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**RUSSIAN POLICE TRANSITION TO DEMOCRACY:
REVISING THE RUSSIAN POLICE ATTITUDE TOWARD
THE RULE OF LAW**

by

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December 1997

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This thesis shows that the Russian police forces' transition to democratic police operations is strained. This transition requires introducing and teaching new concepts that include respect for human rights, dignity, integrity, accountability and professional competence. The rule of law in police operations requires an unbiased application of the laws of the state.

The Russian police forces' goal to be trained in accordance with international standards and to be free of corruption requires a new focus. Russian police must shift from the role of protection of state interests over those of individuals, to a role centered on protecting and serving the citizens. Improved training for police forces and higher legal standards will solidify the fundamental principles of professional police conduct and a civic motivation for public safety.

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ATTITUDE TOWARD THE RULE OF LAW**

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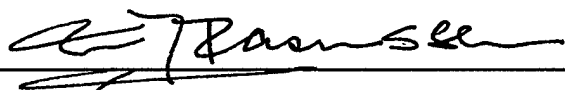
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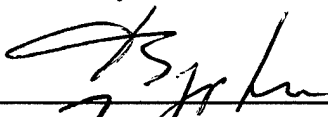
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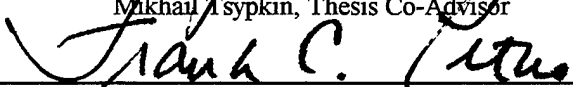
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EXECUTIVE SUMMARY

I. INTRODUCTION

The transition to democratic police operations in Russia requires introducing and teaching new concepts of policing that include respect for human rights, dignity, integrity, accountability and professional competence. Police operations that observe the rule of law are a critical element of domestic security in any democratic society and require the fundamental driving force to be the laws of the state. Unlike the Western European empires of Britain and France, Russia and then the Soviet Union did not incorporate the legal ideals of the Enlightenment into the state's philosophy of government. Therefore, the Soviet Union failed to establish a true legal framework to regulate many aspects of police operations. The transition to democratic police practices requires a re-focusing of the basic use of police, from instruments of state control to protectors of public safety.

The international community has taken steps to promote democratic human rights and individual safeguards around the world. In countries such as Panama, Haiti, Guatemala, and now Bosnia, the international police community has attempted to spread the fundamental principles of democratic police operations to improve the human dignity and quality of world wide police operations. There are seven principles that must be introduced as states make the transition from authoritarian regimes to democratic societies. These are:

- 1) An orientation to democratic principles that include adherence to the rule of law and regulations. A key to this is the maintenance of free and open elections.
- 2) Adherence to a code of conduct which encourages and requires professionalism and methods of policing corruption and abuse of authority.
- 3) Protection and safety of human life. This requires a restraint on the use of and methods of force in the application of laws.
- 4) A motivation for public service to the people of the state, not a particular individual leader or government.
- 5) Police operations focused upon the fight against crime involving persons and property, not the political control or legitimacy of the current government.
- 6) A respect for human rights in all methods of investigation and incarceration.
- 7) Efforts for an unbiased application of the laws of the state in a non-discriminatory manner to all citizens.

Russian police operations require reform with regard to all seven of these principles. This requirement stems from the lack of an established rule of law and from the principles that inspired the police forces after the Bolshevik Revolution. The Russian police transition from Communist Party rule to a democratic system with a dedication to law has been turbulent due to a tradition encompassing the political use of police. Russia, like many aspiring democracies, has found that the international community is ready to make an effort to assist it in police reform.

While maintaining more individual freedoms than dictatorships, democratic societies also generally have greater incidence of crime than totalitarian police states. In a democracy, it is vital that the methods and practices used by police to balance order and freedom be subject to close scrutiny. The elements of organized and domestic crime, common to open market societies, have in many ways compromised the strides taken by both Soviet General Secretary, then President, Mikhail Gorbachev between the years 1985 to 1991 and President Boris Yeltsin from 1992 to 1996. Russia has experienced a rapid growth in domestic and organized crime since the collapse of communism in 1991. The methods and approach the government uses to curb and control this increase in crime will be a test of its democratic foundations.

II. THESIS STATEMENT

This thesis shows that democratic police operations are an essential foundation for a state's transition to democracy and examines the problems presented in the democratic transition of a totalitarian police society with no true foundation in the rule of law. Specifically, it shows that the Russian transition to democratic police operations is strained due to a significant reliance on presidential decrees instead of legislative anti-crime acts and the rule of law. The seven internationally agreed upon democratic police principles provide a basis to evaluate the current reforms in Russia.

III. CONCLUSIONS

The leadership of the Russian Ministry of Internal Affairs has made several efforts in a positive direction. Both the qualitative and quantitative efforts to recruit, train and

maintain professional law enforcement officers and the progress made toward a standard of public service are fundamental. Given the positive presidential efforts to eliminate corruption and enhance international training, the Russian police appear dedicated to establish the laws and policies designed to move closer to democratic police operations. Police operations need to function in accordance with a *Rechtsstaat* concept, enabling a society to have the knowledge and access to the law that is essential to hold the state accountable to its own laws.

It appears that until the Russian legislature can enact positive measures to combat crime the police will continue to be directly subordinate to the Russian President. Measures to combat crime and move the police toward more democratic efforts will remain vested in presidential decrees and directives.

Overcoming the seventy years of Communist police terror has not been easy. While Soviet President Gorbachev made the initial steps to provide for greater individual rights, he was confronted with the need to restore order. This led to an excessive use of the police for political purposes. If President Yeltsin continues wrestle with the legislature, Russia's dedication to move toward the rule of law and democratic police operations may be stifled. With a concerted effort at reform, as younger generations of policemen are trained, not only in Russia but throughout the world, the fundamental principles of professional police conduct and the motivation for public safety will take hold. From the initial successes shown in the international training efforts to improve Russian police motivation for public service and human rights, to an effort to reduce

corruption with Operation “Clean Hands,” the environment is ripe in Russia to espouse the democratic police motto ... “To Protect and Serve.”

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I. INTRODUCTION

The necessary transition to democratic police operations in Russia requires introducing and teaching new concepts of policing that include respect for human rights, dignity, integrity, accountability and professional competence. Police operations that respect the rule of law are a critical element of domestic security in any democratic society and require the fundamental driving force to be the laws of the state. Unlike the Western European empires of Britain and France, Russia and then the Soviet Union did not incorporate the legal ideals of the Enlightenment into the state's philosophy of government. Therefore, the Soviet Union failed to establish a true legal framework to regulate many aspects of police operations. The transition to democratic police practices requires a re-focusing of the basic use of police, from instruments of state control to protectors of public safety.

The historical evolution of the rule of law and democratic police methods in democracies throughout the world has common threads linked to the continental and colonial traditions of Western Europe. Democratic policing developed a criminal procedure that provides safeguards for defendants and creates separation between courts, prosecutors and police. These safeguards are inherent in the rule of law in any democratic society. Police operations in democratic societies are bound by them as these safeguards are critical to domestic security and require the unbiased application of force in upholding the laws of the state.

The international community has taken steps since the creation of the United Nations to promote democratic human rights and individual safeguards around the world. In countries such as Panama, Haiti, Guatemala, and now Bosnia, the international police community has attempted to spread the fundamental principles of democratic police operations to improve the human dignity and quality of world wide police operations. There are seven principles that must be introduced as states make the transition from authoritarian regimes to democratic societies. These are:

- 1) An orientation to democratic principles that include adherence to the rule of law and regulations. A key to this is the maintenance of free and open elections.
- 2) Adherence to a code of conduct which encourages and requires
- 3) Protection and safety of human life. This requires a restraint on the use of and methods of force in the application of laws.
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Russian police operations require reform with regard to all seven of these principles. This requirement stems from the lack of an established rule of law and from

the principles that inspired the creation of the police forces after the Bolshevik Revolution. The Communist methods of a totalitarian police state maintained and harshened Russia's traditionally authoritarian police methods. Russia, like many emergent democracies, has found that the international community is ready to make an effort to assist it in police reform.

The Russian police transition from Communist Party rule to a democratic system with a dedication to law has been turbulent due to a tradition encompassing political use of police. From 1917 to 1991, each Soviet leader applied the police apparatus differently, but always to ensure communist rule. This resulted in a continuous pendulum swing of limited progress toward and then abrupt digression away from reform.

The largest fluctuation of use was evident in the post-Stalin years [1953-1991] as Soviet leaders attempted to move away from police terror but still maintain central control over the society by using the police as a political tool. From Nikita Khrushchev's weak approach to reform, Leonid Brezhnev's lack of change and increased use of the *nomenklatura* system, Yuri Andropov's goals of reducing corruption, Mikhail Gorbachev's inability to overcome the dilemma of a liberalized Soviet society with a maintenance of social order and central control, to Boris Yeltsin's use of Presidential Decrees; Soviet police operations have been manipulated to meet the needs of a particular party or leader, and not the protection of the citizen. It is this protection of the individual citizens of the state that is a pillar in democratic police operations.

While maintaining more individual freedoms than dictatorships, democratic societies generally have a greater incidence of crime over that of a totalitarian police state. In a democracy, it is vital that the methods and practices used by police to balance order and freedom be subject to close scrutiny. The elements of organized and domestic crime, common to open market societies, have in many ways compromised the strides taken by both General Secretary Mikhail Gorbachev (1985-1991) and President Boris Yeltsin (1991-present). Russia has experienced a rapid growth in domestic and organized crime since the collapse of communism in 1991. The methods and approach the new democratic government uses to curb and control this increase in crime will be a test of its democratic foundations.

The adoption and implementation of the international principles of democratic policing are essential for Russia's transition to democracy. After a legacy of Communist police manipulation, the reforms and initiatives taken by the Russian government from 1991 to 1996 have opened the door to change, support by international cooperation to assist in the establishment of democratic principles of police operations.

The main argument of this thesis is that democratic police operations are an essential foundation for a state's transition to democracy. This thesis examines the problems presented in the democratic transition of a totalitarian police society with no true foundation on the rule of law. Specifically, it shows that the Russian transition to democratic police operations is strained due to a significant reliance on presidential

decrees instead of legislative anti-crime acts and the rule of law.¹ Chapter II reviews the historical development of democratic police operations and presents the seven internationally agreed upon democratic police principles. These principles, when applied within one of three historical models of police operations, provide a basis to evaluate the current reforms in Russia. Chapter III provides a brief historical view of the Russian and Soviet traditions of policing and highlight the attempts at reform prior to 1991. Chapter IV will discuss the democratic police transitional efforts of President Yeltsin and the Russian Ministry of Internal Affairs. Finally, the concluding Chapter evaluates the reforms discussed in Chapter IV in light of the principles established in Chapter II. This final chapter shows that the current reforms in the Russian Interior Ministry (MVD) are progressing slowly and appear to be headed in the proper direction.

¹ The term police is used throughout this thesis in place of the Russian *militia* to avoid confusion. This thesis does not address the issues related to the Interior Troop section of the Russian Interior Ministry. This militarized police element is used to maintain internal security and combat demonstrations and other significant domestic disorders.

II. HISTORICAL AND DEMOCRATIC POLICE CONCEPTS

Some of our people seem to understand democracy as being able to do whatever they want, as a result *bespredel* [society's conduct is without limits or bounds] has completely overtaken us. Now, we have wild democracy, an epidemic of seizing everything in sight, of getting rich at any cost.

Aslambek Aslakhanov, Supreme Soviet Parliamentary Committee on Law and Order, 1992.²

"Democracy" has become a rallying cry of most newly independent states throughout the world. However, a problem lies in an over use of this word, especially when it is poorly defined. According to Robert Dahl, modern democracies consist of seven distinct institutions, which are summed up well by Joshua Muravchik in his article *Promoting Peace Through Democracy*. Muravchik defines democracy "to consist of three elements: principal government officials are chosen in elections that are free, open, and relatively fair; freedom of expression; and the rule of law."³

Rule of law differs from rule by law. The latter can easily be used by totalitarian and authoritarian regimes as mechanisms to control society. Conversely, the first does not imply the manipulation of laws and courts to serve the motives of a tyranny, but rather requires government to function according to a publicly known set of established rules. The rule of law emphasizes the rights of individual citizens and places constraints upon

² Cited in Handelman, Stephen. *Comrade Criminal*. (New Haven:and London Yale University Press, 1995), 4.

³ Muravchik, Joshua. "Promoting Peace Through Democracy." *Managing Global Chaos: Sources of and Responses to International Conflict*. Edited by Chester A. Crocker and Fen Osler Hampson with Pamela Aall. (Washington: United States Institute of Peace Press, 1996), 585n1.

law enforcement officials. These constraints includes regulations, rules, and procedures; used to enforce the law and maintain order. As such, police operations in a democracy must also function with a commitment to the rule of law. This is the fundamental principle that allows the leaders of the state to operate with legitimacy and ensures the people retain a confidence in the ideals of justice and the law.

While democratic nations are not guaranteed to be free of police corruption and abuses, the system has the tools and capacity for investigating and dealing with situations of corruption or violations of citizen's rights. All democratic police agencies maintain ethics and a standard of conduct that allows the profession to police the conduct of its own. The proper balance of an officers' code of conduct coupled with methods to reign in officials who abuse the established professional responsibility, lead to increased public trust. This chapter will provide an historical review and describe the fundamentals of democratic police operations. After providing a view on the role of the rule of law in democratic society, I will provide a look at three traditional models of police in history and outline the development of the principles that drive democratic police operations regardless of the police model adopted by a democratic state.

A. RULE OF LAW AND SOCIETY

The early Anglo-Saxon idea of police accountability to the rule of law is a tradition that has continued to develop in all democracies to the present day. The ideas that those who perform the duties of law enforcement, and criminal justice officers, should do so

with professionalism and a sense of ethics can be most readily discerned from developments in the 19th century. Emile Durkheim described what maybe distinct about the concept of a 'professional' group. "It is not merely that such groups have high status, or high skill, or a politically supported monopoly over certain kinds of work - most important is an infusion of work and collective organization with moral values, plus the use of sanctions to insure that these moral values are upheld."⁴

Too often we think of law only in the context of civil and criminal conduct, forgetting that law is related to the entire structure of society, including its government. "Thus the biblical insistence on the responsibility of people -- even of monarchs -- to God's law turned the political tide in those countries where the Reformation emphasized the Bible as the only final authority took root."⁵ In England the threat of absolutism of the monarch, with no higher authority, was slowly diminished and increasingly men began living without fear of arbitrary revenge. When the state permitted the teachings of the Bible to bring forth its natural conclusions that there is a higher authority for which all members of the state are responsible, it was able to have structure and freedom in both society and government. This allowed the individual to call into question the right or wrong actions of government. "The 'little man,' the private citizen, can at any time stand up and, on the basis of biblical teaching, say that the majority is wrong. So, to the extent

⁴ Cited in Skolnick, Jerome H. *Justice Without Trial: Law Enforcement in Democratic Society*. (New York: John Wiley & Sons, Inc, 1966), 235.

⁵ Schaeffer, Francis A. *How Then Should We Live?: The Rise and Decline of Western Thought and Culture*. (Illinois: Crossway Books, 1976), 108.

to which the biblical teaching is practiced, one can control the despotism of the majority vote or the despotism of one person or group.”⁶

As monarchical rule declined and democracy began to develop, notable authors were concerned with its emerging tenets. Thomas Hobbes is credited with the idea that government must have absolutist powers to guide the people and ensure individuals did not destroy one another, as he felt they were naturally inclined to do. Conversely, John Locke, often termed the father of modern liberalism, stressed the importance of personal liberty and individual rights. This idea, however, presented some concern for Alexis de Tocqueville. He was focused on what was termed the “tyranny of the majority.” He stressed that the concern for modern democracy should be to ensure the majority does not stifle individual rights to expression. Jean Jacques Rousseau answers this with his argument that individual freedom would theoretically be reflected in the “general will,” through a social contract. The utopianism of this concept was evident throughout the French Revolution’s Reign of Terror. During this period, the gaining of the general will meant not only the loss of freedom for the individual, but the reign of the guillotine. Actually, one did not have to wait for the Reign of Terror to see the flaw in this idea. It was already in Rousseau’s own writing. Rousseau’s idea of autonomous freedom clashed with his presentation when he moved from the individual to society. In *The Social Contract* (1762) he writes,

In order that the social compact may not be an empty formula, it tacitly includes the undertaking, which alone can give force to the rest, that whoever refuses to obey the general will shall be compelled to do so by the

⁶ Ibid., 110.

whole body. This means nothing less than that he will be forced to be free.⁷

Humanistic utopianism ends in tyranny, whether in Rousseau's writing or in the Reign of Terror which carried his position to its conclusion. Roland Stromberg points out that initially many of the English parliamentary defenders of liberty were concerned the *demos* could be as dangerous to liberty as the unrestrained authority of the throne. Eventually, the English Constitution brought with it an acceptance of universal suffrage as the parliamentarians ensured the general citizenry could not easily alter it significantly. "Constitutionalism, often linked to democracy, is undemocratic in essence, rooting law and policy in a written constitution not easily amendable and subject to interpretation by an independent, non-elective judicial authority."⁸ The state power locked in a constitution, carried with it both a limit on oppression and a requirement for maintaining the *demos* in an acceptable order.

This is aligned with the basic idea of the modern state as interpreted by Max Weber. This requires states to possess a means to control order within its territorial limits. For Weber and others who subscribe to the theory of the *Machtstaat*, the direct control of the means of internal and external violence is the distinguishing feature of state power. This complements the modern theory that one element of a nation state is the ability to control a defined bordered territory with legitimate force. Police can therefore be seen as "a mechanism for the distribution of non-negotiable coercive force and as the special

⁷ Quoted in *Ibid.*, 155.

⁸ Stromberg, Roland N. *Democracy: A Short Analytical History*. (New York: M.E. Sharpe, 1996), 9.

repository domestically of the state's monopoly of legitimate force; police is the label and policing the means used when asserting the state's exclusive authority to the use or threat of the use of force within its territory."⁹ Hence, police operations are directly connected to the larger interests and authority of the state, and the method in which they are employed directly has an impact on the state's legitimacy.

B. DEMOCRATIC POLICE MODELS

"The idea of rechtsstaat, a rule-of-law state, was a fundamental concept of nineteenth-century German jurisprudence. According to this legal model, individuals and institutions were subordinate to the written law."¹⁰ This is the basic principle used by democratic states to develop operational law enforcement methods and models with a characteristic pattern of compliance. This pattern has special arrangements for gathering information, processing offenders, and evaluating the competence of law enforcement personnel under the rule of law. "The idea of operational law enforcement should suggest both the attitudes and behavior of policemen responding to judicial rulings, and interpersonal relations with the accused, the prosecutor, defense attorney, judge, and whenever applicable, with the general public."¹¹

⁹ Anderson, Malcom, Monica den Boer, Peter Cullen, William Gilmore, Charles Raab, and Neil Walker. *Policing the European Union*. (Oxford: Clarendon Press, 1995), 90.

¹⁰ Shelley, Louise I. *Policing the Soviet Society: Evolution of State Control*. (New York: Routledge, 1996), 7.

