

**An Assessment of the Russian Judicial and Law Enforcement Systems:
The Torture and Murder of Sergei Magnitsky**

Testimony before the Tom Lantos Human Rights Commission

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May 6, 2010**

Distinguished Members of the Commission, thank you for inviting me to appear before you today.

I have been asked to share my assessment of the Russian judicial and law enforcement systems, particularly as it relates to the observance of fundamental human rights, the rule of law and respect for basic human decency. My message to you this morning is that the justice system in Russia today has severe failings that present real dangers to U.S. national interests and to the lives of ordinary Russians. The best way to convey this is to share the tragic story of what happened to my Russian lawyer.

Six months ago, on the night of November 16, 2009, Sergei Magnitsky, a 37 year-old husband and father of two young children, was killed in an isolation ward of a Russian pre-trial detention center. He was killed for having the courage to testify against corrupt police and government officials who had stolen \$230 million from the Russian government.

Despite enduring agonizing pain in the final four months of his life as his keepers tortured him and deliberately withheld life-saving medical care, Sergei refused to withdraw his testimony and compromise his integrity. Whenever challenged, he would repeat to his captors his firm determination to bring them to justice in an open trial. He paid the ultimate price for his beliefs. He was left to die, alone, away from the family that he had not been permitted to see for eleven months.

The story of what happened to Sergei Magnitsky is so medieval that it is hard to imagine that it could have taken place in today's world. But it did happen and will continue to happen so long as the United States and the rest of the civilized world – and indeed, Russia itself – allow corrupt Russian officials to act without consequences.

I. The Fraud against the Hermitage Fund: A Fraud Perpetrated by Government Officials and Discovered by Sergei Magnitsky

Sergei worked for the American-owned law firm in Moscow, Firestone Duncan, and was one of the external lawyers for the Hermitage Fund, which my firm advised. He wasn't involved in politics, he wasn't an oligarch and he wasn't a human rights activist. He was just a highly competent professional – the kind of person whom you could call up as the workday was finishing at 7pm with a legal question and he would cancel his dinner plans and stay in the office until midnight to figure out the answer. He was what many people would describe as the good face of modern Russia: an intelligent and honest man working hard to better himself and to make a good life for his family.

The tragedy of Sergei Magnitsky began on June 4, 2007. On that day, 50 police officers from the Moscow Interior Ministry raided Hermitage and Firestone Duncan's offices under the guise of a tax investigation into a Hermitage client company. There was no apparent reason for the police investigation as that company was regularly audited by the tax authorities, and they had always found the taxes to be paid correctly, in full and on time. During the raid, police officers took away the corporate seals, charters and articles of association of all of the Hermitage Fund's investment companies – none of which were listed in their search warrant. Several months after the raids the police were still refusing to return the seized items, and we were wondering about the true motivation for their raid and why the police were so desperate to get their hands on all the original statutory documents of the Hermitage Fund's Russian companies.

In mid-October 2007, the motivation for the raids became clear. We got a telephone call from a bailiff inquiring about a judgment of the St. Petersburg Arbitration Court against one of the Fund's Russian companies. That was strange, because the company had never been to court and neither the Fund's trustee, HSBC, nor we knew anything about any lawsuits or judgments in St. Petersburg.

The first thing we did was call Sergei. If there was something legally complicated going on in Russia, he was the person who knew how to get to the bottom of it. He calmed us down and said it was likely to be some type of mistake. He said he would make some inquiries and figure out what was going on.

After researching the situation, Sergei came back to us with shocking news. He checked with the St. Petersburg court and then went to the registered address of our companies and discovered that the Hermitage Fund's companies had indeed been sued by some shell companies they had never heard of or done business with. The lawsuits were based on forged and backdated contracts. He also discovered that the Fund's companies had been represented by lawyers that the Fund had never hired, and who proceeded to plead guilty in court. Despite all of these obvious inconsistencies, the St. Petersburg court awarded the plaintiff shell companies hundreds of millions of dollars in damages against the Hermitage Fund's Russian companies. Most shockingly, when Sergei analyzed the forgeries used in court, he was able to prove that they could have only been created with the documents seized from our offices by the Moscow Interior Ministry on June 4 while these documents were in their custody.

The news went from bad to worse. Sergei went to the Moscow company registration office, where he discovered that three Russian companies had been fraudulently re-registered from the name of the Hermitage Fund's trustee, HSBC, into the name of a company owned by a man convicted of manslaughter. Again, Sergei determined that the only way that the ownership could have been changed was with the original corporate materials seized by the police.

On the back of Sergei's discoveries, on December 3 and 10, 2007, HSBC and Hermitage filed six 255-page complaints outlining all the details of the frauds and the names of the police officers involved. The complaints were filed with the heads of the three main law enforcement agencies in Russia. However, instead of investigating the frauds against Hermitage, the law enforcement agencies passed the complaints right back to the specific police officers named as conspirators in the complaints. Those officers then retaliated by personally initiating spurious criminal cases on knowingly false grounds against employees at Hermitage.

At this point, Sergei was becoming visibly angry that the Interior Ministry officials could be so blatantly corrupt. Sergei wasn't a dispassionate lawyer like many we have encountered in the past. He was our advocate in the truest sense of the word. It was very comforting that a professional as

talented as Sergei was putting in so much energy and passion into protecting us. Although we were still unsure what the corrupt officers had in store for us, we felt a sense of calm having Sergei by our side.

By the summer of 2008 it still wasn't clear why the police were so keen to steal three of the Fund's investment companies, create fake judgments and fabricate criminal cases against us. If the intention was to steal the Fund's assets in Russia, they had failed because, by the moment our companies were stolen, the assets had been safely moved by the Fund's trustee outside the country. To help us find the answer, Sergei methodically followed up all the loose ends hoping to make sense of the persecution against us. He sent out more than 50 letters to different tax authorities and registration offices requesting information on our stolen companies. Almost nobody replied, but on June 5, Sergei received a letter from the Khimki (a suburb of Moscow) tax authorities, that broke the case wide open. According to the letter, our stolen companies which were re-registered in Khimki, had opened bank accounts at two obscure Russian banks.

