уголовную ответственность. Любой просроченный налог должен быть выплачен по первому требованию причем вместе с налогом выплачиваются не только проценты, но и штрафы.

Служба принудительного взыскания налогов нередко использовалась в качестве того средства, с помощью которого таких людей, как американский гангстер Ал Капоне, сажали за решетку. Иногда правительство США не может изыскать способ осудить известного гангстера за совершенные им преступления, но может доказать уклонение от уплаты налогов, что уже само по себе является уголовно наказуемым деянием.

Но даже и в административном плане возможности налоговой службы огромны. Она имеет право удержания имущества должника до уплаты долга, причем имеет в этом отношении преимущество перед другими кредиторами, и долг перед налоговой службой не списывается даже в случае объявления банкротства.

Сочетание этих механизмов принуждения с развитой индустрией консультирования (те же юристы и бухгалтера) создало в США давно установившуюся традицию согласия. Американцы, возможно, не любят налоговую службу, но они безусловно боятся и нехотя уважают ее.

### **Заключение**

Федеральный подоходный налог с граждан в США отражает ту раздвоенность и споры, которые характерны для современных Соединенных Штатов. Система работает вполне хорошо, хотя все задаются вопросом, почему она не может быть более быстрой и дешевой. Никогда не будет принят простой налоговый кодекс. Хотя я ни в коем случае не считаю себя специалистом по налоговой политике других стран, я полагаю, что сбор налогов является мучительной процедурой для любого правительства.

## НАЛОГООБЛОЖЕНИЕ ПРЕДПРИЯТИЙ В СОЕДИНЕННЫХ ШТАТАХ

### Введение

Целью настоящей статьи является дать российским юристам общий обзор той процедуры, согласно которой определяются доходы предприятий и налоги в США. Данный материал следует читать вместе с двумя статьями о налоговом законодательстве США, также подготовленными для настоящего семинара. Первым рекомендуется прочитать материал о взимании подоходного налога с граждан, затем - данную статью, и последним - материал о судебных решениях и штрафных санкциях по взиманию налогов.

### Соображения социальной политики, определяющие налоговое законодательство США

Изучение любой налоговой системы или ее частей, должно предприниматься вместе с пониманием того, какая социальная политика лежит в основе данной налоговой системы. В США общая налоговая политика характеризуется единством в применении и воплощении. В отношении производства, налоговая политика США стремится поддержать продуктивное инвестирование капитала, разрешая вычитать (не облагать налогом) расходы производства, так что налог исчисляется только с чистой прибыли.

### Влияние типа предприятия на налогообложение

Существует несколько основных типов предприятий в США. Самым простым является индивидуальное предпринимательство, когда индивидуум ведет дело самостоятельно. Конечно, строго говоря предпринимательство, организованное по такому принципу, не является в прямом смысле слова "предприятием", ибо у него нет отдельного от своего владельца юридического статуса. Поэтому доходы и расходы индивидуального предпринимателя декларируются на дополнительной странице (приложении), которая прилагается к федеральной налоговой декларации, заполняемой всеми налогоплательщиками.

Федеральная налоговая декларация известна под названием Форма 1040, а указанное Приложение называется приложение В. Если предприятие организовано по принципу товарищества (контрактные отношения между двумя или более лицами), то такая кампания должна заполнять информационную федеральную налоговую декларацию. Такая декларация, известная как форма 1065, отражает доходы и расходы товарищества и определяет сумму облагаемого налогом дохода (или убытки), которая причитается товариществу в целом. К форме 1065 прикладывается приложение К-1, которое определяет распределение облагаемого налогом дохода (или убытков) между компаньонами, в соответствии с условиями договора о товариществе. облагаемый налогом доход или убытки, которые устанавливаются для каждого компаньона в приложении К-1, должны быть указаны в федеральной налоговой декларации, которую заполняют все налогоплательщики (форма 1040). Налоговая декларация, заполняемая товариществом потому и называется "информационной", что на этом уровне налоги не собираются. Налог собирается только на индивидуальном уровне, причем на ту часть дохода товарищества, которая причитается каждому компаньону, и которая, следовательно, указывается в индивидуальной федеральной налоговой декларации.

Налогообложение на уровне товарищества иногда называют "сквозное" налогообложение, так как облагаемый налогом доход не подвергается налогообложению на этом уровне, а вместо этого проходит "насквозь" на уровень индивидуального налогоплательщика.

С точки зрения налогообложения существует два типа корпораций, так называемые S-корпорации и C-корпорации. Статус S-корпорации, дающий своим акционерам преимущества "сквозного" налогообложения, предоставляется лишь некоторым типам корпораций. В рамках настоящего анализа будет достаточным сказать, что такой статус предоставляется корпорациям, число акционеров которых не превышает 35. S-корпорация заполняет федеральную налоговую декларацию 1120S, которая во многих отношениях аналогична форме 1065, заполняемой товариществом. Форма 1120S определяет величину облагаемого налогом дохода (или убытки), и затем предписывает перераспределить этот налог между акционерами, также в соответствии с Приложением К-1 и пропорционально доле каждого акционера в корпорации.

В случае C-корпорации (которая, как правило, больше по размерам) доходы первоначально облагаются налогом на уровне корпорации, а оставшаяся после уплаты налогов прибыль выплачивается в виде дивидендов, или удерживается (в определенных рамках) в виде прибыли. В таком случае, сумма, которая остается в руках акционеров после выплаты налога (сначала на уровне корпорации, а затем еще и на индивидуальном уровне) является соответственно меньшей. Такое явление известно в США под названием "двойное налогообложение".

Проиллюстрируем действие двойного налогообложения и его отличия от "сквозного" налогообложения на следующем примере. Предположим, что корпорация получила доход в сумме 10.000 долларов, при этом ставка федерального дохода на прибыль - 35% и ставка подоходного налога с граждан - 30%. Если этот доход получен предприятием, имеющем статус S-корпорации, то он не облагается налогом на уровне корпорации, и налог высчитывается только на индивидуальном уровне из расчета 30%, так что после выплаты налога на руках у акционеров остается доход в размере 7.000 долларов. Если же этот доход получен в результате деятельности C-корпорации, то он сначала облагается налогом в 35% на уровне корпорации, после чего остается прибыль в сумме 6.000 долларов, которая выплачивается в виде дивидендов. Перейдя к акционерам, эта прибыль снова подвергается налогообложению, на этот раз по ставке подоходного налога с граждан в размере 30%, оставляя в виде прибыли уже только 4.450 долларов ( $6.500 \times 0.7$ ). Таким образом, общая налоговая ставка оказывается равной 54,5%. Очевидно, что желательно избегать такого двойного налогообложения, поэтому если возможно использовать статус S-корпорации, им всегда пользуются. Такое льготное налогообложение предоставляется маленьким кампаниям, поскольку считается, что отдельный статус корпорации определяется, в какой-то степени, ее размером, и небольшие предприятия в какой-то степени больше похожи на товарищество (группу индивидуумов), чем на отдельную предпринимательскую единицу. Разумеется, количество акционеров является весьма приблизительным средством для определения размеров кампании, и выбранное число в 35 акционеров является достаточно условным.

В плане налогообложения C-корпорация рассматривается как самостоятельный субъект. Она заполняет федеральную декларацию о доходах (форма 1120), выплачивает полагающийся налог с корпораций, после чего распределяет оставшуюся прибыль между акционерами таким образом, как это определяет совет директоров кампании. В определенных пределах C-корпорация может оставить часть дохода в виде прибыли. Например, она может это сделать с целью сохранения определенного уровня

оперативных резервов, или на капитальные затраты. Эти ограничения определяются правом акционеров на получение дивидендов, выполнения которого они могут требовать, при необходимости, через суд, если удерживаемые корпорацией доходы не имеют разумного отношения к деятельности корпорации. При этом, решения совета директоров считаются обладающими юридической силой при условии отсутствия очевидных доказательств обратного.

### **Политические соображения**

Часто говорят, что законодатели склонны облагать налогами корпорации по причине того, что они (корпорации) не голосуют. Но даже если это и так, то акционеры участвуют в голосовании, и в последнее время в американском налоговом законодательстве сложилась тенденция уравнивать налогообложения предприятий, независимо от того, в какой форме они организовано. Но хотя малый бизнес облагается налогом в одинаковой степени и пользуется льготами по сквозному налогообложению, крупный бизнес по-прежнему остается объектом двойного налогообложения.

### **Расходы, вычитаемые из суммы, облагаемой налогом**

Доход, облагаемый налогом, вычисляется путем вычитания из валового дохода большое количество разнообразных расходов, которые, в совокупности можно описать как "себестоимость" или издержки производства. Эти расходы, вычитаемые из суммы, облагаемой налогом, распадаются на множество категорий. Ограничения объема настоящей статьи дают возможность коснуться только трех из них: амортизация, заработная плата и оборотные фонды. Эти три сферы были выбраны потому, что отношение к ним в американской и российской системах отличается. Существуют вполне законные основания для обоих подходов - и российского, и американского. На этих основаниях, а также на том влиянии, которое они оказывают, стоит остановиться.

1. Амортизационные начисления. По американскому законодательству, стоимость имущества, используемого в производстве, может вычитаться в течение реального времени его эксплуатации. Различные виды имущества имеют различные период амортизации, который, в большинстве случаев, отражает их реальные сроки эксплуатации. Соответственно, в идеале амортизационные начисления должны учитывать только степень амортизации. Иными словами, имущество, срок эксплуатации которого составляет пять лет, должно амортизироваться на 20% в год.

Однако, с целью привлечь капиталовложения, американское налоговое законодательство часто позволяет предприятиям исчислять амортизационные издержки со степенью, превышающей чистую амортизацию. Кроме того, предприятия имеют право вычитать из облагаемой налогом суммы стоимость имущества до 17.500 долларов в год, если это имущество введено в эксплуатацию в течение данного финансового года, тем самым давая еще один стимул для капиталовложений, особенно в сфере малого бизнеса.

Некоторые эксперты по международному налоговому законодательству отмечают, что в российской системе сроки эксплуатации, в течение которых могут производиться амортизационные начисления, являются нереально большими, и что разрешение правительства на применение более быстрых сроков с одной стороны трудно получить, а с другой - такое разрешение применимо далеко не везде.

2. Заработная плата. В Соединенных Штатах, как правило, не существует ограничений на то, какое количество денег может быть потрачено на заработанную

плату и соответственно вычтено из суммы, подвергающейся налогообложению. В противоположность этому, ограничения, накладываемые на выплату заработной платы в России, являющейся производным от "минимальной заработной платы", ставят работодателя в трудное положение. Он может или выплатить более высокую заработную плату, которую он не сможет вычесть из суммы средств, облагаемых налогом, и тем самым обречь себя на выплату налога с части стоимости производства, или же он может отказаться от выплаты более высокой заработной платы, что, очевидно, скажется на квалификации работников.

Экономисты утверждают, что российский подход - ограничения уровня зарплаты, которую можно вычесть из облагаемой налогом суммы - служит законным макроэкономическим целям ограничения "инфляции заработной платы", а тем самым - ограничения инфляции в целом. Перевешивает ли это соображение экономические влияние налогообложения части стоимости производства - этот вопрос находится вне сферы анализа настоящей статьи.

3. Оборотные фонды. Отношение к оборотным фондам также влияет на исчисление облагаемым налогом доходов. Это особенно справедливо в период инфляции, а также в период изменения уровня оборотных средств. Периоды увеличения оборотных средств - такие, как во время ввода предприятия в действие, а также во время последующих периодов роста, могут создавать обманчивое впечатление внешней прибыльности. Сами по себе, различные методы исчисления оборотных средств могут иметь заметное влияние на выплату налогов и, соответственно, на наличие нераспределенной прибыли в периоды повышенного спроса на капитал, и часто одновременно с этим - уменьшения движения наличности

### **Обязанность работодателя удерживать налоги на заработную плату, выплачиваемую работникам**

По американской налоговой системе работодатели обязаны удерживать налоги с заработной платы, выплачиваемой работникам. Основание для этого простое: если работодатель не удержит налоги, то вероятность того, что правительство сможет собрать причитающиеся налоги, уменьшается. В этом плане, проводится различие между работниками по найму и "вольнораемными" работниками по контракту.

Работодатель обязан удерживать налоги с заработной платы своих работников по найму, но он не обязан удерживать налог с оплаты труда работников по контракту. И работники по найму, и работники по контракту работают на работодателя. Но разница между ними лежит в том, насколько работодатель может контролировать их действия. Если работодатель имеет достаточно большой контроль над тем, как работник исполняет свои обязанности по доверенной ему работе, то такое человек считается работником по найму (и работодатель должен удерживать налоги). Если же, с другой стороны, работодатель не имеет контроля над тем, как выполняется порученная работа (кроме, разумеется, предусмотренного контрактом права получить работу в определенный срок и в соответствии с установленными условиями), то в таком случае считается, что речь идет о вольнораемном работнике, действующим по контракту и работодатель не обязан удерживать налог с заработной платы. В подавляющем большинстве случаев закон считает, что речь идет о работнике по найму, а не о вольнораемном работнике по контракту.

Примером вольнораемного работника по контракту может служить садовник, которого нанимает фирма, строящая гостиничный комплекс, для посадки кустов и деревьев. В таком случае в контракте определяется количество растений, а также стоимость и срок завершения работы. Садовник использует свои собственные

инструменты, труд своих наемных рабочих, и в целом обладает полным правом сделать эту работу так, как считает необходимым. Поскольку садовник является вольнонаемным работником по контракту, то фирма выплачивает ему полностью стоимость работы, без вычитания налога, и обязанность подсчета и выплаты необходимых налогов лежит на садовнике. То есть с точки зрения налогообложения, он работает сам на себя.

При приеме на работу, работник по найму заполняет специальный бланк (форма W-4) в котором устанавливается сумма удерживаемого налога. Различные наемные работники с одинаковой заработной платой иногда выплачивают совершенно разный налог, в зависимости от их конкретных обстоятельств. Например, работник, который не женат и не имеет детей, будет платить больший налог, чем его товарищ, у которого не работает жена и трое маленьких детей. Соответственно, оба наемных работника заполняя форму W-4, укажут своему работодателю различные суммы налогов для удержания, стараясь при этом чтобы указываемая сумма удержания была близка к той, которую они обязаны выплачивать по закону. Работодателю разрешается полагаться на те данные, которые предоставляют его работники в отношении величины удерживаемых сумм, и работодатель не несет никакой ответственности, если расчеты его работников впоследствии оказываются неверными. Обязательность выплатить неуплаченные налоги лежит на самих наемных работниках при заполнении ими очередной налоговой декларации за год.

Люди, не связанные работой по найму, обязаны ежеквартально предоставлять расчеты ожидаемых выплат налогов. Таким образом, правительство собирает налоги сравнительно регулярно (раз в квартал), и ему не приходится ждать 15 апреля, чтобы получить налоги, которые должны быть заплачены с доходов, полученных в предыдущем календарном году. Ожидаемые выплаты исчисляются налогоплательщиком на основании исчисления предполагаемого дохода, а также ожидаемых расходов и т.д. Вольнонаемные работники могут быть обязаны выплатить проценты и штрафы, если предполагаемые выплаты оказываются меньше, чем нижний предел их налоговых выплат за предыдущий год или оказываются равными 90% причитающихся налоговых выплат за текущий год.