¹¹ Skolnick, Jerome H. *Justice Without Trial: Law Enforcement in Democratic Society*. (New York: John Wiley & Sons, Inc, 1966), 18.

The essence of law in a society is ultimately dependent upon its political and social philosophy. "When law is viewed primarily as an instrument of education or as an instrument of order, rather than as a goal in itself, the society no longer conceives of punishment as a last resort, to be used only reluctantly. Soviet morality permits the government to threaten pain in order to push the citizen to many acts to which it cannot yet pull him by hope of reward."¹² Conversely, democratic policing is founded on a consensus between the police and the public.¹³ Since the police's work really begins at the point where consensus breaks down, it is essential that democratic policing methods include remedies to violations of human rights and unprofessional conduct. "From its inception, therefore, the decentralized institution of the American police was in structure and function fundamentally different from the police model adopted by Russia and subsequently, by the Soviet Union."¹⁴

Communist police operations were rooted in a Soviet tradition of police terror and represented a centralized form of policing whose scope and authority far exceeded that of earlier historical models. "In contrast to (European) continental and colonial police models, the Soviet militia represented and enforced conformity with a state ideology that proscribed a wide range of human activity and justified a single party's monopoly of power."¹⁵ As such, the police played an important role in the Communist Party's ability to

¹² Ibid., 20.

¹³ Liang, Hsi-Huey. *The Rise of Modern Police and the European State System from Metternich to the Second World War*. (Cambridge: University Press, 1992), 317.

¹⁴ Shelley, *Policing the Soviet Society: Evolution of State Control*, 5.

¹⁵ Ibid., 3.

dominate almost all aspects of Soviet life. This application of police operations was often used more forcefully in periphery states to establish control of the new Soviet society.

“Similar to other imperial police forces, the Soviet militia focused less on preventing and detecting crime in the 'colonized' non-Russian areas and more on protecting state property and maintaining social and political control.”¹⁶ The police were accountable not to the citizens of the state but the Party and ultimately its leader. The police became a leading apparatus of the state as a “guardian of ideology” and thus the police destroyed all it should normally uphold: law, morality, justice and safety.¹⁷

Police in most industrialized countries tend to fall into one of three basic organizational and operational models of policing. The exact model each state uses to manage its' monopoly on the internal use of force is dependent upon any variables. These include political ideology, evolution of policing within the state, perception of the state's citizens on issues of governmental authority, and the role of police in the society.¹⁸ There are several differing terms used in defining the model of policing used by states. I have settled upon Continental, Combined and Decentralized.¹⁹

¹⁶ Ibid., 12.

¹⁷ Ibid., 35.

¹⁸ *The Encyclopedia of Police Science*, 485.

¹⁹ *The Encyclopedia of Police Science* uses the terms Centralized, Coordinated, and Fragmented. Lousie Shelley uses the terms Continental, Colonial and Anglo-Saxon. David Bayley use the terms Centralized and Decentralized in his book *Patterns of Policing: A Comparative International Analysis*. (New Brunswick: Rutgers University Press, 1985), 54. All have similar and applicable uses that describe the model of historical and present day policing throughout the world.

1. Continental Model

Police were first established as an institution in the late 1600's when political power rested with the monarch or emperor. These police were most often centralized military forces subordinate to the state. The French Revolution made a significant influence on European monarchies. A vital framework developed in France after the 1789 Revolution that served to protect the citizens from unlimited state power. The idea of civil liberties was based upon the idea that power should never be exercised in the absence of law. This along with industrialization, urbanization and the birth of the modern bureaucratic state forced western European states to consider and accommodate the interests of their rising working class.²⁰ Thus, what evolved was a rise of state paternalism and the idea that citizens should be protected with their social welfare enhanced. By assigning many functions of the new bureaucratic state to police forces directly subordinate to them, specifically the regulation of commerce and industry, European rulers were able to enhance their authority. Unlike a democracy, the monarch, not the people, determined what was necessary for the citizen's welfare.

As the empires of Britain and France collapsed, some European states moved toward a more decentralized form of state power. Today, police operations in Western Europe draw their powers and authority from the central government, but are decentralized to the extent that they often receive direct input from the citizens of the state to varying degrees. "The legacy of absolutist policing remains evident in the centralized

²⁰ *The Encyclopedia of Police Science*. Edited by William G. Bailey. (London: Garland Publishing Inc, 1995), 555.

and hierarchical nature of western European police forces, but the range of police functions has been reduced and their accountability to the citizenry increased.”²¹ Thus while remaining centralized, these forces no longer are militarized and are responsive to the will of the populace rather than to a hierarchical authority.

2. Combined Model

To maintain order and their interests in colonized lands, European empires instituted a varied form of policing. The new colonial police derived their authority from both the central government and various local colonial leaders. Thus, colonial police were less centralized and, unlike their continental counterparts, not a militarized force. They retained authority from the state and held the monopoly on policing until the middle 20th century when private security agencies began to take hold. This form of police were more focused on protecting the property of the state and maintaining political and social order, than on preventing and detecting crime. Because all threats to political order were in essence a threat to the power of the imperial state, law enforcement in the colonized area was highly politicized. Thus a method of combined authority both to the central government and various local governmental bodies was instituted.

The American colonists made every effort to rid themselves of the police methods tied to the politics of the king. The new thinking of American colonists was strongly influence by such philosophers of the French Enlightenment as Baron Charles Louis de Montesquieu. They attempted to create a democratic legal system which stressed the

²¹ Shelley, *Policing the Soviet Society: Evolution of State Control*, 11.

importance of local self-government and was devoid of the political controls that the absolutist state used to maintain power.²² "From its inception, therefore, the decentralized institution of the American police was in structure and function fundamentally different from the continental and colonial police model adopted by Russian and subsequently, by the Soviet Union."²³ The collapse of most of the world's colonies has resulted in this model of police operations to be greatly reduced. However, many multiethnic states still struggling with the idea of democracy have found this method of policing in regions of ethnic tension to ensure the stability of the state.

3. Decentralized Model

The American desire to escape the European political police state, resulted in the formation of a police force with legitimacy in the local government and based solely upon the laws of the individual state and nation. The collapse of the great European Empires found the formation of a new enlightened method of police operations.²⁴ The American model of police is decentralized and places the focus of operations in crime control and the maintenance of order as their priority. Thus, early Anglo-Saxon police became subservient to the rule of law. The primary focus of the democratic government was justice as the end objective. This required a commitment to the citizens and the law.

²² *The Encyclopedia of Police Science*, 487.

²³ Shelley, *Policing the Soviet Society: Evolution of State Control*, 5.

²⁴ The eventual collapse of the British and French empire after World War I has furthered idea from late 1800's to move police operations toward a more professional civic minded arm of the political establishment to maintain order as society became more liberalized.

“Rule of Law depends on consent, consent which in its most reliable form becomes habit.

The habit of consenting to obey the law.”²⁵

From the historical concepts, one can draw three principal styles of police authority. The first, continental policing, is mostly a coercive police. One which in the 1690’s was used to enforce the conversion to the Roman Catholic religion in Spain. Spain’s present special police force, the Guardia Civil, can still be classified in this manner due to the threat presented by the Basque terrorist group *Euskadi to Askatasuna*, or ETA. The threat presented by ETA, which stands for Basque Homeland and Freedom, requires Spain’s police operations to remain highly centralized and militarized. The second, combined policing, can be described as a method to safeguard state interest and property. This style was mostly used by 18th century despots to control and maintain their empires and can still be associated to the method used in England, Wales and Northern Ireland. At present, there are 43 police forces which are controlled by not only a chief police executive but also a home secretary.²⁶ The home secretary is a senior member of the British cabinet. The third, decentralized policing, is a form of self policing in which there is a willing acceptance of police rule by the community that understands and endorses its missions. Both combined and decentralized models are the methods of policing most associated with the modern democratic policing.²⁷

²⁵ Crosson, Matthew T. “Retiring Court Administrator Offers Reflections About the Justice System.” *New York Law Journal*. 3 May 1993. LEXIS-NEXIS, 2.

²⁶ *The Encyclopedia of Police Science*, 487.

²⁷ Liang, 12.

C. BUILDING DEMOCRATIC POLICE

With the collapse of many totalitarian regimes in the last two decades, there has been a rise in new democratic states throughout the world. Along with the more supranational world order created by the United Nations, there has also been a rise in international assistance to foster individual rights. This has resulted in the international community becoming more involved in assisting states to establish democratic police operations to reinforce state legitimacy. From Latin America to Eastern Europe, the United Nations has been providing essential guidance and training to help transitioning police forces. The International Police Task Force Commissioner in Bosnia, Mr. Thomas Peter Fitzgerald, clearly outlined the goals and foundations for a transition to a democratic police force. He outlined what is accepted as the International Standards for Policing in a Democratic State. The transition, he stresses, begins with the basic foundation of the rule of law. All police are in the act of public service and responsible to laws, not to the whim of political leaders or particular party platforms. Specifically in Bosnia, he said that the police functions must be "limited to those provided in the Constitution and Law on Ministry of Internal Affairs."²⁸

Police must ensure the application of seven basic principles that guide all democratic policing. The standards Mr. Fitzgerald and the international police community identified are:

²⁸ Fitzgerald, Peter. "Commissioner's Guidance For Democratic Policing in the Federation of Bosnia-Herzegovina." (Sarajevo: United Nations Mission in Bosnia-Herzegovina International Police Task Force, May 1996), 6.

- 1) The orientation to democratic principles;
- 2) The adherence to a code of conduct worthy of the public trust;
- 3) The protection and safety of life;
- 4) Public service;
- 5) A central focus on crimes against people and property;
- 6) The respect for human dignity;
- 7) Non-discrimination.²⁹

These principles imply a standardized set of behaviors that must be trained and enforced.

The transition to democratic policing also includes: a requirement not to perform military or secret police functions; training on the Constitution, criminal code and professional standards; a requirement for all operations to be governed by law and written policy; and methods for investigation of misconduct.³⁰ The major obstacle for transition lies in the fact that these democratic ideals of public service are fundamentally at odds with the repressive styles of police operations that often become standard in totalitarian states. With this repression comes a lack of professional police conduct as police officers are guided by the ideal of state control and survivability, not the rights of individual citizens or civic and community service. This trend is hard to alter and is complicated further by

²⁹ Ibid., 4.

³⁰ Specifically, democratic police must not be used in conducting armed operations against the citizens of the nation or in support of armed combat as the Stalin did in the 1930's and 40's. They also must not operate under secrecy, where police can apprehend citizens in their homes at night with no judicial review or approval. Ibid., 5.

the difficulty in the initial education and re-orientation of those providing the education for officers at the police academies and at all levels of police education.

1. Professionalism

In 1829, with the introduction of the London metropolitan police came a call to document rules regarding police and a standard of conduct to be followed. As noted by legal scholar Jerome Skolnick, "there is a large body of rules defining crimes and the punishments of those who commit them, rights and the remedies of those who are wronged, but there is also a body of rules defining how and by whom, when and where, rules of the former kind can be put into force."³¹ This idea of rules for those enforcing the laws of the state promulgates the idea of professionalism in which police must have a sense of ethics and commitment to community service. This stature of police service as an honored profession requires police to be highly trained, honest and capable. In fact, the origins of modern policing are commonly agreed to be found in the teachings of Sir Robert Peel over a century and half ago. He conducted extensive research into the need for public order, more specifically, a professional police force in London. Reviewing statistics from London and Middlesex, he argued that crime was dramatically increasing in the period of the industrial revolution and the military was inherently untrained to deal with the riots, prostitution and drunkenness that was rampant.³² Peel was a strong proponent of a professional police force versus the use of the army throughout the city. He was

³¹ Skolnick, 3.

³² *The Encyclopedia of Police Science*, 555.

"confident they would be able to dispense with the necessity of a military force in London for the preservation of the tranquillity of the metropolis."³³ Peel's work was followed by the formation of the International Association of Chiefs of Police in 1893.³⁴ This Association provided for the first nationwide voice for reform and professionalism in policing to instill a set of values for police officers to ensure individual freedoms and the interest of the state are protected with legitimacy.

Value conflicts of a democratic society and police sometimes clash with the rule of law. Police in a democratic society are required to maintain order and to do so under the rule of law. As functionaries charged with maintaining order, they are part of the bureaucracy. Yet, the ideology of a democratic bureaucracy emphasizes initiative rather than disciplined adherence to rules and regulations. Police and the state must find the right balance between freedom and order. To protect the rights of the many while holding true to the right of the individual, is often difficult.

By contrast, the rule of law emphasizes the rights of individual citizens and constraints upon the initiative of legal officials. This tension between the operational consequences of ideas of order, efficiency, and initiative, on the one hand, and legality, on the other, constitutes the principal problem of police as a democratic legal organization.³⁵

In short, law and order are frequently found to be in direct opposition with one another.

Adherence to law implies a rational restraint upon the rules and procedures utilized to

³³Skolnick, 2

³⁴"Model Minimum State Standards." International Association of Directors of Law Enforcement Standards and Training. No Date. On-line. Available HTTP: <http://ns1.dpscs.state.md.us/iadlest/modelmin.htm>, 18 January 1997.

³⁵Skolnick, 6.

achieve order. This in turn limits the overall efficiency of maintaining order. Societal order under law, therefore, subordinates the ideal of conformity to the ideal of legality.³⁶

The idea of this balance was a focus of England's 1962 Royal Commission on Police. The Royal Commission was the first official body to undertake a careful appraisal of this issue and became the standard for police in both Great Britain and the United States. David Bayley, a noted police scholar and Professor of Criminal Justice at Berkeley, referred to the conclusions of the Commission when analyzing the formation of police operations in India. "It saw the need not only to examine the traditional problems of administrative structure, recruitment, accountability, and conditions of service but the need to examine public perceptions of police activity and the policeman's perceptions of himself and his relations with the community."³⁷ In 1962, the Commission found that the balance between enforcing the law and at the same time being accountable to that law is essential to legitimate police operations.

The police systems in England, Scotland, and Wales are the products of a series of compromises between conflicting principles or ideas. Consequently, in contrast to other public services such as health and education, the rationale of the police service does not rest upon any single and definite concept of public good. Thus, it is to the public good that the police should be strong and effective in preserving law and order and preventing crime; but is equally to the public good that police power should be controlled and confined so as not to interfere arbitrarily with personal freedom. The result is the compromise. The police should be powerful but not oppressive; they should be efficient but not officious; they should form an impartial force in the body politic, and yet be subject to a

³⁶Ibid., 9.

³⁷Bayley, David H. *The Police and Political Development in India*. (New Jersey: Princeton University Press, 1969), 4.

degree of control by persons who are not required to be impartial and who are themselves liable to police supervision.³⁸

The requirement was identified that to maintain a true dedication to the rule of law, police must be committed to identifying, investigating and eliminating those within the police profession that failed to obey the very rule of law they pledged to uphold. This presents one of the most difficult tasks for the transition of a police force from an authoritarian regime to a police force operating in a democracy. "The police reformer's problem is to reduce gross brutality, which seems to have traditionally been associated with corruption."³⁹

This idea is echoed in one of the three elements of professionalism as defined by Samuel Huntington in 1957. In his description of 'corporateness,' Huntington identifies a professional commitment that the group enforces upon its members. "This collective sense has its origins in the lengthy discipline and training necessary for professional competence, the common bond of work, and the sharing of a unique social responsibility."⁴⁰ This collective sense enforces standards upon all those who enter the profession in order to maintain the interest and status of the profession. This dedication to maintain standards of conduct lead to a heightened sense of respect and trust by the society that they serve.

³⁸Ibid., 9-10.

³⁹Ibid., 4.

⁴⁰Huntington identifies three characteristics of a profession, expertise, responsibility and corporateness. Huntington, Samuel P. *The Soldier and the State*. (New York: Vintage Books, 1957), 10.

It is the police officer, who is the lowest level of government which interacts with the community daily, that is challenged with closing the gap that often develops in a society between those who enforce the law and those against whom it is enforced. This is especially important where the rule of law is a new idea. In this situation, it is essential that the police demonstrate their common humanity with the citizens of the state.⁴¹ The ideal of professionalism can be noted in all seven of the basic principles specified by the international police community. Number two, the adherence to a code of conduct worthy of public trust highlights the critical link between police conduct and the perceptions generated in the public eye.

Police efforts to strengthen their professional conduct must focus on training. The idea of a well-trained police force is not new. In both Continental Europe and England, extensive training programs for police officers have existed for quite some time. Professionally oriented training programs also even serve as an inducement in police recruiting; influencing a more socially oriented individual. George Brerton noted in Europe, that when an officer is promoted by means of acknowledgment of their ability to master their profession, they become dedicated to the field. "These men make a career of the police service and are promoted through the various ranks and sometimes are promoted from a small city to a large city as opportunities are presented and their abilities are recognized."⁴² Brerton further identified the move in 1923 by August Vollmer, a well-

⁴¹Bayley, *The Police and Political Development in India*, 29.

⁴²Brerton, George H. "The Importance of Training and Education in the Professionalization of Law Enforcement." *Journal of Criminal Law, Criminology, and Police Science*. 52 (May, 1961), 111-121.

known American police chief, to stress several recommendations intended to raise standards and improve police departments in the United States. Vollmer's suggestions were to:

- 1) Establish and maintain higher standards of education, mental, moral, and physical requirements for applicants;
- 2) Provide observation of all recruits by a physician-psychologist during their training period;
- 3) Withhold full police authority from the recruit until he is judged fit to discharge the duties of his position;
- 4) Establish preparatory and promotional courses for policemen in colleges and universities;
- 5) Establish crime prevention divisions and appoint trained criminologists to conduct activities of the division;
- 6) Establish a merit system in police departments;
- 7) Educate the public and secure its friendship and cooperation with the police department.⁴³

All of these training requirements and administrative procedures go directly toward developing a professional police force. By 1937, the International Association of Chiefs of Police created a committee on the Professionalization of Police services that monitors

Cited in Pavalko, Ronald M. *Sociology of Occupations and Professions*. (Illinois: F.E. Peacock Publishers, 1971), 37.

⁴³Ibid., 37-38.

and makes recommendations on continued standards of conduct, training requirements and code of ethics for police enforcement officers in the United States.⁴⁴

2. Police Restraint

A democratic society places constraints upon those who are granted the right to invoke the processes of punishment in the name of law. Rules must be drafted clearly, stated concisely, and carried out with regularity and fairness. "Authorities are servants of the people, not a 'vanguard' of elites instructing the masses. The overriding value must be the consent of the governed. From it derives the principle of the accountability of authority, accountability primarily to courts of law and ultimately to a democratically constituted legislature based upon universal suffrage."⁴⁵ To think of democratic police as founded on a consensus between the police and the public is paradoxical. The need for police only becomes necessary when, at some point, the consensus to obey the law is broken.⁴⁶

The organizational model of the police also influences their conception of order. To the degree that police are organized in a military model, there is also likely to be generated an authoritarian idea of order. Police structured and trained in areas of combat similar to a military force can tend to lean toward the arbitrary use of authority to achieve what they perceive to be the aims of the law. The officer and organization, while structured with identifiable rank and physical training requirements, must be focused on a

⁴⁴Pavalko, 38.