Once we learned about the banks, everything started to make sense. Sergei found the Russian central bank website where all aggregate bank deposit information is stored, and it showed an enormous spike in deposits at these two obscure banks right after the accounts for our stolen companies were opened. The spike in deposits was exactly equal to the taxes that the Hermitage Fund companies had paid in 2006. At that moment, we finally understood the reason why our companies had been stolen.

The people who stole our companies did so to embezzle \$230 million that the Hermitage Fund's Russian companies – one of the largest taxpayers in the country – had paid in taxes in 2006. Perpetrators claimed retroactively that the \$230 million taxes had been “overpaid” because of liabilities from the sham court judgments that had purportedly “wiped out” the historic profits. The perpetrators were brazen enough to apply to the Moscow Tax Inspectorates for the refund of the entire amount of funds paid by the Hermitage Fund's companies to the Russian government in profit tax. The approval of this refund – the largest in Russian history – was granted by the Moscow Tax Inspectorates in a single day, and over the next two days, the entire amount was wired to the new bank accounts opened by the perpetrators. The date of the wire transfer (December 26, 2007) showed that it was carried out after and in total disregard of the complaints to the Russian authorities from HSBC and Hermitage that had alerted them to the details of the ongoing frauds and abuse of office three weeks earlier. Had those complaints been acted upon by the Russian law enforcement authorities, the theft of \$230 million from the government simply could not have taken place.

II. Testimony Against the Interior Ministry

At this point Sergei was indignant. When corruption stared him in the face, he felt he had a duty to fight it. It wasn't just about his client, it was now also about his country. The police officers who were supposed to be fighting crime were intimately involved in one of the biggest crimes ever perpetrated against the Russian people. In July 2008, Sergei helped us prepare a detailed criminal complaint about the stolen tax money and the abuse of office, which was filed with seven different Russian government agencies. We also shared the information with the press, and Sergei briefed some Moscow-based press correspondents on the details of the tax rebate fraud and the complicity of Russian officials in it.

We had hoped that the details in our complaints would be shocking enough to force the Russian authorities to investigate the fraud and to punish the corrupt officials. Instead, the Interior Ministry officers who were involved in the fraud reacted by harassing, intimidating and prosecuting all of the

lawyers who represented HSBC and the Hermitage Fund. These lawyers tried to resist by filing complaints with the Russian authorities and courts detailing the corruption and abuse of office by the Interior Ministry officers, but that had no effect. In response, the intimidation only worsened. Finally, six of our lawyers from four different law firms were forced to either leave the country or to go into hiding.

The one lawyer who didn't leave Russia was Sergei. Despite the clear power of corrupt police targeting all of our lawyers, he was sure that he was safe because he had never done anything wrong or illegal. He believed that the law of Russia would protect him because he was telling the truth. He also believed that he was safe in today's Russia. When Jamison Firestone, the head of the law firm Sergei worked for, encouraged him to leave Russia like the other lawyers, Sergei replied, "You watch too many movies, this isn't the 1930's."

His belief in justice was so strong that he went on to do something many people would be too scared to do. On October 7, 2008, he went to the offices of the Russian State Investigative Committee (the Russian equivalent of the FBI) and testified against two officers of the Interior Ministry, Lt. Colonel Artem Kuznetsov and Major Pavel Karpov, for their involvement in the theft of the Hermitage Fund companies and the theft of \$230 million from the Russian budget. It was an enormously brave move, and we feared for him that day. Amazingly, Sergei was the only person who wasn't worried. It was a big relief when he emerged from the Investigative Committee at the end of the day unscathed.

III. Arrest and Detention of Sergei Magnitsky by the Officers He Accused

In retrospect, our relief was misguided. On November 24, 2008, just over a month after testifying against Interior Ministry officials Kuznetsov and Karpov, a team of officers who directly reported to Kuznetsov went to Sergei's apartment at 8am while he was preparing his children for school and arrested him. Sergei was thrown into detention on a sham charge: tax underpayment by two Hermitage Fund companies in 2001 as their alleged director. In reality, the companies had clean audits, the statute of limitations for taxes had expired four years earlier, in 2004, and Sergei was not their director so he couldn't have had any legal responsibility for their taxes anyway. However, the law didn't matter because the investigators had other plans. Sergei learned that the officers appointed to investigate his case were the same ones he had implicated: Kuznetsov and his subordinates. When we heard this, it wasn't difficult to imagine where this was going to lead. Sergei had become their hostage.

We were truly shocked by his arrest. Although there were signs that something like this could happen, Sergei's self-confidence gave us the sense that our fears were overblown. Up until this point, our problems with corruption in Russia had all been abstract – on bank statements, share registries and balance sheets. We had never experienced a real human impact before. No matter how many unpleasant situations one might encounter in one's business career, nothing prepares you for having someone you know being taken hostage.

The Interior Ministry justified Sergei's detention on the grounds that he was a "flight risk" and the Moscow court sanctioned it despite the fact that the Interior Ministry held Sergei's passport and IDs, making it impossible for him to travel anywhere. Insisting on Sergei's prolonged detention, the Interior Ministry brought a letter from the Russian Federal Security Service claiming that Sergei had applied with the UK Embassy in Moscow for a visa. This was false. When Sergei's lawyers presented a letter from the UK embassy stating that Sergei had not approached it with a visa request, the judges simply ignored it. One of the judges sanctioned the continued captivity of Sergei on the

grounds that he “saw no reason to question the information from the Federal Security Service (FSB),” despite the fact that this “information” was not at all substantiated and was directly contradicted by the information from the UK embassy. It became apparent that the judges and Interior Ministry officers keeping Sergei hostage had lost any respect for the truth.

Our immediate concern upon hearing of the arrest was how a highly-educated lawyer like Sergei would fare among hardened Russian inmates. It is not difficult to imagine the terrible things that go on behind prison walls. Fortunately, on this front the reports from his lawyers who visited him gave us some hope. Although his background made him quite conspicuous among others detainees, his character allowed for him to gain the respect of other inmates almost immediately. He was as passionate about the other miscarriages of justice he encountered, and he used his legal skills to help them prepare appeals, and for that he was appreciated. Although the conditions of detention were harsh, we learned that he was well treated by the other detainees.