#### **Удержание подоходного налога: федеральная система и система штата**

До сих пор речь шла исключительно о федеральной системе удержания подоходного налога. Однако, налогоплательщик обязан также выплачивать налоги штата (а иногда и местные налоги). В некоторых штатах, в том числе и в Вермонте, подоходный налог штата представляет собой определенный процент от федерального подоходного налога. Таким образом упрощается организация сбора налогов, но одновременно, налоги, собираемые штатом, оказываются в прямой зависимости от налоговой политики федерального правительства. В последнее время, в целях уменьшить дефицит федерального бюджета, Конгресс США принял решение передать ряд федеральных программ в ведение штатов (процесс передачи полномочий). В результате, федеральное законодательство сократило федеральные налоги, так как был упразднен ряд федеральных программ.

В таких штатах как Вермонт, где подоходный налог штата является определенным процентом от федерального подоходного налога, это привело к уменьшению сбора налогов, в то время как для финансирования вновь переданных на уровень штата программ требовалось как раз прямо обратное. Процесс передачи федеральных программ на уровень штатов породил призывы к упразднению связи между подоходным налогом штата Вермонт и федеральным подоходным налогом. Но

тем не менее, желательно сохранить ту очевидную простоту сбора налога, которая существует при нынешнем подходе (определенный процент от федерального налога), и скорее всего Вермонт сохранит такую систему, изменяя, при необходимости, этот процент в периоды передачи федеральных программ в ведение штата, до тех пор пока не установится новый баланс финансовой ответственности между федеральным уровнем и уровнем штата.

### **Заключение**

Считается (и вполне обоснованно), что в Соединенных Штатах все налогоплательщики платят свои налоги. Такой высокий уровень собираемости налогов дает возможность установить достаточно низкие ставки налогов, чтобы не отпугнуть налогоплательщиков от декларирования своих доходов. Сами расходы производства не облагаются налогом (так как они полностью вычитаются из суммы, облагаемой налогом), а капиталовложения поощряются путем различных налоговых льгот, как например возможности ускоренных темпов амортизации по сравнению с реальным сроком эксплуатации. Налоговое законодательство широко доступно для граждан, и правительство оказывает налогоплательщикам помощь в разъяснении и упрощении процедуры выплаты налогов. Налоговая политика, которая поощряет инвестирование и продуктивное использование капитала, согласуется с целями свободного рынка.

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*Марк Оттинджер - специалист по коммерческому и международному праву; практикующий юрист в городе Берлингтон, штат Вермонт, уже в течение 15 лет. Он преподает коммерческое право; в 1995 году три месяца преподавал на юридическом факультете Петрозаводского университета по программе Фулбрайт. Марк Оттинджер - один из основателей и руководителей программы "Буква закона" Карелия-Вермонт. Это его десятый приезд в Петрозаводск.*

## ПОДОХОДНЫЙ НАЛОГ: НАЛОГОВЫЕ ОРГАНЫ, СБОР НАЛОГА И ШТРАФНЫЕ САНКЦИИ

Настоящий доклад описывает систему сбора самого крупного в США налога - подоходного налога. Этот налог собирается Департаментом налоговых сборов США, входящим в министерство финансов США. Штат Вермонт, как и большинство американских штатов, имеет также свой подоходный налог, собираемый в дополнение к федеральному налогу. Внутренний подоходный налог Вермонта собирается Налоговым Департаментом штата. Система сбора подоходного налога штата Вермонт также описывается в данном докладе.

Необходимо заметить, что несмотря на то, что все американские налоги собираются отдельно друг от друга, меры, предпринимаемые правительством для обеспечения сбора налогов, а также ответственность за неуплату являются схожими для всех налогов.

### 1. Подоходный налог США

1) Процедура уплаты налога. Определение размера и выплаты подоходного налога основываются на декларациях доходов. Частные лица и товарищества обязаны заполнить такую декларацию за предшествующий год до 15 апреля следующего года. Корпорации должны заполнить налоговую декларацию в течение 3 месяцев и 15 дней после завершения финансового года.

Налоговая декларация для большинства налогоплательщиков является подсчетом сумм причитающихся налогов по отношению к уже уплаченным налогам. Работодатели должны регулярно удерживать из заработной платы своих работников определенную сумму налога для того, чтобы обеспечить выплату налогов до заполнения налоговой декларации. Частные предприниматели, товарищества и корпорации обязаны заполнять ежеквартальную налоговую декларацию и выплачивать установленный налог таким образом, чтобы общая сумма четырех ежеквартальных выплат составляла общегодовую выплату налога. Неуплата соответствующей ежеквартальной суммы может повлечь за собой значительные штрафные санкции.

Для большинства налогоплательщиков годовая налоговая декларация, а также любые выплаты или возврат средств в соответствии с декларацией завершает ежегодную обязанность по выплате налогов. У частных лиц или небольших фирм лишь очень малый процент деклараций проверяется налоговой службой и такой же очень небольшой процент их оспаривается. Проверки обычно заключаются в том, что налогоплательщик должен доказать точность заполнения налоговой декларации, а это в свою очередь может (и очень часто так и бывает) повлиять на пересмотр общегодовой суммы выплат налога. Налоговая служба занимается проверкой налоговых деклараций крупных фирм более тщательно.

Поскольку лишь очень небольшое количество налоговых деклараций проверяется или оспаривается, система сбора налогов в большой степени зависит от честного декларирования доходов. В целом так и бывает, но все же имеют место случаи непоступления налоговых средств в казну из-за невнесения доходов в налоговые декларации.

2) Апелляции. Налогоплательщики, несогласные с суммой налога, установленной налоговой службой, имеют возможность подать апелляцию в сам налоговый департамент. Если налогоплательщик не удовлетворен результатом рассмотрения апелляции, то после этого у него есть три возможности апеллировать. Налогоплательщик может выплатить установленную сумму налога и подать апелляцию в окружной суд США или в специальный суд, называемый судом по рассмотрению претензий. Также налогоплательщик может, не выплачивая установленной суммы налога, подать жалобу в налоговый суд США и, хотя этот суд располагается в Вашингтоне, его слушания проводятся в той части страны, откуда последовала жалоба от налогоплательщика.

3) Сбор налога. К налогоплательщикам, добросовестно декларирующим свои доходы и своевременно заполняющим налоговые декларации, но не выплачивающим задолженности по налогам, могут применяться различные виды сборов налогов. В целом, процедура сбора должна начинаться лишь после рассмотрения всех апелляций, но про определенных обстоятельства налоговый департамент вправе начать свою деятельность незамедлительно, так как окончательный расчет налогоплательщика с государством ставится действиями самого налогоплательщика под угрозу.

Налоговая служба располагает двумя взаимосвязанными методами сбора налоговых недоимок. Во-первых, по прошествии 10 дней после требования об уплате налога может быть наложен арест на все имущество налогоплательщика (кроме непосредственно необходимого для существования, которое не подлежит аресту), и продав его, налоговые органы используют вырученные средства для погашения задолженности налогоплательщика государству. Во-вторых, налоговая служба обладает правом удержания всей собственности налогоплательщика до уплаты им налога и принуждения налогоплательщика в судебном порядке продать собственность для уплаты долга. Трудности при применении подобных методов обычно возникают в тех случаях, когда одновременно имеется несколько разных требований на собственность должника со стороны других кредиторов. Хотя чаще налоговая служба имеет приоритет над остальными кредиторами, однако некоторые требования являются более приоритетными, чем требования департамента по налогам.

4) Гражданская ответственность. Неуплата налогов ведет к применению различных штрафных санкций:

1. Выплата 5% за каждый просроченный месяц из-за несвоевременной выплаты.
2. Выплата 5% от суммы налога за каждый месяц несвоевременного заполнения налоговой декларации.
3. Выплата 25% от недоплаченного в случае, если сумма налога значительно занижена.
4. Выплата 75% от недоплаченного в случае мошенничества с целью уклонения от уплаты налога.
5. Выплата 100% суммы установленного налога производится в случае сознательного уклонения от сбора или передачи налога, если налогоплательщик обязан это делать.

Последнее относится, например, к работодателям, которые удерживают налоги из зарплаты работников, но не перечисляют их государству.

В последние годы эти основные типы наказаний широко применялись в случаях особо крупных нарушений.

5) Уголовная ответственность. Сознательное уклонение от уплаты налога или сознательное уклонение от сборов и передачи налоговых средств является уголовным преступлением, наказуемым тюремным заключением на срок до 5 лет и

значительными штрафными санкциями. Также существует ряд преступлений, связанных с фальсифицированием налоговых деклараций. Намеренное уклонение от заполнения налоговой декларации является менее серьезным преступлением, наказуемым тюремным заключением на срок до 1 года.

## **2. Подоходный налог штата Вермонт**

Подоходный налог штата Вермонт зависит от федерального налога, что означает, что он составляет определенный процент от федерального налога. Методы сбора, гражданские и уголовные наказания являются такими же, что и при сборе федерального налога. Штат Вермонт принял также уникальное положение, позволяющее производить сбор налоговых средств более эффективно. Любое частное лицо, товарищество или корпорация, при подписании договора со штатом, должны подтвердить отсутствие задолженности по налоговым выплатам. Делается это под присягой, и в случае обнаружения ложности данного заявления, налогоплательщик подпадает под действие уголовной статьи за лжесвидетельство, дающей право заключения его в тюрьму на срок до 15 лет. Это же положение распространяется на все лицензированные и прочие требующие разрешения виды экономической деятельности и устанавливает процедуру отзыва лицензии, если ее владелец не выплатил все налоги. Многие виды деятельности требуют лицензирования, в том числе юридическая и врачебная деятельность. Для этих профессий наказание за неуплату налогов равнозначно потере возможности зарабатывать на жизнь.

TO: Justice John A. Dooley, Mark Oettinger  
FROM: Stephen Dycus   
DATE: December 2, 1997  
RE: Teaching in Russia

I have been back from Russia for just over a month, and I've had time now to digest some of what I learned during my stay there earlier in the fall. Here is a brief report on my experiences, along with some recommendations.

#### A. My Life in a Small Russian City

While waiting in line to clear customs at the Petrozavodsk airport, I was given this advice by a Finnish businessman: "Be flexible." His words served as a kind of mantra over the next two months.

When I arrived in Petrozavodsk I was housed initially at the Hotel Petrouni, behind the old Roman Catholic Church on Marx Prospekt. After several difficult days in which I experienced no hot water, then no water at all, and finally rats in my room, Aida Kling located a furnished flat for me in a near suburb about a ten-minute trolley ride from the center of town. The flat was located in a typical Soviet-style apartment block and built to a standard design, with a living room, bedroom, and small kitchen. It was fitted out with well-worn but comfortable furnishings. It even had cable TV, on which I could watch MTV or Eurosports in English, in addition to a variety of Russian channels. (At the very end of my stay I was told that CNN was also available.)

Because, as you know, there are no really good restaurants in Petrozavodsk, I prepared most of my own meals. I was able to locate two American-style supermarkets, the best one downtown near the University, where I could find most of what I needed, put it in a basket, and pay at the exit, without having to exercise my very limited Russian.

I was careful about what I ate and drank, and I remained healthy throughout most of my stay in Russia. The only exception came at the beginning of the heating season in Petrozavodsk, when the coal-fired central steam plants were started up. Then I and most of the people I met developed a sore throat and raspy cough that seemed to be related to the nearly opaque blanket of smog that settled over the city.

My inability to speak or understand Russian was a serious handicap. I strongly recommend that future travellers acquire at least a good beginner's vocabulary before departing.

I could hardly have survived -- and certainly not happily --

without the help of Sergei Pavshukov. He met me at the airport (with Aida), helped me get oriented, showed me around town, answered my questions, and became a kind, sympathetic friend who was always cheerful and completely dependable. Sergei eventually referred to himself as my "nurse."

Despite Sergei's efforts, and even though I was busy much of the time, I experienced feelings of loneliness and isolation. Following Carl Yirka's advice, I was able to set up a dial-in Internet connection with the University that worked fairly well, and e-mail provided my main link with home. I was also able to read the New York Times on-line each day. I took a small short-wave radio that allowed me to listen to the BBC World Service and Voice of America some of the time. But most weekends I found it disconcerting to go several days without speaking a word of English to anyone. I was invited to tea one afternoon at the apartment of Olga Zalkind, and at the end of my stay Elizabeth and I went to tea at Larissa Boitchenko's apartment. Otherwise, aside from a few lunches in town, I saw no other Russians socially during my six weeks in Petrozavodsk.

I did meet with the Rector of the University, Viktor N. Vasiliev, with whom I exchanged assurances of a desire for continued cooperation between our two schools. I also spent a fascinating afternoon (arranged by Irina Kosinets) meeting with Svetlana Puzshkina, a member of the Karelian Duma, and other legislators. They asked for my views about emergency powers under the Russian constitution and for information about the American tradition of federalism.

#### B. Teaching at the Law Faculty

I saw Rostislav Dusaev only twice -- once at a conference of Scandinavian scholars, when he presided over a workshop at which I made a presentation, and a second time briefly near the end of my stay, when he bought my lunch. Questions about his whereabouts were greeted with vague responses about teaching in Murmansk, travelling to Moscow, etc. I have the strong impression that Aida Kling was left to make decisions about my work there, but I can't be certain about this.

The admonition to "be flexible" was certainly relevant to my work as a teacher at the Law Faculty. I had written to Rostislav in March, as I was planning my travel, to try to get his agreement on a teaching schedule, since I had been warned by Mark that this might be a problem. In my correspondence I described very clearly my proposal to arrive in Petrozavodsk on August 27, to teach for six weeks beginning on September 2, which I understood was the first day of classes, and to depart on October 15 after administering and grading two final exams. On April 6 he wrote back to say, "Your future schedule is sufficient for us. But the concrete dates of your classes and examinations will be more clear for us at the end of August." I sent several other messages containing the same information during the spring and

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early summer. Imagine my surprise upon arriving in Petrozavodsk to learn that in fact classes would not start until September 8, leaving me only five weeks to do my two courses!

Aida Kling was extremely accomodating in arranging my class schedule. I taught Property on Tuesdays and Thursdays for an hour and a half each day (with a five minute break in the middle), and National Security Law in the same fashion on Wednesdays and Fridays. That gave me less than one and one-half semester credits (by our way of reckoning) for each course, but probably enough to meet the limited goals of these two introductory offerings. When I complained about changes in times and room assignments in the second week, I was promised that my schedule would not be changed again, and it was not.

When I met with Aida before classes began, she told me that about 30-35 fourth-year students would be enrolled in my Property course, and that around 70 third- and fourth-year students had signed up for National Security. National Security was accordingly scheduled to meet in the largest classroom, which seats about 75. On the basis of these numbers it was agreed that the final exams would be written, rather than oral, and would be administered on October 10 and 13. I did not ask for and was not given class rosters, since I did not expect to be able to call on students in class with questions. This turned out to be a serious mistake.