⁴⁵Skolnick, 21.

⁴⁶Liang, 317.

discretionary use of force to maintain order. As during a state of martial law, crime control is elevated to a position where it is valued more than the principle of accountability to the rule of law. At all other times, however, civil liberties and freedom must be balanced with the maintenance of order, with supremacy going to individual rights. This requires police officers with an inherent ability to exercise discretion when necessary. Skolnick argues that "in the abstract, rule of law embodies rational restraints upon authority as it defines criminal conduct."⁴⁷ This requires the application of civil liberties and individual rights that ensure state authority is not exercised arbitrarily outside of established laws. "The idea of operational law enforcement should suggest both the attitudes and behavior of policemen responding to judicial rulings, and interpersonal relations with the accused, the prosecutor, defense attorney, judge, and whenever applicable, with the general public."⁴⁸ This separation is necessary to enhance the professionalism and ethical conduct of the police. Professionalism and ethical conduct begin in the education of police officers.

Professional modern police must operate on a legal basis and arrest suspects solely on objective evidence. This requires specific training on the rights of individuals accused of violation of the law. Law enforcement must be focused to regulate behavior of individuals rather than a collective group in a democratic society. This is necessary as police must enforce specific violations and cannot arrest the whole for actions of one. Critical to this is training is the use of force. The use of force, the minimum amount of

⁴⁷Skolnick, 11.

⁴⁸Ibid., 18.

force required to conduct an apprehension, is paramount to ensuring human rights. It is essential that a professional police officer apply no more physical coercion than is necessary in any given situation. The use of excessive force to render a suspect under arrest or even more extreme, the use of fear to exact confessions, is unacceptable to the basic idea of individual rights and the rule of law. Standardized training programs are designed and implemented to ensure only the minimum force necessary is used consistently.⁴⁹

Often constraint is not seen as an effective mechanism when a government is encountering problems in establishing order in the society. Often in this situation human rights and individual freedoms are compromised for the greater good of order in the society. This can be taken to the extreme however, and used to mold the society into something undesirable. Many Soviets continued to follow Marxism in spite of clear evidence that oppression was not only an excess of Stalin, but was and is an integral component of the system of communism. No one made this more clear than Aleksandr Solzhenitsyn in *The Gulag Archipelago*. He takes great pains to point out that the foundations of lawless expediency, the willingness to ensure internal security at any cost which were firmly established from the beginning of the Communist state. After summarizing the trials up through 1922 and looking ahead to the famous showcase trials,

⁴⁹ "Model Minimum State Standards," 20.

Solzhenitsyn asks, "What, then, were they surprised at in 1937? Hadn't all the foundations of lawlessness been laid."⁵⁰

Solzhenitsyn goes further to write, "From the most ancient times justice has been a two-part concept: virtue triumphs and vice is punished.' In contrast, he concludes that in Russia, 'Young people are acquiring the conviction that foul deeds are never punished on earth, that they always bring prosperity.'⁵¹ Accountability and impartiality are absolutely required in order to ensure any justice system maintains its legitimacy on its own footing. It is clear that both Aleksandr Solzhenitsyn and more recent legal political leaders find this element absent in the Soviet and post-Soviet Russia.

In a democracy the relation between the police and the politicians is conditioned by the need to ensure the efficiency and impartiality of the agency, on the one hand, and its responsibility and accountability to the people, on the other. Efficient administration without responsibility is incompatible with the principles of democracy; and accountability without efficiency calls into question the whole purpose of government. The role of the policeman is not an easy one. While one must bear a responsibility for the reputation he acquires, it must be kept in mind that controversy and emotion are undeniable elements of law enforcement. The police must act with restraint in society's name, using skills of persuasion, and sometimes force, to entice individuals to conform to the society's rule.⁵² It is this balance that must be trained and developed in Russia today. If used properly,

⁵⁰Solzhenitsyn, Aleksandr. *The Gulag Archipelago: 1918-1956*. Vol. I, (New York: Harper Row, 1973), 367.

⁵¹Cited in Schaeffer, 212.

⁵²Bayley, *The Police and Political Development in India*, 409.

police can be a foundation for which democracy can be consolidated in a transitioning society as it serves to be the basis of the rule of law.

D. INTERNATIONAL TRAINING AND COOPERATION

David Bayley finds that in developing governments, "leaders inside and outside the police must become accustomed to examining the opportunities for democratic tutelage that are contained in the police role. Standing proudly on accountability under law and neutrality in politics, they must play a creative role, that perhaps no other agency of government is so critically placed to assume in a developing democracy."⁵³ This is an area where the international police community has made efforts to provide assistance programs world wide to introduce and teach new concepts of policing. These concepts include respect for human rights, dignity, integrity, accountability and professional competence, and enhance the seven basic principles of democratic policing. The transition to democratic police practices requires a re-focusing of the basic use of police, from protectors of state control to protectors of public safety. Several agencies in the United States are actively engaged in the areas critical to assisting Russia in re-focusing their police.

⁵³ Ibid., 423.

1. Hiring and Training Standards

According to the International Association of Directors of Law Enforcement Standards and Training, a fundamental emphasis of law enforcement educational curriculum should consist of clearly identifiable performance objectives for standards of conduct. This must be supplemented with a field training program incorporating on-the-job training in order to conduct job performance analysis. Field training must cover: knowledge and skills unique to the law enforcement agency; knowledge of particular skills that are determined to be essential to the occupation; and demonstration of proficiency in the established performance objectives. All must be completed with satisfactory evaluation prior to the officer being certified.⁵⁴ Entry standards are designed to ensure graduates will meet as closely as possible a minimum of professional standard as adopted by the state.

Today, the international training mission of the Federal Bureau of Investigation (FBI) is "to secure and advance the strategic and operational interests of the FBI in a training context."⁵⁵ While the initial goals are related to enhancing the efforts of solving crime in the United States, it is realized that a successful democratic transition is critical to furthering efforts to curb crime transcending international borders. Current training and assistance includes police ethics training and methods of establishing a viable method of hiring the right people to enhance and promote professional police operations.

⁵⁴ "Model Minimum State Standards," 18.

⁵⁵ Special Agent Charles H. Byrd II, Chief, FBI International Co-operation Unit, interview by author, 22 May 1997, Washington D.C., Hoover Building, Washington D.C.

Special Agent Byrd, FBI Chief of the International Cooperation Unit, has found in the last three years, that some of the concepts related to conducting law enforcement operations under the rule of law are beyond Russian society's understanding due to their historical background. He does note however, that the mid-level managers, who are the focus of the international training efforts, are eager and grasp these concepts quickly. The areas of focus for the FBI's training have centered upon assisting the Russia Ministry of the Interior to develop an infrastructure and the institutions to enhance their commitment to ethics and professionalism. The areas of specific emphasis are the recruitment of personnel, the methods of certifying training and the internal controls to enforce professional standards.⁵⁶ The FBI's training program focuses on maximizing the number of officers trained either at the International Law Enforcement Academy in Budapest, Hungary, or with mobile training teams sent to Russia several times each year; and Russian police managers attending the FBI Academy in Quantico, Virginia. All of these efforts are designed to develop a community policing approach that will also impact positively on the cynical elements of the Russian society toward law enforcement. "The International efforts since 1994 have already reaped significant benefits. To date, we have made 12 arrests in cases that have organizational crime connections and impact on both the United States and Russia."⁵⁷

⁵⁶ Ibid.

⁵⁷ Ibid.

2. Civic Education

Democratic police can not be trained to obey the rule of law in a vacuum. As noted by Special Agent Byrd, there are elements of civil society that do not have a practical understanding of civic responsibility. This is due to the Russian society's general distrust of everything related to government. To counter this in the Russian society, the United States Information Agency (USIA) has developed a civics education program designed to educate and broaden the public service attitude of the former Communist society. Centuries of corruption and totalitarian abuses have resulted in a culture that places extreme distrust on anything government and specifically police oriented. Without a basic general trust of police enforcement agencies and the government as a whole, the governmental institutions can not further develop the professional attitudes of its employees, who are products of that society.

USIA grants have also supported civics education workshops for school administrators. In the fall of 1996, 31 Russian school administrators from eighteen regions of the country participated in a USIA- funded, five day workshop near Nizhniy Novgorod.⁵⁸ The American Federation of Teachers, in consultation with USIA in Moscow, organized the workshop, which provided an opportunity for school administrators from each different region to learn about developments in the field of civics education elsewhere in the country.

⁵⁸ "Fact Sheet: USIA Civic Education Programs in Eastern Europe and the NIS." (Washington, D.C.: United States Information Agency, November 1996), 6.

This program is designed to strengthen and encourage the growth of tolerant democracies and civil societies. "For more than seven years, civic education programs have been at the heart of USIA's democratization programs and have played a strategic role in strengthening democratic norms and values among young people preparing for the future as responsible and well-informed citizens of the new democracy."⁵⁹

The rule of law and the governmental approach to police operations are a critical element of domestic security in any democratic society. While maintaining more individual freedoms and political stability, democratic societies tend to develop greater incidents of crime than those of a totalitarian police state. The methods and approach the new democratic government uses to maintain internal stability and to curb this increase in crime is a cornerstone in the foundation as the nation transitions toward democracy.

Together with a civic minded society and a rule of law oriented police, democracy can develop as the transitional state finds the balance between liberty and order. "Respect for law is an essential ingredient for democracy; for the police to try to operate autonomously, without consideration for the desires of the people, would cheapen the law and encourage the public to make common cause with the law breakers against the law."⁶⁰

The democratic transition of Russian police operations requires introducing and teaching new concepts of policing that include respect for human rights, dignity, integrity, accountability, and professional competence. Stated more simply, a police force can directly affect the political system of the state and society by virtue of how it interacts with

⁵⁹ Ibid., 1.

⁶⁰ Bayley, *The Police and Political Development in India*, 28.

the community, the methods it uses to enforce the laws of the state, and how it deals with its personnel when the standards are violated. The rule of law approach to police operations is a critical element of domestic security in any democratic society and requires the fundamental driving force to be professionalism and adherence to the laws of the state. It is this very issue that makes Russia's transition to democratic police operations and the rule of law most difficult. The seventy years of Communist police state tactics have severed to hinder this understanding in Russian society.

III. BRIEF HISTORY OF THE RUSSIAN/SOVIET POLICE STRUCTURE

The evolution of the Soviet police and methods of law enforcement in the decades of Soviet rule reflected the Soviet state's ideology. A crucial relationship developed between the Communist party and the people where the Party would control and direct each Soviet citizen's life. This relationship would establish the pattern of law enforcement that characterized the repressive nature of Soviet police operations throughout Communist rule and into its collapse. Thus, the legacy of Soviet police operations presents one of the critical challenges to the success of the Russian transition to democracy. The cornerstone of these challenges is the fundamental approach the state takes toward the rule of law. This chapter will provide a brief historical view of the Russian and Soviet attitude toward the rule of law and the traditions of policing. In doing so, the chapter will also highlight the futile attempts made at reform by Soviet leaders prior to 1991.

A. SOVIET CONCEPT OF RULE OF LAW AND SOCIETY

As was discussed in Chapter II, the development of a democratic police is rooted in a dedication to a rule of law and an essential contract between the society and the police who enforce the laws. This premise creates a challenge for Communist transitions to democracy that are founded on oppressive police operations. From the earliest use of

police in Russia, there was no apparent expectation in the society that officials or state institutions would adhere to the laws. Additionally, there were no enforcement mechanisms to ensure compliance with protecting legal rights granted to the citizens. This was due to the constant altering of laws to meet the needs of the state. Beginning with the tsarist police, the Russian use of police to control society riddled the rule of law with a dilemma of poorly educated and corrupt police officials. While the Soviet state established a legal framework under the Soviet Constitution, rights were not clear. This allowed for the abuse of the legal system with laws and regulations published "For Official Use Only." These laws were classified and the individual citizens were at the mercy of the Party and police.⁶¹ While all laws pertaining to criminal conduct were published, those that encompassed life once part of the system of justice were not. The most significant was the "Statute on the Militsiia" which guided police in the incarceration and interrogation of criminals of the state. Thus, the guiding principles that the police followed in the treatment, questioning and application of the law were not made known to even the prisoner himself. In the Soviet society, the quality of law enforcement was only further degraded and eroded due to the lack of any system of checks on the entire justice system. In the words of Lord Acton, "power tends to corrupt and absolute power corrupts absolutely." Due to the extreme centralization of the Soviet system, especially during the Stalinist years, the police structure was almost completely free to act in secrecy

⁶¹ Shelley, Louise I. "Soviet Criminal Law and Justice: Are There or Were There Secrets." *Soviet Sobranie of Laws: Problems of Codification and Non-Publication*. Edited by Richard M. Buxbaum and Kathryn Hendley. (Berkeley: Berkeley Research Series #78, 1991), 140-155.

and went unchecked except by the leadership of the state. This led to the abuses of power by Joseph Stalin and others to ensure the life of the state by providing the police overwhelming authority in investigations and prisons.

1. Shaping Soviet Society

Beginning with the Bolshevik formation of the Vecheka, more commonly referred to as the Cheka in 1918, Soviet autocratic police authority was an essential component of the state control of society. It established a tradition of sweeping police power, brutal investigative techniques, massive use of labor camps, and long sentences for control of ordinary citizens.⁶² This is in direct contrast to the rule of law forms of police operations adopted in the West. "In a rechtsstaat, knowledge of and access to the law are essential in order that the citizenry can hold the state accountable to its own laws. Such a situation did not prevail in the USSR, where Soviet officials enhanced their power by enacting laws known only to law enforcement bodies."⁶³ The most significant example of this is the administrative laws which provided the rights of prisoners and the accused. By restricting access to these administrative laws, the Soviet state was able to maintain a definite advantage over citizens apprehended for crimes. This method of secretive state controlled operations began a long tradition of manipulation of the police to meet the ideological needs of the state. They instilled a perpetual distrust by the citizens of all police officials. Laws enforced by the Soviet police thus became the foundation of the "administrative

⁶² Shelley, Louise I. *Policing the Soviet Society: Evolution of State Control*. (New York: Routledge, 1996), 35.

⁶³ *Ibid*, 8.

command system," making all Soviet subjects subordinate to the unknown and overarching authority of the state.⁶⁴ This system allowed the regime to make the enforcement of laws and judicial procedures more expedient and can be seen as one of the most evident signs of non-democratic law enforcement traditions. Aleksandr Solzhenitsyn describes the system best:

It would have been impossible to carry out this hygienic purging, especially under wartime conditions, if they had had to follow outdated legal processes and normal judicial procedures. And so an entirely new form was adopted: extra-judicial reprisal, and this thankless job was self-sacrificingly assumed by the Cheka, the Sentinel of the Revolution, which was the only punitive organ in human history that combined in one set of hands investigation, arrest, interrogation, prosecution, trial and execution of the verdict.⁶⁵

The hygienic purging that Solzhenitsyn is referring to is the elimination of threats to the ideology of the state by placing authority for all the elements of the system of justice in the hands of the police. This created a body capable of fabricating evidence, extracting confessions through coercion and the sentencing of offenders. While this system was most prevalent prior to 1953, the traditions of police authority and secrecy remained largely until 1991.

2. Soviet Criminal Law

Deep within the Russian tradition is the idea that the law plays the role of teacher for the society. This foundation of parentalism is not unique to Russia or Marxist

⁶⁴ Ibid.

⁶⁵ Solzhenitsyn, Aleksandr. *The Gulag Archipelago: 1918-1956*. Vol. I-VII. Translated by Thomas P. Whitney. (New York: Harper and Row, 1973), 28.

Socialism. Its development has accompanied the increasing centralization of power in many industrial countries. "The Soviet Union has probably gone further than any country, however, in focusing on the role of law as a teacher and parent. Soviet law thus challenges us to examine the potentialities and dangers inherent in parental law."⁶⁶ The illusion was that the Russian people through some innate sense of truth would find a superior form of social life to that provided by any external legal order. "The Russian intelligentsia both before the Revolution and since failed, for the most part, to acquire any real sense of the importance of law and legal order."⁶⁷

This trust is most evident in the Russian word *pravo* which means Law in the larger sense, more correctly right or justice. Russian also has a word for a particular law or statute, *zakon*. As Harold Berman points out: "In Russian the word Law, *pravo*, is related to the word truth, *pravda*. This may derive from an older conception that Law is revelation, that it is ordained by nature itself."⁶⁸ Relying on this tradition, the Russian people paid a high price for the trust and belief that the administration of the law could safely be left to the dictates of the Russian soul and the judgment of the state authorities. This belief in the Russian soul and judgment of state authorities has led directly to the police oppressions of the Tsarist period and to the vast police repression of the Soviet era.⁶⁹

⁶⁶ Berman, Harold J. *Justice in the USSR: An Interpretation of Soviet Law*, (Cambridge: Harvard University Press, 1963), 6.

⁶⁷ Shapiro, Leonard. *Russian Studies*. (London: Harper Collins, 1986), 74. Cited in Braithwaite, Rodric.

"Russian Realities and Western Policy." *Survival*, vol. 36, no. 3, Autumn 1994, 15.

⁶⁸ Berman, 7.

⁶⁹ Braithwaite, 15.

A detailed examination of Soviet law is neither practical nor necessary to examine the fundamental issues involved in the Soviet model of law enforcement. What is critical however, is what Louise Shelley points to; that Soviet criminal law, while published, was not reproduced in sufficient numbers to be accessed by the legal community or the general population. This on the surface appears to show an attempt at honesty toward the laws of the state. In reality, many operational laws (those affecting citizens upon arrest) were classified as "For Official Use Only." This coupled with the reality that the Criminal Code was not published in sufficient numbers to be available created a law enforcement environment of secrecy.

While all criminal and administrative laws that proscribed conduct were not held secret, the publication of criminal and administrative law did not guarantee a citizen that he would not be convicted of a crime he did not know existed. Ferri Feldbrugge argues that the Soviets practiced "token observance, but at the same time circumvented by the device of unpublished rules."⁷⁰ Thus Shelley argues that Soviet law fell within the guidelines of the Universal Declaration of Human Rights, "but in actual administration of the law reflects the secrecy that is so pervasive in Soviet life."⁷¹ This form of secret lawmaking and maintaining was not unique to Stalin. The *Sobranie* published between 1973 and 1979 in sixty volumes, prepared by the Juridical Commission attached to the

⁷⁰ Feldbrugge, F.J.M. "Repression through Criminal Law." *The Fifth International Sakharov Hearing*. Edited Allen Wynn. (London, 1986), 32. Cited in Shelley, "Soviet Criminal Law and Justice: Are There or Were There Secrets," 141.

⁷¹ Shelley, "Soviet Criminal Law and Justice: Are There or Were There Secrets," 141.

