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The role of in-house counsel in post-Soviet Russia in the wake of privatization

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ABSTRACT *The mass privatization of Russian industrial enterprises in the early 1990s would seem to have provided an opportunity for in-house lawyers to enhance their role within the enterprise. Drawing on a series of in-depth case studies, the article argues that the shift from state socialism to the market had minimal impact on Russian in-house counsel. The lawyers themselves made little effort to take on new duties in the areas of commercial paper or corporate governance, and were often sidelined even in their traditional areas of competence, such as contractual relations with suppliers and customers. The case studies reveal variation, which are driven by institutional history and barter levels.*

How did in-house Russian lawyers (*iuriskonsul'ty*) of the 1990s understand their role and how did other managers view them? An interaction I had as part of a World Bank team charged with assessing the conduct of business in the transitional economy in Russia in 1996 provides a window into these attitudes. We were meeting with managers at a number of enterprises in Moscow and Ekaterinburg and I asked the general director of a privatized food-services company in Ekaterinburg to talk with the head of the legal department. The general director was openly contemptuous of this request. He told the team that talking to this woman would be a waste of time. He explained patiently, as if to small and stupid children, that she had no real authority and that she merely carried out his orders. He felt confident that he would do a better job than she of fielding any law-related questions. When I insisted, he ordered the lawyer to his office and, in front of her and us, repeated his dismissive assessment of her capabilities. When I finally had an opportunity to talk with her one-on-one, it took considerable cajoling before any of her own thoughts emerged. Her first answer to any question was to refer me back to the general director. Once I broke through her reserve, however, it turned out that she had a mind of her own, though very little discretion in doing her job. It is tempting to see the general director's behavior as a demonstration of his raw power which, within the enterprise environs, was virtually unlimited. But there was more going on. After all, the general director

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did not balk when the team asked to speak with the directors of the sales and procurement departments. His behavior vis-à-vis the lawyer reflected her low status within the enterprise. This experience piqued my curiosity as to how in-house lawyers were coping with life in a market-oriented environment.

The collapse of the Soviet Union in 1991 and the advent of market reforms (including privatization) brought profound changes to the industrial sector. Given that privatization was a legal process by which an enterprise transformed itself from being state-owned to being a shareholder-owned corporation and that working through it required mastering endless statutes, regulations, and executive decrees (e.g. Boycko *et al.*, 1995), it is reasonable to think that *iuriskonsul'ty* would have been deeply involved. Likewise, life as a privatized company in a nascent market economy would seem to have required the active involvement of *iuriskonsul'ty* to help management cope with the new challenges, such as securing financing, negotiating with customers and suppliers, and keeping shareholders satisfied. But was top management prepared to offer its *iuriskonsul'ty* seats at the table when corporate strategy was being formulated and were the Russian in-house lawyers ready to participate?

I began to explore these questions as part of my collaboration on a 1997 survey of 328 industrial enterprises spread out across six regions of Russia. The survey was aimed at understanding the functions of law in the transition context (Hendley *et al.*, 2000). We surveyed four key officials at each respondent enterprise: the general director, and the heads of the sales, procurement, and legal departments. In an earlier article, we shared our findings on the role of *iuriskonsul'ty*. We documented the infrequent use of outside counsel (Hendley *et al.*, 2001, pp. 697–699). Most (approximately 80 percent) of the surveyed enterprises had some sort of in-house legal advisor. About half were lodged in a legal department (Hendley *et al.*, 2001, pp. 690–694). We argued that the low incidence of Communist Party membership among the directors of legal departments¹ combined with the tendency for women to hold these positions² suggested a low level of influence within the enterprise. We buttressed that argument with data on the activities of *iuriskonsul'ty*, showing that many of the activities that would be undertaken by lawyers in Western corporations, such as drafting various types of commercial paper and preparing documents for annual shareholders' meetings, had never been undertaken by a majority of the in-house lawyers surveyed (Hendley *et al.*, 2001, pp. 700–708). Our analysis led us to the tentative conclusion that, in the wake of privatization, Russian in-house lawyers had been unable or unwilling to take on a more proactive role within their enterprises. At the same time, recognizing the limitations of our data, we noted that our study should be seen “as a starting point for more detailed research on the role of lawyers in transition economies” (Hendley *et al.*, 2001, p. 687).

To that end, during the first half of 1998 after our preliminary analysis of the survey data, I carried out a series of six in-depth case studies of industrial enterprises during which I was able to explore what *iuriskonsul'ty* did on a day-to-day basis. The enterprises were selected from among those that had participated in our 1997 survey on the role of law in doing business in post-Soviet Russia.³ The sample variation of this survey in terms of the size, age, ownership, access to legal expertise, and industrial sector was replicated to the maximum extent possible given the challenge of gaining

access.⁴ Once I had gotten access, I was given a work space in the legal department (for those enterprises that had legal departments). This gave me an invaluable opportunity to observe the *iuriskonsul'ty* in their day-to-day activities and to gain insight into the parameters of their authority within the enterprise. The lawyers assisted me in arranging interviews with managers, which allowed me to learn what the lawyers thought of these managers and vice versa. I also had a chance to study contracts and other documentary records of agreements, which helped me assess the technical expertise of the lawyers. My research goes beyond confirming the marginality of *iuriskonsul'ty* following privatization by revealing that it took different forms depending on factors as diverse as organizational history, barter levels, and the mix of individual personalities. In the discussion below, I show that this variation can be understood by adapting ideal types developed by students of the American legal profession.

Nelson and Nielsen (2000) outline three behavioral rubrics for in-house counsel: cops, counsel, and entrepreneurs. The dividing lines between the three are fluid. It is entirely possible for an individual to exhibit characteristics of each ideal type, though one usually dominates. When acting as cops, lawyers function primarily as gatekeepers. They see their job as making sure that the firm stays within the boundaries of the law. By contrast, when acting as counsel, lawyers tend to look beyond the strict letter of the law when responding to inquiries from management. One of their respondents described himself as a "consigliere", indicating that he sees his role as providing advice on the broader implications of the strategy being proposed (Nelson & Nielsen, 2000, p. 465). When lawyers act as entrepreneurs, the balance of their interest shifts away from assessing the legality of a transaction to evaluating how it contributes to strengthening the company. The three ideal types can be seen as points along a spectrum from by-the-book lawyering to a more freewheeling image of lawyer as business advisor. Most (50 percent) of the lawyers in Nelson and Nielsen's study fit into the middle ground role of counsel. Among those remaining, twice as many exhibited characteristics of entrepreneurs (33 percent) than as cops (17 percent). Thus, in the American setting, in-house lawyers typically seek to expand their role beyond merely assessing legal compliance. Although Nelson and Nielsen do not address the role of European lawyers, an application of their framework to the secondary literature suggests that continental lawyers would fit most comfortably into the cop category (Van Houtte, 1999; Rogowski, 1995; Kolvenbach, 1979). As will become apparent, the situation in Russia in 1998 was markedly different from both the US and Europe.

By adapting Nelson and Nielsen's ideal types, I show not only that privatization failed to open the eyes of Russian managers to the potential contributions of their *iuriskonsul'ty*, but how one can understand the roles taken on by Russian in-house counsel. More specifically, rather than chafing at the restrictions of the traditional role as legal gatekeeper, I found that Russian *iuriskonsul'ty* were reluctant to exercise even this limited power. Most of what I observed could best be characterized as running the gamut from wannabe cops to proud cops. I saw nothing that even remotely approached the entrepreneurial function that Nelson and Nielsen found to be a growing trend among American in-house lawyers. Indeed, in only one of my case studies did I observe lawyers fulfilling anything akin to Nelson and Nielsen's counsel function.

The institutional framework of the Russian legal profession

Before getting into the details of the case studies, some background on the legal profession in Russia at the time of the case studies is in order. Like much of continental Europe, Russia's legal profession has always been segmented.⁵ The contours of these divisions as well as their rigidity has changed with the collapse of the Communist Party's power. During the Soviet era, private law firms (like all forms of non-state-sponsored activity) were outlawed. Instead, law students who were interested in becoming lawyers and who had no desire to become prosecutors⁶ or judges⁷ chose between joining a *kollegiya advokatorov* (college of barristers) and working at an enterprise legal department.⁸ The former were known as *advokaty* and the latter as *iuriskonsul'ty*. Entrance to the *kollegii advokatorov* was highly politicized and limited to relatively few (Rand, 1991; Kaminskaya, 1982). Becoming a *iuriskonsul't*, by contrast, required no vetting for political reliability. Graduates of law faculties were allocated to enterprises as part of the annual 'distribution' (*raspredelenie*) of labor. Those so dispersed were required to stay with the job for at least three years, but many ended up staying for their entire work career.⁹

Much like their counterparts in continental Europe,¹⁰ Soviet *iuriskonsul'ty* were not within the top echelon of management (Hendley *et al.*, 2001). Their lives were also complicated by their divided loyalties.¹¹ Not only did they carry out the traditional functions of corporate counsel by championing the interests of the enterprise, but they were also frequently called upon to solve legal problems for employees. This went well beyond casual advice to those intimidated by the apparent complexity of the legal system. Nor was it limited to work-related issues. Soviet *iuriskonsul'ty* provided substantive assistance to workers at all levels of the enterprise on issues of family law, housing, and even criminal matters (e.g. Shelley, 1984, 1981–82). The lawyers' loyalties became more entangled when management and workers found themselves on opposite sides of an issue, as when management took disciplinary action against employees.¹² The *iuriskonsul't* typically straddled the fence, counseling each side on its options. The apparent conflict of interest was not recognized in the Soviet context because workers and management were viewed as parts of a unified whole rather than as inevitably antagonistic.