I was assigned two diferent interpreters for my classes. Vlad Talantsev, a 1997 graduate of the Law Faculty who also has duties in the Law Clinic, translated my Property lectures. He also served as my chief intermediary with Aida, and he helped me with a wide variety of day-to-day problems, both academic and otherwise. Vlad is a very talented young man who hopes to pursue a career in teaching, and he is just beginning work on a Ph.D. program at a Finnish university. My translator for National Security was Daniel Yevdokimov, another recent graduate of the Law Faculty who is working for a law firm in Petrozavodsk. While Daniel's English was better (he studied for a year at UVM), he was also extremely busy with other responsibilities; he sent substitutes to work for him at least half the time, and he simply failed to show up one day at all. Perhaps ten percent of my students understood enough English to follow my lectures without relying on the interpreter.

Teaching with a translator meant that I could only cover about half as much material as I might have otherwise. The Property course necessarily dealt only with the basics. I selected topics that I thought would be especially relevant to the rapidly evolving Russian system of land ownership, and I skipped such esoterica as the Rule against Perpetuities and the Statute of Uses. Stripping the subject down in this fashion, and imagining ways to explain concepts based largely on linguistic distinctions in English, was a fascinating process that forced me to think in an entirely new way about teaching this familiar

course. I came away encouraged about the possibility of teaching the basics more efficiently back home (perhaps with the aid of a computer-assisted program) and concentrating more on issues of legal process, politics, and economics. It is also clear to me now how a comparison with other legal systems might help to illuminate the development of our own laws.

The National Security Law course was especially interesting and dramatic because of ongoing political developments in Russia. I spent a lot of time talking about the still-controversial Russian constitution of December 12, 1993, which provided fascinating comparisons with our own organic law. Students seemed to understand the importance of the subject when we talked about Korea and Vietnam and Afghanistan, Grenada and Chechnya, the CIA's internal security activities, and the Pentagon Papers.

I began and ended each of my courses with the message that my job was not to prescribe or even to propose, but simply to tell the story of our experience in the United States making many of the same policy choices currently facing the Russian people. I admonished my students that, as future leaders of their government, they might profit from our own mistakes and successes, but that they had to work hard and exercise patience and imagination to build a stable democratic society based on their own sense of what was just and practical.

In addition to my regular classroom teaching, I was asked by three of the English teachers at the Law Faculty to speak informally to their classes about the U.S. Constitution and the American legal system.

I was also recruited to make presentations at two different conferences. The first was a very large convention of humanities scholars from Scandinavia and Russia. I spoke to a workshop on Law about prospects for transplanting United States laws into the Russian legal system. I used common law equitable servitudes and the Freedom of Information Act to illustrate the problem. Later in my stay I was asked by Larissa Boitchenko to speak to a conference on Domestic Violence, sponsored by the Gender Studies Centre. My topic was common law systems of marital property. About 50 people from all over Russia attended.

On the next-to-last day of classes, while preparing for the administration of my National Security Law exam the following day, I learned for the very first time that instead of the 65 or 70 students I thought had been enrolled (approximately 60 showed up for class each day), the course had at some point been made compulsory for third- and fourth-year students, and the official enrollment was actually 142. Similarly, Property, which had been represented to me as an elective course with an enrollment of about 35, was required for fourth-year students, of whom there were 68. Anywhere from 25 to 30 students had actually come to class each day. Bear in mind that the classes were scheduled to meet in rooms that seated 75 and 30 or so, respectively. I have

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no doubt that the Law Faculty was helped by having me offer so many student contact hours. I do not know who made the decision to adjust this "detail" of my schedule. But I was the unwitting victim of a huge bait-and-switch. Pedagogically, the result was most unsatisfying, and it cost me two extra days of grading final exams, for which I had not planned.

The first examination, for National Security Law, was a disaster. Even using three of the largest rooms available, students (many of whom I had never seen before) were forced to sit jammed together shoulder-to-shoulder. Although monitors were deployed in each room, there was massive cheating. I was able to give failing grades to a number of papers on which answers had been copied word-for-word, but half the questions were multiple choice, and it was impossible to control the outcome. Neither Aida Kling nor Vlad Talantsev seemed surprised; they simply indicated that oral, rather than written, exams were the rule at PSU.

At the beginning of the Property exam, which was administered three days later, I announced new rules. Students had to sit in alphabetical order with an empty chair between each two test-takers. This change provoked much grumbling, but it stopped most of the cheating.

Both exams were graded pass/fail, although I published a letter for each class listing the names of the top student and the dozen or so next-best ones. Failure rates ran 12% in National Security, 4% in Property.

### C. Conclusion and Recommendations

I am happy that I made the trip to Petrozavodsk, and I am extremely grateful to the two of you and to the Vermont-Karelia Rule of Law Project for helping to make the trip possible. I owe a special debt of gratitude to Mark for the hours he spent sharing invaluable information and advice from his teaching assignment there two years ago.

I am satisfied that my teaching and diplomacy there were worthwhile. I learned a lot, and I developed information and resources that will be extremely helpful in my future writing and teaching. Far more important, however, is whatever contribution I was able to make to the development of a friendly relationship between our two communities and institutions. I am strongly encouraging other members of the VLS faculty to make similar trips.

I would, however, advise against going to PSU to teach without the clearest commitment, well in advance, about courses, schedules, students, translators, and exams. Such a commitment should be formalized in an agreement between the heads of our two institutions -- Wroth and Dusaev, or perhaps Wroth and Vasiliev -- after it is negotiated by the individual faculty member.

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Because I now know even more clearly than Mark could tell me how classes are organized and conducted, I may be able to help spot potential pitfalls in the future.

It would be helpful to know more about the program and faculty at the PSU Law Faculty in order to plan future interactions with them. Without this information it will be impossible, for example, to plan courses that take into account what students will already have studied. Neither can we pretend to make judgments about the qualifications of PSU teachers or even know what their interests are, in order to use them as resources.

Future visitors to Petrozavodsk should be much more systematic and insistent than I was about getting to know students and other teachers.

We need to explore ways to cooperate in works of scholarship. For example, Vladimir Kozshin, a KGB colonel teaching as an adjunct on the Law Faculty, and I agreed that we would review one another's writings about the new Russian constitution.

Aida Kling was probably as responsive as she could be to my needs at the Law Faculty, but without Rostislav there I often felt as if we were on a ship without a rudder.

I see more clearly now than I could have before going to Karelia how important it is for us to be there. We must provide all the support and encouragement we can to efforts to build a stable democratic government in Russia. I would like to continue to be part of that effort.

**vbarfoun**

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From: John Dooley III <dooley@supreme.crt.state.vt.us>  
To: vbf <vbarfoun@plainfield.bypass.com>  
Subject: Trip to Archangel (fwd)  
Date: Wednesday, December 03, 1997 11:52 AM

David Cluchey - LAW writes:

>From acsweb.acs.usm.maine.edu|payson.usmacs.maine.edu|dcluchey Mon Jul 21 14:40:17 1997  
From: David Cluchey - LAW <dcluchey@payson.usmacs.maine.edu>  
Organization: University of Southern Maine  
To: Lisman@together.net  
Date: Mon, 21 Jul 1997 14:24:38 -0500  
Subject: Trip to Archangel  
CC: Dooley@supreme.crt.state.vt.us  
Return-receipt-to: David Cluchey - LAW <dcluchey@payson.usm.maine.edu>  
Priority: normal  
X-mailer: Pegasus Mail for Windows (v2.43)  
Message-ID: <5FD439417C0@payson.usm.maine.edu>

Mark & John,

I had a very successful visit in Archangel. I met with the Archangel Steering Committee for the exchange program, we roughed out a schedule for the September visit and they selected the three delegates from Archangel for the Petrozavodsk conference. They were delightful hosts and we have the basis for quite a successful exchange program.

The Steering Committee includes the following members:

1. Tatiana Zykina-Law School Dean-the driving force behind Archangel's commitment to this program. She organized my visit and could not have been more helpful.
2. Oleg Alexandrovich Naumov-Chairman of the Commercial Court of Archangel Oblast.
3. Michail Grigorovich Averin-Chairman of the Archangel Oblast Court.
4. Victor Aleksevich Shiraev-Head of the Justice Administration for Archangel Oblast (Minister of Justice?).
5. Michail Efimovich Anbreit-Chairman of the Presidium of the Oblast College of Advocates.
6. Valentin Fedorovich Derbin-lawyer in private practice (slated to become the director of the legal clinic at the law school).
7. Sergey Nikolaevich Orexanov-procurator of the October Region of the City of Archangel.

This Committee appeared to me to be very well chosen and well-positioned to make things happen in the legal community of Archangel.

The three delegates chosen to attend the conference in Petrozavodsk are:

1. Tatiana Zykina
2. Victor Shiraev
3. Valentin Derbin

Shiraev will be prepared to deliver a talk on the theme: "Enforcement of Judicial Judgments: New Developments in Legislation." Apparently there is a new federal law dealing with the enforcement of judgments. As I suspect we are all aware, this is one of the most pressing problems in the Russian judicial system.

Although this is more of a procedural theme than a strictly tax or commercial theme, it is an issue of obvious importance to the credibility of the Russian courts. Please let me know if you regard this topic as acceptable so I can inform Zykina.

In planning the schedule for the September delegation, we assumed arrival in Archangel in the afternoon of Sunday, 9/28 (assuming departure from Petro by night train on Saturday, 9/27). The rough schedule follows:

**9/28 Sunday- Arrival in Archangel**

- \*Hotel Registration
- \*Dinner

**9/29 Monday**

- \*Meeting of Conference Participants in preparation for Archangel Conference.
- \*Excursion to Maly Karely
- \*Lunch
- \*Meetings with counterparts (judges, law faculty, private lawyers).
- \*Dinner

**9/30 Tuesday**

- \*Conference 10 a.m. to 5 p.m.
- \*Dinner

**10/1 Wednesday**

- \*Meeting with the Rector and others at the Pomor State University.
- \*Meeting with the Archangel Steering Committee to discuss future contacts and exchanges.
- \*Lunch
- \*Meeting with the administrations of the Oblast and the City.
- \*Dinner

**10/2 Thursday**

- \*Departure of the Delegation.

While I was in Archangel, we looked at several possible venues

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Our faculty was founded in 1993. Nowadays we have 2 chairs: the chair of the theory and history of state and law and the chair of the constitutional and civil law. About 700 students study on the faculty. There are 12 teachers on the staff. This year we had our first graduates.

The list:

1. Zykina Tatiana, the dean of the faculty, professor of the Labour Law.
2. Molchanov Boris, the head of the chair of the theory and history of state and law, professor of the Criminal Law.
3. Nizovchev Dmitry, the vice-dean, the assistant professor of the history of Russian state and law.
4. Korzun Andrew, assistant professor of the history of state and law of the foreign countries.
5. Iashkin Aleksey, assistant professor of the Criminal Law.
6. Shtatsky Sergey, assistant professor of the Criminal Law and process.
7. Vlasova Tatiana, assistant professor of the Theory of state and law.
8. Fillipova Valentina, assistant professor of the Civil Law.
9. Maliy Aleksander, the head of the chair of the Constitutional and Civil Law.
10. Malay Tatiana, assistant professor of the Civil Law.
11. Romanovsky George, assistant professor of the Administrative Law.
12. Ruchin Michael, assistant professor of the Civil Law.

Students:

1. Vergak Maxim, 4 course.
2. Kotova Maria, 4 course.
3. Telegin Sergey, 4 course.
4. Gudkov Denis, 4 course.

Private lawyers:

1. Derbin Valentin, noncommercial partnership "CORPUS". The founder, lawyer.
2. Derbina Liubov, noncommercial partnership "CORPUS". The director, lawyer.
3. Lapin Dmitri, noncommercial partnership "CORPUS". The founder, lawyer.

JOINT PROPOSAL OF  
THE UNIVERSITY OF MAINE SCHOOL OF LAW  
AND  
THE DEPARTMENT OF LAW  
POMOR STATE UNIVERSITY  
FOR  
THE POMOR-MAINE CLINICAL LEGAL EDUCATION INITIATIVE

**COVER SHEET**

Application to the United States Agency for International Development and International Research & Exchanges Board for a Sustaining Partnership into the Next Century [SPAN] grant to support the Pomor-Maine Clinical Legal Education Initiative, a joint project of the University of Maine School of Law and Pomor State University, Department of Law.

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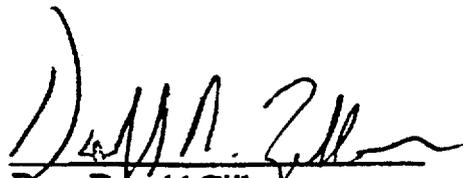
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The attached program and cost proposals were jointly developed and have been closely reviewed by the staff of the University of Maine School of Law and the Department of Law, Pomor State University. As signatories for these institutions, we are in full agreement on all aspects of these proposals, including the proposed activities, outcomes, time line, and budget as described herein.

Прилагаемая программа и предлагаемые расходы были совместно разработаны и подробно обсуждены сотрудниками юридического факультета Университета штата Мэн и юридического факультета Поморского государственного университета. В качестве сторон, подписавших данное предложение от лица вышеуказанных университетов, мы полностью согласны со всеми аспектами данного предложения, включая предлагаемую деятельность, результат, временные рамки и бюджет, так, как это описано в данном предложении.



Dean Donald Zillman  
University of Maine School of Law



Dean Tatiana Zyikina  
Department of Law  
Pomor State University

**University of Maine School of Law  
&  
Department of Law, Pomor State University**

**POMOR-MAINE CLINICAL LEGAL EDUCATION INITIATIVE**

**EXECUTIVE SUMMARY**

The Pomor-Maine Clinical Legal Education Initiative is a joint project of the University of Maine School of Law, an administrative unit of the University of Southern Maine, and the Department of Law of Pomor State University. The goal of the project is to broaden access to justice and strengthen the rule of law within the Archangelsk Oblast by establishing a live client legal aid clinic and supporting curricular courses within the Pomor State University Department of Law.

The Pomor-Maine Clinical Legal Education Initiative builds upon and extends the existing relationship between Pomor State University and the University of Southern Maine that is now in its seventh year. The Initiative also builds upon the extensive cultural, business, educational, and person to person contacts between the citizens of Archangelsk and those of the greater Portland, Maine area.

The project envisions creation of a collaboration between the law faculties at both institutions with the specific objective of establishing a live client legal aid clinic at the Pomor State University Department of Law. The project consists of five phases, each with specific objectives supporting the overall goal.

During the first phase Russian faculty will be selected. American and Russian faculty will generate a set of common materials describing the clinical experience and program at the University of Maine School of Law and the structure and needs of a clinical program at the Department of Law of Pomor State University in Archangelsk. These materials will be available in Russian and English and will form the baseline of shared knowledge for all participants.