Council of Ministers and published by the USSR Ministry of Justice.⁷² The *Sobranie* laid the foundation for the *Svod zakonov* SSSR, the official law collection. The *Svod* includes 1,300 federal acts, including many consolidations and codifications of pre-existing statutes. "A substantial portion of the statutes included in the *Sobranie* cannot be found in the *Svod*, but continue to be in effect."⁷³ Under Stalin's successors there was a continued use of closely held and unpublished administrative laws. This helped official law enforcement and justice to retain their hold on judicial procedures from start to finish, especially in criminal cases.⁷⁴

The impact of such extensive secret law made the individual powerless in the hands of the state. Even if the criminal law is known, the principles of the rule of law are not upheld if the individual cannot know when he is crossing the state's limits or how his case will be processed through the justice system.⁷⁵ "The *Sobranie* represents a legal challenge because it includes acts which affect the rights and duties of citizens but is not accessible to the public."⁷⁶ It was initially published and distributed to a limited circle of users during the Brezhnev years. Having a set of laws that are restricted to the knowledge of only

⁷² The *Sobranie* is a compilation of All-Union acts having 'normative significance.' This concept has not been legally defined, but Soviet legal scholars generally agree that the term includes acts regulating the behavior of men -- that is, affecting the rights and duties of citizens and other subjects of law. Shelley, "Soviet Criminal Law and Justice: Are There or Were There Secrets," 141.

⁷³ Loeber, Dietrich Andre. "The Sobranie: A Challenge to Glasnost," *Soviet Sobranie of Laws: Problems of Codification and Non-Publication*. Edited by Richard M. Buxbaum and Kathryn Hendley. (Berkeley: Berkeley Research Series #78, 1991), 2.

⁷⁴ Juviler, Peter. "Secret Justice and Personal Rights," *Soviet Sobranie of Laws: Problems of Codification and Non-Publication*. (Berkeley: Berkeley Research Series #78, 1991), 158.

⁷⁵ Shelley, "Soviet Criminal Law and Justice: Are There or Were There Secrets," 152.

⁷⁶ Under long-standing Soviet law, the suspect or accused had no right to counsel until after interrogation and indictment or even later, when the accused is notified of the completion of the pretrial investigation that follows. Loeber, 10.

certain agencies is the very contradiction to the rule of law and democracy. The right to know the law has been a fundamental element of the rule of law in Western legal thought. Individuals cannot be excused for failing to know the law, but they have a basic right to know what can and cannot be done in society. "The rule of law presumes a certain rationality to human behavior. It assumes that individuals calculate the costs of their behavior, but if they cannot know the full legal consequences of their behavior, they cannot make rational decisions. Thus, while secret law may serve the larger state control objectives, it may be counterproductive in the individual case."⁷⁷

Secret legislation concerning police operations fell into four main categories. These categories include the right and responsibilities of the law enforcement apparatus; the career patterns of individuals employed; the decisions made concerning the initiation of cases; and the division of responsibility among branches of the law enforcement apparatus.⁷⁸ This extensive area of secret laws has been a part of the Soviet Union for many decades and is a reality of the administrative command system used to control the economy and Soviet life. The secrecy of such laws clouds the faith and confidence of society in the law enforcement of the state. The citizen's inability to understand the rules and decisions made ensured the state's control. This enhanced state authority as the individual citizen was unaware of the law enforcement personnel's responsibilities and the vast scope of that authority.

⁷⁷ Shelley, "Soviet Criminal Law and Justice: Are There or Were There Secrets," 153.

⁷⁸ *Ibid.*, 146.

Combined with this was the overwhelming influence of the Party in all aspects of the Soviet justice system. The approximately 16,000 Soviet judges were formally 'independent and subordinate to the law' according to Article 155 of the 1977 Constitution. "In practice the rule of 'telephone law'-- local party and governmental pressures -- widely superseded the rule of constitutional and statute law."⁷⁹ Thus the Soviet system contained a basic contradiction between the independence of judges and their political subordination as long as the Communist Party retained its vanguard role, under Article 6, of 'guiding and directing force.'

3. Unique Development of a Model

The Continental or militarized police model served to provide an initial basis for the structure and operational procedures of the Soviet police. However, the level of state mandated authority went well beyond that in place in western Europe.

Rooted in both the continental and colonial traditions, Communist policing nevertheless represented a unique type of policing whose scope and authority far exceeds that of earlier historical models. In contrast to these police models, the Soviet militia represented and enforced conformity with a state ideology that proscribed a wide range of human activity and justified a single party's monopoly of power.⁸⁰

Law in the Soviet Union functioned to reinforce the power of the Communist party, not to grant rights to citizens. This tradition was acquired from the Russian tsars. They had developed centralized police forces in order to maintain their power over ethnically diverse populations spread over large geographical areas. The tsars used

⁷⁹ Juviler, 163.

⁸⁰ Shelley, *Policing the Soviet Society: Evolution of State Control*, 3.

colonial methods of policing to regulate order in the frontier regions of the Russian empire. As David Bayley describes, the Soviet system was developed out of the precedent set by Tsar Nicholas I in 1826. This system, which included the Third Section known as the first Russian secret police, was designed to ensure police functions were directly tied to the Tsar's personal staff.⁸¹ This force however was more centralized than those used by western European empires. The centralized system functioned to maintain the authority of the central Russian government.

The Soviet government carried on this tradition of colonial police operations unlike other European empires in the 19th century. For instances, the British empire used a colonial police force only in detached colonies. The Soviets on the other hand, used it in their homeland. "The blending of continental and colonial police functions in the USSR permitted a hierarchical, centralized police system to execute orders through a vast territory populated by numerous- and diverse- ethnic groups."⁸² Through the use of both the continental and colonial police methods, the Soviet state was able to increasingly use police in an attempt to model the ideal Soviet man. As citizens failed to conform to the ideology, increasingly, the police became the system to ensure conformity. One of the best methods to ensure this conformity became the use of confessions to reaffirm the state's legitimacy. Robert Conquest describes the extensively used means of obtaining

⁸¹ Bayley, David H. *Patterns of Policing: A Comparative International Analysis*. (New Jersey: Rutgers University Press, 1985), 60.

⁸² Shelley, *Policing the Soviet Society: Evolution of State Control*, 11.

such confessions in his work *The Great Terror: A Reassessment*. He details the use of the “conveyor” method of interrogation used extensively by the NKVD in the 1930’s.

When we read, in cases of no particular importance, and areas ones never made to be public, of the use of the ‘conveyor’ system, tying down teams of investigators for days on end, the impression one gets is not simply of vicious cruelty, but insane preoccupation with pointless formality.⁸³

Conquest highlights the insanity of the Soviet legal system. One that went to great lengths to exhaust extensive man hours in order obtain a confession instead of evidence to maintain control rather than law and order within the society. This contorted system within the law enforcement process furthered the state’s hold on the people and was used to ensure the security of Communism. “Behavior that transgressed prescribed ideological norms was perceived as threatening the state; a great number of areas of life thus became criminalized and, consequently, subject to police authority.”⁸⁴

The Soviet model of police operations was also greatly influenced by the *nomenklatura* system. This system of Communist Party control of specific positions to be filled by approved Party members resulted in the major law enforcement positions in all republics being filled specifically by the Party leadership. This ensured compliance to the ideology and enhanced Slavic domination in ethnic regions. “Colonialism in the USSR had two distinct components, one ideological and one nationalistic: colonial police in the Soviet Union enforced both Marxist ideology and Great Russian dominance.”⁸⁵ This often

⁸³ Conquest, Robert. *The Great Terror: A Reassessment*. (New York: Oxford University Press, 1990), 130.

⁸⁴ Shelley, *Policing the Soviet Society: Evolution of State Control*, 4.

⁸⁵ *Ibid.*, 12.

led to the dissolution of traditional republic laws and an increase in corruption as police leaders were not closely tied to the ideals of the society they were policing. "Soviet policing can be characterized as colonial not because the police imposed alien legal norms on foreign populations, but because police leadership on the republic level followed a conscious personnel policy that favored Slavs."⁸⁶

Contrary to states in the West, the Soviet state failed to democratize their police force as the state underwent forced industrialization and urbanization. Thus, the police became a central component of the Party's power over the state and ability to enforce its economic policies. "With the Soviet militia assigned to control citizen mobility, crime, sanitation, markets and political activity- not to mention registration of printing presses and typewriters- virtually all citizen activity fell within the legitimate purview of the police."⁸⁷ This vast-range of police functions enabled the Communist Party to maintain a monopoly of political and economic power and to control all aspects of Soviet life, most specifically cultural and religious. The Communist state fundamentally denied the Enlightenment idea that the state represents the will of the people. Instead, it believed it was the role of the vanguard to mold the citizens in order to create the true socialist society. Hence, the Soviet state depended on the police and the threat of criminal law to induce conformity to the Communist ideology. The Soviet perpetuation of the use of police control can be traced to Russian history which is wrought with bloody rebellions and attempted coups.

⁸⁶ Ibid., 13.

⁸⁷ Ibid., 6.

The Soviets relied upon three distinct principles in their operating methodology that greatly contributed to the state's ability to maintain control of such a diverse and large empire. These principles were:

1) Divide and Rule -- police operations designed to divide the inhabitants into suitable compartments for better control and manipulation. This method was used extensively in the various ethnic republics to gain and maintain a Slavic Russian dominance of the regions. The most extensive use was in the Central Caucasus regions where it was necessary to deport large ethnic groups in an effort to maintain control of the region.

2) Fear of Police Secrecy -- includes the act of police hiding the actual mechanism of its power from the public view to exert control. This is best expressed in the use of secret administrative regulations that were not revealed to the public. Soviet criminal law, while published, failed to make public knowledge the administration law which "affects the way the law is imposed, the legal proceedings, the offender's treatment in confinement, and his destiny upon release."⁸⁸ Thus a system was used to greatly control criminals and dissidents or any who acts against the Soviet ideology by subjecting them to a world where the rules of the game are classified.

3) Violence and Deceit -- police often justified use of violence as a subterfuge against disturbers of domestic public peace as for the greater good. This included acts of inflicting physical punishment or its threat to influence behavior.⁸⁹ This method of the use of force or threat of force to put down domestic rebellion can still be seen in the present

⁸⁸ Shelley, "Soviet Criminal Law and Justice: Are There or Were There Secrets," 141.

⁸⁹ Liang, 14-15.

day Internal Troop formations. These troops, while considered police forces, are trained in the use of military force and were used successfully during the collectivization period in Soviet history.

B. EVOLUTION OF SOVIET POLICE

This system based upon law as the instrument for imposing a necessary social order was applied quite differently throughout the life of the Communist State. Each Soviet leader used the police in different forms but with the same goal: to maintain power. This resulted in a perpetual pendulum swing with each Communist General Secretary manipulating the police differently in order to achieve their individual idea of that necessary social order.

Soon after the October 1917 revolution, the Bolsheviks found it necessary to create a police force since the tsarist police were eliminated with all other tsarist institutions. With initial notions of a free stateless society, the Bolsheviks had no idea that what they would create would be a far more repressive police organization than any used by the tsar.⁹⁰ With the realization that a force was needed for the maintenance of power throughout the period of civil war that followed the Revolution, the Provisional Government created the NKVD (People's Commissariat of Internal Affairs) on 7

⁹⁰ Knight, Amy W. *The KGB: Police and Politics in the Soviet Union*. (Boston: Unwin Hyman, 1990), 10.

November 1917.⁹¹ The actual organization of this new internal security body was not complete however, until the summer of 1918. This new organization was a multi-functional body with 11 different divisions and over 400 personnel to handle all internal security issues of the new state. As such, the NKVD had the temporary authority to enact and develop their own regulations which eventually took on a legislative connotation.⁹² Initially, their priority was to liquidate any counter-revolutionary acts. One division, the Cheka, quickly focused efforts as a political police with vast authority to delve into the lives of all citizens.⁹³

Lenin, from his earliest years, was concerned with the efficiency of law enforcement. Thus, the Soviet law enforcement emphasized positive results. The focus became arrests and prosecution solve rates rather than application of established legal procedures.⁹⁴ This is fundamentally at odds with western understanding of the rule-of-law state. Martin Latsis, a high ranking Chekist official in 1921 described a system that established the earliest traditions of corruption and disregard for a rule of law. "However honest a man is, however crystal clear his heart, work in the Cheka, which is carried on with almost unlimited rights and under conditions greatly affecting the nervous system,

⁹¹*Organy I Voiska MVD Rossii: Kratkiy Istoricheskiy Otcherk. (Organization and Forces of the Russian Ministry of Internal Affairs: Brief Historical Essay. United Russian MVD Publication, Moscow. 1996), 183.*

⁹²*Organy I Voiska MVD Rossii: Kratkiy Istoricheskiy Otcherk, 183.*

⁹³ Knight, 13.

⁹⁴ Throughout the Soviet period, crime solve rates ran above 95%. Most democratic police are lucky to maintain a level above 60%. Shelley, *Policing the Soviet Society: Evolution of State Control*, 15.

begins to tell. Few escape the effect of the conditions under which they work....corruption, brutality, physical coercion....”⁹⁵

After attempts at popular police efforts, the Bolsheviks created a police force based upon a system devised by the Provisional Government and the police organizations that had formed at urban factories.⁹⁶ By April 1919, the police was militarized and displayed a return to the continental police traditions as under the tsarist regime.⁹⁷ Initially, the newly formed police appeared to have a sensitive face. Officers were polite and did not hound the public, but gradually they developed little tolerance for possible offenders. This was a result of the fact that by 19 January 1921 almost one third of the Soviet police were placed under the control of the military and sent to the front to fight in the civil war. Those who returned distinguished in battle for the Soviet state, were transferred to the secret police leaving a poor quality of police personnel in the post war period. Adding to this degradation was the emerging policy of selection based upon ideological concerns and class background verse individual qualifications.⁹⁸ In 1922, the first pendulum swing began with all the divisions of the police being pulled together no longer under the military but the strongest NKVD division, the political police.⁹⁹ Crime control seemed quickly to be subordinate to political functions. “Political domination of policing, an issue of concern in many democratic societies, was intentionally

⁹⁵ Skolnick, *Justice Without Trial: Law Enforcement in Democratic Society*, 21.

⁹⁶ The NKVD act “Orabochei Milicii” (Of the Worker’s Militia) was enacted on 10 Nov 1917 in an attempt to police the new society with common workers. This effort was inefficnet and ineffective in curbing the ills. *Organy I Voiska MVD Rossii: Kratkiy Istoricheskiy Otcherk*, 183.

⁹⁷ *Organy I Voiska MVD Rossii: Kratkiy Istoricheskiy Otcherk*, 451.

⁹⁸ Shelley, *Policing the Soviet Society: Evolution of State Control*, 24.

⁹⁹ *Organy I Voiska MVD Rossii: Kratkiy Istoricheskiy Otcherk*, 452.

institutionalized within the law enforcement structure.”¹⁰⁰ With a merge of social and political functions to fight ordinary crime and politically motivated banditry, the Soviets used criminal law to institutionalize the socialist economic system.

With the death of Lenin, Stalin quickly found the police and political police useful tools in accomplishing his goals of collectivization and industrialization. Not only were all police forces used to confiscate peasant taxes, but they forced labor to build the large new industrial complexes. The police were associated with the worst repression of the Stalinist period. This is evidenced through the use of such methods as the Ukrainian Horse Brigades of the Militia for the confiscation of grain and the rapid growth of the Gulag system. “Police legitimacy in this period was not based on the Rule of Law, but on the individual power of the supreme dictator.”¹⁰¹

During the Stalinist period, the NKVD appeared to be the antithesis of democratic policing and its structure and activities were in line with the tenets of totalitarianism. In a totalitarian society, subordinates are offered little opportunity to introduce new means of achieving the goals of the organization. Subordination implies obedience not initiative. Thus soon Stalin was able to use his NKVD, not as a subordinate to the Party, but to control the Party. The NKVD had three leaders (Genrih Yagoda 1934-1936, Nikolai Yezhov 1936-38, and Lavrentii Beria 1938-1945) between the four years of Stalin’s worst

¹⁰⁰ Shelley, *Policing the Soviet Society: Evolution of State Control*, 25.

¹⁰¹ *Ibid.*, 35.

purges, 1934-1938.¹⁰² With Yagoda and Yezhov victims themselves of the purges, Beria, became Minister of Interior from 1938-1945. After Stalin's death Beria's loyalty to the methods of Stalin would be evident as he made an attempt to merge the police divisions with the other repressive state security organs.¹⁰³ Stalin's leadership purges and increase in the authority of the police are evidence of his insecurity and desire to maintain political power, not his concern for the domestic security of the Soviet citizen. In the words of David Bayley, "By implication, criminal insecurity does not impel police into politics; only political insecurity does."¹⁰⁴ Stalin used an effective method of controlling all the police elements and the Party by extensive use of torture, blackmail and falsification. As Robert Conquest details, by doing so outside the police and Party apparatus first, he lulled them into a false sense of security making his deep purges in both of these elements easier. "Under a calm facade, there was furious activity. He [Stalin] had ready all the ingredients which he was to bring together into the set pieces of the Great Purge."¹⁰⁵

Early in 1930, the idea to spread global revolution was reduced to a concentrated effort to perfect the Socialist State in Russia. This required a more aggressive effort for industrialization and collectivization, and as such immediate registration of all property and citizenship.¹⁰⁶ Soviet police training in turn focused on identification of enemies of the state, whom were more specifically peasants resisting State policies and collectivization.

¹⁰² Beria served under General Secretary Khrushchev as Internal Affairs Minister again between March 1953 and June 1953 just prior to his being tried and shot for his crimes. *Organy I Voiska MVD Rossii: Kratkiy Istoricheskiy Otcherk*, 448.

¹⁰³ *Organy I Voiska MVD Rossii: Kratkiy Istoricheskiy Otcherk*, 205.

¹⁰⁴ Bayley, 205.

¹⁰⁵ Conquest, 79.

¹⁰⁶ *Organy I Voiska MVD Rossii: Kratkiy Istoricheskiy Otcherk*, 199-200.

By 1932 a passport system had to be instituted to handle the flood of peasants fleeing collectivization. By forbidding passports to peasants, the police was able to forcibly tie the peasant to collective farms.¹⁰⁷ This system was in direct contradiction to Lenin's initial ideas against a state system of control over the individual's movement. What developed was successful police repression and hence a political conformity and low crime rates. "The high degree of social order attained at that time is remembered nostalgically by many people in the post-soviet state today."¹⁰⁸ In addition, Stalin's fear of German advances and a desire to increase control of the population but not vest all police power in one organization, he created yet another swing of the organizational control of the police. On 30 February 1941, the Presidium of the Supreme Soviet ordered a split between the police (NKVD) and the newly created NKGB (People's Commissariat of State Security). By March 1946, both became full ministries, the Ministry of Internal Affairs (MVD) and the Ministry of State Security (MGB).¹⁰⁹

The police were not accountable to the citizens of the state, nor entirely to the Party, but ultimately to Stalin. With the demise of the Party under the purges, the police became a leading apparatus of the Stalinist state and essentially guardians of ideology. Soon, the police destroyed all it should have normally upheld: law, morality, justice and safety.

¹⁰⁷ Shelley, *Policing the Soviet Society: Evolution of State Control*, 32.

¹⁰⁸ *Ibid.*, 34.

¹⁰⁹ *Organy I Voiska MVD Rossii: Kratkiy Istoricheskiy Otchek*, 207 and 456.