With the onset of market reform in the 1990s, the role of legal professionals within Russian enterprises underwent a fundamental shift. No longer were they able to serve as legal problem solvers for workers. Indeed, the dividing lines between management and labor came into sharper relief as the economic difficulties forced enterprise administrators to lay off workers (wholly or partially) and delay paying those who remained. Privatization also contributed to this shift by forcing Russian managers to focus on profitability and to slough off the social welfare functions that enterprises had fulfilled during the Soviet era. Regardless of the cause, the reality is that Russian legal professionals began to identify more closely with management. Their universally-accepted *raison d'être* became the protection of the interests of the enterprise. This realigning of their function rendered them more closely analogous to Western corporate counsel.

The 1990s also increased the porousness of the previously rigid barrier between *iuriskonsul'ty* and *advokaty*. Both groups began to take on new tasks and to take

advantage of the disintegration of state regulation over the legal profession. Some *iuriskonsul'ty* left their enterprises and organized themselves into private law firms, while some *advokaty* expanded their practice from the traditional criminal defense work to include corporate law.¹³ With the exception of Moscow and St. Petersburg, law firms specializing in corporate law were slow to spring up in Russia. At least initially, *advokaty* resisted retraining themselves in corporate law, preferring to rely on the criminal defense work that had been their bread and butter during the Soviet era. When they did appear in the economic (or *arbitrazh*) courts, judges were generally unimpressed with their command of the law.¹⁴ Enterprise managers did not clamor for their services. As my case studies illustrate, enterprise management generally downplayed the importance of legal issues and, when they were inescapable, preferred to turn to their *iuriskonsul'ty* rather than trusting outsiders.

The case studies

Three distinct patterns emerge from the case studies, which I have characterized as superfluous lawyers, lackey lawyers, and counselor wannabes. These are intended to serve as archetypes of the roles played by Russian *iuriskonsul'ty* more generally, though the case study methodology makes it impossible to determine whether these patterns capture the full range of possible options or to assess the relative frequency of the individual patterns.

The studies of the role of Soviet-era *iuriskonsul'ty*, albeit few in number, provide a sense of the institutional environment in which the *iuriskonsul'ty* I encountered during the case studies came of age (e.g. Shelley, 1984, 1981–82; Giddings, 1975). The analysis of results from our survey updated the story, but provided only an overview (Hendley *et al.*, 2001). The case studies allowed me to probe more deeply into what these lawyers were doing, how they thought about their role, and how others viewed them. The timing of the case studies was fortuitous in that it came after the enterprises had had more than five years to adjust to the end of state planning and just before the global financial crisis of the summer of 1998, which hit Russia hard. The research captures an important moment in time and helps explain why market reforms had so little impact on the role of *iuriskonsul'ty* and why law proved incapable of constraining the baser instincts of upstart Russian managers in the transition to the market. At the same time, the case study method has limitations. Though providing a window into the behavior of enterprise managers (including the in-house lawyers) and underlying motivations, the extent to which these behavioral patterns are representative is unclear. To the extent possible, I have made use of the survey data to provide a broader context. The case studies are also limited by time. They allow me to identify obstacles to a fuller role for *iuriskonsul'ty*, but what has happened in the time since my case studies remains for future investigation.

Superfluous lawyers

In Nelson and Nielsen's (2000) study, there is an assumption that enterprise management see lawyers as a necessary evil, i.e. that they provide critical expertise, though not always in a way that facilitates the larger goals of the enterprise. This recognition of the

importance of assessing the legal implications of business transactions was not shared by all Russian managers. Some failed to appreciate the potential contribution that a *iuriskonsul't* might make. In the most extreme cases, managers saw no need to have a legal department or to consult with outside lawyers. For them, lawyers were a non-issue; they were simply superfluous.

This image of the superfluous lawyer was best evidenced by an enterprise in Ekaterinburg that manufactured women's undergarments, *Venera*.¹⁵ This enterprise differed from the other case studies in that it had never been state-owned. The general director and his top lieutenants left an Ekaterinburg defense plant to create it in the late 1980s, taking advantage of the Gorbachev-era legislation that legalized new forms of property ownership. The company began life as a cooperative that, according to the general director, made an extraordinary amount of money buying and selling goods in short supply.¹⁶ At the outset, his only real asset was his access to key officials at the ministry of construction, with whom he became friendly while working at the defense plant. Recognizing that profiteering would peter out when state controls on prices were lifted, he began two lines of manufacturing: parts for televisions and women's underwear. He and his staff had no prior experience with either. Within a few years, it became clear that the greatest opportunities were in producing underwear. Women were weary of the utilitarian styles of undergarments that had been available to them during the Soviet era and *Venera* was well-positioned to take advantage of this market niche. Perhaps because it was a start-up company, *Venera* was less flustered by foreign imports. Indeed, it had always seen foreign companies as its primary competition, dismissing the few enterprises on the territory of the former Soviet Union that produced these items as hopelessly out-of-date stylistically.

By 1998, *Venera* had transformed itself from a cooperative into a closed joint-stock company. The stock was closely held, with only 20 shareholders. Ninety-eight percent of its stock was owned by top management.¹⁷ The general director held a controlling interest and was the undisputed locus of power within the enterprise. He micro-managed virtually all aspects of the business. By early 1998, some of his deputy directors were beginning to chafe under this regime, but no one wanted to rock the boat because dividends had been paid regularly. *Venera* had grown from five employees in 1990, to 90 in 1992, to 300 in 1998. Its success and profitability distinguish it from the other case studies.

Upon arriving at *Venera*, I studied its organizational chart in vain for any mention of a legal department or a lawyer. Unlike the other enterprises where I spent time, it had no prior history as a state-owned enterprise and, therefore, did not inherit a legal department. When created, the need for a formalized legal department was a low priority. One of the founders had graduated from the local law institute and, even though he had never worked as a lawyer, he had been deputized to handle any legal questions that might arise.¹⁸ His actual title was deputy director for general questions (*zamestitel' direktora dlia obshchikh voprosov*). This sort of stopgap solution makes sense for a start-up business where everyone pitches in, but I encountered *Venera* a decade after its founding, by which point it had developed a network of dealers across Russia and suppliers that spanned the globe. By that point, the absence of a legal department had to be seen as a deliberate choice.

The general director claimed otherwise. From our first conversation to our last, he loudly proclaimed his commitment to operating within the law and portrayed himself as someone fighting against the tide of legal nihilism among his subordinates. He belittled their low level of “legal grammar” (*pravovaya gramotnost'*) and detailed his plan to raise it by hiring a “real” lawyer. He told me that he had already interviewed several candidates and had offered the job to one who had passed on it. He believed that she declined because she perceived that the other managers would not take her seriously. Perhaps this was true, but it does not explain why he did not persist. After all, this general director was no shrinking violet. Rather, he was a towering presence within the enterprise who had a finger in every aspect of the business from the purchase of raw materials to the design, sales, and marketing of the finished goods. He ruled through a combination of intimidation and authority. His decision was unquestioned and determinative in all contexts. There is no doubt in my mind that, had he genuinely wanted a *iuriskonsul't*, he would have had one.

How did this vibrant company cope in a market environment without in-house legal expertise? I explore this by examining how the procurement and sales departments handled their interactions with outsiders. These transactions inevitably raise the specter of legal liability. The involvement of a lawyer – even if only as a gatekeeper to prevent anyone from taking advantage of *Venera's* legal naivete – would seem to be warranted.

Of all the enterprises I studied, *Venera* faced the greatest challenges in obtaining the raw materials and other inputs needed for manufacture. Other enterprises may have had more difficulties in paying for their inputs, but only *Venera* had to respond to the vagaries of fashion, thereby resulting in constantly changing needs. Moreover, most of the must-have items, such as latex, silk, and lace, were unavailable within Russia, forcing *Venera* to interact with suppliers in Europe and East Asia, whom they met periodically at regional trade shows. When I asked the head of the procurement department about the involvement of lawyers in the transactions with these far-flung suppliers, he scoffed at the question. The very idea of bringing lawyers into the negotiations or even having them review the contracts before signing struck him as preposterous. Indeed, left on his own, he would not have bothered with contracts at all.

Contracts were certainly more central in the day-to-day activities of the sales department. Like most Russian manufacturers, *Venera* had generated its own form sales contract. Because sales were made both directly and through regional dealers, several form contracts had been developed. Though the deputy director for general questions had participated in their drafting, he did not take the leading role, nor did he involve himself in case-specific decisions about how the form could or should be adapted for particular customers. This was left to the sales department personnel. When customers balk at *Venera's* standard terms – a fairly common occurrence – the decision about whether to accept the alternative language proposed rested with the general director, not his deputy who had a legal education. Naturally, his evaluation emphasized the business implications over the potential legal consequences, many of which were beyond his understanding. His main concern, which was shared by those in the sales department, was with maintaining good relations

with dealers and customers.¹⁹ When problems arose, the sales department handled them. To a person, they regarded *arbitrazh* courts as something to be avoided. In the year preceding my visit, they had only initiated one case and did so only when all other avenues of collecting on the debt had been exhausted. At that point, the deputy director with legal expertise became involved, but the general director made the decision to go to court.

Although one of the top managers of *Venera* had been trained as a lawyer and had been given responsibility for handling legal issues, he did not self-identify as a lawyer and rarely acted as a lawyer. This was less because he had many other responsibilities, and more because neither he nor his colleagues perceived any need for legal advice. The staff of both the sales and procurement departments believed that if the relationships with trading partners were properly nurtured, the legal niceties would take care of themselves. To them, lawyers were unnecessary.