The second phase will involve a trip to the University of Maine School of Law by key faculty participants from the Pomor State University Department of Law. During the three-week visit they will observe clinic and curricular course operations at the University of Maine School of Law. The primary foci of this phase, however, is to agree upon a detailed curriculum for the courses required for clinical work, develop and provide appropriate instructional models for intensive training in interviewing, counseling, drafting, pretrial and trial advocacy in the Russian law department, and establish a start-up plan for clinic operations.

The third phase will consist of developing finished materials in Russian and English for the intensive required courses and suitable administrative and operational documents for clinic operations. During this phase two computers, a printer, and fax machine will be purchased for the Pomor Department of Law clinical faculty to insure ease of communication and co-ordination with their American colleagues.

The fourth phase will occur in Archangelsk. It will include conducting the two week intensive courses in interviewing, counseling, drafting, and pretrial and trial advocacy for Russian law students, leading to the start of clinic operations.

The fifth phase is the establishment and operation of the clinic at Pomor State University. The project provides for the purchase of eight computers and two printers for use by students in representing clients. State University's Department of Law will provide the building, furniture, and supplies necessary to operate the Clinic out of its normal operating budget. This phase also provides for continuing faculty dialogue and consultive support during the first year and support for half of the clinic operations.

The program includes sufficient funds to partially underwrite the cost of clinic faculty during the first eighteen months of the clinic's operation. At the end of the program, Pomor State University's Department of Law is committed to continuing the clinic as a regular part of its curriculum.

The total program seeks a grant of approximately \$110,000.00 and involves a participant match well in excess of 25%. The detailed cost proposal is attached.

## PROGAM PROPOSAL

### 1. PARTNERSHIP TRACK RECORD AND INSTITUTIONAL CAPABILITY

A. Partnership Track Record: Ten years ago the Cities of Greater Portland and the City of Archangelsk became sister cities. Fourteen Maine cities and towns in the Greater Portland area are part of this program. During the last decade Russians and Americans have journeyed back and forth between Maine and Archangelsk on exchange visits. These citizen exchanges have involved doctors, dentists, attorneys, construction contractors, academics, and persons in other fields. High school student exchanges have occurred each year. There is hardly a month when there is not at least one person from Archangelsk visiting in the Greater Portland Area or one person from the Greater Portland Area visiting Archangelsk. Hundreds of residents of Maine and Archangelsk have traveled back and forth under the Archangelsk-Greater Portland Sister City Exchange Program. This program has been completely funded by private donations and fund raising, except for a three year period when a Federal grant funded the high school student exchanges. There is a permanent Portland Committee established in Archangelsk and a permanent Archangelsk Committee established in Portland.

The importance of this tie to the success of the program at Pomor State University cannot be underestimated. It is impossible to work in Archangelsk or at the University without meeting people who either have been to Portland, Maine, or who know someone who has been to Portland, Maine. The same is true on this side of the Atlantic. The sister city relationship is a source of enormous civic pride in the greater Portland Area and in Archangelsk. There is broad popular support for the sister city relationship in the cities and towns of the Greater Portland Area and in Archangelsk. The sustained success of the sister city relationship has led to the current exploration of establishing a State to Oblast relationship between Maine and the Archangelsk Oblast.

The Archangelsk Committee arranged for a number of faculty and administrative leaders from Pomor State University to visit the University of Southern Maine. This relationship led to the formation of a collaborative agreement between the two Universities for the exchange of students in 1990. In October of 1994 the Universities entered into a second five-year agreement. The purpose of the agreement is "to promote international cooperation and to foster their mutual interest in the field of higher education and research." The terms of the Agreement call for exchange of faculty, students and academic publications as well as cooperation in research activities. This joint proposal is an outgrowth of that partnership and seeks to forge a direct link between the law schools associated with the two Universities. Since 1990, five student and fourteen faculty exchanges have occurred. Most recently, Vladislav Goldin, Vice Rector of the Pomor State University, taught a Political Science Course at the University of Southern Maine in the Summer of 1997. [Copies of the 1990 and 1994 Agreements and a summary of joint activities are included in the Attachments.]

The University of Maine School of Law and the Department of Law of Pomor State University have already initiated important contacts. In September of 1997, Dean Tatiana Zykina was invited to spend a week at the University of Maine School of Law its our own expense. She made this trip after attending a program on clinical education in Washington, D.C. While in Maine, she attended and observed the courses which were required for clinical work and spent many hours learning about the Law School's Clinical Practice Program. The Law School supplied an interpreter for Dean Zykina in the person of a law student who was perfectly bilingual,

After the Dean's departure, a large amount of material relating to the Law School's clinic was shipped to her via D.H.L.

Three weeks later Professor Judy Potter, the creator, designer and first tenured Director of the Law School's clinical program traveled to Russia in order to further explore creation of a relationship between the two Law Schools and the establishment of a clinical practice program at Pomor State University. She traveled as part of the Vermont-Karelia Program for this purpose. Her first stop was the Clinic at the University at Petrozavodsk. This Clinic was established as part of the Vermont-Karelia Program by Professor James May, a clinical professor at the Vermont Law School, a private law school. Professor Potter spent one day at this Clinic, interviewing key personnel and inspecting the Clinic facilities. Dean Zykina came to Petrozavodsk to be with Professor Potter at this time, and she spent time at the Clinic at the Petrozavodsk Law School along with Professor Potter. Together, they analyzed the clinical program there and determined how the clinic at Pomor State University could build on the experience of the Petrozavodsk Law School. At the Petrozavodsk Law School, the clinic is not offered for credit. One major difference between the two clinics is that the Clinic at Pomor State University will be offered for credit. This is an important move forward in establishing clinical practice programs as part of a law school curriculum.

From Petrozavodsk, Professor Judy Potter traveled to Archangelsk to meet once again and work further with Dean Zykina. At this time Professor Potter visited the externship program already established by Dean Zykina. Later, Professor Potter shared with Dean Zykina the newly developed standards for the University of Maine Law School's externship program.

While in Archangelsk, Professor Potter met with leading jurists, attorneys, heads of legal departments and the Ministry of Justice for the Oblast of Archangelsk. To a person, they all expressed strong support for the clinical practice program that Dean Zykina and Professor Potter had been designing. It is fair to say that there exists solid backing from every facet of the Archangelsk legal community for such a clinic. Professor Potter also met with the Young Lawyers' Association at Pomor State University. This Association is a highly selective one made up of law students and recent law graduates of the University. The Association is exploring establishing a legal services program at the University to represent indigent persons. It is part of the clinic plan that the students working in this program be supervised within the clinical practice program. The discussions and agreements in principle between Dean Zykina and Professor Judy Potter have led directly to this proposal.

As a further result of the Fall visit to Archangelsk, the State of Maine has been asked to release surplus computers to Pomor State University. Arrangements have also been made through individuals active in the Sister City Committee to ship the computers to Pomor State University free of charge.

It is fair to say that we at the Law School have almost daily contact with our counterparts in Archangelsk. Our contact is by fax and e-mail. We have developed a dialogue which is a natural, frank exchange of ideas by persons who have a great deal of affection and mutual respect for one another. Project management on both sides of the partnership is in the hands of those directly responsible for achieving our goals and objectives. Therefore, we anticipate no difficulty in resolving administrative or other problems.

**B: Institutional Capability:**

**1. University of Maine School of Law**

**a. Clinical Programs: The University of Maine School of Law is an**

administrative unit of the University of Southern Maine, and the law school of the University of Maine System. Although one of the smallest state law schools in the United States, the University of Maine School of Law has achieved sustained excellence and innovation with a minimum of resources. This success is due in large part to the Law School's commitment to clinical legal education. The Law School Law has been a pioneer in clinical education. The Law School founded the Cumberland Legal Aid Clinic more than a quarter century ago. It was one of the first law schools to fully integrate the clinical and traditional faculties. The Cumberland Legal Aid Clinic received the Emile Gumpert Award in national recognition of its sustained excellence. For a number of years after it started, the Clinic was a general practice live client clinic with no specialized programs. In the Clinic third-year students at the Law School handled all manner of criminal and civil cases in all State and Federal courts.

In the late 1980's the Cumberland Legal Aid Clinic was the first clinical program to propose that all student attorneys be administered an oath of office by the Maine Supreme Judicial Court. This practice has been copied by clinic and courts in other states. In the early 1990's the Clinic collaborated with the Maine Medical Center to create the Forensic Psychiatry Project. This Project involves monthly seminars for and the sharing of clinic cases between student attorneys and fellows in adult and child psychiatry. The Forensic Psychiatry Project has received national recognition. Also in the early 1990's the Cumberland Legal Aid Clinic created the Domestic Violence Project. This project provides representation to indigent victims, mostly women, seeking final orders for Protection From Abuse or Harassment.

In 1993 the Cumberland Legal Aid Clinic inaugurated the Integrated Clinical Education Program. This Program blended clinical and traditional components of the Law School curriculum into a pedagogically coherent whole, offering four courses involving live-client representation by third year law students. The four programs are the General Practice Clinic, the Family Law Practicum, the Estate Planning Clinic, and the Criminal Defense Practicum. A fifth course, the Rural Access Project, was a joint endeavor of the Maine Bar Foundation, Pine Tree Legal Assistance, Legal Services for the Elderly, and the University of Maine School of Law. All clinics offer free legal services to indigent people in Southern Maine. Student attorneys represent clients at both the trial and appellate levels. They can appear as attorneys of record in the U.S. District Court, the First Circuit Court of Appeals, U.S. Bankruptcy Court, Maine Supreme Judicial Court, Maine Superior Court, Maine District Court, and a number of quasi-judicial tribunals.<sup>1</sup>

The Cumberland Legal Aid Clinic operates year round. It employs four law students to carry the remaining case load of all clinics during summer recess. The faculty members provide professional supervision of summer interns. The Summer Intern Project insures a sufficient case inventory to meet the needs of all clinical courses in the fall semester. The Law School has consistently competed successfully with the top law firms in Northern New England for the very best summer intern candidates.

b. Curricular Support: The University of Maine School of Law's advocacy programs have had successes far out of proportion to its size and resources. It is a clinical training program which uses methods similar to those developed by the National Institute of Trial Advocacy. A Trial Practice course is offered two semesters. This course is co-taught by

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<sup>1</sup> Under the Maine Rules of Civil and Criminal Procedure, law students are permitted to appear before any court or tribunal upon successful completion of two years at an accredited law school and upon certification by the Dean. Student attorneys must be supervised by a licensed attorney. Rule 90 M.R.Civ.P.; Rule 62 M.R.Crim.P.

A student/faculty ratio of twelve to one is maintained in the basic trial practice course by assigning additional faculty members to the course each semester as needed. The Trial Practice Course teaches basic trial advocacy skills and the associated procedural and substantive law. Students are trial counsel in two mock trials, one jury and one judge-tried. The class meets three hours a week. Approximately 80% of class time is devoted to simulated trial exercises, including opening statements, introduction and use of exhibits, direct and cross examination of lay and expert witnesses, and making and meeting evidentiary objections and summations. The syllabus includes instruction about and simulation of limited discovery, motions, and other pre-trial practice matters.

Professor Potter teaches courses in interviewing, counseling, and negotiation at the Law School. The interviewing, counseling, and negotiation courses also use simulation as a methodology. During the course the students handle various problems especially designed for the course. They are graded on their performances of these problems throughout the semester.

Professors Potter and Mullane also teach the Advanced Trial Advocacy class. Members of this class represent the University of Maine School of Law in the National Mock Trial Competition. Over the last five years the University of Maine School of Law Trial Advocacy team has advanced past the New England Regional Competition to compete in the National final rounds of the competition. Only the top 20 teams in the United States advance to this level.

The introduction of innovative teaching methods would, in and of itself, be an important innovation at Pomor State University. Dean Zykina is very interested in the introduction of these new teaching methods to her Law Faculty.

## 2. Pomor State University:

Pomor State University is the largest and foremost University in the Archangelsk Oblast. The Law Department faculty began at Pomor State University five years ago. The study of law is a five-year program in the Russian system of higher education. Last Spring the first class of 32 students graduated from the Law Department of Pomor State University. There are about 160 students in each class in the Law Department or about 800 students studying law. The first Dean of the Law Faculty is Tatiana Zykina. Before becoming the Dean of the Law Faculty, she was an extremely well-known prosecutor's assistant and professor at Pomor University. She comes from a family of attorneys, her father being a well known and respected judge who now teaches on her faculty. For 22 years he headed the Regional Court. The Law Faculty consists of about 20 full-time professors and 20 adjunct professors.

The Pomor State University Law Department already has in place a well-thought-out externship program wherein six law students a semester work in the Law Offices of two well-known and experienced attorneys. There are excellent facilities for the students at these offices and the quality of supervision and the experience is exceptional.

However, Dean Zykina is interested in establishing a client-based, in-house clinical practice program at her University. Therefore, in early September of this year, Dean Zykina traveled to a clinical conference in Washington, D.C. followed by a trip to Maine. Her trip to Maine is described above in § 2.A. Partnership Track Record. The solid support of Dean Zykina for the establishment of the clinical program which it taken for credit is unique. Other Deans have not given such unqualified support. Dean Zykina's goal is for her Law School to have the best clinical program in Russia without qualification and for her clinic to be a model for all other law faculties.

### 3. GOALS AND OBJECTIVES:

A. The Department of Law of Pomor State University and the University of Maine School of Law seek to facilitate individual access to justice within the Archangelsk Oblast, enhance legal skills training of new lawyers in adversary representation under a rule of law, and inculcate in the succeeding generations of law graduates a commitment to the rule of law and service for the public good. These goals will be accomplished by establishing a sustainable live-client legal aid clinic and appropriate skills training within the Pomor State University Department of Law. It is contemplated that this Clinic will handle family law, commercial law and employment law matters. The law students participating in the Clinic will be in their fifth year of study. Through this project there will be expert collaboration in the establishment of academic and administrative procedures, necessary curricular skills training, effective academic and professional supervision of student attorneys, and efficient methods of providing professional representation using law student advocates. The project has defined objectives directed at creating an innovative program that will directly meet the Rule of Law target sector of the USAID program in Russia. The project's objectives will materially advance both citizen participation in and strengthen the justice system as an essential component to building and maintaining democracy.

B. The Pomor-Maine Clinical Legal Education Initiative builds upon the existing relationship between the communities through the Sister City Program and extends the working relationship between the University of Southern Maine and Pomor State University to the law schools associated with both institutions. The existing Agreement between Pomor State University and the University of Southern Maine facilitates student and faculty exchanges as well as exchanges of academic and text materials. The program proposed herein will take this cooperation to the next level, and engage both institutions in a joint enterprise with a single concrete objective.

C. The first legal aid clinic at a Russian law school was established at Petrozavodsk State University by the Vermont/Karelia Rule of Law Project funded by the USAID. The Maine/Pomor project will build upon the earlier success of Vermont/Karelia by extending the concept by involving two new institutions and new political subdivisions within both countries and by providing service to a different community. The Pomor-Maine Clinical Legal Education Initiative also differs from the earlier effort by directly linking a law school in both countries within the context of a vibrant sister city relationship and an educational exchange program between the law school's parent universities. Further, the Pomor-Maine Clinical Legal Education Initiative will be creating a clinical program that gives academic credit to the students participating in it.