1. Attempts at Less Authoritarian Police Methods

“As the terror of the Stalin years receded, citizens became complicit in their own control, thereby sustaining police power and making duplicity the heart of the state-citizen relationship.”¹¹⁰ This best describes the resistance that confronted any reforms attempted by post Stalin Soviet leaders. With the complete manipulation of the legal process under Stalin, the necessary lines between domestic law enforcement, intelligence and counter-intelligence functions were blurred beyond recognition. Secretary Nikita Khrushchev attempted to reform the entire Soviet justice system between 1953-1963. His hope was to reduce the scope of terror exercised by the KGB, professionalize criminal law enforcement, and eliminate the excessively harsh punishments instituted by Stalin. In 1954, Secretary Khrushchev made a permanent separation between the KGB and the MVD.¹¹¹ This was an effort to eliminate the role of the intelligence arm of the state security apparatus from participation in the law enforcement and judicial process. Khrushchev was determined to set the rules of the game for criminal acts and eliminate the arbitrary arrests and application of force by the state security institutions. By 1956, he was made the first attempts to decentralize Soviet police operations in order to focus criminal efforts in each Republic. His initiatives included an increase in police salaries, and reduction in administrative overhead, and a significant rise in the authority of the middle

¹¹⁰ Shelley, *Policing the Soviet Society: Evolution of State Control*, 16.

¹¹¹ *Ibid.*, 41. From this point on, I will refer to the development of the Russian criminal police (MVD) and not the political police (KGB) unless specifically stated.

managers. However, the most significant reform act was the change in criminal statistical counting in efforts to no longer falsify the counting of criminal incidents.¹¹²

Despite his reforms, the basis of law enforcement operations remained founded on the old combination of continental and communist police traditions. While Khrushchev was successful in increasing community involvement, a level of professionalism and an observance of legal norms, police authority remained vested in the Party not the law or constitution. This fact is clear in the writings of two scholars familiar with the Soviet abuses of the rule of law. In the words of Leonard Schapiro:

Khrushchev and his associates seemed to have a genuine enough intention to clean up the Augean stables of Stalinism in the realm of law as well as in other fields. They were however, faced with a number of strong pressures tempting them to disregard the law and resort to the old-fashioned practices which we usually associate with the government of the USSR.¹¹³

Robert Conquest concurs and highlights the lack of individual civil rights reform after the abuses of Stalin.

However one looks at it, the penal and police systems were reformed in the Khrushchev period. Equally, however, one looks at it, they did not undergo essential change, did not become truly liberal.¹¹⁴

MVD Minister Nikolai Stahanov, Minister of Internal Affairs from 1955 to 1961, tried to emphasize crime control and enforcement of economic regulations as more important than political duties in an effort to regain control of the police structure and operations. He

¹¹² *Organy I Voiska MVD Rossii: Kratkiy Istoricheskiy Otcherk*, 208.

¹¹³ Shapiro, Leonard. "Prospects for the Rule of Law." *Problems of Communism*, vol. 14. (March-April 1965), 3.

¹¹⁴ Conquest, *The Great Terror: A Reassessment*, 482.

made moves to rapidly alter the police attitude toward civil rights by giving the administrative courts more authority. This created a greater distinction between criminal offenses and those handled administratively. He failed however to meet the Party's goal of eliminating crime in the Soviet state and was unable to resist the pressure to continue to falsify crime statistics to do so. This raised serious concerns in the Central Committee of the Communist Party, and by August 1960, Minister Stahanov received heavy criticism for the democratic changes. Minister Stahanov was fired later in 1961 as a result.¹¹⁵ Despite these attempts, the Stalinist police leadership left behind an influence in the conduct of police operations in society, institutional operations, and a total disregard for the rule of law in the Soviet society.¹¹⁶

2. Stifling of Democratic Reform

General Secretary Leonid Brezhnev made little attempt to continue police reforms. During his tenure from 1964 to 1982, he was, however, able to push for more qualified recruits with the primary role of police being to maintain social and economic order, and a secondary role in appearing to assist the KGB in controlling dissidents. However, Brezhnev made no attempt to remove the Party influence of the police and went even further to corrupt the law enforcement structure. "Nepotism, string-pulling and servility, which increasingly ousted Party principledness, entered our lives... Thus the number of

¹¹⁵*Organy I Voiska MVD Rossii: Kratkiy Istoricheskiy Otcherk*, 209.

¹¹⁶ Shelley, *Policing the Soviet Society: Evolution of State Control*, 39.

untouchables, protected by highly-placed patrons increased.”¹¹⁷ One of the most obvious of these was the placement of his son-in-law, Iurii Churbanov, as Deputy Minister of the USSR MVD with no previous police experience. More significantly, Brezhnev re-centralized the MVD and returned to continental police model, abandoning Khrushchev’s ideas of social order maintained without special police forces. He even went so far as to expand law enforcement orientation by increasing police rights to administer penalties and handle drunks. The police again became executors of Party policy and not professional enforcers of the law. Brezhnev’s patronage system led to police corruption that undermined the policing authority of the Soviet state by producing a visual lack of confidence in the police by the public.

General Secretary Iurii Andropov, noted for his efficiency and incorruptibility, began the initial general clean up of police operations and the MVD. His efforts were stalled later during the tenure of General Secretary Constantin Chernenko, but regained energy again with Gorbachev and Yeltsin. In 1983, Andropov saw that 161,000 MVD personnel were fired at all levels of MVD hierarchy throughout USSR and that by 1986, 5% of MVD and police had been dismissed.¹¹⁸ This purge of corruption, however, resulted in an infusion of a large quantity of Slavs to fill police vacancies in non-Slavic republics. This created poor community relations in the regions due to the large number of political organs influenced by the Central Committee that acted to prevent collaboration

¹¹⁷ Quote taken from “Brezhnev’s Special Favor’ Protected Corrupt,” British Broadcasting Corporation Monitoring, 6 May 1988, cited in Shelley, *Policing the Soviet Society: Evolution of State Control*, 47.

¹¹⁸ Shelley, *Policing the Soviet Society: Evolution of State Control*, 51.

between the local party cells and the local MVD officials. According to present day Russian Internal Troop Commander Colonel General Anatoliy Shkirko, there is a need to use a police force loyal to the central government as there is reason to question the loyalty of the local police forces is in question. He argues that there is and has been a problem with the special local police sub-units, OMON (or special purpose police detachments) or SOBR (Special rapid reaction detachments), which relates to the connection each has with the local or regional leadership and that each is recruited from the local ethnic population base.¹¹⁹ From the mid 1980's to the fall of the Soviet State, this ethnic recruiting lead to shortcomings in the execution of central orders. "As a rule, a certain part of the local internal affairs organs are neither impartial nor independent in inter-ethnic and other conflicts. This is precisely why in such conditions it is impossible to manage without a federal force with its extraterritorial principle of manpower acquisition."¹²⁰

Thus Andropov began a watchdog system which provided the party a confidence that centralized instructions were implemented and ensured the basic elements of continental and communist policing were maintained. General Secretary Chernenko did little to actually improve the police but did attempt to revitalize the public's view of it. He ensured that "patrol posts were restructured in towns and cities in order to make the police more responsive to the community complaints."¹²¹

¹¹⁹ Ibid., 51.

¹²⁰ Ibid., 1.

¹²¹ Ibid., 53.

“Leaving military intelligence aside, no fewer than 17 reorganizations took place since the NKVD and Cheka were established in late 1917 until the collapse of the USSR in late 1991.”¹²² Throughout the first seventy years of communism, police operations were used to impose an ideal social order that was corrupted by a false legitimacy derived from the Party, or its leaders, and not the laws of the state. Each subsequent Soviet leader applied an individual approach to policing the Soviet society in order to retain their monopoly of power. This combined with the use of secret administrative laws contributed to a lack of any form of allegiance to serving the society and developed a model of police operations ripe for corruption. This model of police operations acquired a focus on molding the behavior of society through fear and coercion, not providing a means of law and order.

¹²² Sherr, James. “Russia’s Federal Security Service.” *Jane’s Intelligence Review*. 1 August 1995. LEXIS-NEXIS, 1.

IV. DEMOCRATIC REFORMS OF MVD (1985 TO 1996)

The militia reforms desired by Mikhail Gorbachev far exceeded those attempted by Yuri Andropov. Gorbachev's goal was to significantly reduce corruption and use the law as a vital instrument of change in the Soviet society. He was expressly interested in creating a society based on law (*Socialist pravovoe gosudarstvo*). This society would be one with the Party and its institutions would be subordinate to legal codes. Militia personnel would act primarily as law enforcement professionals, not servants of the Party. With the total collapse of the Communist state, the torch for democratic reform was passed to President Boris Yeltsin. Many difficult challenges faced the new Russian government. The transition to a market economy brought with it a large increase in crime, especially organized crime. Finding the new Federal Assembly unable to quickly pass laws to combat this crime, he soon subordinated police authority directly under himself raising the question of the future of the rule of law in Russia.

A. GORBACHEV'S REFORMS (1985-1991)

Gorbachev saw this transition of law enforcement as an eventuality, similar to those of Western models where the continental police slowly became more accountable to the people over time. At the same time, one of his other progressive efforts, *glasnost*, severely tarnished what little image and prestige the Soviet militia still maintained in 1986.

Public criticism of the militia and a rapid increase in economic crime countered any efforts he made to instill rule of law. Eventually, however, history would show that the militia and the Soviet citizens were more ready for reform than anticipated.

1. *Glasnost* and Public Criticism of the Police

Vivid revelations of police problems of corruption and abuses in the press between 1986 and 1988 significantly contributed to a steady decline in the police's ability to combat the ever increasing organized crime and widening nationalist conflicts. "Once a formidable element of the state's social control apparatus, the MVD proved unable to combat the widening nationalist conflicts, rising crime and increasingly powerful organized criminal groups that resulted from the policies of perestroika."¹²³ With *glasnost* the public became aware for the first time in sixty years of the actual crime statistics. To increase democratic police operations, Gorbachev eased the crime solve rate requirements of 95%. Throughout Communist rule, this had been an unrealistic policy for the police compared to any other societal standard. He also authorized independent private detective and security services. These agencies were authorized in an attempt to privatize some elements of police activity and ease the rapid increase in organized crime pressure on new private businesses. However, while these services were legal, no laws or regulations to govern their actions were enacted. The result was a democratization of policing in form but not substance.

¹²³ Shelley, Louise I. *Policing the Soviet Society: Evolution of State Control*. (New York: Routledge, 1996), 55.

Secretary Gorbachev's new policies of openness produced widespread movements by various ethnic republics for independence. This required the establishment of a special MVD organization dedicated to putting down demonstrations. The creation of the OMON, Special Purpose Militia Detachments, increased the use of police forces in aggressive conflict with citizens. Joined by Soviet Army troops to put down resistance to central rule in the Baltics, the police troops at times protected citizens against Army troops. This was a small sign of loyalty to public safety and willingness to protect citizens demonstrating in nationalist movements. Added to this, was the Baltics, Moldovia and Caucasus regions movement to establish autonomy from central government rule of their ministries of internal affairs. "Removal of Party influence from this (MVD) key institution of state control was seen as a prerequisite to enhanced civil rights."¹²⁴

2. Social Order verse Central Control

One of Gorbachev's leading police reformer was his Minister of Internal Affairs from 1988 to 1990, Vadim Bakatin. Bakatin had frequently criticized the operation of the MVD as being too closely tied to the Party and not a true law enforcement agency. To eliminate this concern, he moved almost immediately to have the arm of the Party in the law enforcement structure removed so as to make it closer tied to the laws of the state, not the political arm of the government.

In practical terms, it has already been decided that political organs within the MVD system will be abolished. Major consolidated party committees will also be eliminated. But there is no need to go to the other extreme. To be or not to be a party member is a matter for each and every one's

¹²⁴ Ibid., 56.

conscience and personal belief. We cannot impose such a prohibition on people, since any ban amounts to a breach of democracy.¹²⁵

His initiatives included a package of measures to further humanize the penal system, specifically to upgrade and improve everyday conditions in jails and camps.¹²⁶ As a result of being vocally committed to rule of law, Bakatin quickly became enemy of the conservative elements in the Party. By 1990, Gorbachev repealed Article 6 of USSR Constitution, which guaranteed the Communist Party's monopoly on power. Increased crime and open criticism of the police due to *glasnost* soon forced Gorbachev to bow to pressure and replace Bakatin with Boris Pugo, a former KGB chief in Latvia. Pugo's familiarity with KGB operations resulted in a evident subordination of MVD operations to those conducted by the KGB. A 1991 Presidential decree gave the KGB and police new broad search and seizure powers of businesses-domestic and foreign. The Presidential decree also implemented joint street patrols between the police and Red Army troops and increased use of OMON to put down nationalist movements and rallies. Frustration among conservatives rapidly built throughout the government after the 1991 banning of primary Party organizations in state institutions. This resulted in many conservative elements, including Minister Pugo, attempting to restore the Party hegemony.

¹²⁵ "Crime is Winning." *Trud*. 17 July 1990. Database on-line. FIBS Document Number: FBIS-SOV-90-138, 51.

¹²⁶ This package included conditions for prisoners to correspond to relatives, receive presents and have improvements in food. *Ibid.*, 52.

"In August 1991, MVD Minister Pugo, together with other military leaders, the Vice President of the Soviet Union, the head of the KGB and leaders of the military-industrial complex initiated a coup."¹²⁷ Not all police leaders however, decided to violate the laws of the Soviet state. RSFSR Deputy Minister of Internal Affairs, Andrei Dunayev, called for MVD and citizens to be loyal to Yeltsin and the USSR Constitution. On the second day of the stand-off in Moscow, Dunayev sent a telegram to call more Russian Republic police to Moscow. Minister Pugo, head of the coup attempt, sent a message to head off reinforcements to the heads of police educational institutions and internal affairs administrations. "It has been learned that the leadership of the RSFSR Ministry of Internal Affairs has instructed the personnel of a number of educational institutions to come to Moscow with their weapons on the morning of 21 August. In view of the fact that a state of emergency has been declared in Moscow, I categorically forbid sending of personnel to Moscow and Moscow Province. Minister Pugo."¹²⁸

Despite Pugo's message, police leaders and instructors at the schools outside Moscow remained loyal. They mobilized the cadets at the academies and responded. After a brief confrontation with Moscow Police Chief Myrikov, they were able to move past barricades and on to the 'White House' to assist defense of the most dangerous sectors. Along with many police elements, the special Alpha Section of the KGB, resisted the coup and it failed quickly. Deputy Minister Dunayev provided the following on the

¹²⁷ Ibid., 57.

¹²⁸ Rudnev V. "Reforming the Internal Affairs Ministry." *The Current Digest of the Post-Soviet Press*, vol. XLIII, no. 36, 9 October, 1991, 25.

crisis against the Russian parliament and president: "From the very first hours we gave the local level clear-cut instructions on how to act. And the Russian Republic police proved to be loyal to the people and Constitution of the RSFSR."¹²⁹ One policeman standing guard at the parliament building summed up the reason for the failure of the coup attempt. "Gorbachev's problem all along was that he trusted the wrong people. He never had any trust in us."¹³⁰

Within months of the failed coup in August 1991, the Soviet state had collapsed. With the collapse came decentralization and all law enforcement operations were transferred from the USSR MVD to the ministries of internal affairs of each respective successor state. It is clear from the actions of most police personnel throughout the coup, that the personnel showed the beginnings of a loyalty to the rule of law. Despite the attempt at restoring Communist central rule, the police acted to restore order and obeyed the laws of the Soviet state. With the reform attempts of *glasnost* came public criticism of the police's weaknesses, this is an essential ingredient to instilling a greater loyalty of the rule of law in society. Correcting those weaknesses and problems is the very method to gain the necessary trust of the public in a democratic police society.

¹²⁹ Ibid., 24.

¹³⁰ Shelley, *Policing the Soviet Society: Evolution of State Control*. 58.

B. YELTSIN'S REFORMS (1992-1996)

The democratic reforms initiated by Gorbachev established the framework for newly elected Russian President Boris Yeltsin to continue the police reforms necessary to develop public trust and professionalism. Once Yeltsin rose to one of the highest positions in the Communist Party, he took on the role as a dissenter and then as leader of the opposition. Once he secured his position in the first free elections in Russia, he personally began to design and act as the architect of a new Russia. One author described Yeltsin as possessing "a technocratic and democratic mentality, on the one hand, but also the style of a leader and a hero."¹³¹ When acting as a technocrat and democrat, President Yeltsin can be receptive to different views. But at the same time as a leader with a heroic personality, he is inclined to resort to authoritarian and forceful means to achieve his goals. This is especially true in light of a weak and slow moving parliament.

By 1993, the growth of crime throughout the Russian state was ever increasing and the security forces had become allies to President Yeltsin as he issued Presidential decrees to empower them to fight crime. These decrees however, were only necessary as the new Russian parliament was unable to effectively pass criminal legislation. With the ever growing crime and the added issue of corruption in the police apparatus reaching an epidemic proportion, he initiated an operation to rid the police of unwanted elements. This initiative, along with the goals of the MVD till the year 2005, show the true signs of democratic reform. The process of internal review of personnel and holding officers

¹³¹ Mikheyev, Dmitry. *Russia Transformed*. (Indianapolis: Hudson Institute, 1996), 72.

accountable for their actions is an elemental step to ensure human rights guarantees and establish the required public trust.

Immediately following the disintegration of the Soviet state, many government agencies were disorganized and lacked central guidance. Concerned over the security of the state, Yeltsin began by restructuring the entire security system of the Russian state.

1. Restructuring

After a review of the historical ties of MVD and KGB, the division of labor between each, and a close look at foreign democratic experiences, the new Russian government found that two managerial apparatuses are necessary for state security. One to safeguard external security, both intelligence abroad and counter-intelligence inside the country, and one to safeguard public security, specifically for fighting crime. This review resulted in a suggestion to form a new ministry, the Ministry of Security and Internal Affairs. It was planned to do what the Chekist of the 1930's feared most, to break the former KGB system of agent support, agents who are by training unsuited to fight crime in an unbiased manner. One suggestion was to merge the MVD and the KGB in special ways as a unified security apparatus. This was later rejected due to the efforts of Yeltsin's first Minister of the Interior, Viktor Barannikov. "In order that we do not have to fear the horrors of the former NKVD, let us comprehensively sort out the KGB today. Let us give over to the police that part of its mechanism that is suitable for the fight against crime. Give to intelligence what is capable of working for external security. And consign the rest

to the archives of our history.”¹³² Barannikov pushed to establish formal agreements with other republic Ministries of Internal Affairs and had a goal of uniting in a professional solidarity. “There is nothing for us to divide up. I have no intention of nationalizing or denationalizing anything. The police should be above politics. Our job is to fight crime.”¹³³

2. Presidential Decrees

Barannikov’s goal was to move beyond the transition difficulties experienced by Gorbachev in his attempt to balance new social freedoms with social order through central control. “The system of society’s law-enforcement protection has been put extremely out of balance by the numerous mistakes of perestroika and by the process engendered by the August putsch. And since the President has found such a way out of the law-enforcement crisis, I am obliged, as a representative of a law-abiding profession, to take this path.”¹³⁴ The road he referred to is one designed to dismantle the abusive and intrusive methods of the Russian security apparatus and increase focus on ordinary criminal activity. Restructuring toward decentralized execution of crime prevention measures began the necessary changes required to provide the police and MVD authority to take a leading role in the elimination of crime.