Thus, the role of the lawyer inside *Venera* does not fit neatly into any of Nelson and Nielsen's ideal types. The gatekeeping function that they see as axiomatic is absent. Nor did anyone seem to miss it. Though the sales department staff was desperately worried about whether customers would live up to their contractual obligations, they did not see how having a lawyer review the contracts would help them alleviate this concern. Rather than seeing non-payments as a legal problem, they saw it as a challenge-of-doing-business issue that could best be handled by building up strong relationships of trust with their customers. The deputy director charged with handling legal issues did not bring potential legal consequences to the forefront. Rather, he seemed to share their view. Perhaps this is because his primary identity was not as a lawyer, but as a manager.

What are the consequences of treating lawyers as superfluous? In terms of ongoing trading partnerships, a dearth of lawyers probably brings no dire consequences when bilateral relations are smooth. It might even be argued that the absence of lawyers, whose job it is to point out flaws in contracts, facilitates tranquility (Macaulay, 1963). But when either side loses their equanimity, the absence of lawyers – especially when the abstention is unilateral – can tilt the scale in favor of the represented side. *Venera's* managers were uniformly skittish about using the courts to discipline recalcitrant customers. One after another, they insisted that the *arbitrazh* courts “don't work”, but they failed to recognize that their unwillingness to pay attention to legal details was largely responsible for their difficulties in court. Their contracts were sloppy which left them vulnerable when customers resisted entreaties for negotiated settlements and *Venera* sought protection in the language of their contracts. Moreover, when I reviewed the handful of litigation files of *Venera*, I found a consistent pattern of mistakes. They were the sort of errors that someone who is rarely called upon to put his legal training to work, like *Venera's* deputy director, would be likely to make. For example, after prevailing in a collection case against a retail store in a town on the Volga River, he erred in filling out the form (*ispolnitel'nyi list*) required to seize the proceeds of the store's bank account. The error was easily fixed, but by the time the new document was prepared, the defendant had emptied its bank accounts, rendering itself virtually judgment proof. *Venera's* filings were riddled with similar mistakes.

The point here is not that the absence of a legal department and/or meaningful legal advice was fatal to enterprises in post-privatization Russia. *Venera* proves that enterprises that treated lawyers as superfluous not only survived, but sometimes thrived. My research suggests, however, that some problems might have been averted had someone with legal training been paying attention. It goes without saying that a staff lawyer, if he had acted as a heavy-handed gatekeeper, might have had the opposite effect. Perhaps *Venera*'s general director, while paying lip service to his commitment to staying within the bounds of the law, actually preferred the freedom granted by his 'don't ask, don't tell' policy.

Lackey lawyers

The attitude toward lawyers exhibited by *Venera*'s managers was an exception among the case studies. The other enterprises had *iuriskonsul'ty* who functioned as lawyers, though the parameters of their activities were consistently more constrained than those studied by Nelson and Nielsen (2000). At four of the other case studies, the managers viewed *iuriskonsul'ty* as technicians who, at best, were capable of assessing whether a contract met the strictures of the law. They did not treat them as counselors; they did not seek out the advice of their *iuriskonsul'ty* on the wisdom of a transaction. In essence, the in-house lawyers acted as the lackeys of management. Though I found variation in the extent of their servility, the hallmarks were the same. Their primary function was to act as gatekeepers, but only of standard transactions. In other words, they were expected to ensure that the ordinary processes of buying inputs and selling outputs went smoothly. As we will see, they did not always follow through on this policing function, but they were deliberately left out of the decision-making process. Rather than being allowed to shape major transactions so as to avoid legal pitfalls, they typically learned of them only when something went wrong. They lacked any measure of independence or discretion. In organizational terms, they were usually subordinate to one of the deputy directors, leaving their relationship with the general director – the critical indicator of power within any Russian enterprise – attenuated.

Drawing on the case studies, I lay out two variations on the lackey lawyer. They are best seen as points along a spectrum within Nelson and Nielsen's ideal type of "cop". I start with *Saratovskii Kauchuk* (*SK*), where the legal department (like the enterprise itself) was barely clinging to life. The *iuriskonsul'ty* tried to act as gatekeepers, but their impotence was evident to the sales and procurement managers who regularly bypassed them. In contrast, the lawyer at *Moskovskaia Bytovaia Tekhnika* (*MBT*) was more of a genuine cop and, at times, she seemed on the verge of transitioning into the role of counsel. She worked closely with the sales department. Her signature was required before *MBT* could move ahead with any sale. Unfortunately, she was still left on the sidelines when it came to corporate strategy.

Dispensable lawyers

The first variant on lackey lawyers are *iuriskonsul'ty* who appear to be integral to the ongoing activities of the enterprise, but who were actually seen as dispensable by

management. It is best reflected by *SK*, a Saratov enterprise that had manufactured the hard plastic casings used by manufacturers of vehicle batteries since 1943. Its *iuriskonsul'ty* had been pushed aside during privatization and had remained irrelevant.

SK became an open joint-stock company as a result of privatization in December 1992. Workers and managers emerged from privatization with control of the enterprise.²⁰ Though *SK* had flourished during the Soviet period, it had fallen on hard times by 1998. Its traditional customer base remained enterprises that assemble cars, trucks, farm equipment, and aircraft, but domestic demand for such vehicles had dried up. With it went the production orders that had sustained *SK*. The enterprise survived thanks to barter. *SK* had not needed to use this tactic during the Soviet era, but it proved to be a lifeline during the industrial decline of the mid- and late-1990s.²¹ By 1998, it was dependent on barter for 90 percent of its 'sales' of output and its 'purchases' of inputs. The inability to ensure a steady supply of raw materials and other inputs had given rise to periodic work stoppages. One of these, which lasted about 10 days, coincided with my field work. Management had attempted to economize by going onto a four-day work week, but the long delays in wage payments evidenced the futility of these measures.²² When I visited the plant in May 1998, workers had yet to receive any wages for that year. Their lack of hysteria indicated that they were accustomed to coping with this state of affairs. Those who could find other work had long since departed. Since 1992, over half of the workforce had left – whether voluntarily or as a result of layoffs. Only 880 workers remained. Those who had stayed felt that *SK* was the best they could do.

The privatized *SK* had inherited a legal department. There was no sense that management had made a conscious decision to retain it. By the same token, no one cared enough to get rid of it. By 1998, two full-time lawyers and one law student intern were employed. All were women. They reported to the deputy director for economic questions, not to the general director. Like the rest of the enterprise, the legal department had undergone downsizing since 1992. When I first met them, these *iuriskonsul'ty* put forward a very positive self-image, telling me that they stood at the crossroads of the contracting process. They claimed that the general director would refuse to sign any contract that lacked the legal department's stamp of approval (*viza*). In the days and weeks that followed, a different picture emerged as they began to share their frustrations with me and as I observed how the contracting process actually worked. Though the *iuriskonsul'ty* were supposed to be consulted, and their blessing was supposed to be a prerequisite to entering into any contract, this was a rule more often breached than honored.

The sales department had no use for lawyers, yet *SK*'s top lawyer had only the highest regard for her counterpart in the sales department and believed that he consulted her before committing the enterprise to anything. Perhaps this had been true at one point, but by the late 1990s, the head of the sales department simply did not see the relevance of legal expertise. At the same time, he was not contemptuous of *SK*'s lawyers, nor did he imply that they were obstructionist. His primary challenge was to keep the enterprise afloat in a world where almost all of their trading partners were cash-poor. This required him to put together barter transactions through which *SK* would gain something of value for its battery blocks. Though the transactions often

contemplated multiple parties, the documentation remained bilateral. Because *SK* sold only through prepayment, albeit in-kind, contracts became ephemeral. As a result, the sales director saw no need to pay attention to their terms. Likewise he saw no need to run them past the legal department. More telling was the fact that no one called him to task for violating the internal policy requiring all contracts to be approved by, and registered with, the legal department. Confirming the tacit sanctioning of this arrangement by upper management was the sales director's respect for other internal policies. For example, when customers proposed paying with promissory notes known as *veksely*, the matter was immediately turned over to the deputy director for economic questions who was viewed as qualified to evaluate these financial instruments. So the failure to call upon the legal department reflected a belief that the *iuriskonsul'ty* had nothing useful to contribute. The head of the sales department saw his deals solely in business terms, not recognizing that they might lead to unwelcome legal entanglements if not careful.

The persistent illiquidity of *SK* left the procurement department constantly scrambling to get needed raw materials and other inputs. *SK* had long been deserted by most of its Soviet-era suppliers, and was now reduced to working through intermediaries who did not demand cash up front. The head of the procurement department, a woman in her late 50s who had spent the bulk of her working life at *SK*, was a pragmatist who gave short shrift to legal niceties. Like her counterpart in sales, she reasoned that contracts were somewhat peripheral for in-kind exchanges. If something went wrong, she felt that the existence of a strong bilateral relationship was more likely to provide an incentive for the supplier to perform than would threats of legal action. She had always had a contentious relationship with the legal department and the added pressure of operating on a financial high wire only worsened matters. In the shortage economy of the Soviet era, getting the inputs necessary to meet plan targets often required shortcuts around the law. Though by 1998 the constraints had become different, her *modus operandi* had not. She and her subordinates made it their goal to keep the factory running. In her view, involving the *iuriskonsul'ty* would not help them meet this goal, so she did not bother. The head of the legal department knew that the supply department routinely acted on its own, but seemed resigned to it.