### 4. PROPOSED ACTIVITIES.

The Pomor-Maine Clinical Legal Education Initiative entails five phases. They are:

Phase I. Preliminary exchange of information about [A] the civil legal system as it exists in the Archangelsk Oblast, and [B] the Cumberland Legal Aid Clinic administrative, educational, and professional operations and logistical planning for Phase II.

This phase will begin in January, 1998 and continue until April, 1998. The goal of this phase is to provide the participants in both schools with sufficient information about their counterpart's legal systems to create a shared basis of understanding of the practical problems and effective solutions of trans-cultural education and legal skills training. At the outset, Pomor State

University Department of Law will recruit and select two suitable faculty candidates for supervision of the clinic. The first objective of this phase is to develop appropriate documentation and agendas to enable the participants to meet the second phase goals and objectives. The second objective of this phase is the necessary logistical planning for Phase II. Both objectives will be achieved by use of e-mail, fax, and mail exchanges of information between counterparts in both institutions, as well as through the University of Maine Law School's connection to its Russian Law Data Base.

Phase II. Faculty training and curriculum development, including course materials, and clinic documents and forms.

This phase will occur at the University of Maine School of Law campus in Portland, Maine, during late April, 1998. Key representatives of the Pomor State University Department of Law teaching team will travel to Portland for a three-week program to work with the University of Maine Law School teaching team. The goal of this phase is to create an integrated Russian-American instructional team that can conduct the initial courses required for clinical work in interviewing, counseling, negotiation, drafting, and pretrial and trial advocacy and to create a plan to start clinic operations. The first objective of this phase is to provide initial training of Russian and American faculty in the subject matter to be taught and the instructional techniques appropriate to the Russian law student and existing justice system. This phase will be timed to coincide with the final trial exercise of the University of Maine School of Law Trial Practice Course at the end of the Spring Semester. A second objective of this phase is to establish an agreed upon syllabus and assignment of faculty responsibilities for the initial skills courses at the Pomor State University Department of Law. The third objective is establish a detailed plan covering all steps necessary to begin clinic operation at the conclusion of the fourth phase. The final objective of this phase is development of all necessary course and operational materials. The University of Maine School of Law will provide all necessary facilities and administrative support to meet these objectives, including translators.

Phase III. Preliminary preparations for clinic operations, and translation, reproduction, and distribution of all necessary documents and forms. Faculty preparations for Phase IV.

The goal of this phase is to make final preparations for the courses required for clinical work and clinic start up. The initial objective is to see that all preliminary steps necessary to host and teach the intensive required courses and start up clinic operations are completed. The first objective is to make all necessary logistical and administrative arrangements, including space, equipment, travel, lodging, and administrative support. The second objective is translation, reproduction, and distribution of all pertinent documents developed during Phase II into Russian and English. Included are suitable evaluative instruments for feedback from faculty, students, and a representative sample of clinic clients. This objective will facilitate the final objective: final faculty preparations for the teaching of the intensive required courses and clinic start up. Two faculty computers with modems, printer, and fax will be purchased for Pomor State University's Law Department use during this phase to insure close collaboration with colleagues at Maine. The Pomor State University Department of Law will be responsible for the achieving the first objective. Both partners will share responsibility for the second and third objectives.

Phase IV. Two week intensive course work and clinic startup.

The goal of this phase is to teach the required courses leading to initial clinic operations with student attorneys at the Pomor State University Department of Law. The first objective will be to create a core group of clinic capable law students. The second objective will be to create a core group of faculty at the Pomor State University Department of Law who are able to teach the courses required for clinical work by the students using new teaching methodologies. The third objective will be to commence clinic operations using the trained students and faculty supervisors. To accomplish these goals Professors Potter and Mullane will travel to Archangelsk and participate in the teaching of these courses. The courses themselves will accomplish the first and second objectives. The University of Maine School of Law faculty will consult and assist the Pomor State University Department of Law faculty and administration throughout their two week stay with educational, administrative, and professional aspects of clinic operation.

Phase V. Continuing consulting support of clinical legal education at the Department of Law, Pomor State University.

The goal of this phase is to provide continuing support to the legal aid clinic at the Pomor State University Department of Law and collaborative dialogue between the law faculties of both institutions on matters of common interest and concern. The objective is the continuation of regular communication by e-mail and fax with translation capabilities available on site at both Law Schools. The purchase provides for the purchase of eight computers and two shared printers for use by the law students in the clinic. Pomor State University Department of Law will provide continuing support for the clinic as a regular part of its curriculum. Further, other initiatives are under consideration and are being proposed. See a discussion of these initiatives under "Plans for Sustainability".

5. PLANS FOR SUSTAINABILITY.

The Pomor-Maine Clinical Legal Education Initiative will create a legal aid clinic within the Department of Law of Pomor State University. It will provide the human resources necessary to sustain the educational, professional, and administrative needs of the clinic and supporting curricular courses. Because the program includes training and long-term support of the faculty, it creates an academic and professional program that is essentially self-replicating. The Department of Law will provide the necessary space, equipment, and administrative support out of its normal operating budget.

Creation of the clinic is, however, only the first tangible accomplishment of a long term collaborative relationship. The personal and institutional relationships between the two communities have already taken on a life of their own. The judges, lawyers, and university faculty of both communities are and will continue to engage in a spirited exchange of ideas and work towards shared goals. There are a number of other initiatives that are generating support in both law schools and their local judiciary and bar. Members of the Maine Bar and Judiciary are exploring working with the National Center of State Courts to establish a pilot project at Pomor State University for the collecting and publishing of the opinions of the Archangelsk Oblast courts at the Law Department library in a data base which would be available to jurists, advocates, prosecutors, academics, law students and other attorneys. Also members of the bench and bar of

the State of Maine are exploring the establishment of exchanges and continuing legal educational programs in Archangelsk. Of particular interest are programs relating to the development of commercial law practice within a reliable and predictable adversarial system. The connections forged during the Pomor-Maine Clinical Legal Education Initiative will become a new and vibrant part of that dialogue.

#### 6. EVALUATION:

The success of each phase of the Pomor-Maine Clinical Legal Education Initiative is directly determinable and verifiable. Accomplishment of Phase One Objectives will result in the production of specific informational materials and the agenda. Copies of these materials will be made available to USAID. Phase II objectives will result in the production of draft materials for use in the intensive courses in interviewing, counseling, negotiation, drafting, pretrial and trial advocacy, and clinic operations. Phase III objectives will result in the publication of Russian and English versions of all course and clinic materials. Copies of these materials will be made available to confirm performance. Phase IV performance will be verifiable in the documentation evidencing the teaching of these intensive courses and the commencement of clinic operations.

Documentation evidencing the activities of the clinic in its first academic year will be provided by the Department of Law of the Pomor State University at the conclusion of its 1998-1999 academic year. This report will include evaluations provided by the student attorneys, faculty, and a representative sample of clients.

#### 7. PERSONNEL QUALIFICATIONS.

Professor Potter was Director of the Cumberland Legal Aid Clinic for fifteen years. Prior to coming to the Law School, she was with a law firm in Washington, D.C. She received her undergraduate degree from Cornell University and her J.D. Degree from the University of Michigan Law School. She is an experienced clinic manager, administrator, and supervisor, as well as a skilled teacher of interviewing, counseling, negotiation and trial and pretrial advocacy. She designed the initial clinic and wrote the manuals and materials used in the clinic. Professor Potter has participated in the USAID's Rule of Law Project in East Africa which was part of a project undertaken by the University of Vermont. As part of this program, Professor Potter traveled to Uganda and Zambia; presented workshops there; and explored the establishment of legal services and clinical programs. She designed a trial advocacy course which was taught at the Law Practice Institute in Lusaka as part of this program. Professor Cluchey, a Harvard Law School graduate, is a recognized expert in international trade. His background includes extensive commercial law experience, as well as practice experience with a private firm and as a prosecutor for the State of Maine. Professor Cluchey speaks Russian and has taught courses in Russia, in Russian. Professor Cluchey is familiar with the current attempts to establish a rule of law and commercial legal system within Russia. Professor Mullane received his undergraduate and law degree from Notre Dame University. He has an extensive trial practice background. He is the current Director of the Cumberland Legal Aid Clinic and is also a skilled teacher of pretrial and trial advocacy, evidence, criminal law, and clinic skills. Professor Mullane is also an expert in the computerization of clinical operations. He has also designed and written substantial clinical practice materials.

Dean Zykina graduated from the Law Department at the Leningrad State University in 1976. From 1976 to 1980 she worked as an assistant prosecutor. From 1980 until 1986 she

worked as a lecturer of Law at the Arkhangelsky Technical Institute. She took post-graduate courses at Leningrad State University in Labor Law. She was awarded a degree of Candidate of Legal Sciences in 1989. From 1989 to 1993 she was a principle lecturer at Arkchangel'skiy Technical Institute. From 1993 to the present she is a principal lecturer and dean of the Law Faculty of Pomor State University. She has published 20 scientific papers on Labor Law. She studied at a number of international and national programs since becoming dean. Dean Zykina speaks sufficient English to communicate readily with the faculty at the University of Maine Law School as do a number of persons on her faculty and some of her students. She also is taking time to increase her facility in English.

The University of Maine School of Law has several students who speak Russian, and access to other Russian speakers with in the University of Southern Maine and Portland communities. Professor Potter studied in Russia in 1958 and has taken twelve credit hours of Russian. She is now actively engaged in recapturing her Russian. The Law School is one of the three Law Schools in the country who is a subscriber to a Russian Law data base. We have also identified a translators in Russia of sufficient skill to translate the materials, and a translator in Archangelsk who is capable of doing simultaneous translations. Funds are budgeted to provide translation services where necessary. Communications have not been and will not be a problem for this project.

## 8. WORK PLAN

For a detailed description of the work to be accomplished in each phase, see the detailed description set forth in § 4 above.

### Phase I.

January 30, 1998: Assign areas of responsibility for information collection and transmission of substantive materials; and logistical planning for Phase II.

February 27, 1998: Travel and logistical arrangements for Phase II completed.

March 20, 1998: All information transmitted to counterparts.

March 20 - April 1, 1998: University of Maine School of Law faculty prepare Phase II curriculum.

April 1, 1998: University of Maine School of Law faculty prepares and disseminates final agenda for Phase II activities.

### Phase II.

April 16, 1998 - May 7, 1998: Faculty representatives from Pomor State University Department of Law travel to University of Maine School of Law for training and curriculum development, including course materials, and clinic documents and forms.

### Phase III.

May 7 - June 1, 1998: All faculty participants complete final drafts of assigned materials.

June 1, 1998 - June 26, 1998: Documents translated into Russian/English.

June 29, 1998 - July 22, 1998: Russian/English final documents reproduced, disseminated to faculty and delivered to Pomor State University Department of Law.

July 31, 1998 - Travel and logistical arrangements complete for Phase IV.

September, 1998: Faculty representatives of University of Maine School of Law travel to Pomor State University to participate in the team teaching of the intensive clinical training courses and to aid in the clinic start up.

Phase V.

August 22, 1998 - December 31, 1999: Continuing consulting support of clinical legal education at the Department of Law, Pomor State University.

January 30, 2000 Final Report of project to IREX and USAID.

COST PROPOSAL

**UNIVERSITY OF SOUTHERN MAINE  
COST PROPOSAL**

**POMOR-MAINE CLINICAL LEGAL EDUCATION INITIATIVE**

UNIV CODE	CATEGORY	US AID	MAINE	POMOR	TOTAL
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**YEAR I : JANUARY 1, 1998 - DECEMBER 31, 1998**

<b>PERSONNEL</b>					
151	Maine Faculty	6,420	38,602	-	45,022
	Pomor Faculty	1,869	-	1,414	3,283
	Total Salaries & Wages	8,289	38,602	1,414	48,305
190	Employee Benefits @ 30.50%	1,958	11,774	-	13,732
	Total Personnel	10,247	50,376	1,414	62,037
<b>OTHER COSTS</b>					
401	Translation Services	3,400	-	-	3,400
402	Interpreter Services	2,760	-	-	2,760
403	Transportation/Driver	190	-	-	190
420	Supplies	1,000	-	-	1,000
430	Telephone, Telefacsimilie, E-Mail	1,550	-	-	1,550
440	Postage	1,250	-	-	1,250
450	Printing & Photocopying	1,750	-	-	1,750
470	Visas/MEDEX	1,200	-	-	1,200
490	Travel	48,190	-	-	48,190
700	Pomor Equipment	5,750	-	-	5,750
	Total Other Costs	67,040	-	-	67,040
	Total Direct Costs	77,287	50,376	1,414	129,077
690	Indirect Costs @ 24.0%	12,573	12,090	-	24,663
<b>TOTAL YEAR I COSTS</b>		<b>89,860</b>	<b>62,466</b>	<b>1,414</b>	<b>153,740</b>

**YEAR II : JANUARY 1, 1999 - DECEMBER 31, 1999**

<b>PERSONNEL</b>					
151	Maine Faculty	-	7,490	-	7,490
	Pomor Faculty	3,635	-	3,635	7,270
	Total Salaries & Wages	3,635	7,490	3,635	14,760
190	Employee Benefits @ 30.50%	-	2,284	-	2,284
	Total Personnel	3,635	9,774	3,635	17,044
<b>OTHER COSTS</b>					
401	Translation Services	-	-	-	-
402	Interpreter Services	-	-	-	-
403	Transportation/Driver	-	-	-	-
420	Supplies	1,000	-	-	1,000
430	Telephone, Telefacsimilie, E-Mail	550	-	-	550
440	Postage	250	-	-	250
450	Printing & Photocopying	750	-	-	750
470	Visas/MEDEX	-	-	-	-
490	Travel	-	-	-	-
700	Pomor Equipment	-	-	-	-
	Total Other Costs	2,550	-	-	2,550
	ng and Curriculum Development	6,185	9,774	3,635	19,594
	Total Direct Costs	6,185	9,774	3,635	19,594
690	Indirect Costs @ 24.0%	1,484	2,346	-	3,830
<b>TOTAL YEAR II COSTS</b>		<b>7,669</b>	<b>12,120</b>	<b>3,635</b>	<b>23,424</b>
<b>TOTAL PROJECT COSTS</b>		<b>97,529</b>	<b>74,586</b>	<b>5,049</b>	<b>177,164</b>
<b>Percent Contribution</b>		<b>55%</b>	<b>42%</b>	<b>3%</b>	<b>100%</b>
		<b>45%</b>			

**UNIVERSITY OF SOUTHERN MAINE  
COST PROPOSAL**

**POMOR-MAINE CLINICAL LEGAL EDUCATION INITIATIVE  
YEAR I : JANUARY 1, 1998 - DECEMBER 31, 1998**

UNIV CODE	CATEGORY	US AID	MAINE	POMOR	TOTAL
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**PHASE I. Preliminary Exchange of Information**