IV. Breach of Human Rights in Detention

Among Sergei’s many heroic qualities, perhaps the most useful for posterity was his instinct as a lawyer to make a meticulous account of his experiences in pre-trial detention and the abuses he endured. He also filed legal complaints highlighting the breach of his human rights and the violations of the law by Interior Ministry investigators, prosecutors and judges in his case. Over the course of his year in detention, Sergei filed over 450 complaints to senior members of the Russian government, detention center officials and the Russian courts. His hand-written notes and legal petitions read like a modern-day Gulag Archipelago, a heartbreaking account of a struggle that played out in the dark corners of Russian detention centers, in isolation cells, away from the comforts of the “rule of law” that so many of us take for granted in the 21st century.

Sergei was subjected by his captors to cruel and inhumane treatment. He was deprived of sleep, drink, food and medical treatment. He was isolated from his family. He didn’t have access to an office, library or a computer. Yet despite these circumstances, he managed to leave a record of unemotional and factual legal evidence implicating his captors and torturers in great detail, and all without even a table to write on. Few people could have managed such a prodigious effort even when not being subjected to such physical and psychological torment.

1. Cruel and Inhuman Treatment and Conditions in Detention

The inhumane conditions Sergei endured in detention resembled a modern-day Gulag. Sergei summarized them in a chilling letter to his lawyer on August 8, 2009:

"Justice, under such conditions [deprivation of sleep, food, drink over a long period of time] turns into the process of grinding human meat for prisons and camps. A process, against which a man is not able to defend himself effectively. A process through which a man loses awareness of what is happening to him and can only think of when this all will be finished and when he can escape the physical and emotional torture and make it to the labor camp (nobody hopes for a not-guilty verdict as they say our courts issue no more than 2% of such verdicts). They say here that the level of human suffering when serving a prison sentence turns out to be much less than here [in pre-trial detention] where a man, who is still not recognized as guilty by the court, is put through the meat grinder."

Initially, Sergei was sent to Pre-Trial Detention Center No. 5 in Moscow, but over the next few months he was moved seven times between four more detention centers. Each move was concealed from his lawyers and family. Conditions were made progressively worse. In July he was transferred to Butyrka, a maximum security detention center known to be one of the toughest in Russia.

Because of the 450 complaints that Sergei filed, we have today a detailed and disturbing set of facts about the conditions the investigators subjected him to in order to get him to withdraw his testimony and plead guilty to the trumped up charges. There was never any emotion in his complaints, even after all the torture he endured. They were crisp and exact. Sergei described in detail the degrading, inhuman treatment he was going through in detention.

One of the tactics used by the investigators was to routinely rotate him among cells. Often he was moved at night so he could be deprived of sleep. Each time he would refuse to recant his testimony the cells would become worse. Some examples of the cells where he spent the last year of his life are listed below.

Butyrka, Cell 59 (88 square feet, four inmates). The toilet in the cell needed to be repaired, with an “intolerable odor” coming from it. The toilet was not partitioned, and the inmates would use bedsheets as a screen whenever anyone was using the toilet. The distance between the toilet and the bed was less than three feet. The only electrical outlets were located above the toilet, forcing the inmates to boil water for their hot drinks in the stench of sewage. On the evening of September 8, raw sewage began to flow up out of the hole in the floor.

Butyrka, Cell 35 (108 square feet, three inmates). The cell windows had no glass, and the walls of the cell were damp. On Sergei’s second day in this cell, raw sewage under the toilet began to rise, and by evening sewage water covered half of the cell. Sergei and his inmates asked that the problem be fixed, but the plumber did not come until 10pm. The inmates asked to be moved to another cell, but they were forced to stay through the night. The inmates moved around the cell by climbing from bed to bed. The plumber only came in the evening, but he couldn’t fix the problem. He expressed indignation over the conditions in which Sergei and his fellow inmates were kept.

Butyrka, Cell 61 (88 square feet, four inmates). Again, the cell windows lacked glass and frames. On September 11, Sergei made a complaint requesting that window panes and frames be installed, but got no response. Because of the cold, Sergei slept fully dressed and wearing his coat and whatever clothes he could find. Window panes and frames were never installed.

In all cells the rats ran freely at night. When Sergei and his fellow inmates attempted to block the toilet hole in the floor of one cell with a plastic bottle, they found the next morning that it had been chewed off with a bite mark “the size of an average apple.”

Sergei was permitted to shower once a week for 10 minutes. He could walk outside the cell once a week for 40 minutes in a courtyard space just 10 feet by 16 feet. In many cells there were more inmates than beds so they had to sleep in shifts. In others, the authorities would never turn off the light so even if he got a bed it was almost impossible to sleep.

Most of his complaints about the conditions of confinement led nowhere, and the majority of the complaints and requests addressed to the administration of Butyrka and the other detention centers, as well as the General Prosecutor’s Office and the Interior Ministry, were simply ignored. When he

did receive a response, it would be to say that no violations had been found so there were no grounds for any action. After the filing of each complaint, his conditions worsened significantly.

2. “Opportunities for Defense” and Interaction with Lawyers

Sergei’s diaries describe in detail the challenges he faced in defending himself against the fabricated criminal proceeding brought against him. Even the simple act of writing complaints was problematic. There was no table in the cell and he would have to write his complaints on a bed. The detention center libraries did not contain any legal material, even the text of the Criminal Code or the Code of Criminal Procedure, and the administration rejected his request to receive these books from his relatives. At one point the administration even forbade Sergei’s wife from sending him the text of the Russian Constitution.