Litigation is traditionally the province of lawyers. Here again, *SK*'s *iuriskonsul'ty* were marginalized, though less so than in the contracting process. The rise of prepayment and barter had drastically reduced *SK*'s use of the *arbitrazh* courts. The head of the legal department estimated that 10 years earlier she had been in court once a week, but had been involved in only five court cases during 1997. The decision to pursue a debtor to court did not rest with her, but with top management. This reflected a concern with potential damage to ongoing relationships and, because the lawyers were not directly involved with *SK*'s trading partners, they were considered incapable of assessing the risk. Nor were they always viewed as the most competent advocate once a case had landed in court. When top management decided to pursue an overdue payment against a Siberian customer which, according to the procedural rules governing the *arbitrazh* courts, meant that the case would be tried in Siberia rather than Saratov, they sent the deputy director for economic questions rather

than one of their *iuriskonsul'ty*. My question to the lawyers as to whether they were insulted by being supplanted by a non-lawyer was greeted with peals of laughter. The top lawyer assured me that she had no interest in business trips; that her pitiful salary was not enough to justify prolonged absences from her family. At the same time, she bristled at the suggestion that the deputy director had been responsible for *SK*'s victory in court, telling me that she had prepared all of the pleadings. The denouement of the case was predictable. *SK* spent months trying to collect on its judgment to no avail, which only deepened the conviction of top management that seeking help from the *arbitrazh* courts was futile.

Why were the *SK* lawyers incapable of asserting themselves as gatekeepers? The chief cause was their lack of authority within the enterprise. This explanation, of course, begs the question: why had the legal department, which by all accounts had fulfilled this gatekeeper role under state socialism, lost its way with the collapse of the Soviet system? Logically it would seem that the introduction of capitalism would have made lawyers more valued. Privatization, which lay at the heart of the reforms, appeared to outsiders to be a process that demanded legal expertise. Likewise the emergence of and ubiquity of *veksely* and other financial instruments unknown during the Soviet era would seem to have increased the value of lawyers. Yet this is not how it played out. These tasks, which appeared to Westerners to require legal expertise, were not delegated to the lawyers. At *SK*, as at all of my case studies, the lawyers played no role in privatization or in the ongoing demands of corporate governance. Instead, more powerful figures within the enterprise took responsibility. At *SK*, it was the deputy director for economic questions. When I asked him about the involvement of the legal department in privatization, he made it clear that the *iuriskonsul'ty* were not up to the task. Along similar lines, he (not the lawyers) took responsibility for post-privatization obligations of corporate governance, such as preparations for the annual meeting of shareholders. The lawyers were also left out of discussions of how to satisfy their tax obligations. Like his colleague, the marketing director did not view the *iuriskonsul'ty* as being competent in this area. Oddly enough, the lawyers shared these views. They did not feel slighted by being excluded and even seemed grateful to not have been put on the spot. They were strangely unconcerned about their growing irrelevance to the privatized enterprise. This unwillingness to seek out a useful role for themselves in the new market environment was the downfall of *SK*'s legal department, dooming it to irrelevance. The *iuriskonsul'ty* were too passive. Accustomed to the old practices, whereby the sales director would seek them out, they sat back and waited to rule on the legality of contracts; but when their phones stopped ringing, they did nothing to remedy the situation and whiled away their days doing nothing.

The passivity of *SK*'s lawyers – and of Russian enterprise lawyers more generally – is not entirely surprising. Legal education in the Soviet Union did not encourage critical thinking. By 1998, this was beginning to change in post-Soviet Russia, but at a glacial pace. As a result, law students were more accustomed to memorizing code sections than to tackling problem-solving exercises. Soviet legal education also gave short shrift to business law, which was logical given that law served as a handmaiden to the dictates of the national plan. *Iuriskonsul'ty* trained in that era were substantively

ill-equipped to take a leadership role in mapping out privatization strategies. Moreover, becoming a *iuriskonsul't* was not the path for those with initiative, much less for rebels. It was a sinecure in the Soviet era. Even in the late-1990s, it was favored by those looking for a steady and safe job, though the proliferation of bankruptcies made it less secure than before. At the time of privatization, the head of *SK*'s legal department had been on the job for 20 years. She was not emotionally or professionally equipped to reinvent herself and her department to meet the needs of the now-private company. She was comfortable with her relatively narrow circle of responsibilities and had no interest in seeing it expanded. She seemed unaware that the circle was, in fact, closing in on itself as the traditional functions of *iuriskonsul'ty* became dispensable.

The most palpable evidence of the low status of the legal department came when the enterprise experienced a production shutdown. During such events, only essential personnel were authorized to continue working. The head of the legal department kicked up a fuss when she learned that she and her colleagues had been left off this list. She won this battle, but management's initial determination that lawyers could be jettisoned with no ill effects reflected its true feelings. Further illustrative was the lack of financial support for the legal department. The *iuriskonsul'ty* had no computers, which exposed the requirement that it maintain a registry of all contracts as a farce. Likewise the subscriptions to legal periodicals had long since expired, making it almost impossible for the lawyers to keep up with the rapidly changing laws and regulations governing business. In an era when laws were changing constantly, this compromised their ability to determine whether a contract complied with the law, a function that they ostensibly retained.

Frustrated cop

I found a spunkier version of the lackey lawyer at *Moskovskaya Bytovaya Tekhnika (MBT)*. In terms of the Nelson–Nielsen framework, the behavior was one of a frustrated cop.

Unlike *SK*, *MBT* produced goods designed for sale directly to the public. Founded in 1923, its production profile has been changed periodically over its history to take account of advances in technology. In 1998, its primary output was men's electric razors, though it had begun experimenting with the production of other home appliances, including coffee grinders and juicers. *MBT* did not have its own stores. Its customer base was composed of retail outlets spread across Russia. The financial instability of the retail sector during the 1990s made its customer base unsteady and complicated the task of identifying reliable new customers. Of the 300 retail establishments with which the *MBT* sales department was working, only about 20 percent were long-term customers. The remainder were more transient. The story was much the same for the procurement department. There was a core group of carryover suppliers from the Soviet era, but *MBT*'s lower levels of production, which translate into smaller orders from suppliers, caused many of its old suppliers to defect and made it difficult to cement relationships with new suppliers.

MBT's managers greeted the transition to the market with enthusiasm. Consumer goods had always been an afterthought under state socialism, which

placed a premium on defense production. The increasing importance of consumer demand was promising for *MBT*. Unfortunately, *MBT* was unable to take full advantage of the new opportunities. After a few flush years in the early 1990s, *MBT* struggled as Russia's borders were opened to foreign imports. In contrast to *Venera*, *MBT* floundered as it tried to compete with foreign companies whose goods were not only better quality and cheaper, but also more effectively marketed. By 1998, production levels were a fraction of what they had once been. When walking around the *MBT* facility, the silence could be deafening. Several managers spoke nostalgically about how the place used to bustle with activity. One commented to me that it had become a "ghost town". Not surprisingly, the enterprise was teetering on the verge of bankruptcy, as many of its customers reneged on payment obligations. During the late 1990s, delays in the payment of wages averaged three months. By that time, however, over 65 percent of the workforce had been laid off. Among the first to be laid off in 1994 were the lawyers. Like most Soviet enterprises of its size, *MBT* had had a legal department. Though the need to pursue recalcitrant customers and the privatization of the enterprise would seem to indicate a pressing need for in-house legal counsel, management saw the legal department as a non-essential unit that could be dispensed of without consequence.

MBT became an open joint-stock company in February 1993.²³ Though not yet disbanded, the legal department was not involved in the privatization process. The very fact that the *iuriskonsul'ty* were sidelined from this critical task provides insight into why they were considered non-essential. In an idiosyncratic turn of events, the head of the department for documentary standardization was put in charge. He was intrigued by privatization and, as various decrees and laws appeared, he studied them in his spare time. He then put himself forward as an expert and the general director asked him to coordinate *MBT*'s privatization process. After privatization, he became the head of the shareholder relations department. This required him to organize the annual shareholders' meetings and prepare materials to be sent to the shareholders. Though these tasks would seem to cry out for oversight from a lawyer, no-one at *MBT* shared that concern. Neither privatization nor the ongoing obligation to shareholders had ever been defined as legal, even though both required the mastery of a complex body of laws and regulations. When I spoke with this manager in early 1998, he made it clear that he had no use for lawyers and that he felt entirely competent to interpret the rules. Interestingly, for him the before-and-after picture for *MBT* had not been significantly altered. In his words, "just as the enterprise was managed [before privatization], so it is still managed". This suggests that he had not fully comprehended the import of privatization.

Debt collection was another story. Because litigating to recover the overdue payments was integral to *MBT*'s strategy (Hendley, 2001), top management saw the need for legal expertise, and recognized the importance of lawyers. After laying off their *iuriskonsul'ty*, they turned to an outside law firm for help with debt collection. They struck a deal, whereby the outside lawyers would take 15 percent of anything recovered. Though top management was generally satisfied with the arrangement, mid-level management was not. In particular, the director of the sales department felt that the outside law firm was not earning its fees. She argued that the outside law

firm relied on the sales department to do all the leg work while the firm sat back and raked in its fees when delinquent customers finally paid. The outside firm collected its 15 percent even in the absence of litigation.

Independent of this issue, the general director hired a young woman lawyer in 1996. Both had begun their work lives at *MBT*, but the lawyer had left six years earlier on maternity leave that became permanent. When her marriage broke up and she wanted to return to the work force, *MBT*'s general director offered her a job. As best I could piece together the situation, he was motivated more by altruism than by a burning desire to reconstitute the legal department. She had no clear mandate for what she was to do. At the time of my case study, despite having been on the job for only a little over a year, she had succeeded in making a place for herself. With the support of the sales department, she had convinced the general director to allow her to manage *MBT*'s litigation. Even so, the general director had not abandoned the pre-existing arrangement rashly. By early 1998, about six months after the *iuriskonsul't* wore him down and began handling collection cases herself, the contract with the law firm was still in place, though it had lain dormant for some time. Thus, despite her short tenure on the job, the *MBT iuriskonsul't* had managed to establish a sphere of autonomy in the judicial arena broader than that of the *SK* lawyers. She also did a better job than her *SK* colleagues in ensconcing herself as a gatekeeper in the contracting process, at least on the sales side. At the same time, *MBT*'s lawyer was not consulted on contracts to purchase raw materials or other inputs. Her efforts to insert herself into the early stages of mapping out strategies for major transactions were mostly frustrated, often causing problems that, in her view, could easily have been avoided at the outset.