¹³² Grigoryev A. “Barannikov Interviewed on Composition of New Ministry.” *BBC Summary of World Broadcasts*. 1 January, 1992. FBIS. 1.

¹³³ Rudnev, 24.

¹³⁴ Grigoryev, “Barannikov Interviewed on Composition of New Ministry.” 1.

After the violent showdown with Parliamentary hard-liners in 1993 over the division of power between the branches of government, Yeltsin however, took action to ensure domestic order by subordinating all security organs to the President. This was not the case from 1991-1993. Initially this appears a positive measure for action against ever increasing crime. Over time, however, the habit of presidential decrees, if abused, can distance police operations from consent of the public. While authoritarian methods of police operations are effective, they do not incorporate the necessary loyalty to the rule of law for the balance of freedoms of the individual against the maintenance of social order. According to the Russian Constitution of 1993, "the parliament of the Russian Federation is the representative and legislative body of the Russian Federation."¹³⁵ The Russian President, at the same time, is granted the authority to issue decrees and directives. The executive branch, on the other hand, is vested with the responsibility to "issue resolutions and directives and ensure their implementation."¹³⁶ As defined, executive power rests with the government of the Russian Federation. This body consists of the Chairman, appointed by the President and approved by the parliament; the Vice Chairman and the federal ministers. At the same time, the constitution allows the President, designated as the Head of State and not specifically part of any branch of the government, to issue decrees and directives as necessary.¹³⁷ With a reliance on Presidential decrees and after personal participation in drafting the 1993 Constitution, Yeltsin can be considered "...now the chief

¹³⁵ "Russian Constitution." *Russian Today*. <http://www.russiatoday.com/rtoday/constit/constit1.html>. Article 94.

¹³⁶ "Russian Constitution," Article 115.

¹³⁷ Mikheyev, 48.

executive officer of an authoritarian system of power created largely by him and under him.”¹³⁸

President Yeltsin soon decreed reforms that required the Russian Ministry of Internal Affairs to carry out procedural cuts quickly to gain control of the growing crime rate. “In a month, everything should be as follows: The Ministry of Internal Affairs will have an investigative committee and a criminal police force, which together will be responsible for investigating major crimes of an inter-republic nature. All other crimes will be put in the hands of the republic agencies. Another police force will also be formed- a public safety force, which will operate in emergency situations such as floods, earthquakes, disasters, ect.”¹³⁹ These proactive measures were designed to gain control over rising crime, both domestic and organized, due to a noted lack of legislation by the Russian Parliament.

His decreed reforms were not without critical review, however. One such critical review of the precedent established by Yeltsin drawing all security forces under himself, comes from Dr. Mark Galeotti of the University of Keele.

In January, the government was restructured both to reflect new conditions and to centralize power more tightly into the hands of the president... The beginning of 1994 thus sees the Russian government deploying an expanding array of security organizations, largely built on the basis of Soviet services and armed with a wide range of powers and responsibilities.

¹³⁸ In actuality, the powers granted to the President under the Constitution allow the Russian President a degree of authoritarian rule. “Russian Constitution”, Article 90. In 1995, the State Duma asked the Constitutional Court to examine the role of the Russian president, as the constitution mandates a division between the executive, legislature and judicial branches but does not place the president in any particular branch. *Nations in Transit*. (Freedom House, 1995), 118-119.

¹³⁹ Mostovshchikov, S. “The USSR Ministry of Internal Affairs will implement reforms, but it won’t sell Lenin’s body for freely convertible currency.” *The Current Digest of the Post-Soviet Press*, vol. XLIII, no. 45, 11 December 1991, 23.

Beset with crime, economic crisis and the rising threat from neo-fascism, it is easy to see why Yeltsin wants these powers, but the Soviet era shows the limitations of the organizations. Andropov controlled them, but did not really know what he could do with them. Gorbachev tried to use them to reform, and found them unprepared to obey him. Yeltsin drew the sword to use against parliament last October. Can he now use or sheath it?¹⁴⁰

At the same time, the restructuring plan and the 1994 Presidential decree were defended by Vice Minister of Internal Affairs Mikhail Yegorov. He argued that the 1994 presidential decree was an urgent measure to protect the population against organized crime.

The decree has made it possible for us to slow down the proliferation of organized crime and all crime. Under the decree, as many as 22,400 persons have been detained for 30 days-- the most disputable point we had with regard to that decree. Out of those, 16,000 were charged and 12,000 arrested.¹⁴¹

Yegorov points out that undoubtedly, everyone is concerned about possible human rights violations, but he adds that the decree also contained a number of other powers granted to law enforcement agencies. These powers included the right to conduct financial investigations and expert studies before criminal proceedings were initiated, a practice never before authorized under Soviet law. This enables the police to confiscate property and funds essential in the investigative process without the use of warrants and probable cause. This is the very concern expressed by Dr. Galeotti. The protection of individual rights in the criminal investigation process is an essential element of democratic police

¹⁴⁰ Galeotti, Dr. Mark. "Decline and Fall - The New Russian Security State." *Jane's Intelligence Review*. 1 February, 1994. LEXIS-NEXIS, 1.

¹⁴¹ "Press Conference with Vice Minister of the Interior Mikhail Yegorov." *Official Kremlin International News Broadcast*. 13 June 1995. FBIS, 1-2.

operations. These overreaching search and seizure powers, not granted by laws passed by a legislative body, but instead are the policies decreed by the president alone.

The Vice Ministry of Internal Affairs justifies this use of presidential decrees due to the lack of effective and necessary laws.

The next point I would like to make, frankly, is that the laws and the legislation in general are the tools that we law-enforcement agencies use in our work. And I will tell you that a production engineer or manager who does not improve his tools is bad. The law is our tool. Undoubtedly, we have taken a long time to draft new laws on organized crime.¹⁴²

Yegorov highlights as an example, the definition found in one of the laws passed on organized crime. He argues that under the law only associations can be targets of law-enforcement bodies, not individuals. He complains that the definition of associations requires illegal activity only when two groups have united.¹⁴³

This is a good example of the issues facing reform of the Russian police. Without good laws, police personnel must rely on Presidential decrees for guidance and not federal laws passed by the legislative branch. As cautioned by Dr. Galeotti, this may result in an inability to restore the authority of police activity to the parliament when that body begins to function in an efficient manner in the area of public security. "Yeltsin said that lawmaking by presidential decrees will continue on matters that have not yet been regulated by existing legislation."¹⁴⁴ As such, President Yeltsin continues to focus on the

¹⁴² "Press Conference with Vice Minister of the Interior Mikhail Yegorov," 6.

¹⁴³ *Ibid.*, 6.

¹⁴⁴ "Yeltsin Notes Good Lawmaking Needed for Democratic State." *ITAR-TASS*. 23 February 1996. FBIS, 1.

urgent issue of rampant crime throughout the Russian state. This resulted in an additional decree to provide law enforcement bodies the authority to rid the state of this new crime.

3. Increased Police Authority Against Crime

One of the first hurdles for reform of police operations was the open recognition of crime within the state. Under the Soviet regime, crime statistics were manipulated to maintain a Communist myth that a low rate of crime was one of the greatest advantages of the their system over capitalism. As Dmitry Mikheyev argues, this was to justify the police state as safer for citizens then the “dangerous world of capitalism, where citizens were deprived of security and protection.”¹⁴⁵ Acting Procurator General Aleksei Iliushenko claims that before the idea of *glasnost* took hold, the MVD has knowingly failed to document crimes and falsified citizens’ complaints in an effort to maintain the appearance of a decline in the crime rate.¹⁴⁶ With *glasnost* however, there was an apparent truth in reporting as statistics showed a rapid growth in crime. “From 1987 to 1989 the number of premeditated murders was said to have increased by 130 percent; rapes were said to have increased by 120 percent; and cases of serious bodily injury were alleged to have risen by 150 percent.”¹⁴⁷ If the numbers are correct, today crime statistics are approximately six times higher than reported under the Soviet system. Much of the rise in crime can be attributed to the reduction of Soviet police authority in the lives of the Russian citizen and to the introduction of capitalism. This is not to suggest that the Soviet

¹⁴⁵ Mikheyev, 154.

¹⁴⁶ Cited in Mikheyev, 154.

¹⁴⁷ Cited in Mikheyev, 154.

society was not already profoundly corrupt and criminal. "[I]ts criminality was different from that in democratic and free-market societies."¹⁴⁸ With the collapse of the Soviet police state, the Soviet criminal element was able to merge with the former *nomenklatura* system and produce a very lucrative organized crime element. Stephen Handleman, author of *Comrade Criminal*, a in depth look at the criminal underworld that survived and even thrived off the gulag system under Soviet rule, calls this the "Thieves World."

In July 1996, President Yeltsin issued an edict to reinforce law and order and intensify the fight against crime in the Moscow Oblast. This edict strengthened the right of authorities to hold prisoners, increased salaries and personnel levels, and issued new rules on the authority to confiscate property. The new rules established specific authority for holding persons in social rehabilitation centers for up to 30 days with authorization of the procurator of Moscow; authorized confiscation of property, similar to the Drug Enforcement Agency and other US agency authority where homes and vehicles can be confiscated if used in the act of a felony; increased salaries of judges and technical personnel to ensure quality of their work and longevity; and increased troop levels.¹⁴⁹ Anatoliy Kulikov, the Minister of Interior, "declared that compliance with international legal norms and the Constitution of Russia was a fundamental point of the edict." He also urged members of Parliament to "get laws on the fight against crime through the State Duma and help us find the finances for the operations of the law enforcement organs."¹⁵⁰

¹⁴⁸ Mikheyev, 155.

¹⁴⁹ "Anticrime Edict Assessed." *Ekspert*. 22 July 1996. FBIS, 1.

¹⁵⁰ *Ibid.*, 1.

The new edict calls for a significant increase of law-enforcement manpower in the Moscow area. Specifically, it calls for 18,671 new posts to be filled in police stations in Moscow alone. Also, another 10,000 agents are being recruited to form a 'motorized' reinforcement of interior troops. These troops would be based in the city capital, while local courts and prosecutor officers as well as Moscow tax police will get a total of 1,850 additional servicemen.¹⁵¹ These new numbers would greatly improve the police's ability to slow down the proliferation of organized crime throughout the Moscow region. But with the addition of personnel and the efforts to improve the quality of recruits by using higher salaries, comes an increased authority for detaining citizens and more time for police to evaluate the situation. This has the potential to increase human rights violations and will require additional efforts to address and investigate them. Not to mention the need to ensure methods to punish personnel who abuse authority. One of the positive elements of the edict includes the development of a witness protection system. "The decree also introduces a sort of witness protection system, modeled on the program used by American law enforcement agencies, to protect witnesses testifying about power abuses, official corruption and crime organizations."¹⁵²

Regardless of the positive measures implicated in the edict, the use of centralized presidential decrees to direct the security ministries and combat crime only instills a loyalty to a specific leader, not necessarily the rule of law. With the Soviet tradition of

¹⁵¹ Saradzhyan, Susan. "Russia Intensifies Fight Against Crime and Corruption." *Radio Free Europe-Radio Liberty*. 15 July 1996. <http://www.rferl.org:80/nca/features/1996/07/F.RU.96071517194019.html>.

¹⁵² Ibid.

totalitarian methods to control social conduct, the new Russian society striving for democracy does not understand the balance of freedom and justice. Without effective laws, public safety will have to remain in the office of the president, but this may be a tragic practice. A promising sign that the presidential control over the police apparatus is only temporary and is truly dedicated to democratic police operations, is evidenced by the initiative to eliminate corruption and increase professional conduct of all officers. As noted by President Yeltsin himself in his state of the nation address to the Federal Assembly in February 1996 - "The effort to purge law enforcement bodies of corrupt officials and traitors, which began last year, will be continued this year."¹⁵³

4. Reducing Corruption

While there remains rampant corruption in the Russian police, work is being done to clean up the force. Results of an anti-corruption operation, Operation "Clean Hands" initiated in 1995 reached the highest levels of the MVD. Internal investigations resulted in Internal Affairs Minister Anatoliy Kulikov firing Moscow Oblast Main Internal Affairs Directorate Deputy Chief General Valeriy Aksakov and Chief of the Regional Directorate for Fighting Organized Crime, Alesksandr Kartashov, for corruption. Specifically, both were charged with misappropriation of combat weapons and failure to take measures against criminal firms in Moscow and the Moscow Oblast that were selling contraband foreign-made vehicles with phony customs declarations.¹⁵⁴ All told, 960 officers were

¹⁵³ "Yeltsin Notes Good Lawmaking Needed for Democratic State." *ITAR-TASS*. 23 February 1996. FBIS, 1.

¹⁵⁴ "Cleanup of Corrupt MVD Officials Detailed." *Kommersant-Daily*. 23 December 1995. FBIS, 1.

fired in 1995 with disciplinary action against another 6,000 of the more than 100,000 serving in the MVD.¹⁵⁵

Major General Svyatoslav Golitsin, head of the MVD's Administration for Internal Security, an office that was set up in January 1995 to fight crime within the MVD, reported 1,277 police officers were convicted in the 1995 "Clean Hands" campaign; 533 for abuse of office.¹⁵⁶ This trend of making corruption, and the elimination of it, public is critical to democratic police operations. The issues that confront the MVD are evident in the description of Deputy Chief of the Main Directorate for Organized Crime within the Russian Interior Ministry, Police Colonel Vyacheslav Burkovich. "All violations of law committed by the employees of the law enforcement bodies can be divided into three parts. The first category is formed by domestic crimes, crimes that have nothing to do with their official duties. The second category is formed by offenses when officials exceed their powers when discharging their duties. And the third is the smallest in terms of numbers but, in our opinion, the most dangerous one. These are crimes when official powers are used for criminal purposes."¹⁵⁷

Vladimir Kirakozov, of the State Prosecutor's Office of Russia, finds the problem of abuse of authority stems from a basic misunderstanding of the idea of public service. This can be traced to the legacy of the Soviet society's mistrust of agents of the state.

The professionals that are being trained for us by the Higher School of Militia, the law institutions, the junior militia training schools are not

¹⁵⁵ Morvant, Penny. "Corruption in Moscow Police." *OMRI Daily Digest*. 13 October 1995, 1.

¹⁵⁶ Ibid.

¹⁵⁷ "Press Conference on Breaches of Law by Members of Law Enforcement Bodies in the Russian Federation." *Official Kremlin International News Broadcast*. 5 December 1995. FBIS, 4.

enough. As a result, we have to employ people from, so to say, the civilian walks of life. Such a person, the moment he puts a militia service cap on his head, starts regarding himself as a representative of a state body at whose beck and call everyone around him should be, and not the other way around. This psychological feature, a lack of proper value orientation among some members of the personnel, leads to permissiveness, to rudeness and violence with regard to citizens, arrogance.¹⁵⁸

It appears that leaders of the Russian law enforcement community understand the basic elements necessary for democratic police operations, but must overcome years of communist police traditions and mind-set. According to Police Colonel Burkovich: "Any breach of law committed by a police employee provokes popular resentment. Any crime evokes mistrust among people, mistrust of the authorities. And we believe that law violations perpetrated by the personnel of the law enforcement system should be minimized."¹⁵⁹ He stresses the goal of treating every single case of corruption the way they are handled in democratic Western countries, as a high priority to prosecute all violations. He is focused on the idea that Russian law enforcement bodies should retain the trust of members of society. He believes in the principle that public trust is essential to democracy, that the citizens of the society should not hesitate to seek help for fear of not getting justice, which is the current case in Russia. The road to reform officer conduct can primarily be found in reform of personnel training. In a Kremlin news interview, Interior Ministry Chief of Personnel Igor Astapkin stressed that the new focus would be on the

¹⁵⁸ Ibid., 5.

¹⁵⁹ Ibid., 8.

officers who will carry on the job in the 21st century, those who will shape the image of the policemen in the 21st century.¹⁶⁰

5. Training Efforts

Russia's problem in police training is both quantitative and qualitative. This stems from decades of using a policy to conscript Ministry of Internal Affairs forces. The Interior Ministry has tried to solve both quantitative and qualitative problems simultaneously. Their goal is to increase the number of qualified recruits accepted, while instilling a standardized training program along internationally accepted techniques. Currently there are 29 establishments of higher education, 16 of secondary education, or academies, and approximately 140 training centers and various branches and departments to train specialists in various fields.¹⁶¹

The first method of reforming training includes attempts to attract young people who are contemplating service in the Ministry of Interior. "What attracts them is the specialized training and specialization in various branches of jurisprudence, those that will be encountered by them in an establishment of higher learning."¹⁶² Furthermore, they are focusing on the initial training of personnel, the policemen specifically. As it is planned, everyone joining the MVD will undergo a standard six-month initial training course. Four months of the training would focus on theory and two months would place emphasis on

¹⁶⁰ "Interior Ministry Press Briefing." *Official Kremlin International News Broadcast*. 29 August 1995. LEXIS-NEXIS, 1.

¹⁶¹ *Ibid.*, 2.

¹⁶² *Ibid.*

practical training in the various bodies of the MVD. Currently, they have established 140 training centers across Russia. "We are building them up because at the end of the year some 15 to 20 percent of the new personnel are untrained because of shortages of places at training centers."¹⁶³ This initial training is designed to provide new personnel with basic knowledge of the MVD and authorize the individual the right to be issued a firearm. Then, as required, comes a secondary education in one of the 16 educational establishments, and finally the 29 higher education facilities to train various specialties. All of these initiatives are designed to focus training on a more standard international basis. These efforts are in conjunction with extensive international cooperation and exchanges not only with the United States, but Germany, Austria, and Canada.

Reform has also been instituted at the academy for command personnel. They have adopted what Russians term "a soft reform." Major General Yuri Puzanov, responsible for police training facilities and personnel, explains the efforts to restructure the entire education program to meet new needs of the state. "We cut the time allotted for retraining top-level personnel, brought training closer to practical needs. We introduced the active form of instruction, it accounts for some 60 percent of the program."¹⁶⁴ The next part of training reform includes the introduction of correspondence students, to enhance the training for those unable to attend the institutions of higher education. The students work in the field that will be the subject of their study in the academy. This concept for restructuring the training of personnel is a multi-tiered system designed to

¹⁶³ Ibid., 2-3.

¹⁶⁴ Ibid., 3.

improve the overall education of officers and enhance standardization throughout the MVD.