Sergei’s opportunities to meet with his lawyers were severely constrained. Butyrka and Matrosskaya Tishina detention centers both have continuous long lines of lawyers outside, waiting to see their inmate clients. Because of these lines, Sergei typically never saw his own lawyers before 4:30pm. By 5:30pm, the wardens would begin to demand that the lawyers leave because the meeting rooms needed to be vacated by 6:00pm. On many occasions, Sergei’s lawyers would arrive for a meeting, but the wardens would keep him in his cell. His lawyers would ultimately be forced to leave the grounds.

3. Contact with Family and the Outside World

Russian law provides detainees with the right to correspond with relatives and others and requires the administration of detention centers to collect correspondence from them on a daily basis and to dispatch it within three days of collection. Inmates of Butyrka were required to leave their correspondence in a special box, where the administration is expected to collect it on a regular basis. Sergei left a letter in this box on September 9, and it was still there six days later. Letters sent to him from his relatives in Moscow were received with 12-day or more delays. Letters from outside Moscow were received nearly a month after they were sent.

Worst of all the deprivations, the Interior Ministry officials denied him any visits from his family, which must have been truly heart-breaking for a man so committed to family. He was denied the possibility to speak to his two young children on the telephone for the 11 months he was in detention. Sergei was not allowed to see his mother or his children during the entire period of his detention. He saw his wife once, two weeks before he was killed, after filing numerous complaints.

Sergei was denied seeing his mother because the investigator and his superiors deemed it “inexpedient.” Sergei was denied seeing his wife, again because investigator and his superiors deemed it “inexpedient.” Sergei was denied seeing his aunt because investigator deemed it “even more inexpedient [than seeing his mother and wife]” and further the investigator questioned if she indeed was his aunt.

On August 25, 2009, Investigator Silchenko wrote to Sergei, who by then had been kept in pre-trial detention without seeing his family that “detention as a measure of restraint restrict the rights and freedoms of a person and citizen to the maximum extent” and that “at this stage of the investigation” seeing his relatives “may negatively impact the course and the results of the investigation given the state of the investigative situation.”

Sergei was denied by the investigator to speak to his young son on the grounds of his son's "young age." From the day he was arrested until the day he died in custody, Sergei never heard the voice of his young children again.

4. Court Appearances

Sergei's pre-trial detention was reviewed six times by the Tverskoi District Court in Moscow. The judges always granted the requests of the lead Interior Ministry Investigator on Sergei's case, Oleg Silchenko, who routinely claimed he needed more time due to the "complexity" or the "difficulty" of the case and that he believed that Sergei would interfere with his investigation if he was released prior to trial. Throughout the court proceedings on Sergei's detention, none of the petitions or materials from Sergei's lawyers were accepted. The judges would routinely rule on the basis of unsubstantiated suppositions from investigators, never checking the information or assertions the Interior Ministry would present to the court. The behavior of the courts throughout violated the basic principle that court rulings must be based on evidence verified by the court and that both parties have equal standing before the court.

Sergei's appearances at the hearings relating to his complaints against the Interior Ministry created their own complications and resulted in what can only be described as a mockery of justice. He noted that "journey takes place in a harsh and humiliating manner similar to torture." He was notified of his court appearances late at night, sometimes after midnight, the day before the hearing. He was never informed about the subject of the hearing or the issues to be considered. Under these circumstances, it was impossible for him to prepare his defense.

To transport Sergei and the other detainees to court, the detention center used special vans, which were equipped with compartments for holding of the inmates, having a size of approximately of 10 feet in length, 4 feet in width and 5 feet in height. Sergei noted that these compartments were designed to accommodate not more than 15 people, but typically 17 to 18 inmates were "squeezed" in, with the result that some of them have to remain bent over in uncomfortable positions for the entire journey. On one occasion Sergei spent 4.5 hours in this position because the van did not go directly to court but was collecting other persons from other courts.

The vans typically returned to the detention center by 7 or 7:30pm, however, the guards typically kept everybody in the vehicles until 8pm. The detainees would then be taken from the vans to holding cells, where they would be kept for another 3 hours while the wardens did "paperwork." Sergei never managed to return to his regular cell earlier than 11pm on the days he would appear in court.

When Sergei and his fellow inmates were taken to court they were given instant lunches, but it was never possible to prepare them because they were never provided with the boiling water required to cook the instant soups or cereals which make up the lunch. Court guards would explain this by the fact that they had no kettle, but Sergei noted how he had routinely seen a kettle in their office.

While in court Sergei would be kept handcuffed and physically restrained, even in his meetings with his lawyers. He would be given no space to work, forced to draft his witness statements by hand in the corridor of the courthouse. Even here, in an added gesture of humiliation, the Interior Ministry would keep him handcuffed to a radiator, making it nearly impossible for him to write his own submissions effectively.

Sergei noted in his diaries that the entire process of transportation to and from court was profoundly debilitating and limited the ability of people to defend themselves. This played into the hands of the Interior Ministry investigators and prosecutors pushing their cases through the system:

“...the people being judged are hungry and tired and have been exhausted by confinement in holding cells and the journey in the vehicles. This is especially damaging to those that have to take part in court hearings that last for several days in a row. Of course, to defend yourself effectively in court under such conditions is impossible. I have heard from many detainees that they would rather agree to not take part in court hearings than suffer on the days when they are transported to court.”

His experience on September 10, 2009, highlights the additional hardship that prevailed throughout his detention. Around 11am Sergei was transferred from his Butyrka cell to a holding cell and was told that he would either be taken to court or to see Investigator Silchenko. Neither option ever materialized. He spent the entire day in the holding box without food or access to drinking water. At 7:30pm, the wardens removed him from the holding cell and returned him to his cell. He went without lunch and missed dinner and, as he noted in his diary, he missed the weekly shower that was scheduled for the occupants of his cell on this particular day. It is impossible to avoid the conclusion that this particular discomfort was deliberately arranged by Silchenko to further break Sergei's will as the court hearing for another prolongation of his detention was coming up on September 14, 2009.

During the court hearings of his complaints, Sergei was kept in a cage like a wild animal. When he protested against this degrading and cruel treatment he was subjected to in court and cited both Russian law and the European Convention on Human Rights, the judge would simply dismiss it.