Much as at *SK*, *MBT*'s supply department had always acted independently of the legal department. Because of its well-known financial difficulties, virtually all of *MBT*'s suppliers required up-front payment, rendering the terms of written contracts largely moot. Though such contracts existed, they were typically generated by the seller (much as *MBT* used its own form in sales of its output). *MBT* rarely quibbled with the language of the supplier-generated contracts. In fact, the head of the supply department, who had worked at *MBT* for 24 years, could not remember a single such incident over the preceding five years (since privatization). She was dumbfounded by my questions about the role of the legal department in her operation. It seemed never to have dawned on her that a lawyer might bring something to the table. Likewise the *iuriskonsul't* was not frustrated by her lack of involvement. Presumably everyone was satisfied with the status quo. *MBT*'s relations with its suppliers had been calm in recent years and so no-one saw any need to complicate matters. Moreover, the impact of the introduction of market mechanisms was muted. In theory, these changes should have empowered *MBT* to shop around for new suppliers that offered better prices and other contractual terms, but its precarious financial situation left *MBT* with few options. It hung onto the suppliers from the Soviet era, hoping that the goodwill built up over the decades would sustain the relationships through tough times. The fact that even these longstanding suppliers were unwilling to extend credit to *MBT* speaks to its limited options.

MBT's lawyer estimated that she spent 80 percent of her time on collections. This work can be divided into the before and after, both of which were deeply intertwined with the sales department. The 'before' side of collections involved limiting *MBT*'s trading partners to those who were able to pay on time. The financial precariousness of most Russian businesses in the late 1990s made it essential to have a strong gatekeeper in place. Gatekeeping took two forms. Decisions had to be made about the contours of *MBT*'s form sales contract and about which of *MBT*'s prospective customers to accept. As to both, it was the sales director, not the lawyer, who acted as the gatekeeper. The two did have a strong relationship and worked together on periodic revisions to the form sales contract. The lawyer's function nonetheless remained circumscribed. Her job was to make sure that the form adhered to the dictates of the constantly-changing law. She did not concern herself with the reasons for substantive changes unrelated to changes in the law. She was also sidelined when it came to picking among prospective customers. *MBT* sought customers at trade shows. Its practice was to lay out a stack of pre-signed sales contracts and encourage all potential customers to sign them. But despite being fully executed, these contracts were not treated as binding. Once back home, a decision would be made about which contracts to pursue. This was a business calculation in which legal considerations were secondary. Once again, the sales director played the central role. Though my review of contracts for the two preceding years revealed that a majority of them had the lawyer's initials, indicating that she had glanced over them, her role was perfunctory. The main concern was not the legal validity of the contract, but whether the customer would live up to its terms. *MBT* did not countenance barter. It sold only on monetary terms. Whether cash was demanded up front or some leeway was extended depended on the customer's ability and willingness to pay. This determination was solely within the discretion of the sales director. The form contract had enough flexibility to allow her to modify the payment terms in accordance with her level of confidence. If she decided to make other changes to the form, then she felt obligated to check with the lawyer as to whether the altered document would still be legal. In other words, the sole purpose of involving the lawyer before entering into a sales contract was to benefit from her technical expertise. As the sales director explained: she "is fine as a lawyer, but we in the sales department know people – we know how to read them". The sales director clearly placed no stock in the lawyer's assessment of the wisdom of the changes from a business perspective.

When sales went bad – the 'after' part of the collection story – the lawyer still acted primarily as a technician. When a customer failed to pay in a timely fashion, the sales department sprang into action. The member(s) of the sales department who had developed a relationship with their counterparts at the delinquent customer would call and send telegrams in an effort to wring out payment. Only when these relational methods failed would the lawyer become involved. In contrast to *SK* and *Venera*, where litigation was dreaded, it was regarded as a normal part of the business cycle at *MBT* (Hendley, 2001). The sales director did not allow her personnel to coddle customers or to play favorites. If payment was not received within a month of the contractual deadline (at the outside), the matter was referred to the lawyer. The lawyer then sent a formal notice (*pretenziia*) that the debt was past due, letting

the debtor know that *MBT* was prepared to pursue the matter to *arbitrazh* court. These *pretenzii* often roused debtors to action. Any negotiations about the amount or the timing of these payments went through the sales department. *MBT*'s lawyer came to the fore only if and when the sales director became convinced that further entreaties would be pointless. Although the lawyer drafted the complaint and represented *MBT* in court, she was only nominally the gatekeeper. In actuality, the gatekeeper was the sales director for she alone decided when to ask the lawyer to seek legal remedies. Once in court, the *MBT* lawyer acted on her own, which reflects the greater trust placed in her than in the lawyers at *SK* (who were often kept out of the courtroom). At the same time, she lacked authority to accept settlement offers. This remained a prerogative of the general director who, like the sales director, sought only her technical assessment of the legality of offers.

Even if not a fully empowered gatekeeper, *MBT*'s lawyer was a valued member of the team that handled sales and collections. Elsewhere, she was less appreciated. In some instances, her exclusion seemed not to bother her. For example, she expressed no regrets at not being consulted on questions of tax law or corporate governance. Like many *iriskonsul'ty*, she did not see these tasks as being part of her job. She was, however, discouraged about the unwillingness of top management to include her in strategy sessions on pending transactions. She felt sure that if brought into the discussions at the planning stage, she could help shape the transactions so as to avoid (or at least minimize) legal problems. The prevailing tendency of management to bring her in only after problems had arisen sometimes left her in no-win situations. By that time, there was often little she could do, yet she was inevitably held responsible for the ensuing losses. Moreover, management continued to treat her as a mere technician, resisting her advice on the wisdom of seeking legal remedies. For example, when a complicated money-raising scheme went sour, she was called into action. In her view, the slipshod nature of the original loan agreement made it unlikely that *MBT* could prevail in court. She reminded management that if *MBT* lost, it would be liable to the state for substantial filing fees. Refusing to credit her opinion, management directed her to file suit. Further compounding their error, they insisted on an appeal when, as she predicted, *MBT* lost. The lawyer's pleas to cut their losses fell on deaf ears. To her credit, she did not back down but continued to press her views, albeit with a notable lack of success.

Although her inability to act as a deal stopper left her a somewhat frustrated cop, the *MBT* lawyer was more integrated into the business activities of the enterprise than her counterparts at *SK*. What accounts for this? Several factors stand out. First, *MBT*'s distaste for barter meant that sales contracts were still meaningful. Its embrace of litigation as a means of dealing with delinquent customers required contracts to be in order from a legal point of view. In contrast to *SK*, where the sales department could routinely bypass the legal department with no ill effect, the risk was too great at *MBT*. The close physical proximity of the sales and legal departments at *MBT* as well as the rapport between the lawyer and the sales director no doubt played a role. On a deeper level, the place of the two enterprises in the production cycle affected the willingness of top management to endorse litigation as a default solution when customers were unable or unwilling to pay. *MBT* had a large and

constantly shifting customer base due to the fact that it sold directly to retail outlets. If one store or kiosk owner was offended by *MBT*'s hardball tactics, there were always several other potential customers waiting in the wings. *SK*, but contrast, had a finite customer base. Its sales were limited to auto and aviation assembly plants. Moreover, these customers had viable alternatives to *SK*. Thus, *SK* filed lawsuits only as an absolute last resort. Those sued tended to be one-time customers, not their old standbys. As a result, the opportunities for the *iuriskonsul'ty* to prove their value to management were very different.

A more nebulous factor was the friendship between the lawyer and the general director. In the Soviet era, both had worked together in *MBT*'s Komsomol organization.²⁴ Their personal connection was well-known to the other managers and gave the lawyer a bit of extra clout, though she was not able to parlay it into a seat at the insiders' table when it came to strategizing about the enterprise's future. Nor was she able to convince the general director to devote his all-too-scarce resources to hiring additional lawyers or subscribing to a computerized database of Russian law. Unlike the *SK iuriskonsul'ty*, at least her requests were taken seriously. A suite of offices had been renovated for her on the same floor as the general director and other top managers, but the money had run out before furniture could be purchased. Perhaps this was symbolic of her role at *MBT* – her ideas were taken seriously but rarely fully realized.

One characteristic shared by the lawyers at *SK* and *MBT* with their counterparts in the US is a reticence about pushing their recommendations within the enterprise, though it plays out differently. Nelson and Nielsen observed that their US respondents were reluctant to be too vigilant in their policing for fear of scaring off management. One lawyer told them:

if I come across to them or the lawyers on my staff come across to them as cops, they are not going to come to us. They are . . . either going to go elsewhere or operate in the dark without lawyers. (Nelson & Nielsen, 2000, p. 470)

Consequently, many US in-house lawyers consciously censor themselves and try to package their advice so as not to scare off the businesspeople. By contrast, Russian lawyers do not censor themselves. When queried by management, neither the *SK* or *MBT* lawyers pulled any punches. This should not be taken to mean that the Russian lawyers were purer than their American colleagues or that they were less invested in the continued success of their employers. The difference lies in the perception of their role. Russian lawyers had no illusions that any opinion they might render would serve as the death knell for a deal, so they felt no need to sugarcoat their conclusions. They did not have regular access to top decision-makers and so had little opportunity to continue pressing their views. Put more bluntly, the lawyers I observed at *SK* and *MBT* were so far out of the decision-making loop that they would not have known which way to slant their conclusions even if they had wanted to please a corporate master.