The quantitative issues are what give the leaders of the MVD the most concern. This is the area in which the educational system reforms should address, specifically the number of personnel being trained in law enforcement specialties. In the past, the number of students entering police educational establishments were 12,000. By 1996, the number has grown to 37,000. This has been complicated by a measure to increase a means competition between applicants according to Personnel Chief Astapkin. "We have competitions on a regional basis to ensure that all regions have enough personnel regardless of the level of preparation. If we decided in favor of a universal competition, applications from remote areas would probably fail to gain admission."¹⁶⁵

On the qualitative side, Russian MVD leaders are not satisfied with the quality of the training being received. In particular they are unhappy about the attitude of the graduates toward their work with the population. Opinion polls in Western democracies have shown a 60% trust in police by the public, in Russia it is 20-30% of the public trust the police.¹⁶⁶ This is due to the attitude of the policeman to his job and the public he is

¹⁶⁵ Ibid., 4. Gallup's 1996 poll of public confidence in major US institutions showed 6 of 10 Americans (60%) expressing at least a "quite a lot" of confidence in America's police. This figure is up from the same poll conducted in 1995 which had a 58% confidence rate. Since 1993, the figures show a level of confidence above 50% for police, this ranks second behind the military and above the Supreme Court, Religion, The Presidency, Public Schools, Newspapers, Congress and the Criminal Justice System. "Public Confidence in Major Institutions Little Changed From 1995." On-line. Available <http://www.gallup.com/news/960606.html>.

¹⁶⁶ "Interior Ministry Press Briefing," 3.

there to serve. "Our personnel have to still get used to the idea that they are servants of the public."¹⁶⁷

Western democratic countries focus training of law enforcement personnel on practical training in applying the law. In Russia the focus is more directed toward theory than training. One area of needed improvement is Russian's lack of on the job training familiar to Western democratic police training where officers must be qualified by a field training officer before acting individually. This has been improved, as the international community has become more deeply involved in the democratic police training in former communist countries. Personnel Chief Astapkin explains the Russian approach to international training efforts:

In promoting international cooperation in personnel training we assume that no system of personnel training in any country is perfect. Every system should meet the national conditions, and suit the level of economic development. But the basis of all national systems of personnel training is commitment to combating crime. And this is the common denominator that enables us to borrow each other's experience and to develop relations.¹⁶⁸

Last year, together with the Federal Bureau of Investigations (FBI), the Russian government developed a program of seminars on various aspects of crime control. With the assistance of the United States State Department, approximately 150 trainees participated in training in the United States and more than 200 were trained in Russia with courses organized with the help of American specialists.¹⁶⁹ Along with these efforts at

¹⁶⁷ Ibid., 4.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid., 6.

international training cooperation, the Russian government has been supportive in the creation of a European police academy in Budapest, Hungary. In 1997, the first Russians will study at the International Law Enforcement Academy.¹⁷⁰

Dedicated to instilling a standard of police conduct throughout Europe, the Academy is considered by Astapkin as essential to the development of a quality Russian police training system. "It is not by chance that every group of trainees that go abroad includes a significant number of teachers of our higher educational institutions who then suggest changes in our curricula, and use foreign experience in their seminars."¹⁷¹ The MVD and Russian government have aggressively used the international police community to focus and refine their training program at all levels. This cooperation, as expressed by FBI agent Charles Byrd, shows a dedication to professional police conduct and operations.¹⁷² One conflicting issue remains however. That issue is the role of the entire judicial system in Russian society. Police efforts and conduct are only half the battle in fighting crime, the Russian judicial system itself must be reformed for the process of law enforcement to be at all effective.

¹⁷⁰ Ibid., 7.

¹⁷¹ Ibid.

¹⁷² See Chapter II, page 32.

C. JUDICIAL ROLE

For the first three years of the new democratic Russian state an effective struggle against crime was handicapped by the absence of any legislative framework. This, coupled with the legacy of Soviet secret laws, made the role of the judicial reform critical. The introduction of the new civil and criminal code was initially impossible without a new democratic constitution and productive legislative organs. After the struggle for power ended by force the Yeltsin sponsored Consitution was ratified in 1993. Once a new political structure established what one newspaper's describes as the rules of the game. "The state began increasingly to engage in what should be its principle business: setting the rule of the game in the market."¹⁷³ Since their creation however, the legislative body and courts have shown little initiative to effectively assert their Constitutional authority and this has lead to weak legislative oversight for Russia's police organizations.

1. Balance of Powers

One of the fundamental prerequisites for rule of law is an independent judiciary. "At the most fundamental level, the principal purpose of the courts in virtually any system is to serve as forum for the peaceful resolution of disputes."¹⁷⁴ Under Soviet law the rights and duties of citizens were often regulated not by laws but decrees of the Council of Ministers. The rule of law, Rechtsstaat, principally calls for issues that concern the rights

¹⁷³ Cited in Mikheyev, 157.

¹⁷⁴ Kritz, Neil J. "The Rule of Law in the Post-conflict Phase." *Managing Global Chaos: Sources of and Responses to International Conflict*. Edited by Chester A. Crocker and Fen Osler Hampson with Pamela Aall. (Washington: United States Institute of Peace Press, 1996), 591.

and duties of citizens to be regulated by laws enacted by a democratic representative body.

¹⁷⁵ This was not the case with Soviet legality. The tradition of executive edicts and secret administrative laws has created a challenge for the new Russian legislature and courts.

The politicization of the Russian Constitutional Court in the early 1990's rendered it more a high-profile political tool than a credible judicial institution. This has resulted in the Court compromising their strength as an independent judicial body of government that is loyal to the Constitution and not the leader of the nation. "As typified by the weakness of the Constitutional Court, Russia cannot make significant progress toward a democratic government and free-market economy until several problems with the judiciary are resolved and the rule of law is established."¹⁷⁶

Neil Kritz, writing on the rule of law in new democracies, argues that this is due to the difficulty in establishing a legitimate justice system after a legacy of dictatorship or central control. The authority for a separation of powers is in the Constitution and comprehending the strength of the rule of law requires time and practice. "It takes a couple of years or more to establish new lines of command, and build a new credible criminal justice system. In Russia, Georgia, ... to cite a few examples, this time lag has resulted in a security vacuum readily capitalized upon by criminal elements."¹⁷⁷ The

¹⁷⁵ Oda, Hiroshi. "Law Enforcement Agencies," *Soviet Sobranie of Laws: Problems of Codification and Non-Publication*. Edited by Richard M. Buxbaum and Kathryn Hendley. (Berkeley: Berkeley Research Series #78, 1991), 127.

¹⁷⁶ *Russia's Democratic Moment?* William C. Martel & Theodore C. Hailes. (Maxwell Air Force Base: Air War College, May 1995), 46.

¹⁷⁷ Kritz, 592.

security vacuum mentioned by Kritz is what plagues Russia today and has resulted in the extensive use of Presidential power by Yeltsin.

The rule of law imposes a network of institutions and legal procedures. These check the sources of tension, constrain the ability of any one branch of the government to engage in violent or abusive action, and force an open governmental process. Essentially, it levels the playing field to ensure a true balance of powers that keeps the government and its institutions in line with the rights proclaimed in the state's constitution.

To address this problem, the new Russian state has to move quickly. They must establish courts that are above corruption and intimidation by criminal elements, police forces that are legislatively supported, and individual officers who held accountable for violations in discretion. The key to this is prompt training to cleanse law enforcement and criminal justice systems.

The rule of law requires that governments adhere to principles of transparency and predictability, and it establishes several mechanisms to ensure that this is so. These include requirements that laws be adopted through an open and public process by a representative body, all regulations be published, no rules be applied retroactively, government agencies conduct their affairs according to prescribed rules, and the whole system be subject to judicial scrutiny to ensure compliance with these rules.¹⁷⁸

As discussed in Chapter II, law enforcers in all societies enjoy a certain degree of discretion in performing their jobs. That degree of discretion becomes excessive if the

¹⁷⁸ Kritz, 593.

laws they function under are known only to the enforcers and not to the very citizens subject to its authority.

2. Legislative Oversight

Legislative inactivity and indecisiveness have prevailed in the early years of Russia's democratic transition. "The norm in the Duma during the last several years is writhing and fractious debates between ideologically-polarized political parties that do not produce solutions to pressing social and economic problems in Russia."¹⁷⁹ The consequence of this friction is a legislature that is seen by the Russian people to be weakened by indecision and paralysis. One of the most difficult challenges has been the revision of the civil and criminal codes. The most obvious sign of legislative ineffectiveness in this area is the fact that the revised criminal code did not go into effect until 1 January 1997 and it is not even complete.¹⁸⁰

Placing all the Russian power ministries under the direct control of the president has resulted in the Russian legislature having no control over them. Hence parliamentary oversight is ineffective. "These facts point to serious problems for Russian democracy; too much power is concentrated in the hands of the president, and the other branches of government are too weak."¹⁸¹ This creates a dichotomy for Russian government and law enforcement bodies. With Russia's crisis of crime, the strong hand of force must be

¹⁷⁹ Ibid. First argued in Slater, Wendy. "Russian Duma Sidelines Extremist Politicians," RFE/RL Research Report, Vol.3, No.7, On-line. 18 February 1994, 5-9.

¹⁸⁰ The Russian Criminal Code consists of three parts. As of August 1997, only Part I was complete according to Alexei Arbatov, Duma member, during his visit to the Naval Postgraduate School.

¹⁸¹ Mikheyev, 189.

asserted from the government. If it is not to come from the legislature, it must come for the executive branch. The problem arises however, when this force is not checked by the judicial branch of the government and functions without oversight. In his article which estimates the prospects for the rule of law in the Soviet Union, Leonard Schapiro wrote "It seems perhaps difficult for dictators to become accustomed to the idea that the main purpose of law is, in fact to make their tasks more difficult."¹⁸² The society must decide just as other democracies have struggled with the balance of order and freedom. Which are more essential, efficient and forceful law enforcement or the individual guarantees set forth in the nation's constitution? The argument is always essentially the same: "that the efficient administration of criminal law will be hampered by the adoption of procedures designed to protect individual liberties."¹⁸³

While Russia struggles with this issue of the balance of powers and legislative oversight within the government, apparently the legacy of secret administrative laws is slowly fading with democracy. One such example is, that while in the past all laws passed on the Ministry of Internal Affairs were secret, they are now as readily available as are other Russian laws passed. Oda Hiroshi argues that there are three reasons the Statute on the Ministry of Internal Affairs was classified in the past. First it called for censorship and control of the reproduction of information. "This function of controlling the flow of information has seldom been mentioned in Soviet sources, but it is well known in the West

¹⁸² Leonard Schapiro. "Prospects for the Rule of Law." *Problems of Communism*. March-April, 1965, 2. Cited in Skolnick, Jerome H. *Justice Without Trial: Law Enforcement in Democratic Society*. (New York: John Wiley & Sons, Inc, 1966), 239.

¹⁸³ Skolnick, 239.

that matters relating to censorship are regarded as state secrets.”¹⁸⁴ Second, the traditional use of the Internal Forces, the military trained forces for domestic demonstrations, and their traditional role and cooperation with the defense forces. Lastly was that the MVD forces were required to support and assist the KGB. “It provides that the ministry should assist the ‘agency of state security’ in the struggle against ‘especially dangerous crimes’ against the state and in other matters related to state security.”¹⁸⁵ Today, the Law on MVD no longer is involved in controlling reproduction of information. However, the traditional role of the Internal Troops and the link to the Federal Security Service is still relevant and yet the law is no longer classified. The most likely explanation is that the latter two roles focus on combating organized crime. This is something which is much needed in Russia today and requires some level of cooperation.

The collapse of the Soviet police state not only created economic challenges for Russia, but also left a significant vacancy in the conduct of law enforcement operations. This vacancy was not filled initially by a proactive and effective legislature. Thus Russia has seen a significant growth in the power and authority of the President as he moves to strengthen the state’s fight against crime. At the same time, the branch of government set forth in the Russian Constitution to prevent abuses of power by either the legislature or the executive, must overcome a legacy of central control and political influence. Both of which greatly inhibits the ability to be a balance of power for the other two branches. The

¹⁸⁴ Oda, 131.

¹⁸⁵ It should be noted that by the 1980’s when the *Svod Zakonov* was published, the Statue on the Ministry of Internal Affairs and the Statue on the Soviet *Militsiia* were included. Oda, 132.

final chapter will consider these attempts at democratic reform as compared to the democratic police principles presented in Chapter II. I will assess Russia's potential for success. To do so I will analyze their efforts to ensure the police forces act primarily as law enforcement professionals with a civic sense of duty, not servants of the particular leadership of the government.

V. EVALUATION OF REFORMS

Yeltsin cannot be judged as if he were the president of a stable democracy with an established constitutional order.

Richard Nixon¹⁸⁶

Former President Nixon's observation highlights the critical challenge that faced both Soviet leader Gorbachev and Russian President Yeltsin. Gorbachev faced the major dilemma of trying to open Soviet society while also maintaining Communist central rule. He found out quickly that to maintain the unity of the USSR he had to abandon some of his commitments to build democratic police principles. By implementing the reforms suggested by President Yeltsin the Russian state finally made the necessary move toward democratic police operations. This move began with the idea that the Russian police needed to become a professional law enforcement body, not a force to be used by the KGB or the state for unsavory tasks, such as instilling fear in citizens, that are connected with maintaining central control. The continued efforts by President Yeltsin to eliminate corruption, improve training, and empower the police against crime, show the signs of a democratic transition. Hazards lie ahead, however, in the lack of good laws to ensure a balance requisite in any democracy, the right mix of individual freedom and restraint, including responsible law enforcement. With a continued use of presidential decrees, a manipulation of the Constitution as it relates to the control of governmental organs may stifle any true rule of law reform efforts.

¹⁸⁶ Cited in Mikheyev, Dmitry. *Russia Transformed*. (Indianapolis: Hudson Institute, 1996), 75.

A. APPROACH TO RULE OF LAW

Russian leaders appear to realize that the basis of a democratic rule of law resides in legislation and constitutional rights. Both are considered vital for the state's democratic transition. The challenge of restraint on rules and procedures to achieve social order is not yet fully understood by Russian society, a society that has only known centuries of authoritarian rule. Unlike its Western European counterparts, the Soviet police tradition was never oriented toward protecting the society. With respect for human rights guaranteed in the 1993 Russian Constitution, this has the potential for slowly changing. Without the proper laws to ensure those rights, the Russian citizen must rely on the president. Current Interior Minister Anatoly Kulikov presents concerns not only for the creation of good legislation, but also for how legislation will be applied by policemen. "These are the laws and rights that they are duty-bound to observe and protect. But what will be the laws and rights in the society of the 21st century? How will the environment affect the young graduates after they begin to work?"¹⁸⁷

This issue is being addressed in the area of training and an attempt to instill the democratic principle of public service. From the qualitative and quantitative initiatives being undertaken to enhance the quality of police personnel through recruitment and training, it appears that positive effects are underway. It will be, however, the application of the new training efforts that will determine in the success. Lieutenant General Igor Astapkin finds the motivation of new trainees positive, but worries about how the overall

¹⁸⁷ Ibid., 10.

attitude of the system and society will change that upon implementation in the field. "If you talk to the students and faculty of our educational establishments, you will see one aim -- to ensure a calm life for people, to ensure protection of their rights, interests, to ensure observance of interests of the state. Such is their task. But when they begin their professional work, unfortunately, the environment at times has its effects."¹⁸⁸

In an effort to focus on the police application of the rule of law and address standards of human dignity, Russia has developed research centers. The centers are in Moscow, St. Petersburg, Ekaterinburg and Irkutsk, founded with money from the MacArthur Foundation to develop ways to enhance law enforcement operations.¹⁸⁹ The Chief of Personnel, Lieutenant General Astapkin, also recognizes the necessary work required in this area. "The subject of law-enforcement and human rights is very new and important to us. You know the situation in this country. There are many areas where a lot of improvement is needed as far as human rights are concerned. For instance, our system of penitentiary facilities needs to be reformed."¹⁹⁰ The area of penal reform is a very complicated and difficult task that, unfortunately, is beyond the scope of this assessment but is an area also being addressed by the Russian government. This is due to extensive scrutiny by the general public, international organizations and civil rights movements.

¹⁸⁸ *Ibid.*, 11.

¹⁸⁹ "Prepared Statement of Louise I. Shelley, Professor, Department of Justice, Law and Society and the School of International Service, The American University, Before the House Committee on International Relations Statement on Post-Soviet Organized Crime." *Federal News Service*. 30 April 1996. LEXIS-NEXIS, 1.

¹⁹⁰ "Interior Ministry Press Briefing," 6.

Russia is using the experience of legislation in other countries to adopt a democratic orientation to the rule of law and its application in law enforcement. The Russian government translation office translates approximately 100 pieces of legislation annually from various other democratic countries in an effort to contribute to the development of Russia's own legal framework. In the words of the Chief of the Ministry of Interior International Relations Directorate, Valery Gorchakov: "... knowing and being directly involved in law-enforcement activities, even doing joint patrol duty together with American policemen or British policemen, our police workers know how the policemen in other countries behave in this or that situation."¹⁹¹ Combining the legal framework and application of the laws has helped Russian MVD officials guide their own judicial reform.

B. COMPARISON WITH DEMOCRATIC POLICE PRINCIPLES

An orientation to general democratic principles, as addressed above, is seen in a slow movement toward legislation that is essential for the development of the rule of law. With a weak legislature, the strength of the law enforcement agencies has come directly from the President. Despite an arguably autocratic use of presidential decrees, President Yeltsin has made several efforts to re-focus the Russian police toward democratic police operations. While these reforms have not seen an extended test period, it can be said that major efforts have significantly moved the MVD, and more specifically the police, to a

¹⁹¹ "Interior Ministry Press Briefing." *Official Kremlin International News Broadcast*. 29 August 1995. LEXIS-NEXIS, 7.

more professional police force. This move, while not complete, shows a significant effort at an adherence to the development of a code of conduct for police. Work is still necessary, however, in creating a force determined to serve society and protect lives.

Table 1 graphically depicts an overall assessment of Russia's democratic police reforms.

Table 1. Comparison of Reforms against Democratic Police Principles

<u>Democratic Principles</u>	<u>Assessment</u>
1) An orientation to democratic principles	- Flux (Weak legislature and lack of complete penal code)
2) Adherence to a code of conduct	- Yes (Efforts to professionalize and eliminate corruption)
3) Protection and safety of lives	- Flux (Hampered by remaining corruption)
4) Public Service	- Flux (Lack of civic sense of duty)
5) Focus on crime against persons and property	- Yes (Despite reliance on Presidential Decrees for authority)
6) Respect for human dignity	- Flux (Improving with international training)
7) Non-discrimination	- Flux (Improving with international training)

The efforts to adhere to a code of conduct can be seen specifically in the continued use of Operation "Clean Hands."¹⁹² Only with a diligent effort to establish a legitimate force in the eyes of society can the Russian police forces move forward in their defeat of

¹⁹² Appendix A shows figures from a 1997 report on crime that demonstrates a continued effort to root out corruption at all levels of the Russian government.

crime. The creation of a criminal investigative element has made crime control a more central focus for the MVD, and this has enhanced the quality of the criminal investigations conducted. This initiative, however, comes with the potential for further human rights abuses due to an increased police authority to hold persons suspected of a crime. This drawback can, however, be counterbalanced by a second Yeltsin initiative, the 1995 efforts to rid the MVD of corruption and to hold officers more accountable for abuses, as in Western democracies. Operation "Clean Hands" has instituted an essential check on the Russian police force as a whole. This program will enhance police professionalism and build up the Russian public's trust in the police force's integrity at the same time.

