In 1999, the Law Center received a grant of $300,000 from United States Information Agency (US IA) to fund a joint project with the University of New Hampshire to develop a "Rule of Law Project" at Vologda, Russia. The institutions have worked to establish a "sister" relationship with Vologda University.

Together, the two institutions are working to help the new law school develop its curriculum and pedagogy in a fashion that prepares lawyers to play a more affirmative role in assuring that the government and private parties alike conform their conduct to the "rule of law."

LEGAL REFORM IN RUSSIA

A Report from the Front

BY RICHARD A. HESSE

AFTER CENTURIES LIVING UNDER A MONARCHIAL LEGAL SYSTEM AND MORE RECENTLY, AFTER SEVEN DECADES OF LIVING under a totalitarian political/legal system, Russia made a radical shift in its political and legal aspirations. All things considered, it is fair to call that radical shift a revolution. Imagine a political, social, economic and legal system that had been solidly in place for decades. Imagine that a major breakdown in the economic and political arrangements produces a revolution that shakes the very foundations of the economic, social and legal systems. Imagine that people generally accept the proposition that they do not want to and cannot go back to the old system. What might these people expect of their government, of their economy, of themselves?

First, they can expect that they must restructure their political system to reflect the new demands of their citizens. They have some clear choices: they might survey the existing political structures in operation elsewhere and adopt the best features of those systems; or they might instead, invent a new political structure. Second, they could expect that the economic engine that provides public and private resources will, for a time, be in disarray. New relationships will be needed and perhaps, an entirely new system will be required. Third, they can expect that the legal system around which their former political and economic arrangements were built will have to be adjusted to the new realities.

My involvement has been in the direct efforts to assist in the creation of a "rule of law" regime in Russia. More specifically, my efforts have been with a specific region of Russia Vologada—where I have worked with judges, lawyers, court administrators, legal educators and students. I have also been one of the hosts for Russians who have visited New Hampshire—some for a short time, others for months. Those experiences give me a less academic perspective on the Russian revolution. But I hasten to add, that like the infantryman in the trenches, I have a limited view of the big picture. In fact, I disclaim any broad significance to my experiences for two important reasons. First, others who were with me in Russia during my work there draw somewhat different conclusions. Second, in spite of the central control which dominated the Russian government for more than seven decades, there are significant differences between the regions of Russia. The differences are greater by far than the differences between the regions of the United States.

Let me begin at the very practical level with an example produced by experience and discussion with my Russian friends. On all of my trips to Russia, commercial exchange has been by cash only. In fact, my colleagues from New Hampshire and I had to carry thousands of dollars in cash on our persons in order to conduct affairs in Moscow and Vologda. We could not use credit cards or checks. As a matter of fact, our New Hampshire project was in need of products and services which we needed to purchase in Vologda but we were unable to arrange any form of currency transfer other than by physically carrying cash from the United States.

Russia has no reliable central banking system. No private bank has arisen to fill the need. The cruel hard fact that dominates the Russian currency and transfer of payments system is that the institutions and the people who run them are not trusted. The importance of that fact cannot be overestimated. Why do merchants in our country and elsewhere in the world allow us to walk out of their stores with merchandise when all we have offered in exchange is a small piece of plastic and our signature? And this is true even when we are thousands of miles from our community and are strangers to that merchant. The merchant is operating on trust but it is obviously not trust in the buyer as an

individual. The merchant is able to trust that a system is in place which will honor the promise represented by the credit card. That system is trustworthy because it is backed by a legal system which is beyond the whim of political leaders or any individual for that matter. The legal system is one based on predictable law.