Counselor wannabes

At only one of my case studies did I observe *iuriskonsul'ty* whose work combined policing and counselor functions. Arguably they fell short on both counts when judged by

the Nelson and Nielsen model. Thus, I label them as counselor wannabes. They were brought into corporate strategy sessions only sporadically and were not entirely successful in regulating the contracting process; but when compared to their counterparts at *Venera*, *SK*, and *MBT*, the lawyers at *Ekaterinburgskii Mashinostroitel'nyi Zavod (EMZ)* were a breed apart.

EMZ began production in 1933, manufacturing machine tools for metallurgical plants, and became one of the Soviet Union's industrial showcases. It enjoyed considerably political prominence, with its general directors often going on to successful careers on the national stage. It had been privatized in November 1992 as an open joint-stock company.²⁵ Initially, the shareholder rolls were dominated by its own workers but, by 1998, employees held less than 10 percent of the outstanding shares. At the close of the Soviet period, it employed 22,000. Layoffs and retirements brought that number down to 16,000 by 1998, and it often lacked sufficient orders to occupy even this reduced work force.²⁶

The differences from the other case studies in terms of the role of *EMZ's iuriskonsul'ty* were obvious from the outset. For one thing, the 17-person legal department at *EMZ* dwarfed those found elsewhere. Indeed, it was by far the largest legal department encountered in the survey (Hendley *et al.*, 2001). Of the responding enterprises that had legal departments, the majority (70 percent) were made up of one or two people.²⁷ Only one other surveyed enterprise employed more than 10 lawyers. Thus, the sheer size of the *EMZ* legal department signaled an atypical attitude toward lawyers. Equally revealing was the decision to maintain the large department in the face of considerable financial difficulties during the 1990s. While *EMZ* had laid off more than 25 percent of its workers since 1992, the legal department was exempted and was allowed to diminish its numbers from 22 down to 17 through natural attrition.

The gatekeeping powers of *EMZ's* lawyers, though not absolute, were far greater than those of the lawyers at the other case studies. They had virtually free rein over drafting the form sales contracts, thereby allowing them to determine the basic framework for dealing with *EMZ's* trading partners. Once customers entered the picture, however, the *iuriskonsul'ty* retreated to the sidelines. They never participated in the negotiations, nor were they part of the inner circle of management that decided whether to go forward with the deals. Rather, the legal department was simply one of several units that assessed draft contracts. Arguably the requirement that its evaluation take place after the others in order that the lawyers could study the other changes proposed signaled the primacy of its opinion. This sort of requirement was nothing new. It was on the books at all of the enterprises I studied. *EMZ* differed only in that it was actually respected in daily practice. Misgivings voiced by the legal department were not necessarily fatal. As is common the world over, legal problems could be trumped by business needs; but what distinguished *EMZ's* practices from that of the other case study enterprises was that the legal risks were clearly articulated. The *EMZ* lawyers tended to limit themselves to identifying technical legal problems, leaving the question of whether the deal made good sense for the enterprise to others. Thus, the *EMZ iuriskonsul'ty* acted more as cops than as counsel.

They occasionally edged toward acting as counsel in the context of litigation. The attitude toward pursuing legal remedies was somewhere in-between that of *SK* and *MBT* (Hendley, 2001). Like *SK*, *EMZ* tended to have long-term relationships with their trading partners and was reluctant to risk them in court. Unlike *SK*, *EMZ* had no trepidation about going to court if negotiations failed to pan out. At the same time, *EMZ* was not as quick on the trigger as *MBT*. The *EMZ* lawyers became involved only when the sales department gave up on getting the delinquent customer to pay through bilateral relational methods. Even then, the legal department's evaluation of whether to pursue legal remedies was not decisive, but was thrown into the mix with business considerations. On the surface, this seems similar to the situation at *MBT*, but my conversations with, and observations of, the *EMZ* lawyers convinced me that they were doing more than merely following the orders of top management. They exhibited more creativity. For example, they sometimes pursued legal remedies aggressively even when it was apparent to all that the chances for actually recovering damages were virtually nil. Their purpose in doing so was to send a message to similarly situated customers that *EMZ* would not passively accept bad behavior but would tie them up in court and, to the extent possible, publicize their bad behavior. Though signaling through litigation is customary in common law jurisdictions, it is understandably fairly rare in countries like Russia that neither recognize precedent as binding nor publish judicial decisions (either in official court reports or in the business press).²⁸ *EMZ* made its trading partners aware of these sorts of lawsuits. Its purpose was to demonstrate its willingness to make the life of delinquent customers miserable as an incentive to toe the line. None of the other case study enterprises allowed their legal departments such a wide range of discretion.

EMZ's legal department also distinguished itself by the breadth of tasks undertaken regularly. Some of these were new, while others were holdovers. In the latter category were employment issues. During the Soviet period, legal departments had dealt with employee complaints relating to work conditions, pay rates, and overtime, as well as management efforts to fire or lay off workers. These chores were seen as legal because they were strictly regulated by the Soviet labor code. In contrast to the other enterprises I studied, where the personnel department had taken over most labor-related matters, the *EMZ* legal department still maintained control. Half of the lawyers in the department spent most of their time on such matters. This shows the strong weight of the past on the present in terms of organizational structure and behavior.

EMZ's legal department was not, however, entirely stuck in the past. The *iuriskonsul'ty* understood that privatization brought new opportunities and challenges and that they could make a contribution by educating management about how to avoid the pitfalls associated with operating in a market environment. They were more pro-active than their colleagues at *SK* and *MBT* in providing prospective advice to management. They had, for example, prepared memos on a series of topics designed to address frequently encountered problems. These memos were pitched at various levels of detail and sophistication depending on the audience being targeted. They were not afraid to expose management blunders and use them to help management avoid similar mistakes in the future. When they lost a case involving millions of rubles owed to them by a utilities company because a technical

mistake had been made at the outset, they did not sweep it under the carpet (as the *MBT* lawyer did in a similar situation), but prepared a memo outlining why the contract had been declared invalid and explaining what ought to have been done. Needless to say, this contract had somehow been executed without the knowledge of the legal department, exemplifying their less-than-absolute gatekeeping powers.

While this educational work had been expanded and reprofiled to meet the needs of a now-private enterprise, the task of educating management about legal matters is familiar from the Soviet era. The *iuriskonsul'ty*'s involvement in issues that had only arisen with the transition to the market represented a more definitive break with the past. Unlike their counterparts elsewhere, the *EMZ* lawyers seemed to recognize an opportunity to redefine and solidify their role in the enterprise. Rather than shrinking from the complexity of tax policy, they deputized one of the lawyers to familiarize herself with its intricacies. She then took on the unenviable chore of analyzing the possible tax consequences of all transactions (including individual sales contracts). As this suggests, the lawyers at *EMZ* participated in the process of developing the major transactions that tended to shape corporate strategy. Though their role was tangential, their mere inclusion is worth noting. Even more anomalous in the post-Soviet Russian context was the involvement of the *iuriskonsul'ty* in matters of corporate governance. They were responsible for handling any legal issues relating to the annual meetings of shareholders and for preparing any amendments to the corporate charter (*ustav*). Though this hardly represents the full spectrum of tasks usually performed by lawyers in connection with corporate governance, it is a much more active role than lawyers at the other enterprises studied aspired to.

Yet certain tasks with inescapable legal components were assigned elsewhere, suggesting that management retained some of the Soviet-era conceptions about what *iuriskonsul'ty* are supposed to do. The lawyers played no role in the preparation of *EMZ* promissory notes (*veksely*) or the evaluation of *veksely* submitted by trading partners as payment for financial obligations. These tasks were diverted to managers with no legal training at *EMZ*, just as they had been at *Venera*, *SK*, and *MBT*. The reasons why reveal deep-seated attitudes toward lawyers and law more generally. *EMZ*, like most Russian enterprises during the 1990s, was financially unstable. *Veksely* and other monetary substitutes became a lifeline for *EMZ* (Woodruff, 1999). Because they had not been used during the Soviet era, it was unclear who would take responsibility for them. What was clear was that whoever did so would hold a tremendous amount of power. It is no surprise that handling *veksely* quickly became defined as a task for managers who had been insiders during the Soviet period. Their legal aspects, though undeniably tricky, were downplayed and treated as routine. The result was that the *iuriskonsul'ty* were left out, though it is not clear that their exclusion was a conscious goal. This choice reflected a mechanistic view of law. Put more bluntly, the *EMZ* managers thought that any fool could assess the legality of *veksely* and that the assessment of their value was more perilous. Consequently, responsibility was placed in the hands of the chief financial officer. What is even more revealing is that no-one questioned the non-involvement of the legal department – not even the lawyers. This fits the pattern I saw at the other enterprises. The exclusion of lawyers was not a conscious decision; including them never

seems to enter anyone's mind. Like their colleagues at *SK* and *MBT*, the *EMZ* lawyers saw nothing wrong with the status quo.