On November 12, 2009, Sergei spoke his last public words in the Tverskoi District Court in Moscow:

“In contrast to the prosecutor who represents the accusing party, I am placed in the courtroom in a cage that is similar to the cages used to keep wild animals. Placing me in this cage violates my right to be treated like a human being, and shows no respect for my honor and dignity, which is essential to any human being and which is guaranteed by Article 21 of the [Russian] Constitution. My right not to be subject to the inhuman and degrading treatment which undermines human dignity is stipulated by Article 3 of the Convention on Human Rights and Fundamental Freedoms. This right has been violated today.”

5. Legal Cynicism and the Denial of Legal Remedies

One of the most shocking human rights abuses Sergei encountered in detention was the absolute lack of any legal remedy against the Interior Ministry officers persecuting him. Each time Sergei encountered an action by an investigator that violated Russian law, he would file a complaint. These complaints were rejected or simply ignored each time. They were never reviewed within the timeline required by the law, and the responses were never given within a reasonable period. The reason for the denial of his complaints was never given, preventing him from challenging it.

What happened to Sergei reflects the prevailing attitude among judges and law enforcement officers in Russia today, which can best be described as “legal cynicism.” Investigators and prosecutors act in a legal vacuum subject to no judicial checks. The judges create an appearance of impartial oversight and mediation but in fact exercise no restraint on the power of the Interior Ministry to run the prosecution and harass and intimidate the defendant as it sees fit. An innocent person falsely accused

by corrupt police officials is allowed to file complaints only to have them rejected. All petitions from the police are accepted however ludicrous or unsubstantiated they are. The presumption of innocence, a central tenet of judicial systems everywhere, is discarded from the outset.

Each rejection by a court, however, served to make Sergei more indignant and determined. He was always the consummate professional. The grounds for his complaints were always clear, logical and based on straightforward evidence. Some examples of his complaints and the legal cynicism that accompanied the official responses to them are listed below.

- Sergei filed two petitions that investigators were prosecuting a case against him when there was no evidence of a crime having taken place or any evidence of his involvement in any wrongdoing. These petitions were dismissed.
- Sergei challenged the legal standing of the Interior Ministry officers to direct the case against him since they were the same ones against whom he had testified and had accused of stealing \$230 million from the Russian state. Sergei demanded they be removed from the investigative team. This petition was dismissed.
- Sergei petitioned the court to review and purge the false statements that had been added to his casefile to justify his ongoing detention by the officers against whom he had testified and the members of their investigative team. This petition was dismissed.
- Sergei challenged that the Interior Ministry had appointed “expert witnesses” in his case without informing his lawyers as required by Russian law. Investigator Silchenko told the court that he would make sure inform the defense in the future, and as a result the court dismissed Sergei’s petition. Silchenko did keep the defense informed as required in the future, however, which would compel Sergei to file another petition. This “cycle” happened numerous times, and every time Sergei’s petition was dismissed.
- Sergei challenged Investigator Silchenko’s decision to transfer him to a temporary holding unit from a normal detention cell as a means to apply pressure on him. This petition was dismissed.
- Sergei challenged that the court was not admitting valid evidence for his defense while at the same time allowing mere hearsay from the Interior Ministry to justify his arrest and continued detention. This petition was dismissed.
- Sergei appealed to Russian courts that the General Prosecutor of Russia did not respond to his previous complaints about human rights abuses during his detention. This appeal was ignored.

Finally, after the Moscow court ruled failing to invalidate the investigators’ actions despite numerous petitions, Sergei filed a claim with the Constitutional Court of Russia about the comprehensive legal violations of the Interior Ministry investigators and the judiciary. This claim was held by Investigator Silchenko for three months prior to it being forwarded to the Constitutional Court. This claim was due for acceptance at the time of his death.

V. Deterioration in Health

Sergei's spirit remained undefeated. However, the deprivation of sleep, food and drink in detention had adversely affected his health. He was a strong 36 year-old man when he was arrested by the Interior Ministry in November 2008. Four months later he had lost 40 pounds. Sergei soon began to experience severe intestinal pain, and on July 1, 2009, Sergei was finally taken for a medical examination by doctors at Matrosskaya Tishina detention center. He was diagnosed with gallstones, pancreatitis and calculous cholecystitis and was prescribed an ultrasound examination and surgery within a month. Instead of arranging the planned surgery, on July 25, the officials transferred Sergei to a different detention center, Butyrka, which had no ultrasound or facilities to treat patients with pancreatitis – and where his worsening condition would go untreated.

Sergei's diaries and complaints provide a chronology of the denial of medical assistance in Butyrka, some of which is set forth below.

Upon arrival at Butyrka on July 26, 2009, Sergei was given no medical examination, despite the pains he had reported at Matrosskaya Tishina and the diagnosis of pancreatitis he had already received. The same day he filed a written request to the administration for an appointment with a doctor. There was no response.

On August 9, Sergei formally requested a meeting with the head of the detention center, noting that his health was in danger. There was no response.

Two days later, on August 11, Sergei wrote a request for an appointment with a doctor, noting that the time prescribed for an ultrasound had passed. There was no response.

In addition to these written requests, Sergei made verbal requests during the paramedics' rounds of the detention center, which would occur once or twice a week. The typical response was, "Write a request ... You did? Then just wait."

On August 14, Sergei submitted a request that the drugs prescribed by the doctor in Matrosskaya Tishina could be passed to him from his relatives since he could not get any from the Butyrka doctors. Three days later, on August 17, Sergei's mother brought the drugs. After Sergei's mother asked the administration to confirm the delivery, they discovered the drugs had been passed to another cell. She brought more drugs, and they were ultimately passed to Sergei on September 4, nearly three weeks later.

On August 24, Sergei wrote in his diaries,

"The disease has become so acute that I could no longer lie in bed. At 4pm, my fellow inmate began to kick the door, demanding that I should be taken out to see a doctor. The warden promised to invite a doctor. ... I was taken to a doctor only five hours later. She said the medical record stated that I had already been treated."