PERSONNEL					
151	Maine Faculty	3 @ 10% for 13 weeks		8,455	
	Pomor Faculty	3 @ 10% for 13 weeks			214
	Total Salaries & Wages			8,455	8,669
190	Employee Benefits @	30.50%		2,579	2,579
	Total Personnel			11,034	11,248
OTHER COSTS					
401	Translation Services		1,400		1,400
430	Telephone, Telefacsimilie, E-Mail		500		500
440	Postage		500		500
450	Printing & Photocopying		200		200
	Total Other Costs		2,600	-	2,600
Total Direct Costs			2,600	11,034	214
690	Indirect Costs @	24.0%	624	2,648	3,272
Total Phase Costs			3,224	13,682	214
					17,120

**PHASE II. Faculty Training and Curriculum Development**

PERSONNEL					
151	Maine Faculty	3 @ 50% for 3 weeks		9,755	
	Pomor Faculty	3 @ 100% for 3 weeks			493
	Total Salaries & Wages			9,755	10,248
190	Employee Benefits @	30.50%		2,975	2,975
	Total Personnel			12,730	13,223
OTHER COSTS					
402	Interpreter Services		2,000		2,000
430	Telephone, Telefacsimilie, E-Mail				-
440	Postage				-
450	Printing & Photocopying		200		200
470	Visas/MEDEX		700		700
490	Travel - Pomor Faculty (3)				-
	Airfare		5,500		5,500
	Lodging (18 days @ \$125)		6,750		6,750
	Per Diems (18 days @ \$100)		5,400		5,400
	Total Other Costs		20,550	-	20,550
Total Direct Costs			20,550	12,730	493
					33,773

UNIV CODE	CATEGORY	US AID	MAINE	POMOR	TOTAL
690	Indirect Costs @ 24.0%	4,932	3,055		7,987
<b>Total Phase Costs</b>		<b>25,482</b>	<b>15,785</b>	<b>493</b>	<b>41,760</b>

**PHASE III. Preliminary Preparations for Clinic Operations and Intensive Advocacy Course**

PERSONNEL						
151	Maine Faculty	3 @ 10% for 13 weeks		10,120		10,120
	Pomor Faculty	3 @ 10% for 13 weeks			214	214
	Total Salaries & Wages		-	10,120	214	10,334
190	Employee Benefits @ 30.50%		-	3,087		3,087
	Total Personnel		-	13,207	214	13,421

OTHER COSTS						
401	Translation Services		2,000			2,000
430	Telephone, Telefacsimilie, E-Mail		500			500
440	Postage		500			500
450	Printing & Photocopying		400			400
700	Pomor Equipment					-
	Computers (2) *		4,500			4,500
	Printer *		800			800
	Facsimilie Machine		450			450
	Total Other Costs		9,150	-	-	9,150

	Total Direct Costs		9,150	13,207	214	22,571
690	Indirect Costs @ 24.0%		924	3,170		4,094
<b>Total Phase Costs</b>			<b>10,074</b>	<b>16,377</b>	<b>214</b>	<b>26,665</b>

**PHASE IV. Two Week Intensive Advocacy Course and Clinic Statrup**

PERSONNEL						
151	Maine Faculty	3 @ 100% for 3 weeks	6,420	6,420		12,840
	Pomor Faculty	3 @ 100% for 3 weeks			493	493
	Total Salaries & Wages		6,420	6,420	493	13,333
190	Employee Benefits @ 30.50%		1,958	1,958		3,916
	Total Personnel		8,378	8,378	493	17,249

OTHER COSTS						
402	Interpreter Services (2 @ \$20/d for 19 days)		760			760
403	Transportation/Driver (19 days @ \$10)		190			190
430	Telephone, Telefacsimilie, E-Mail					-
440	Postage					-
450	Printing & Photocopying		200			200
470	Visas/MEDEX		500			500
490	Travel - Maine Faculty (2)					-
	Airfare		3,700			3,700
	Lodging (19 days @ \$80)		3,040			3,040
	Per Diems (21 days @ \$100)		4,200			4,200

UNIV CODE	CATEGORY	US AID	MAINE	POMOR	TOTAL
	Total Other Costs	12,590	-	-	12,590
	Total Direct Costs	20,968	8,378	493	29,839
690	Indirect Costs @ 24.0%	5,032	2,011		7,043
	<b>Total Phase Costs</b>	<b>26,000</b>	<b>10,389</b>	<b>493</b>	<b>36,882</b>

**PHASE V. Continuing Support of Clinical Legal Education at Pomor International University,  
Department of Law (September - December 1998)**

PERSONNEL					
151	Maine Faculty	3 @ 5% for 18 weeks		3,852	3,852
	Pomor Faculty	2 @ 100% for 18 weeks	1,869		1,869
	Total Salaries & Wages		1,869	3,852	5,721
190	Employee Benefits @ 30.50%			1,175	1,175
	Total Personnel		1,869	5,027	6,896

OTHER COSTS					
402	Interpreter Services (2 @ \$20/d for 19 days)				-
403	Transportation/Driver (19 days @ \$10)				-
420	Supplies		1,000		1,000
430	Telephone, Telefacsimilie, E-Mail		550		550
440	Postage		250		250
450	Printing & Photocopying		750		750
470	Visas/MEDEX				-
700	Pomor Equipment				-
	Computers (8) *		18,000		18,000
	Printers (2) *		1,600		1,600
	Total Other Costs		22,150	-	22,150
	Total Direct Costs		24,019	5,027	29,046
690	Indirect Costs @ 24.0%		1,061	1,206	2,267
	<b>Total Phase Costs</b>		<b>25,080</b>	<b>6,233</b>	<b>31,313</b>

<b>TOTAL YEAR I COSTS</b>	<b>89,860</b>	<b>62,466</b>	<b>1,414</b>	<b>153,740</b>
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\*Indirect costs not applied

POMOR  
11/25/97

**UNIVERSITY OF SOUTHERN MAINE  
COST PROPOSAL**

**POMOR-MAINE CLINICAL LEGAL EDUCATION INITIATIVE  
YEAR II : JANUARY 1, 1999 - DECEMBER 31, 1999**

UNIV CODE	CATEGORY	US AID	MAINE	POMOR	TOTAL
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**PHASE V. Continuing Support of Clinical Legal Education at Pomor International University,  
Department of Law (January - December 1999)**

<b>PERSONNEL</b>					
151	Maine Faculty	3 @ 5% for 35 weeks		7,490	7,490
	Pomor Faculty	2 @ 100% for 35 weeks	3,635	3,635	7,270
	<b>Total Salaries &amp; Wages</b>		<b>3,635</b>	<b>7,490</b>	<b>3,635</b>
190	Employee Benefits @	30.50%		2,284	2,284
	<b>Total Personnel</b>		<b>3,635</b>	<b>9,774</b>	<b>3,635</b>
<b>OTHER COSTS</b>					
402	Interpreter Services (2 @ \$20/d for 19 days)				-
403	Transportation/Driver (19 days @ \$10)				-
420	Supplies		1,000		1,000
430	Telephone, Telefacsimilie, E-Mail		550		550
440	Postage		250		250
450	Printing & Photocopying		750		750
470	Visas/MEDEX				-
700	Pomor Equipment				-
	Computers (8) *				-
	Printers (2) *				-
	<b>Total Other Costs</b>		<b>2,550</b>	-	<b>2,550</b>
	ing and Curriculum Development				
	<b>Total Direct Costs</b>		<b>6,185</b>	<b>9,774</b>	<b>3,635</b>
690	Indirect Costs @	24.0%	1,484	2,346	3,830
<b>TOTAL YEAR II COSTS</b>			<b>7,669</b>	<b>12,120</b>	<b>3,635</b>
<b>TOTAL COSTS</b>			<b>97,529</b>	<b>74,586</b>	<b>5,049</b>
<b>Percent Contribution</b>			55%	42%	3%
				45%	100%

\* Indirect costs not applied

POMOR  
11/25/97

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## Professor Judy R. Potter



*B.A., Cornell University; J.D., University of Michigan.*

Professor Judy Potter is a women's rights advocate and one of the founders of the Women's Legal Defense Fund. She has tried cases throughout the United States, including the landmark civil rights case of the *Equal Employment Opportunity Commission v. ATT and Thirty Operating Subsidiaries*. At the law school, her courses include Negotiation, Trial Practice and Criminal Law Practicum.

Upon joining the faculty at the law school in 1972, after leaving private practice in Washington, D.C., Professor Potter served as Director of the Cumberland Legal Aid Clinic, a position she held until 1988. She was also instrumental in organizing the Law School Clinical Practice Program. In 1995-96, Professor Potter served as Associate Provost of the University of Southern Maine, where she concentrated on issues surrounding technology on campus and students with learning disabilities.

In addition to teaching responsibilities, Professor Potter presents workshops and speaks frequently on topics such as Expert Testimony and Character Evidence and Impeachment, and has taught in a trial advocacy program at Harvard Law School. Professor Potter, along with Professor Mullane, coached a Trial Advocacy Team in 1996 that won the Northeast Regional competition and competed in the national trial competition in Dallas, Texas.



**Daniel E. Wathen**  
**Chief Justice**

Judicial Center  
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Augusta, ME 04330  
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Fax: (207) 287-4641

Year of Birth: 1939  
Began Service: 1981  
Appointed By: Governor James B. Longley  
Term Ends: 03/1999  
Political Affiliation: Republican  
Education Ricker Col 1962 AB; Maine 1965 LLB;  
Virginia 1988 LLM  
Judicial Justice, Maine Superior Court, Augusta, ME, 1977-1981  
Legal Practice Partner, Wathen & Wathen (and predecessor firms),  
1965-1977  
Current Memberships American Bar Association; Kennebec County  
Bar Association; Maine State Bar Association

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Year of Birth: 1937  
Began Service: 08/01/1986  
Appointed By: Governor Joseph E. Brennan  
Term Ends: 10/20/2000

Education Bowdoin 1959 AB; Boston Col 1962 JD  
Government Member, Lewiston City Council, City of Lewiston,  
Lewiston, ME, 1968-1970; Mayor, City of Lewiston, Lewiston, ME,  
1971-1972; Member, Maine State Senate, 1973-1976; Chairman,  
Lewiston Charter Commission, 1978-1979

Judicial Justice, Maine Superior Court, Auburn, ME, 1979-1986;  
Chief Justice, Maine Superior Court, Auburn, ME, 1984-1986

Legal Practice Private practice, Lewiston, ME, 1962-1979

Military Service United States Army, 1962-1964

Current Memberships Androscoggin County Bar Association; Maine  
State Bar Association

**Howard H. Dana, Jr.**  
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Year of Birth: 1940  
Began Service: 1993  
Appointed By: Governor John McKernan  
Term Ends: 2000  
Political Affiliation: Republican

Education Bowdoin 1962 AB; Cornell 1966 MPA, LLB  
Clerkships Law Clerk, Judge Edward T. Gignoux, 1966-1967  
Government Director, Legal Services Corporation, 1982; Director,  
Legal Services Corporation, 1989-1993

Legal Practice Verrill & Dana, 1967-1993

Current Memberships Alternate Dispute Resolution Planning &  
Implementation Committee; American Bar Association Standing  
Committee on Legal Aid & Indigent Defendants; Judicial Council;  
Justice Action Group; Liason to Courts Advisory Committee on  
Professional Responsibility; Mediation Committee

**Staff**

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Educ: Vermont Law 1996 JD  
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Year of Birth: 1922  
Began Service: 08/30/1983  
Appointed By: Governor Joseph E. Brennan  
Term Ends: 08/30/1997

Education Willamette 1944 LLB

**Kermit V. Lipez**  
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Cupchynsky & Kittelson, LLP, Dallas, 1991—; Dallas, 1984—, also bd. dirs.; gen. counsel Dallas, 1987. Author: Chapter 4 Foreclosure of Annual, 1984; sr. editor So. Meth. U. Law Rev., Dallas, 1982-86, Dallas County Community Arch of Dimes Fundraiser, Dallas, 1987. Named (en Am.) Jaycees—Dallas, 1983, 84; Easterwood Mem. ABA, State Bar Tex., Dallas Bar Assn., Dallas Assn. Young Lawyers, Tex. Exes Assn., Phi Delta Phi, Republican. Home: 4147 5220-3739 Office: Cooper Glasgow et al 8333 TX 75225

ILTON, lawyer; b. Washington, Aug. 14, 1922; Ober Glasgow Harris, Glenn, B.S., U. Md., 1943; U., 1949. Bar: D.C. 1949, U.S. Supreme Ct. McGarraghy & Artis, Washington, 1949-55; 1955-82; pres. Wilkes, Artis, Hedrick & Kingston, 1988—. Bd. dirs., gen. counsel Greater sr. prin., 1988—. Bd. dirs., gen. counsel Greater -89; chmn. Md. PAC, 1985—; bd. govs. Wash. Citizens Tech. Adv. Com. for Drafting Bldg. s., Washington, Commrs. Citizens Adv. Com. on Conv. Ctr. Authority Transp. Revenue Com., Special Com. on Vehicle Emissions Inspection Districting Com.; chmn. Govs. Task Force Standards, Md. Stadium Authority, Md. Protection and Planning Commn; chmn. Md. Served to 1st Lt. U.S. Army, 1942-46, ETO. Outni award George Washington U., 1985, Outni award George Washington Bd. Trade, Real Estate, Greater Washington Bd. Trade, r Assn., D.C. Bar Assn., Md. Bar Assn., Urban ng Ofcls., Washington Bldg. Congress, Lambda g. Land use and zoning (including planning), reservation, land. Home: 9012 Brickyard Rd Office: Wilkes Artis Hedrick & Lane 1666 K St DC 20006-2803

EA, lawyer; b. Farmersville, Tex., Oct. 8, 1915; sive Victoria (McElyea) G.; m. Miriam Celeste (D.) son, Christopher C.; m. Lois Adair Felder, m. Rhoda Swegles Price, Feb. 2, 1979 (dec. L.L.B., 1938. Bar: Tex. 1937. Atty. Justice or, 1939; spl. atty. antitrust div. Justice Dept., en U.S., 1947-48; ptr. firm Fischer, Wood, istri, Tex., 1949-50; mem. firm Clifford & Miller, firm Clifford, Warnke, Glass, McIlwain & 7, Clifford, Glass, McIlwain & Finney, Wash- r and Warnke, to 1980; lectr. econs. U. Corpus articles to prof. jous. Served to I. (j.g.) USNR, Bar Assn. (nat. council 1961-69), D.C. Bar, State Assn. (atty.-advisor 1961—; dir. 1975—), Sat. us Christ); founding mem. Nat. Lawyers Club, Presbyterian. Home: 3719 63rd Dr Lubbock