What explains the anomalous role of *EMZ*'s legal department? Just as a lack of respect was at the heart of the feebleness of the *SK* lawyers, the greater animation of the *EMZ* lawyers surely lies in the respect they enjoyed from top management. The source of this esteem was somewhat elusive. The structure and size of transactions at *EMZ* were undoubtedly relevant. As a manufacturer of machine tools, their contracts tended to involve more substantial sums than manufacturers of consumer goods (*Venera* or *MBT*) or auto parts (*SK*). Because more was at stake, the importance of having contracts that firmly bound the other side was critical. During the Soviet era when all enterprises lived with perennial shortages, the challenge was to insure a steady supply of inputs. Though the scholarship on enterprise behavior under state socialism downplays the importance of formal ties (Berliner, 1957), the existence of an air-tight contract undoubtedly served as valuable leverage when top management was trying to wangle deficit goods out of an overextended supplier. In reality, however, contractual obligations took a back seat to the exigencies of fulfilling the economic plan. Management could always turn to Communist Party officials as well as bureaucrats from the industrial ministries for help when their ability to meet their plan targets was in question. This all changed with the end of state planning. Contracts became more meaningful, though management had to figure out how to hold customers to their word. The combination of the large amounts involved and the financial instability of most Russian enterprises in the late 1990s forced *EMZ* to design creative payment terms that were unnecessary when the state was footing the bill for all industrial production. Because *EMZ*'s survival depended on being able to enforce these contracts, bringing in the legal department to assess their legality made sense. Of course, analogous arguments could be made with regard to the other enterprises, yet their managers had not seen the light. This suggests that other factors were at play.

Conversations with the *EMZ* lawyers revealed that their general directors had historically recognized the value of legal expertise. Indeed, rather than selecting the directors of their legal department from within, they had a longstanding practice of selecting people (usually men) who had independently established themselves as leaders in the local legal community. These legal lights were then able to attract top-quality *iuriskonsul'ty* to work with them. Precisely when this began is unclear. Anecdotal evidence dates it back to at least the Brezhnev era. Thus it is not a post-Soviet phenomenon, but an inherited idiosyncratic internal tradition. Whether the general director who was in charge at the time of my case study was even conscious of treating his legal department differently is unclear. Having spent his work life at *EMZ*, he was more likely simply following the pattern set by those who came before him (just like his counterparts at *SK* and *MBT*). The financial resources devoted to the legal department served as concrete evidence of his commitment. The lawyers' quarters were spacious and equipped with computers. Management had even paid for an ongoing subscription to an electronic legal database, something that the lawyers at the other enterprises I studied could only dream of.

At the time of my case study, the man who headed *EMZ*'s legal department had previously served as a judge in the courts of general jurisdiction. On my first day at *EMZ*, he was out of the office serving as one of the outside examiners at the Ekaterinburg Law Academy, a mark of the high regard in which he was held by the local legal community. The way the other lawyers spoke of him – with a mixture of fear and admiration – was different from what I had heard elsewhere. Their interactions explained why. He was unsparing in his review of their work, but his criticism was constructive, not mean-spirited. The younger lawyers told me that, among their cohort, working at *EMZ* was considered desirable, despite the meager salary, because it provided wide-ranging opportunities and good training. Unlike the lawyers at the other enterprises I studied, the *EMZ* lawyers were not just marking time, but saw their time there as a stepping stone to a more challenging job.

This suggests that *EMZ* attracted a different sort of person to its legal department which, in turn, contributed to the willingness to challenge traditional boundaries. Yet these were not people who conceived of themselves as particularly daring. It was more that they had the self-confidence – perhaps fueled by the secure place of the legal department in the enterprise firmament – to insert themselves into matters where legal expertise would be useful even though lawyers had not previously been involved. But there was no ongoing campaign to expand the legal department's sphere of influence. Indeed, their perceptions of where to insert themselves were colored by the prevailing organizational norms. As I noted above, they did not fret over being left out of the process of reviewing *veksely*, nor did they brood over their limited role in matters of corporate governance.

Explaining the role of *iuriskonsul'ty* following privatization

Certain patterns emerge from these seemingly disparate case studies. The most conspicuous pattern is one of bureaucratic inertia. As I conducted this research in 1998, I witnessed no conscious campaign to push *iuriskonsul'ty* to the sidelines. Rather, general directors and their management teams at these privatized enterprises followed the behavioral patterns established during the era of state socialism. This was reflected in both attitudes toward legal departments and in the range of tasks assigned to the lawyers. Just as they did during the Soviet era, *iuriskonsul'ty* reviewed contracts for legal errors and acted as their enterprises' representatives in *arbitrazh* court when necessary. Management expected no more and, equally revealing, lawyers demanded no more. Thus, when new tasks with strong legal components arose as a result of the transition to the market, these were routed elsewhere in all of the case studies. For the most part, *iuriskonsul'ty* had nothing to do with the privatization process and had little to do with the chores of corporate governance that were created by privatization. Likewise, they were completely out of the loop on matters of corporate finance, playing no role in drafting security instruments or evaluating them. Moreover, the Russian lawyers studied as part of the case studies were sublimely content with their role as technicians.

What explains the lack of initiative exhibited by the *iuriskonsul'ty* after five years of exposure to market stimuli? Why did they lack the entrepreneurial leanings of the

in-house counsel studied by Nelson and Nielsen? The reality is that people are unlikely to aspire to what they have never witnessed. The role models available to these *iuriskonsul'ty* uniformly accepted their lot in life, never recognizing that they might aspire to more. Indeed, my research suggested that the minimal demands placed on *iuriskonsul'ty* was one of the attractions of the job, especially for working mothers because it offers the guarantee of an eight hour workday. The fact that all of the so-called 'lackey lawyers', namely the lawyers at *SK* and *MBT*, were women cannot be dismissed as coincidental. This skewed gender representation replicated the Soviet pattern. Lawyers with more initiative had left. The loosening up of state regulations on the legal profession had opened up a myriad of opportunities for energetic lawyers who were willing to take the risks associated with private practice. Even so, the explosion of corporate law firms that has accompanied the economic boom in China (Michelson, 2007; Liu, 2006) has yet to be replicated in Russia, at least outside of Moscow and St. Petersburg. The reasons why are beyond the scope of this article.

Just as the case studies did not reveal an effort to emasculate *iuriskonsul'ty* on the part of management, nor did they reveal any desire by management for more entrepreneurial lawyers or even for lawyers who act as counsel under the Nelson–Nielsen model by providing advice that mixes “business, ethical, and situational concerns” (Nelson & Nielsen, 2000, p. 464). Both sides were satisfied with the status quo. Perhaps managers simply did not appreciate what they might gain from a deeper relationship with their lawyers. The difficulty of imagining what one has never experienced applies to managers as well. No doubt that is part of the story; but I suspect that these managers would not have opted for *iuriskonsul'ty* who fit the profile of a counsel or entrepreneur even if they had been made available. My suspicions are bolstered by a conversation I had with a manager at a Moscow candy factory that had been the target of one of the first hostile takeovers in Russia in the mid-1990s. In order to fend off the unwanted suitor, the factory had retained a Western law firm with a Moscow office.²⁹ Once the threat had abated, they continued to funnel their corporate work to this firm until they received their first bill. The Russian managers were aghast. They could not understand how the fees had mounted so quickly, especially when the work struck them as routine. On a deeper level, they did not place a value on the work of the law firm that equaled the fees. The convenience of having the law firm at their beck and call 24 hours a day was not worth it. Had the managers at the case study enterprises been faced with a similar choice, I am confident that their choice would have been the same as that of their Moscow colleagues.

But the reality is that most Russian enterprises, including my case study enterprises, have few (if any) contacts with Western law firms or with Western investors. This leaves me skeptical of the argument that national styles of legal practice are being muted through the increasingly inter-connected nature of the world economy (e.g. Dezelay & Garth, 1996). While this globalization thesis may help us understand the adoption of the so-called Cravath system among elite corporate law firms in transition countries where most of the lawyers were educated abroad (Liu, 2006, p. 751), it is not helpful in explaining the reticence of Russian *iuriskonsul'ty* in 1998.

The contrast between *EMZ* and the other enterprises illustrates the importance of institutional history. Through a silent process of inertia, the lawyers at each of

the case study enterprises took on a variant of the role of their Soviet-era predecessors. The *EMZ* lawyers had traditionally played a more central role and, therefore, it is not surprising that they were called on to take on some corporate governance duties and to provide tax analysis of pending transactions. They did not push their expertise onto resistant managers. Rather *EMZ*'s longstanding practice of valuing legal advice made the creeping expansion of lawyers' role into new areas acceptable to all. On the flip side, the situation at *SK* and *MBT* confirms that powerlessness begets powerlessness. To be sure, by providing technical legal expertise when asked, these legal departments provided a valuable function, but they operated far from the center of power. This sort of work was unlikely to appeal to young energetic lawyers, not just because of its tedium but also because it was poorly compensated.

The case studies highlight the differences between the role of in-house counsel in the US and in Russia in the aftermath of privatization. Though some behavioral patterns might seem familiar at first glance, the similarities dissipate upon deeper analysis. For example, the desire of the sales managers to keep *iuriskonsul'ty* out of negotiations with recalcitrant customers until the managers have made every effort to settle the dispute is common to both the US and Russia. In Macaulay's seminal study of contracting behavior in the US, he shares the opinion of one businessman, who says "you can settle any dispute if you keep the lawyers and accountants out of it. They just do not understand the give-and-take needed in business" (Macaulay, 1963, p. 11). The comment reflects a frustration with the legalistic approach of lawyers. The Russian managers I encountered were not frustrated by in-house lawyers. In contrast to their US counterparts, the Russian lawyers lacked the power within the enterprise to press their point of view or to act as "deal-stoppers" (Nelson & Nielsen, 2000, p. 471). Nor would it have occurred to them to buck management. The Russian case reminds us that we take for granted that lawyers matter in business settings and challenges us to explain how this came to be. Perhaps more importantly, it reveals yet another missing piece of the puzzle as we seek to understand why Russia's effort to transform itself into a functioning market economy proved so arduous. Explanations have tended to focus on the obvious problems, such as rampant corruption and the rise of the oligarchs. This snapshot of the role of Russian *iuriskonsul'ty* in 1998, a critical moment in post-Soviet history, documents the failure to bring law and lawyers into the board rooms. It also helps us appreciate why legal concerns often seemed so distant to business transactions in post-privatization Russia.