On August 25, Sergei wrote a request for an appointment with a surgeon. There was no response. The next day, on August 26, as the deputy head of Butyrka was making a round of the cells, Sergei complained that urgent medical assistance was not being provided. He tried to show the letter indicating the diagnosed disease, but was told, "You are delaying us from our rounds."

On August 31, there was another visit of rounds. Sergei wrote to his lawyer,

“A similar round. ... Concerning the surgery, he said, ‘You will have it when you are released. Here, nobody is obliged to provide it to you.’ And he left.”

Butyrka officials repeatedly refused to escort Sergei to another detention center to conduct an ultrasound examination on the ground that they lack guards.

In total, Sergei and his lawyers filed over 20 applications for medical treatment in August and September 2009. These were sent to Butyrka officials, Investigator Silchenko, General Prosecutor Chaika. Sergei personally appealed to Judges Krivoruchko and Stashina during court sessions which considered whether to prolong his detention. All petitions for medical help were refused. These rejections included:

- On September 2, Investigator Silchenko issued a decree denying “in full” a request from Sergei’s lawyers about medical treatment.
- On September 14, Judge Krivoruchko in front of Investigator Silchenko and Prosecutor Burov rejected formal complaints from Sergei about his denial of medical treatment.
- On October 9, Officer Pechegin of the General Prosecutor’s Office replied that there was no basis for Prosecutor’s Office to review complaints about the violations of Sergei’s rights, including the denial of medical treatment.
- On November 12, Judge Stashina rejected petitions from Sergei’s lawyers about the denial of medical treatment for *cholecystopancreatitis*, diagnosed in July 2009.

VI. An Inconvenient Hostage for the Interior Ministry: the Motivation for Sergei’s Torture

Ultimately, the officials whom Sergei had testified against had a very specific plan for him. They wanted to put enough pressure on Sergei so he would withdraw his testimony against them and make false statements against himself and his client, the Hermitage Fund. Most cynically, they specifically wanted him to take responsibility for the theft of \$230 million that they had stolen from the state. After moving him through several detention centers and an incalculable number of cells, they presented him with their plan. They kept telling him, “If you sign the following statements, then you will be freed.” In spite of the hardships he was subjected to, he rejected their proposals. As a lawyer and someone who believed in justice, there was no way he would be pressured into making false statements about himself or his client. Instead, he wrote new complaints in which he described the pressure he was subjected to and how police officers knowing his innocence were producing false evidence. He explained how the tax charges against him were fabricated to cover up police involvement in the largest known fraud against the Russian budget.

On September 11, 2009, Sergei wrote to the investigator:

“My criminal persecution has been ordered, to serve as a retribution ... It is impossible to justify the charges brought against me, as I assert again that I did not commit any offenses, and the documents collected by the investigators only prove my innocence ... If this case is ever heard in court, these experts will simply be unable to justify their conclusions during cross-examination by the defense.

Realizing the invalidity of their claims, the investigators have arranged for physical and psychological pressure to be exerted upon me in order to suppress my will and to force me to make accusations against myself and other persons ... in exchange for a suspended sentence and freedom. Every time I reject these propositions by the investigators pushing me to commit such a base act, the conditions of my detention become worse and worse ... The administration of the detention centers has assisted the investigators to organize my persecution by creating intolerable conditions for me in their facilities.”

Throughout this ordeal, Sergei stood true to his beliefs and principles no matter what new suffering was devised for him. His belief in those principles was so strong, and Sergei knew them to be so undeniably correct, that upholding them became his primary aim no matter the physical and psychological torture he was forced to endure.

On October 13, 2009, Sergei detailed the role of his persecutors in crimes against the Russian state and the theft of money from the Russian people, and his account illuminated the motivations of those officials behind his persecution:

“This prosecution is a repressive measure to punish me for assisting my client in connection with the investigated theft of the companies owned by my client. In the course of the legal assistance I was providing I gained knowledge of the possible participation of police officers in the said theft and that the stolen companies were subsequently used by the criminals to steal from the state budget the amount of 5.4 billion rubles (\$230 million), which had been earlier paid by the said companies in taxes at the time when they were controlled by my client...I believe that exactly the fabricated criminal case, which was initiated by Kuznetsov made it possible to confiscate the statutory documents and the registration documents of the stolen companies and it made it possible to deprive the legal owners of their control over the said companies... The direct personal interest of Kuznetsov in the illegal criminal prosecution against me is also shown by the fact that actually all documents, which were forged as a legal basis for detaining me in custody, were fabricated by the Tax Crime Department officers, who are the subordinates of Kuznetsov: Droganov, Krechetov, Tolchinskiy... In my view, Kuznetsov and other law enforcement officers, who acted under the arrangement with Kuznetsov, could be involved in the theft of Rilend, Mahaon, and Parfenion and in the subsequent theft of 5.4 billion rubles from the state budget as described above. They were extremely interested in suppression of my activities I performed to assist my client in the investigation of the circumstances connected with the crimes against them, and that was the reason for the illegal criminal prosecution that was initiated against me by investigator Silchenko. I believe that with the participation of Investigator Silchenko, or with his tacit consent the inhuman and humiliating conditions were created for me in pre-trial detention.”

The last complaint Sergei was able to file with Russian courts was made on November 11, 2009 – five days before his death. It described egregious tampering by the Interior Ministry in the materials in his case file and the falsification of evidence against him by Investigator Silchenko. Sergei saw that the materials in the file had been altered and intended to take criminal action against Silchenko and others, writing:

“Materials of [the] criminal case which are now being shown for me to review, are not the same materials that were produced to me on 20 October 2009 because they noticeably differ in the manner of certifying the authenticity of the included copies and in the manner of their binding, and because in both cases materials were collated in a manner that did not exclude the possibility to undo the binding, and add, delete or replace documents, and I do not exclude the possibility that these materials are also different in their contents.”

Sergei concluded his complaint, which turned out to be the last in his life, stating his determination to bring those responsible for the falsifications to justice:

“It is now clear to me that originals of certain documents in the materials of the criminal case shown to me as copies cannot be at the disposal of the investigation, therefore the certified copies of these documents, in my opinion, could be treated as falsified proofs, because they have been certified without comparing the copies admitted into the criminal case with the original of the corresponding document or other properly verified copy of the document, and I intend to insist on bringing to justice the persons who certified these copies or placed them in the case materials.”