Public trust is of immediate importance as organized crime has penetrated local police agencies, a situation that has reduced the society's trust in the police. As highlighted in a 1995 Russian MVD roundtable video, Russian journalists claim that it appears that the police forces are accepting criminal rules of the game. This must be countered by focusing on the public call for elimination of internal corruption. One such avenue is the demonstrated passion of several of the younger new police officers. They appear to acknowledge that someone must stand up for the people against crime.¹⁹³ President Yeltsin has provided one of the other necessary means for improving the crime situation. Increased police authority and resources will greatly improve the law enforcement agencies' ability to counter the proliferation of crime, and empower police to combat even better resourced and organized criminal elements. The added personnel,

¹⁹³ *Ministry of Internal Affairs Press Club*. Produced by Russian Ministry of Internal Affairs. 60 min. Moscow, December 1995. Videocassette.

salaries, and equipment in the area of the motorized troops leads, however, to a question of the controls on the police's use of force. As the police grow in size and ability, while the military suffers from neglect and poor funding, it should be cautioned that their adherence to democratic principles is more essential than ever. The quantitative and qualitative efforts in place are a means of achieving this goal. The ground work has been established to instill the proper ethics and police methods necessary. This will, it may be hoped, guarantee the ability of the professional MVD officers to question any use of the police forces beyond democratic professional law enforcement operations. As the legitimacy of the International Law Enforcement Academy grows, the standard of a level of restraint for police operations will increase the maintenance of social order in Russia.

1. International Cooperation

Respect for human dignity is a fundamental democratic principle espoused by the United Nations. Since the collapse of Communism, the United States has contributed more than 15 million dollars in assistance to promote cooperation in law-enforcement training to jointly solve crimes while instilling due process ideals. According to FBI Deputy Assistant Director Jim Moody: "Just a year ago, we took a major cooperative step with other Federal agencies and other foreign nations with the creation of the International Law Enforcement Academy in Budapest, Hungary. This is the rare opportunity to extend the rule of law while mobilizing law enforcement to meet the explosion of international

crime.”¹⁹⁴ This increased cooperation is an added positive step to achieving the Democratic Police Standards, specifically: standardized training; an officer code of conduct to eliminate corruption and gain public trust; and instilling public service standards. However, concern must still be focused on individual state efforts to ensure human rights. This is an area of transition not yet fully completed. A balance is still necessary between the sweeping authority provided police to combat crime, and the rights of the individual citizen.

All democratic states struggle with this very issue of the proper balance to ensure order and the individual freedoms of citizens. Western democracies have been wrestling with this difficult issue seriously for centuries. As the situations of rampant organized crime, political violence, and especially terrorism can show, the use of legitimate force by the state can quickly whittle away the basic rights of the very citizens it is supposed to protect. A good example of this is the precarious situation in Northern Ireland. The British government has been forced to make a challenging decision: to use force and restrict liberties to ensure order, or to allow chaos to rein. To preserve the order of the state, the British Parliament ascertained that certain liberties must be subdued and restricted to ensure the stability of the democratic order. As they eventually discovered, however, special legislation, such as Internment and the Prevention of Terrorism Act, may only serve to alienate the citizens and fuel the propaganda and goals of the criminal

¹⁹⁴ “Prepared Statement of Jim E. Moody, Deputy Assistant Director Criminal Investigation Division, Federal Bureau of Investigation Before the Senate Governmental Affairs Committee.” *Federal News Service*. 15 May 1996. LEXIS-NEXIS, 1-2.

terrorists. These are areas where international assistance can be beneficial to all democratic states. While sovereignty is always a road block in the minds of leaders, the decision making process and the resulting police tactics to be used can be enhanced by sharing knowledge and experience. This can already be seen in the international fight against crime.

International assistance is essential to solve a world crime dilemma, the rapid spread of organized crime. The FBI's approach to combating Russian and other international organized crime groups includes the provision of specific law enforcement training to foreign law enforcement agencies. With funds from the US State Department, the FBI has trained approximately 1800 law enforcement officers from Russia, Ukraine, Latvia, Poland, and Lithuania. "This training demonstrates to police agencies of the new democracies how effective law enforcement can be conducted within the legal framework of a democratic society, and provides the necessary core, general and specified law enforcement instruction."¹⁹⁵ One of the beneficial aspects of this increased international training is the interaction opportunity it provides the trainers and the trainees. Specific crime problems in individual countries can be examined and discussions can focus on how to address the problems. Also, the training provides a unique opportunity to share experiences learned in the process and develop relationships for future cooperation.

¹⁹⁵ "Prepared Statement of Jim Moody, Deputy Assistant Director Criminal Investigation Division, Federal Bureau of Investigation Before the House Internal Relations Committee." *Federal News Service*. 31 January 1996. LEXIS-NEXIS, 5.

The academy in Budapest comes as a direct result of the FBI director's trip to Eastern Europe in 1994 and President Clinton's direction to US Government Agencies to join together to increase the world's capabilities in fighting international crime. "The academy brings together seasoned investigators as instructors and law enforcement officers from across Eastern Europe, Russia, and the Newly Independent States to learn policing under the Rule of Law."¹⁹⁶ It provides an eight week professional development program similar to our FBI National Academy program at Quantico, VA. During fiscal year 1995, each of three classes graduated 33 mid-level police officers from a variety of East European states (Czech Republic, Hungary, Latvia, Poland, Romania, Slovakia, Estonia, and Lithuania). Fiscal year 1996 had a much more aggressive schedule, in that approximately 200 persons were scheduled to be trained from Albania, Belarus, Bulgaria, Croatia, Estonia, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Macedonia, Moldova, Poland, Russia, Slovenia and Ukraine.¹⁹⁷ Deputy Assistant Director Moody described this effort as an essential element in assisting Eastern Europe and Russia on their road to full democratic police operations. "Along with the instruction geared to the investigation of crimes, we have provided training in ethics and internal police controls, the first time that this has ever been done and an area which is critical to the success of policing under the rule of law."¹⁹⁸

¹⁹⁶ "Prepared Statement of Jim E. Moody, Deputy Assistant Director Criminal Investigation Division, Federal Bureau of Investigation Before the Senate Governmental Affairs Committee." 15 May 1996. 4.

¹⁹⁷ Ibid., 4.

¹⁹⁸ Ibid., 6.

FBI Director Louis Freeh acknowledges that it is not the fundamentals of police operations that Russia needs assistance with; it is dedication to the rule of law and professional conduct that must be enhanced.

They don't simply want us to teach them how to do surveillance, how to do electronic wiretapping. They know that very well. They've been doing that successfully for decades. But what they haven't been doing well, and what they don't have anybody else to teach them except the Americans, is the Rule of Law which we steadfastly and persistently apply to all our efforts. We need to teach them not so much the science of policing -- that they know; we need to teach them the police ethics, the protocols that we use, the notions of due process.¹⁹⁹

Since the beginning of 1996, the United States has trained 150 Russian Federation MVD officers on internal police controls, detailing how the United States police regulate themselves. The goal was to teach them how to democratically monitor each other to ensure that the police have the leadership and rank and file that are corruption-free and that understand the principles of due process.²⁰⁰

2. Due Process

Despite these moves to function under international standards, two due process issues still present a potential problem to democratic police operations. These are human rights, and the overall attitude of policemen toward the community they are required to serve. In the area of human rights, at the end of 1996, the US State Department's annual review of human rights gave Russia a mixed review. The report still cites the use of

¹⁹⁹ "Prepared Statement of Louis J. Freeh, Director Federal Bureau of Investigation, Before the House Committee on International Relations Hearing on Russian Organized Crime." *Federal News Service*. 30 April 1996. LEXIS-NEXIS, 6.

²⁰⁰ *Ibid.*, 6.

torture in prisons and high rates of corruption that persist throughout the Russian MVD.²⁰¹ Additionally, it can be argued that the 1995 Presidential Decree authorizing broad search and seizure authority, and extending the time required before officials are required to file charges with the Procurator General, show signs of sweeping police authority. Without the proper oversight by responsible agencies, the procedures could lead to grave civil rights abuses.

There are several arenas, however, where due process progress can be noted. The first concerns a suspect's right to counsel, a right often extensively abused under Soviet law enforcement efforts. "Counsel is now admitted upon a suspect's detention, arrest, or the presentation of a criminal charge. Prior to 1 December 1989, counsel was admitted only later, at the start of or after the pretrial investigation."²⁰²

A second area is the opening of the entire judicial process after decades of secrecy. After 75 years, the new Russian judicial system re-introduced trial by jury in 1995. "Citizens are now subject to laws rather than the arbitrary dictates of the state -- a critically important distinction."²⁰³ This is a clear sign of a determination to shed the procedural secrecy that perpetuated the abuses of individual rights and inhibited due process. Vladimir Rubanov, former department head in the KGB's Research Institute, noted that secrecy is a product of, and condition for, the function of the "administrative" -- hierarchical structures for governing society. Secrecy actually harms the *perestroika* process. "Secrecy in the

²⁰¹ Morvant, Penny. "U.S. Reports Little Progress on Human Rights in Russia." *OMRI Daily Digest*. 31 January 1997. 1.

²⁰² *Ibid.*, 163.

²⁰³ Mikheyev, 186.

operation of the apparatus of power creates the danger that it will become an independent and unaccountable force."²⁰⁴ Openness and democratization have begun to unveil the secrecy of the entire judicial process. This shift from secret to open justice may take many years to complete, but the farther that shift progresses, the more likely it will be to ensure human rights and inviolable due process to citizens.

The second issue stalling democratic police operations is the attitude of the police force toward the public they are supposed to protect. This problem is seen in a lack of police responses to complaints filed by victims of crimes. Recently Minister Kulikov has directed investigations into this matter. He is focusing on the registration of crimes and how citizens' statements are handled. He is aware of the fact that mismanagement in this arena will further degrade public trust. "There are indeed a lot of violations and abuses in Moscow over the filing of statements of crimes."²⁰⁵ Minister Kulikov confirms the continued need for reform in Russia's police efforts.

Until strict observance and compliance with the constitution and the laws have become a natural norm of behavior, an obligation, and a moral duty, it is premature to speak about establishment of legislation and democracy in Russia. Only by creating a civil society based on principles of respect and observance of the law can we avoid the dogma of contending ideologies.²⁰⁶

This concern for civil duty and respect for laws is a process not easily completed. Only through assertive legislative efforts, a strong constitutional court, and an extensive

²⁰⁴ Juviler, Peter. "Secret Justice and Personal Rights," *Soviet Sobranie of Laws*. Berkeley: Berkeley Research Series #78, 1991, 156.

²⁰⁵ "Interior Ministry Press Briefing," 11.

²⁰⁶ *Ibid.*, 270.

education in schools, can the decades of social distrust be removed. While the loss of state and law enforcement power initially was not compensated for by any form of civility or self-restraint, as the governmental bodies develop and living conditions improve, there will be a renaissance of the human spirit. This will hopefully contribute to an overall decline in crime throughout Russia.

The positive steps in the training and professional ethics of the Russian police are elementary in the move from the former Soviet continental police methods to a democratic police force. As all Western democracies found necessary in the age of the Enlightenment, once the seeds of democratic police operations are planted and as generations of MVD personnel are exposed to international standards, the society develops the call for adherence to such standards.

C. CONCLUSION

As Russia continues to make the complicated transition to democratic police operations, it is imperative that the international community continue to provide training and assistance as necessary. However, the re-focusing of police efforts from those involving protection of the interests of the state over those of the individual, to a role centered on protecting and serving the citizens of the state will take time.

The leadership of the Russian Interior Ministry has made several efforts in this positive direction. Both the qualitative and quantitative efforts to recruit, train and

maintain officers called upon to conduct law enforcement operations and the progress made toward a standard of public service are fundamental. In the words of Personnel Chief Astapkin:

The key to personnel policy has always been to pick honest and decent people of the right age envisaged by the Law on the Militia, and the same requirements are put to the top executives. They should be people with experience in the field, highly regarded and decent people. We are introducing tests, psychological and physical.²⁰⁷

With this effort, along with the positive presidential efforts to eliminate corruption and enhance international training, the Russian police appear dedicated to establishing the laws and policies designed to move closer to democratic police operations. Police operations need to function in accordance with a *Rechtsstaat* concept, enabling a society to have the knowledge and access to the law that is essential to hold the state accountable to its laws.

It appears that until the Russian legislature can enact positive measures to combat crime the police will continue to be directly subordinate to the Russian President. Measures to combat crime and move the police toward more democratic efforts will remain vested in presidential decrees and directives. As Appendix B shows, the *1996 MVD Report on Crime* depicts an overall 6% decrease in the rate of reported crimes and a 9% increase in crimes solved since 1995.

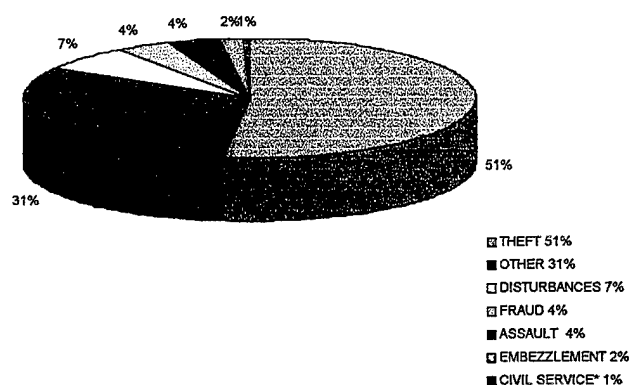
Overcoming the seventy years of Communist police terror has not been easy. While Soviet President Gorbachev made the initial steps to provide for greater individual rights, he was confronted with a perceived need to restore order. This led to an excessive

²⁰⁷ "Interior Ministry Press Briefing," 9.

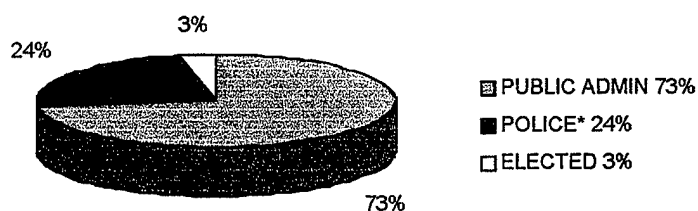
use of the police for a political purpose - maintaining central control. This role is not that of a professional police service in a democratic society. If President Yeltsin continues to wrestle with the legislature, Russia's efforts to move toward the rule of law and democratic police operations may be stifled. With a concerted effort at reform, as younger generations of policemen are trained, not only in Russia but throughout the world, the fundamental principles of professional police conduct and the motivation for public safety may take hold. From the initial successes shown in the international training efforts to improve Russian police motivation for public service and human rights, to an effort to reduce corruption with Operation "Clean Hands," the environment is ripe in Russia to espouse the democratic police motto ... "To Protect and Serve."

APPENDIX A. 1996 RUSSIA CORRUPTION INDICTMENTS

STRUCTURE OF RUSSIAN CRIME 1996

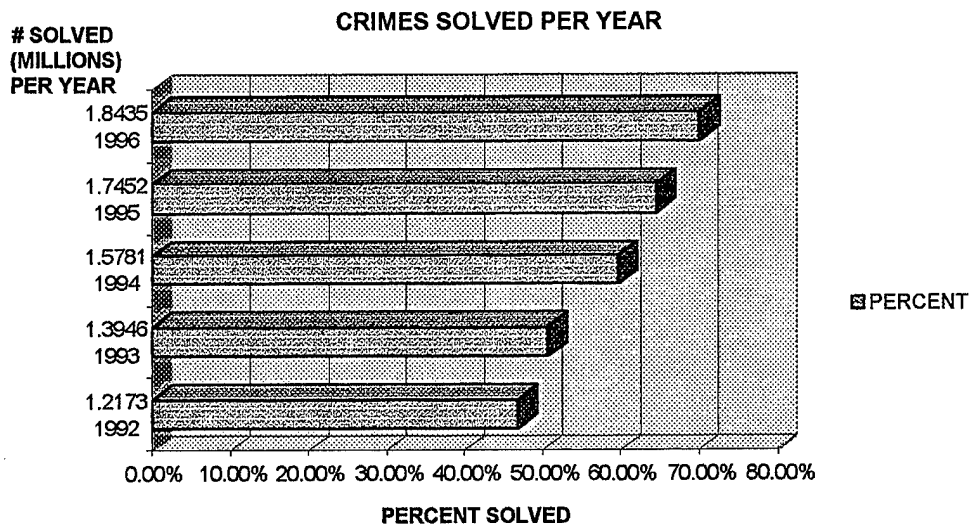
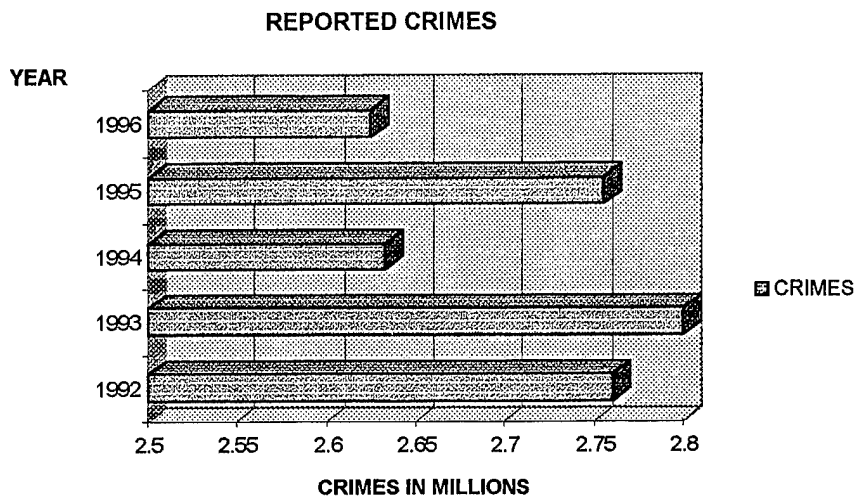


CORRUPTION IN CIVIL SERVICE



*Includes all levels of government elected representatives, public administration officials and law enforcement personnel. Sources: "MVD Report on Crime." *Rossiyskiye Vesti*. 20 February 1997. Database on-line. FIBS Document Number: FBIS-SOV-97-055; Morvant, Penny. "Corruption in Moscow Police." *OMRI Daily Digest*. 13 October 1995. Database on-line; "Kulikov on Crime and Corruption." *OMRI Daily Digest*. 20 January 1997. Database on-line; "MVD Announces Results of 'Clean-Hands' Operation." *OMRI Daily Digest*. 19 June 1996. Database on-line.

APPENDIX B. RUSSIAN CRIME STATISTICS 1992-1996



Sources: "Local Crime Statistics Examined." *Vostochno-Sibirskaya Pravda*. 19 June 1996. Database on-line. FBIS Document Number: FBIS-SOV-96-138-S; "Criminal Statistics as of June 1995." *General Information Center of the Ministry of Interior of Russia*. Moscow: Ministry of Interior, 1995; "MVD Report on Crime." *Rossiyskiye Vesti*. 20 February 1997. Database on-line. FBIS Document Number: FBIS-SOV-97-055.

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