The behavioral patterns witnessed are closer to, but do not entirely mirror, those typically found in the legal departments of European companies (Van Houtte, 1999). If put into the Nelson–Nielsen typology, in-house lawyers in those companies would fit comfortably into the cop role. They handle the day-to-day legal needs of the enterprises where they work, but rarely meddle in questions of corporate strategy. They are more comfortable asking the 'is it legal' question than the 'is it a good idea' question. My research shows that Russian lawyers aspired to this role. With the exception of *EMZ*, however, the case studies reveal that managers were uninterested in their assessments. It might be argued that the need for legal advice faded in importance in the chaotic economic climate of Russia in the 1990s. The multi-sided barter transactions that evolved as illiquid enterprises struggled to survive may have diminished the

relevance of contracts and, as a corollary, the need for legal advice. Perhaps, but such assessments were ultimately short-sighted. These barter transactions were just as susceptible to going bad and the need to protect oneself was just as pressing, even if less evident. Moreover, the practice of going around the lawyers or getting rid of the legal department entirely set Russia on a path that diverged sharply from that of its European neighbors.

The transition away from a planned economy towards a market economy in Russia had a profound influence on enterprise management. The dismantling of the institutional infrastructure of planning, including the industrial ministries and the agencies that created the national economic plan, left managers on their own to solve problems. They could no longer rely on bureaucrats to step in and solve problems in the supply chain. Likewise they could not count on their output to be 'sold' or, more accurately, allocated through the planning process. Independent of the state, they had to build stable relationships with suppliers and customers. As this suggests, their biggest challenge was to wean themselves off state subsidies and learn to survive on their own as profit replaced plan fulfillment as the universal measure of success. Law provided the building blocks for this transition, but somehow the *iuriskonsul'ty* got left out. By capturing a decisive period in the transition, the case studies help us understand why this happened. The reasons are complicated and vary slightly in each enterprise, yet they all illustrate the power of institutional history, though personalities and gender politics also played a role. *Iuriskonsul'ty* had no tradition of power or influence within enterprises and, thus, when it came time to figure out how to divvy up new market-driven tasks within privatized enterprises, they were left out. Moreover, the deeply ingrained attitudes of both management and of the *iuriskonsul'ty* themselves regarding their role strongly suggests that the *iuriskonsul'ty* will not soon be taking a seat at the table as top management develops corporate strategy.

Whether *iuriskonsul'ty* are doomed to permanent irrelevance or whether they will be able to prove their worth to management is a determination best left to future research, but my case studies provide little reason for optimism. Lawyers have traditionally been tolerated rather than lionized in Russia (Newcity, 2005). On paper, the market reforms that were introduced in the early 1990s in Russia provided a wealth of opportunities for *iuriskonsul'ty* to assert themselves, but the case studies suggest that they lacked the entrepreneurial spirit and that they were content to live according to the old Soviet adage: "we pretend to work, and you pretend to pay us".

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Notes

- [1] While 91 percent of the general directors surveyed had belonged to the Communist Party before the breakup of the Soviet Union, only 36 percent of the heads of legal department were members (Hendley *et al.*, 2001, p. 695).
- [2] Among the enterprises surveyed with legal departments, 59 percent were headed by women. By contrast, only 7 percent had female general directors (Hendley *et al.*, 2001, p. 695).
- [3] In the course of that survey, we asked the general directors whether they might be amenable to having a foreign scholar carry out a case study at their enterprise. We approached only those enterprises that indicated some willingness. This excluded 25 percent (83) of our sample. For details on the composition of the sample and other information about the survey, see Hendley *et al.* (2000).
- [4] Dr Alla V. Mozgovaya of the Institute of Sociology of the Russian Academy of Sciences in Moscow, who had coordinated the 1997 survey, negotiated initial access for me. I then had to convince management to let me stay. Dr Mozgovaya found that many enterprises were nervous about the presence of a foreigner. Thanks to the earlier survey, I began each case study with a wealth of basic information about the enterprise. This greatly expedited my research, as compared with earlier case studies (e.g. Burawoy & Hendley, 1992; Hendley, 1992).
- [5] For an overview of the structure of legal professions in Europe, see Scott (2004), Rogowski (1995) and Abel (1988).
- [6] For more information on prosecutors (*prokuratura*), see Thaman (1996) and Smith (1978).
- [7] As in most civil law countries, becoming a judge is one of the career patterns open to Russian law students. See Solomon and Foglesong (2000) for a thorough analysis of how the system of selection and retention of judges has been reformed since 1985.
- [8] For a discussion of analogous divisions within the legal profession in other civil law countries, see Abel (1988, pp. 4–8). Boigeol (1988) details the unsuccessful efforts to unify the historically divided French bar. Daly (1997, pp. 1063–1065) details the creation of a separate organization for in-house lawyers in the US in 1982 as a response to their dissatisfaction at their “second-class status” within the American Bar Association. Such specialty organizations exist for many subgroups within the US legal profession, but the ABA remains as an umbrella organization.
- [9] This tendency is common in countries with civil law traditions. As Merryman (1985, p. 102) notes, “the average young lawyer soon finds himself locked into a career from which escape is likely to be too costly to contemplate”. Blankenburg and Schultz’s (1988, p. 135) study of the German bar finds that most in-house lawyers spend their entire career within a single company. On the other hand, Van Houtte (1999, p. 12) found that many Belgian company lawyers began their careers as independent lawyers or worked for large law firms (see also Abel, 1988, p. 8). See Heinz and Laumann (1982, p. 195) for an analysis of the propensity of US lawyers to move among subsectors of the bar. A follow-up study (Heinz *et al.*, 1999) analyzed the relative contentment of lawyers in these subsectors.
- [10] The literature on in-house counsel in Europe reveals that these lawyers also carry out mundane functions (e.g. Van Houtte, 1999, pp. 18–20; Rogowski, 1995; Kolvenbach, 1979, p. 17). In the US, by contrast, in-house counsel have experienced a rapid increase in status over the past several decades and are more likely to be involved in shaping company policy (e.g. Rosen, 1989, pp. 486–488). See also Daly (1997, pp. 1077–1078).
- [11] See Shelley (1984, 1981–1982) and Giddings (1975) for a detailed discussion of the legislation governing *iuriskonsul’ty* and their behavior during the decades of Soviet power.
- [12] On labor disputes, see Hendley (1996) and McAuley (1969). Given that many enterprises controlled housing for their workers, *iuriskonsul’ty* sometimes had to choose sides in housing disputes (Shelley, 1981–1982, pp. 449–450).
- [13] Jordan (2006) traces the story of the *advokatura* in the post-Soviet era, but does not extend her study to *iuriskonsul’ty* or to the role of *advokaty* in handling economic disputes.
- [14] Russia has a separate hierarchy of courts, known as *arbitrazh* courts, devoted to business disputes. Jurisdiction is generally limited to legal entities. For enterprises, lawsuits grounded in disputes with a customer or supplier as well as with the state would be decided by the *arbitrazh* courts.

Russia also has a constitutional court and a separate hierarchy of courts that handle the myriad of non-business disputes (Solomon & Foglesong, 2000).

- [15] As a condition of access, all of the case study enterprises were promised anonymity. Their names have been changed.
- [16] For most of the Soviet era, profiting from selling shortage goods at premium prices was considered speculation and was illegal. When cooperatives were legalized in the late 1980s, many of their proprietors (including the future general director of *Venera*) were able to find loopholes in the law that freed them to engage in such speculation. These sorts of activities help explain both the rapid increase in the number of cooperatives (from 8,000 in 1987 to 185,500 in 1990) and the general public's disaffection for them (14.7 percent of those surveyed in May 1990 had a positive attitude toward them) (Jones & Moskoff, 1991, pp. 16, 106).
- [17] All of these manager-shareholders were men. Even more intriguing, they uniformly took great pride in the fact that their wives did not work outside the home.
- [18] At the defense plant, he had worked in the Komsomol organization, ultimately rising to serve as its top official.
- [19] The obsession of the *Venera* managers with preserving customer relations (which was echoed by managers at the other case study enterprises) is reminiscent of Macaulay's (1963) findings in his seminal study of contract relations in the US. In the concluding section, I argue that, notwithstanding the superficial similarities, there are important differences.
- [20] *SK* privatized via Option 2 which allowed enterprise employees to purchase 49 percent of the capital stock under advantageous terms. For an account of the three options for the privatization of state enterprises, see Boycko *et al.* (1995).
- [21] In 1992, barter accounted for 20 percent of *SK*'s sales and 10 percent of its supply acquisitions.
- [22] During the last quarter of 1996, 80 percent of *SK*'s employees had worked less than 40 hours per week.
- [23] *MBT* privatized via Option 2. There was a bit of a skirmish between the general director, who favored Option 1, and the workers, who backed Option 2.
- [24] Komsomol was the youth arm of the Communist Party of the Soviet Union.
- [25] *EMZ* privatized via Option 2.
- [26] During the last quarter of 1996, 30 percent of *EMZ*'s employees had a reduced work week.
- [27] The mean size of legal departments among the 128 respondents who reporting having them was 1.6 lawyers.
- [28] As of 1998, several databases of Russian legal information were available (e.g. Garant and Kodeks). Their primary emphasis was on legislation and administrative regulations. Their coverage of judicial output was spotty at best, even as to Russia's highest courts. As a rule, the business press paid little attention to court decisions.
- [29] See Silver (2000) for an analysis of the role played by US law firms abroad.

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