, lawyer; b. Asheboro, N.C., Oct. 17, 1940; s. e F. (Foust) G.; m. Gloria A. Grant, June 12, st; m. Martha G. Daughtry, June 9, 1982. BA, 1966. Bar: N.C. 1966, U.S. Dist. Ct. (ca. dist.), (we. dist.) N.C.; U.S. Ct. Appeals (4th cir.), asst. presiding justice N.C. Supreme Ct., 1966-ant and Glass, Asheboro, N.C., 1971-77; exec. Democratic Party, 1977-78, dep. commr. N.C. Congl. asst. 4th Congl. Dist. N.C., 1979; ptr. Southern, Raleigh, N.C., 1979-86; ptr. Poyner 4; Brooks, Stevens & Pope, P.A., Cary, 1994—; o Jr. Coll. Bus., 1973-76. Author: Legal Guide ficers; contrib. editor: N.C. Will Drafting and 1983; contrb. articles to prof. jous. Basketball adolph County YMCA; pub. chmn., United Ap- County Emergency Med. Technician Bd.; mem. erations law; active Dem. campaigns, Boy Scouts ountables, 1980-89, asst. dist. commr. 1979-84, t. com. Boy Scouts of Am., council ex. bd., council commrs. coll., 1980-83, Boy Scouts Am. ers, 1995; force judge adv. COMRNER, 1985- SRN. Meritorious Svc. medal with gold star, tion, Nat. Meritorious Svc. award USNR, 1995, with Gold Star, Nat. Defense Svc. medal with t Warfare Specialist Cert.; recipient numerous ounts Am., Disting. Eagle Scout award, 1991, City Asheboro. Mem. ABA (studying com. on b County Bar Assn. (pres. 1971-74), 19th Jud. -75), N.C. Bar Assn. (chmn. youth lawyer sect. iminal Law Symposium (chmn. 1978), N.C. Def. itigation support 1989), N.C. Bar Assn. (com- Sovereign Mil. Order Temple Jerusalem, Naval isiscopal, Health, Nuclear power, General, civil pping Pines Ct Cary NC 27511-4059 Office: Cary NC 27511-8506

lawyer; b. Indpls., Feb. 26, 1959; s. George resia (Matingly) G.; m. Barbara Jean Lannan, atthens, Joseph, Connor, George, BA, Ind. U., 1984, U.S. Dist. Ct. (no. and so. dists.) Ind. 1984, 1984. Law clk. Hon. Judge S. Hugh Dillin U.S. ndpls., 1984-86; assoc. atty. Riley, Bennett & ce. asst. Ind. Gov. Evan Bayh, Indpls., 1989-90; ayh, Indpls., 1991-93; chmn. Ind. Transp. Fin. l. Transp. Coord. Bd., Indpls., 1989; ptr. Baker Pres. St. Thomas Aquinas Parish Coun., Indpls., om., Indpls., 1993—; mem. com. Indpls. Urban ing com. Southeast Ind. Regional Hwy. Coali- Bayh's Econ. Devel. cabinet, Ind. U. Honors ar Assn., Ind. U., 1977. Mem. Ind. Bar Assn.,

Fellow Am. Bar Found.; mem. ABA, Nat. Bar Assn. (life), Nat. Bar Assn. Jud. Coun., Am. Judicature Soc., Conn. Bar Assn., Waterbury Bar Assn., Omega Psi Phi, Baptist, Lodges: Elks, Masons. Office: Conn Superior Ct 300 Grand St Waterbury CT 06702-1900

GLASS, ROY LEONARD, lawyer; b. Littleton, N.H., Jan. 27, 1947; s. Jack Irving and Noreen (Leuthwait) Kline; m. Suzanne Schmidt Goldstein, May 20, 1967 (div. Oct. 1978); 1 child, Shannon Renee; m. Patricia Lee Wimbish, Dec. 9, 1978 (div. 1988); 1 child, Ashley Leigh. AA with honors, St. Petersburg Jr. Coll., Fla., 1971; BA, U. South. Fla., 1972; JD, Fla. State U., 1975. Bar: Fla. 1976, U.S. Dist. Ct. (mid. dist.) Fla. 1977, U.S. Dist. Ct. (no. dist.) Fla. 1978, U.S. Supreme Ct. 1979, U.S. Ct. Appeals (11th cir.) 1983. Assoc.: Meyers, Mooney & Adler, Orlando, Fla., 1976-78; assoc. Barrett, Boyd & Bajoczyk, Tallahassee, Fla., 1978-79; sole practice, Tallahassee, 1979-81; ptr. Deserio & Glass, St. Petersburg, Fla., 1981-82; assoc. Battaglia, Ross, Hastings, Dicus & Andrews, St. Petersburg, 1982-85, sole practice, St. Petersburg, 1985—; lectr., Floridians Against Constl. Tampering, Fla., 1984. Served to capt. U.S. Army, 1966-70, Vietnam. Mem. ABA, Am. Trial Lawyers Assn., Am. Arbitration Assn., Am. Soc. Law & Medicine, Acad. Fla. Trial Lawyers (mem. speakers bur.), Fla. Bar Assn. (health law com. 1984—, chmn. health care profs., subcom. 1984—, mem. exec. com. health care sect. 1986-94), St. Petersburg Bar Assn. (legis. com. 1983-85, liaison med. soc., med. rels. com. 1985—, trial lawyers 1987—), Pinellas County Trial Lawyers Assn., Internat. Platform Assn., St. Petersburg C. of C. (urban solutions task force 1983-84), Phi Delta Phi, Phi Kappa Phi, Beta Gamma Sigma, Clubs: Suncoast Tiger Bay (St. Petersburg, Fang & Claw award 1983), Breakfast Sertoma (Cert. of Appreciation 1984), Westgate High Twelve (Cert. of Appreciation 1987), Fla. Bar Health Law Section (Meritorious Svc. award, 1994). Personal injury, State civil litigation, Administrative and regulatory. Office: 3131 66th St N Ste A Saint Petersburg FL 33710-3115

GLASSER, GERALD, lawyer; b. Bklyn., Dec. 30, 1949; m. Leah Blatt, June 3, 1973; children: Rachel H., Benjamin A. BA, Bklyn. Coll., 1971; JD, Suffolk U., 1975; LL.M. NYU, 1976. Bar: Mass. 1975, U.S. Dist. Ct. Mass. 1975, Tax Ct. 1978. Math. tchr. N.Y.C. Bd. Edn., 1971-72; assoc. Kamberg, Beriman & Hendel, Springfield, Mass., 1976-78; ptr. Kalil and Glasser (now Kalil, Glasser & Senecal), Springfield, 1978—; adj. prof. law Western New Eng. Coll., Springfield, 1976-78; pres. Springfield Mtge. Corp. 1989-93, corp. counsel Springfield Mtge. Corp., 1994—; bd. dirs. Springfield Mtge. Corp., Springfield Mtge. Svcs. Mem. Mayor's Indsl. Devel. Adv. Com., Holyoke, Mass., 1980-87; mem., sec. vice chmn., chmn. Indsl. Devel. Fin. Authority, City of Holyoke, 1984—. Mem. Mass. Bar Assn., Hampden County Bar Assn., Mass. Acad. Trial Lawyers, Bankruptcy, Taxation, general or other. General civil litigation. Office: Kalil Glasser & Senegal 135 State St Springfield MA 01103

GLASSER, IRA SAUL, civil liberties organization executive; b. Bklyn., Apr. 18, 1938; s. Sidney and Anne (Goldstein) G.; m. Trude Maria Robinson, June 28, 1959; children: David, Andrew, Peter, Sally. BS in Math., Queens Coll., 1959; MA in Math., Ohio State U., 1960. Instr. math. Queens Coll., N.Y.C., 1960-63; lectr. math. Sarah Lawrence Coll., Bronxville, N.Y., 1962-65; assoc. editor Current Mag., N.Y.C., 1962-64, editor, 1964-67; assoc. dir. N.Y. Civil Liberties Union, N.Y.C., 1967-70, exec. dir., 1970-78; exec. dir. ACLU, 1978—; cons. U. Ill.-Champaign-Urbana, 1964-65; dir. Asian Am. Legal Def. and Edn. Fund., N.Y.C., 1974—. Author: Visions of Liberty: The Bill of Rights for All Americans, 1991; co-author: Doing Good: The Limits of Benevolence, 1978; contrb. articles to prof. jous. Chmn. St. Vincents Hosp., N.Y.C., Community Adv. Bd., N.Y.C., 1970-72. Recipient Martin Luther King, Jr. award N.Y. Assn. Black Sch. Suprs., 1971, Gavel award ABA, 1972, Allard K. Lowenstein award Park River Ind. Dem., 1981, Malcolm, Martin, Mandela award Greater Bapt. Trinity Ch., 1993. Office: ACLU Inc 132 W 43rd St New York NY 10036-6506

GLASSER, ISRAEL LEO, federal judge; b. N.Y.C., Apr. 6, 1924; s. David and Sadie (Krupp) G.; m. Grace Gribetz, Aug. 24, 1952; children—Dorothy, David, James, Marjorie. LL.B., Bklyn. Law Sch., 1948; BA, CUNY, 1976. Bar: N.Y., 1948. Fellow Bklyn. Law Sch., 1948-49, instr., 1950-52, asst. prof. law, 1952-53, asso. prof., 1953-55, prof., 1955-69, adj. prof., 1969-77, dean, 1977-81; judge U.S. Dist. Ct. N.Y., 1981—; judge N.Y. State Family Ct., N.Y.C., 1969-77. Mem. ABA, Assn. of Bar of City of N.Y., Office: US Dist Ct 225 Cadman Plz E Brooklyn NY 11201-1818

GLASSMAN, CAROLINE DUBY, state supreme court justice; b. Baker, Oreg., Sept. 13, 1922; d. Charles Ferdinand and Caroline Marie (Colton) DUBY; m. Harry Paul Glassman, May 21, 1953; 1 son, Max Avon. LLB summa cum laude, Williamette U., 1944. Bar: Oreg. 1944, Calif. 1952, Maine 1969. Atty. Title Ins. & Trust Co., Salem, Oreg., 1944-46; assoc. Belli, Ashe, Pinney & Melvin Belli, San Francisco, 1952-58; ptr. Glassman & Potter, Portland, Maine, 1973-78, Glassman, Beagle & Ridge, Portland, 1978-83; justice Maine Supreme Judicial Ct., Portland, 1983—; lectr. Sch. Law. U. Maine, 1967-68, 80. Author: Legal Status of Homemakers in State of Maine, 1977. Mem. Am. Law Inst., Oreg. Bar Assn., Calif. Bar Assn., Maine Bar Assn., Maine Trial Law Assn. Roman Catholic. Home: 56 Thomas St Portland ME 04102-3639 Office: ME Supreme Jud Ct 142 Federal St Portland ME 04101-4151

GLASSMOYER, THOMAS PARVIN, lawyer; b. Reading, Pa., Sept. 4, 1915; s. James Arthur and Margaretha (Parvin) G.; m. Frances Helen Thierolf, May 9, 1942; children—Deborah Jane Beck, Nancy Parvin Bringham, Wendy Jean Barber. A.B., Ursinus Coll., 1936, LL.D. (hon.), 1972; LL.B., U. Pa., 1939. Bar: Pa. 1940. Law clk. Common Pleas Ct. 6, Phila., 1939-40; assoc. Murdoch, Paxson, Kalish & Green, Phila., 1940-42; atty. Dept. Justice and Office Price Administration, 1942-43; assoc. Schnader, Harrison, Segal & Lewis, Phila., 1946-50, ptr., 1950-87, retired ptr., 1988—, chmn. pension com., 1969-84, chmn. tax dept., 1972-84, chmn. investment com., 1984-86, chmn. bd. trustees of Retirement Trust, 1986-89; sec. The Lawrence McFadden Co., Phila., 1992, dir., 1994—; lectr. NYU Inst. Fed. Taxation; adv. bd. U. Pa. Tax Conf., 1968-88. Author: (with Sherwin T. McDowell) Legal Problems in Tax Returns, 1949; editor-in-chief U. Pa. Law Rev., 1938-39. Past pres. Upper Dublin Twp. PTA Council; mem. Zoning Bd. Adjustment Upper Dublin Twp., Montgomery County, Pa., 1957-59, bd. commrs., 1959-71, pres., 1968-69; mem. Upper Dublin Environ. Control Bd., 1972-82; bd. dirs. Ursinus Coll., Collegeville, Pa., 1956—, 1st v.p., 1978-81, pres., 1981-90, chmn. exec. com., 1981—; bd. dir. Wissahickon Valley Watershed Assn., 1974-76; chmn. trustee Bernard G. Segal

III), lawyer; b. Schenectady, May 11, 1937; d. Pierre Charles (Fox) Chandelier; m. James H. Glavin, III, June 1, 1963; chi James, Rita, Henry, A.B. cum laude, Middlebury Coll., 1958; Albany Law Sch., 1961. Bar: N.Y. 1961, U.S. Dist. Ct. (no. di U.S. Tax Ct. 1965, U.S. Supreme Ct. 1978. Assoc. Eugene S. N.Y., 1961-64, Helen Fox Chandelier, Schenectady, 1965-76 and Glavin, Waterford, Schenectady, and Albany, N.Y., 1965-4th Jud. Dist. Nominating Conv., 1966-67; confidential law justices N.Y. State Ct. Claims, 1968-71; surrogate judge Sar 1986. Bd. dirs., chmn. fin. com. Schenectady YWCA, 1979-8 Council, SUNY, Albany, 1985—; tech. advisor HSA of Nor. Maternity and Pediatric Com., 1976; bd. dirs. Schenectady Jr. 76, Assn. Com. Mem. and Coll. Trustees, SUNY, 1991—; c Jr. League Pub. Affairs Com., 1976; sec. Bellevue Maternit 1966—, bd. dirs. 1966-83, bd. advisers, 1984—; trustee Mic 1978-88, chmn. law com., 1982-83, vice chmn. bd. dirs., 1 N.Y. State Bar Assn. (del. ho. of dels. 1987-88, nominating Saratoga County Bar Assn. (exec. com. 1981—, v.p. 1988 Schenectady County Bar Assn., Phi Beta Kappa, Kappa Kappa K Mem. editorial bd. Albany Law Rev., 1960-61. General pr Glavin & Glavin PO Box 40 69 2nd St Waterford NY 12

GLAVIN, JAMES HENRY, III, lawyer; b. Albany, N.Y., C James Henry, Jr. and Elizabeth Mary (Gibbons) G.; m. A. Rita June 1, 1963; children—Helene Elizabeth, James C., Rita, Henry IV, A.B., Villanova U., 1953; J.D., Albany Law Sch., 1 1956, U.S. Dist. Ct. (no. dist.) N.Y. 1957, U.S. Supreme Ct. 1 Ct. (mid. dist.) Tenn. 1959, U.S. Ct. Appeals (D.C. cir.) 1976 Appeals 1959. Mem. Glavin and Glavin, Waterford, N.Y., regional bd. Key Bank, N.A., 1968-93. County chmn. Der Saratoga County, N.Y., 1964-68; bd. dirs. Bellevue Maternity Waterford Central Catholic Sch., 1969—; trustee St. Mary's C 1974—, Waterford Rural Cemetery. Served to capt. JAGC, U Mem. ABA, Assn. Trial Lawyers Am., Am. Soc. Law and Acad. Polit. and Social Sci., ICC Practitioners Assn., Am. P. Soc., N.Y. Trial Lawyers Assn., Am. Acad. Hosp. Attys., Tr Assn., Nat. Health Lawyers Assn., Fed. Bar Assn., N.Y. St. Estate Planning Com. Eastern N.Y., Saratoga County Bar County Bar Assn., Rensselaer County Bar Assn., Internat. mantics, Mystery Writers Am., Soc. Am. Baseball Rsch. R Clubs: Nat. Lawyers Air Force Assn.; Lions (past pres.), KC Tour Broker and the Interstate Commerce Commission, 197 ministrative Law Practice in New York, 1988. General pract Saratoga Ave Waterford NY 12188-0040 Office: Glavin & Gl Waterford NY 12188-0040