On November 12, 2009, Sergei prepared the following hand-written notes for a court hearing scheduled for that day which considered and sanctioned the prolongation of his detention without trial:

“I have been detained in prison for a year as a hostage in the interests of the persons, whose intention it is to ensure that the criminals actually guilty in the theft of 5.4 billion rubles from the state budget will never be found. The same Investigator Silchenko and his subordinates [who directed the criminal case against Sergei Magnitsky] investigated the case of the money stolen from the budget. The man, who signed the forged documents, was convicted for 5 years in prison. That same man, a sawmill worker, was convicted, while the other swindlers have not been identified by the investigators. Investigator Silchenko does not want to identify the other persons, who made this fraud possible. He instead wants the lawyers of the Hermitage Fund, who pursued and continue to pursue attempts for this case to be investigated, be forced to emigrate from their country in which criminal cases were filed against them, or like me be detained in prison.

My imprisonment has nothing in common with the legal purposes of criminal proceedings... It has nothing in common with the purposes of the restraints listed in Article 97 of the RF Criminal Procedural Code, but this is a punishment for my merely defending the interests of my client, and finally the interests of the State, because should my client's interests be realized, should the law enforcement agencies assist in the realization of his interests instead of hindering them, then the theft of 5.4 billion rubles (\$230 million) from the state budget would become impossible.

The actual purpose of my criminal investigation and my detention in prison are in conflict with the law and no formal legal basis exists for my detention.”

The corrupt officers tried to break him, but they found him stronger than they could have ever imagined. They probably never had a hostage who didn't break under this type of pressure before. Ultimately, he reached the one-year deadline for pre-trial detention under Russian law, the

investigators had to put him on trial or release him. They were planning a big show trial for him where they were hoping for his false confessions to be the primary evidence of the trial. Instead they had no evidence of his wrongdoing, and more worrying for them, he was continuing to make very specific, public and incriminating statements about police involvement in the theft of \$230 million from the Russian government. He had become a very inconvenient hostage.

VII. Sergei's Last Days

On November 12, 2009, Sergei appeared before the Tverskoi District Court in Moscow, which ruled to extend Sergei's detention without trial. This is the last time Sergei was seen alive outside of detention. The next day, an Interior Ministry investigator stated to Sergei's lawyers that Sergei reported feeling unwell in his cell, but that it was "nothing serious" and refused to provide them any further details. Earlier that day, Sergei wrote a complaint to the Head of Butyrka:

"Over the course of the day on November 12, I was deprived of the possibility to have hot meals and deprived of the 8-hour sleep during the night, which may have caused exacerbation of the pain in the area of the pancreas and a fairly discomforting pain in the area of the liver, which I did not have before, as well as nausea. Therefore, I request a recommendation as to whether I should take some medicine for liver treatment, unless the above described pain stops or if it continues systematically. In addition, I ask you to inform me when finally the ultrasound prescribed for as far back as August is going to be done."

This complaint was written three days before his death. When interviewed after Sergei's death, the Head of Butyrka replied simply, "Magnitsky never requested a meeting with me, and he never submitted any complaints. Neither did his lawyer."

The doctor did not see Sergei that day, despite two written pleas, nor at any time during the following next two days while he was in agonizing pain.

On the morning of Monday, November 16, Sergei's lawyers arrived to Butyrka to try to meet with Sergei. Investigator Silchenko informed them that Sergei would not see them because he was unable to leave his cell for health reasons. Silchenko refused to show them a copy of the medical report on Sergei's condition, saying it was a matter "internal to the investigation."

As this was happening, Butyrka officials were apparently scheduling to transfer Sergei to Matrosskaya Tishina detention center, having concealed this fact from Sergei's lawyers. It is not clear exactly when on November 16, 2009, Sergei left Butyrka but according to Matrosskaya Tishina officials, Sergei arrived there around 6:30pm, with a diagnosis of an "acute cholecystitis and pancreatitis." It is not clear what happened to Sergei en route and who accompanied him. One of the first words Sergei told officials at Matrosskaya Tishina center on arrival was that somebody tried to kill him. He didn't want to leave the nurse's room as he feared for his safety. In response, he was put in a straight jacket, handcuffed and moved to an isolation ward. The doctors who arrived to care for him were kept outside the prison fence until it was certain he was dead. When the doctors were let in, they found Sergei dead on the cell floor. He was reported dead at 9:50pm.

The next morning, November 17, 2009, Sergei's mother arrived at Butyrka with a parcel of fruit and other items. The administration notified her that her son had been transferred to Matrosskaya Tishina the prior evening. Upon her arrival at Matrosskaya Tishina, the guards told her that the package is "not necessary because your son is dead."

The Moscow Prison Oversight Commission empowered by law to monitor human rights in detention centers held an investigation into the circumstances of Sergei Magnitsky's death and released their report on December 28, 2009. They concluded that Sergei Magnitsky was subjected by investigators to physical and psychological pressure and kept in torturous conditions. They were astonished that the accounts they got from detention center officials and doctors were entirely contradictory in every detail of what happened to Sergei during the last hours of his life. Their report states that they conclude that the officials and doctors were lying and "deliberately concealing the truth."

The Commission's final conclusion was that the death of Sergei Magnitsky represented a breach of the right to life and a breach of the state's duty to safeguard life – rights guaranteed by the European Convention on Human Rights of which Russian Federation is a signatory.

VIII. Russian Government Actions After Sergei's Death

At first, the detention center officials told Sergei's lawyers that the cause of his death was a rupture to his abdominal membrane, but later that day they revised their story, saying he had died of a heart attack. Sergei's family requested that an independent expert be present during an autopsy. The authorities refused. The family then requested that they be allowed to conduct an independent autopsy. The Russian authorities refused. The family was told that Sergei's body could not be preserved long enough because the morgue's refrigerators had broken. When the authorities finally released Sergei's body to the family it was on condition that it be used only for an immediate burial. The family was denied the opportunity to conduct a wake. When Sergei's family saw him finally at the cemetery, they noticed his hands had bruises, abrasions on his knuckles and cuts in his palms.