GLAZE, THOMAS A., state supreme court justice; b. Jar Phyllis Laser; children: Steve, Mike, Julie, Amy, Ashley. B: 1960, JD, 1964. Exec. dir. Election Research Council Inc., advisor, 1965-66; staff atty. Pulaski County Legal Aid, 1966 dep. atty. gen., 1967-70; pvt. practice law, 1970-79; chancellor Ct., 6th Jud. Cir., 1979-80; judge Ark. Ct. Appeals, 1981-86 Ark. Supreme Ct., 1987—; co-author Ark. Election Act, 19 summer Act; lectr. U. Ark. Bd. dirs. Vis. Nurses Corp., You Office: Ark Supreme Ct 625 Marshall St Little Rock AR 72

GLAZER, DONALD WAYNE, business executive, lawyer Cleve., July 26, 1944; s. Julius and Ethel (Goldstein) G.; m. children: Elizabeth M., Mollie S. A.B. summa cum laude, D: 1966; J.D. magna cum laude, Harvard U., 1969; LL.M., U. F Mass 1970. Assoc. Ropes & Gray, Boston, 1970-78, ptr., 15 1992—; pres. Mugar/Glazer Holdings, Inc., Boston, 1992-95; New Eng. TV Corp. and WHDH-TV, Inc., Boston, 1992-93; Boston U. Law Sch., 1975; lectr. law Harvard U., Cambridge; 91. Co-author: Massachusetts Corporation Law and F Fitzgibbon and Glazer on Legal Opinions, 1992; co-editor F on Securities Regulation, 1970; contrb. articles to legal jous. Cowen Slavin Found.; trustee Santa Fe Neurosci. Inst.; dir. Soccer League, co-chmn. intramural com.; past trustee, pa Founds. of Greater Boston Inc. Fellow Salzburg Seminar i 1975. Mem. ABA (legal opinions com., past chmn. subcom benefits and exec. compensation, fed. securities law com., pas force in sec. 16 devels.), Boston Bar Assn. (past chmn., corp. s securities law com., past co-chmn. legal opinions com.), Am. Bar Legal Opinions Com. Jewish. Home: 225 Kenrick S 02158-2731

GLAZER, HOYT ERIC, lawyer; b. Norfolk, Va., May 15, 1 Jay and Sylvia Katherine (Lerner) G. BA, Columbia U., 15 U., 1993. Bar: La. 1993, W.Va. 1994, U.S. Dist. Ct. (so. dist Staff atty. W.Va. Supreme Ct. Appeals, Charleston, 1994, Ja Charleston, 1995—. Editor, author Jester of Columbia, 1987- W.Va. Econ. Justice Project, Charleston, 1989—; radio re W.Va. Litr. Comma., Charleston, 1989, 95—. Recipient Columbia U., N.Y.C., 1989, Am. Jurisprudence award Am Rochester, N.Y., 1991. Mem. ABA, La. State Bar Assn., V Assn. Workers' compensation, Appellate. Office: Jackson & 533 Charleston WV 25322

GLAZER, JACK HENRY, lawyer; b. Paterson, N.J., Ja Samuel and Martha (Merkin) G.; m. Zeida d'Angleterre, Jan Duke U., 1950; JD, Georgetown U., 1956; postgrad. U. Fran 1956-57; S.J.D. U. Calif.-Berkeley, 1977. Bar: D.C. 1957, Ca GAO and NASA, 1958-60; mem. maritime div. UN Internat. Geneva, Switzerland, 1960; spl. legal adv. UN Internat. Telk Union, Geneva, 1960-62; atty. NASA Washington, 1963-6; NASA-Ames Research Center, Moffett Field, Calif., 1966 Maritime Acad., 1975-78; asst. prof. Hastings Coll. Law, assoc. dean bus. sch. San Francisco State U., 1988-92. Com Militia, ret. Capt. JAGC, USNR, ret. Mem. Calif. Bar A Assn., White's Inn (reader). Contrb. articles on internat. law Home: 1110 Taylor St San Francisco CA 94108-1916 Office: White St San Francisco CA 94109-2609

GLAZER, MICHAEL H., lawyer; b. Boston, May 3, 1941; and Nancy (Hartman) G.; m. Jill Samter, Dec. 20, 1970; c

Vis. Ass't Prof.,  
19; Assoc. Prof.,  
*comparative Law,  
Asian Economic  
Transactions;*  
Consult., Proj. on  
Int., World Bank,

Prof. Marquette,  
II.; J.D., 1989,  
I. Admitted: IL,  
Unai, Eifert &  
is. Ass't Prof.,  
Marquette, since  
; *International  
Award, 1995;*  
Process in Japan,

Prof. Wash., St.  
D., 1990, Yale.  
Policy Analyst,  
3; Ass't Prof.,  
Coll. of Med.,  
ash., St. Louis,  
*icine; Legal*  
1.

Prof. & Dir.,  
53. A.B., 1986,  
ed: CT, 1990;  
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supps.; Broker-Dealer Law and Regulation: Private Rights of Action, 1995. *Member: ALI. Consult., Int'l Fin. Corp., 1980; Consult., Am. Phila. Pacific Stock Exchs., Chgo. Bd. Options Exchg. & NY Stock Exchg., 1980-81; Spec. Counsel, NY Stock Exchg., 1987.*

**POSIN, DANIEL Q., JR., \* (M)** Prof. Tulane. b.1941. A.B., 1963, Cal., Berkeley; M.A., 1967; LL.B., 1967, Yale; LL.M., 1975, New York Univ. *Admitted: CA, 1972. Staff Counsel, Consumers Union & Ralph Nader, DC, 1967-68; Lect., Univ. of East Africa, (Rockefeller Fdn., Field Staff), Nairobi, Kenya, 1969-70; Leg. Ass't, Cong. William F. Ryan, DC, 1971-72; Assoc., Lowenthal & Lowenthal, San Fran., 1972-73; Assoc. Prof., Hofstra, 1974-79; Prof., 1979-84; Vis. Prof., San Diego, fall 1981; Vis. Prof., Southern Methodist, 1983-84; Assoc. Prof., 1984-85; Prof., 1985-87; Vis. Prof., Cath. Univ., 1986-87; Prof., 1987-90; Prof., Tulane, since 1990. *Subjects: Business Planning (S); Corporate Taxation; Corporations; Individual Income Tax; Law & Economics (S); Securities Regulation. Corporate Counsel's Annual (with others) 1978; Family Legal Guide (with others), 1981; Hornbook on Federal Income Taxation of Individuals (Student Ed. & Lawyer's Ed.), 1983 & 1993; Corporate Tax Planning: Takeovers, Leveraged Buyouts and Restructurings, 1990 & supps. Member: Phi Beta Kappa; Am. Econ. Ass'n; Am. Law & Econ. Assn. Mem., ABA, Tax Sect. On lv., fall 1996.**

**POSNAK, BRUCE A., (M)** Prof. Mercer. b.1942. B.A., 1963; LL.B., 1966, Maryland. *Admitted: MD, 1966; CA, 1968. Trial Att'y, U.S. Dep't of Just., DC, 1966-69; Of Counsel, Gefner & Satzman, L.A., 1970-71; Exec. Dir., Prod., DC, 1971-72; Trial Att'y, Antitrust Div., Just. Dep't, DC, 1972-75; Assoc. Prof., Ohio No., 1975-77; Assoc. Prof., Mercer, 1977-79; Prof., since 1980. *Subjects: Antitrust (S); Antitrust; Civil Procedure; Civil Rights; Conflict of Laws; Legislation; Sports Law (S). Member: COIF.**

**POSNER, ERIC A.,\*** Ass't Prof. Pennsylvania. b.1965. B.A., 1988, Yale; J.D., 1991, Harvard. *Admitted: MD, 1991. Clerk, U.S.C.A., DC Cir., 1991-92; Att'y-Adv'r, Dep't of Just., DC, 1992-93; Ass't Prof., Pennsylvania, since 1993. *Subjects: Bankruptcy; Commercial Law; Contracts. On lv., fall 1996.**

**POST, DAVID G.,** Vis. Assoc. Prof. Georgetown. Ph.D., 1978, Yale; J.D., 1986, Georgetown. Assoc., Wilmer, Cutler & Pickering, DC, 1987-93; Clerk, Just. Ruth B. Ginsburg, U.S. Sup. Ct., DC, 1993-94. *Subjects: Computers & the Law (S); Constitutional Law; Copyright Law.*

**POST, DEBORAH WAIRE, (F)** Prof. Touro. b.1949. b.1978, Harvard. *Admitted: TX, 1979. Assoc., Sewell & Paterson, Houston, 1978-83; Ass't Prof., Boston, 1983-88; Vis. Ass't Prof., Touro, 1987-88; Assoc. Prof., 1988-95; Prof., since 1995. *Subjects: Contracts; Corporations; Racism & American Law. Rights of the Poor; Securities Law; Sociology of Law; Cultivating Intelligence: Power, Law & the Politics of Teaching, 1996; Contracting Law (with Kastely & ...), 1996.**

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**A VISIT TO RUSSIA RENEWS A LAWYER'S APPRECIATION  
FOR THE RULE OF LAW**

**By George F. Burns**

Last month, I went on a 10-day visit to Russia with Maine Supreme Court Justice Caroline Glassman, University of Maine law professor Judy Potter, Portland lawyer Neale Duffett, and a legal delegation from Vermont. The trip renewed my appreciation for the role law plays in our country.

No one is above the law in America. This is our fundamental ideal, one we do not always attain but to which we constantly aspire. There is no guarantee that any country will live by the law, or even try to. Russia has no shortage of good and talented people, but that doesn't mean that the rule of law will prevail. A healthy legal environment grows out a combination of positive laws on the books, attitude, some economic strength, sacrifice at key moments, and a great deal of luck. Our country has had all those things.

Even though Russia has been in the midst of a massive transition to a market economy for years, many things we all take for granted still do not exist there. At a meeting with Russian taxation authorities in the Republic of Karelia (near Finland), I wondered aloud why tax collection was so difficult and, in particular, why there wasn't more monitoring of checking accounts. My comments were met with a stony silence, and finally a member of the Vermont delegation, Justice John Dooley of the Vermont Supreme Court, leaned over to me and whispered, "George, they don't have checking accounts in Russia; everyone deals in cash." That answered my question.

The next day I gave a talk for Russian lawyers, judges, and law students on how we Americans tax ourselves, a relevant topic because the Russia government had just proposed a sweeping new income tax code to the Russian Duma. I noted four characteristics that I thought were particularly illustrative of the dualistic way

in which Americans think and act. First, we "voluntarily" report our own income every year (but I noted that the penalties for not filing a report were very harsh); second, we hope to attain certain social and political objectives through our tax code (actually, we make whatever political deals are necessary to raise the revenue we need); third, we have a graduated, progressive income tax structure (but the wealthy can buy tax advice that makes the real rates less progressive); and, fourth, we have a complicated and ever-changing tax code which I ascribed to the need for numerous compromises in a democratic, capitalistic society (shamelessly hammering home the dualism idea, I remarked that Americans are always clamoring for a simple tax code).

At the end of my talk, an anguished member of the Russian Duma asked me whether it was wise for Russia to adopt its own new federal income tax code so precipitously when it was obviously full of flaws. My mind raced while the interpreter worked through the question. I didn't want to commit a diplomatic error by criticizing the Russians for enacting a new tax code, suddenly or not. On the other hand, I wanted to avoid a noncommittal and useless response. I answered that you had to start somewhere, and that the American experience, over nearly nine decades, showed that perfection is unattainable, and debate inevitable and endless. The questioner sat down, probably unsatisfied with my answer, and fully convinced, I'll bet, that the Russian tax code will be more bad than good.

When I later learned that law professors at Harvard and Duke Law Schools had drafted much of the new Russian tax code, I wondered whether that was the right approach. I even wonder now about our own mission to Russia. Are we American lawyers and judges really helping the Russians to move into a market economy? If foreign investment in Russia is at a trickle because of uncertainties about the enforcement of legal and commercial rights, were visits like ours likely to

help? Is there intrinsic worth to American legal ideas that transcend our own parochial experience?

The answers, of course, are mixed; lawyer's answers, if you will. America is a litigious society. When I boarded the plane in Maine to go to Russia, I was among those who decried that reality, who complained about the surfeit of lawyers, and the constant bickering over rights and obligations. On my return I found myself thinking, "Thank God. We have some bad laws, and too many laws, whether bad or good, but at least we are all talking about them all the time." In our day-to-day bantering and complaining, in our lectures, in our books and movies, we are always talking about law. It is so deep in our blood that, in our disorderly way, we manage even to honor verdicts viewed by some as outrageous. That is the transcendent idea: that legal process counts and is worthy of respect. But you cannot simply impose an idea, however worthy, on another society. The best teacher is example, and when the Russians see our example they can choose for themselves whether it makes sense for them.

Two particular Russian challenges lie ahead. First, all of our Russian hosts, whether they were judges, defense lawyers, or prosecutors, complained about the imprecision in the Russia tax law and the practical reality that many businesses that owe taxes in Russia simply collapse and reorganize under another name to avoid payment of the taxes. Second, they expressed frustration over the doubtful enforcement of court orders generally. The Russian courts which preside over commercial issues, the "arbitrage" courts, are not part of the Russian Supreme Court system, and it is the Russian Supreme Court system that actually enforces judgments in Russia. (Some Supreme Court judges in Russia thought that the arbitrage courts ought to merge with the Supreme Court, but the arbitrage judges that I spoke with disagreed, hardly a surprise.) Russia has recently adopted a new

"bailiff" law to beef up enforcement, but many observers believe the new law still falls far short of the kind of enforcement clout needed to instill public confidence.

From our perhaps xenophobic vantage point, both problems seem to have obvious solutions. It would help simply to impose personal liability for tax compliance on owners and managers of companies. You could also impose liability on individuals for fraudulent conveyance of assets, as we often do in this country. To enhance enforcement of court orders have a sheriff or marshal carry out court orders and apply the courts' contempt powers.

But are these really the key ingredients that make for a sound tax and court system in the United States, or are other factors more important? It's hard to say. Just having laws on the books isn't enough. For all I know, the proposed new Russian tax code may already have some of the features I suggest. At the end of the day, it isn't just compulsion that makes our system work. Although it is wise to have force waiting in the wings, force is more powerful threatened than used. It is the interaction of legal force and voluntary compliance, developed over generations, that really makes a democratic, capitalistic society work. You can't just write it; you have got to live it. You can't just live it; you have got to write it.

Are we helping the Russians? Being gracious, they would say we are, but who knows? What I do know is that the Russians have helped me -- by sending me home with a deeper appreciation of our legal and economic culture, however flawed, however changing.

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