The day after Sergei died, Irina Dudukina, the Russian Interior Ministry's Investigative Committee Press Secretary, announced that Sergei had died of "a heart attack and toxic shock." This was despite the fact that official medical reports made five days before his death stated that his heart activity was normal (on November 11, Butyrka staff wrote that Sergei suffered from "acute cholecystopancreatitis" but had a normal heart function). In another statement on November 17, Ms Dudukina stated that Sergei had made "no complaints" about his health over the course of his detention.

Sergei died still awaiting trial. Even by Russia's standards he was still "innocent" of the trumped-up charges the Interior Ministry had cobbled together against him. This didn't prevent Ms. Dudukina of calling a press conference a week after Sergei was killed to repeat the baseless charge against him, or Deputy Interior Minister Anichin calling Sergei "guilty", not only ignoring the principle of presumption of innocence, but making his statement on the sacred fortieth day of mourning after Sergei's death, publicly smearing the name of a man no longer alive to defend himself in front of his family and his country, a man whose spirit they couldn't break while he was alive.

Sergei's death created an uproar both in Russia and overseas. President Medvedev ordered an investigation into how a man who had yet to face a trial could be incarcerated for a year and ultimately die in the worst prisons in Russia. It has now been six months since Sergei's death, and no one had been punished. Aside from the dismissal of 20 detention center governors, 19 of whom had nothing to do with Sergei Magnitsky, no one has been held to account. The one detention center governor who did play a role in Sergei's death, the governor of Butyrka, was dismissed but quickly reappointed as the deputy director of another Moscow detention center.

In addition, no one has been brought to justice for the largest tax refund fraud in Russian history which Sergei discovered. The Russian officials and private criminals who together stole \$230 million walk free today – and in some cases, they have even been promoted within their respective ministries.

On April 22, 2010, the Moscow Helsinki Group, an independent human rights organization, publicly called on Russian authorities to open a case against the Russian Interior Ministry officers involved in the Sergei Magnitsky case for crimes under several articles of the Russian Criminal Code: “Conduct of criminal prosecution of a knowingly innocent man,” “Unlawful arrest and detention”; “Forced testimonies”; “Torture”; “Murder committed with a special degree of brutality” and “Murder committed to conceal other crimes.” (See <http://www.mhg.ru/news/EB81324>). To date, no official has been charged for their role in the persecution, torture and death of Sergei Magnitsky.

IX. Implications for U.S. Policy

We cannot change what corrupt officials do in Russia, but we can change what privileges they have access to in the West. The “legal cynicism” that pervades Russia and the corruption of Russian law enforcement threatens U.S. national interests. Although many of the criminals in this story reside in Russia, the United States government still has an enormous reach. Corrupt officials see their acts go unpunished in Russia, and they feel “untouchable” there, but they must understand that their actions will have consequences whenever the United States can reach them. How should the U.S. government react to the Magnitsky case?

1. Approve the “Cardin List” and Revoke the U.S. Visas of Corrupt Russian Officials.

As requested by Senator Benjamin Cardin in his letter dated April 26, 2010, the State Department should revoke the U.S. visas of the corrupt Russian officials involved in Sergei’s death and the \$230 million fraud.

2. Freeze the U.S. Bank Accounts of Corrupt Russian Officials.

In addition to revoking their visas, the U.S. Treasury should freeze any U.S. accounts owned by corrupt Russian officials or that it suspects of holding proceeds of Russian corruption. If the Treasury is aware of non-U.S. accounts of such individuals, it should work closely with the relevant foreign governments to freeze these accounts overseas.

3. Demand Russia Punish Those Responsible for Sergei’s Torture and Death.

To this day no one has been charged with Sergei’s torture and death and the Head of the Interior Ministry’s Investigative Committee Anichin, Investigator Oleg Silchenko, Lt Col Kuznetsov continue to work freely within the Interior Ministry. Senior Interior Ministry officers responsible for carrying out the \$230 million fraud against the Russian state have been promoted within the Interior Ministry. It is in the U.S. national interest that President Medvedev rid the Russian law enforcement bureaucracy of corrupt officials. Punishing those individuals responsible for Sergei’s death is an essential beginning.

4. Demand Russia Protect Its Lawyers.

Being a lawyer in Russia has become one of the most dangerous professions, and Sergei’s story tragically demonstrates this. But his story in many ways is not unique. Honest lawyers in Russia stand in the way of corrupt judges and police and are routine targets for harassment and worse. Sergei is not the only lawyer working for Hermitage who has suffered at the hands of the Russian Interior Ministry. Five other lawyers working for Hermitage have had to flee Russia with their

families to escape the same fate as Sergei. These lawyers and others like them deserve the recognition of the United States, and their situations should be raised by the U.S. government in its discussions with Russia. President Medvedev, a lawyer himself, should understand the crucial role lawyers play in building a sustainable rule of law.

X. Conclusion

One can never judge the true character of a person until they are faced with extreme adversity. Most people, if faced with a far lesser challenge than Sergei, would have given in, and it would have been understandable if he had as well. But for Sergei, his integrity and honor were more important than any physical pain he was subjected to. His resolve never faltered, no matter how insurmountable the obstacle had been. He did what to most people seems to be the impossible; he battled as a lone individual against the power of an entire state. Sergei was an ordinary man who became an extraordinary hero.

Ultimately, Sergei's story is one of extraordinary bravery and heroism that should be an example to us all. He died still believing, despite the cruel experience of the last year of his young life, that the rule of law could exist in modern Russia. Russia needs more, not fewer, patriots like him. Sergei, his heroic fight, and the ideals he stood for must be upheld.

Thank you for the opportunity to share this with you today.

Enclosed:

- "Complaint by Sergei Magnitsky to Yuri Chaika, General Prosecutor of the Russian Federation, September 11, 2009" (English translation)