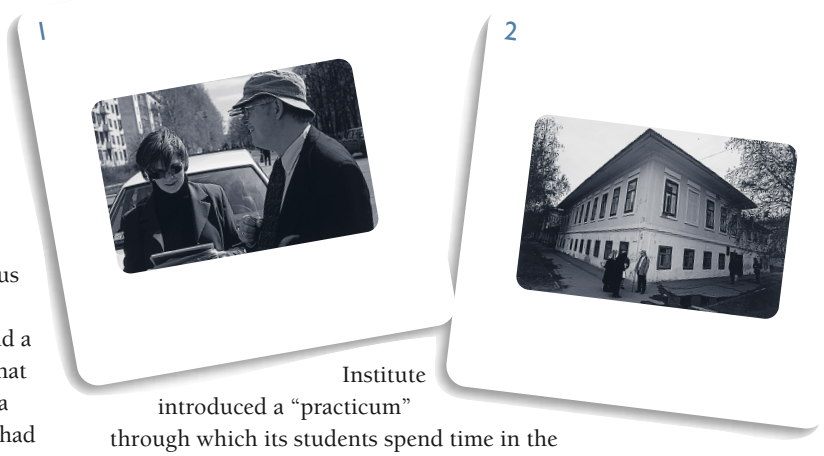
The micro example of the purchase is but a glimpse of what the international community has in mind when it calls for the "rule of law." The "rule of law" envisions a system that provides a predictable and non-arbitrary means of regulating conduct in the political arena, in economic affairs and in all societal conduct. The idealized version of the "rule of law" can be found in the international human rights documents starting with the Universal Declaration of Human Rights and in the numerous Covenants and Protocols found in the body of international law. That idealized version seeks to protect individual rights to participate in the political system, to own, use and enjoy private property, to freely express views without fear, to practice the religion of one's choosing and, in broad terms, to be free from oppressive and discriminatory acts. To say that the aspiration for the "rule of law" throughout the world is ambitious understates the case.

In 1997 and 1998, the Russian economy was in what economists called a "meltdown." When we arrived in Vologda on a Sunday at 4:30AM, we were greeted by eleven officials from the courts, the Department of Justice and the Vologda Pedagogical Institute law department. They were delighted to see us but seemed a bit uneasy. We were taken to our hotel, asked to rest for a few hours, have breakfast and attend a meeting. When we met later that day we discovered that they did not think we would actually come to Vologda because of the terrible economic conditions and they had not retained the experts from Moscow to make presentations at the two day conference scheduled to begin on the following day. Further, they had not hired the professional translators which we had requested for our own use. It was now clear why our hosts were so uneasy when we arrived.

My first cultural experience with the Russians was instructive. We spent several hours planning a program for the conference over the next two days. Each member of our delegation agreed to make a presentation at the conference. I was assigned the task of comparing the Russian and US Constitutions and the civil law in the US with the new Russian Civil Code; while I had read some materials on both the Russian Constitution and the new Russian Civil code, I was most uncomfortable speaking about Russian law to Russian judges. Further, I do not speak Russian and had to rely on a Russian student whose English language skills were marginal to serve as my translator. As we worked through this process my imagination ran wild. What embarrassing mistake in understanding Russian law might I make? What mistranslation of my remarks would create an international incident?

My goal was to understand how Russian legal education prepared its lawyers—particularly in light of the rhetorical desire to move to the "rule of law." At the macro level, I discovered that the curriculum was a traditional one that differed very little from the curriculum in the Soviet style law schools. I discovered that there was some desire (mainly from the Dean) to make changes. I also discovered that the students were very receptive and far ahead of their professors in willingness to explore new methods and ideas.

I realized that Russian educators separate academic preparation from "the real world." It is unacceptable for an experienced lawyer to teach in Russian law departments even after he or she abandons a legal practice. Thus Russian professors have little understanding of the operation of their own legal system. In short, law is a purely academic discipline.



Recently, the law department in the Vologda Pedagogical Institute introduced a "practicum" through which its students spend time in the functioning offices of the courts, the Ministry of Justice, the Department of Justice and the Bailiffs Services. That practicum is a novel proposition. Students and the lawyers and administrators with whom they serve are not clear about what to do; as a result students often end up providing free labor, copying, filing, "go-fer" duties.

In November of 1999, two Russian professors arrived in New Hampshire to spend the academic year with us (FPLC and UNH). They were given a great deal of exposure to undergraduate education and to graduate level education. They took part in law school classes as students and assumed responsibility to teach part of courses at UNH and to deliver specific topic lectures at FPLC. In addition, they visited private law offices, government law offices, the courts, the prisons and the legislature. They attended cultural events and toured medical facilities. They visited Pittsburgh and Nashville as part of an auto trip from Durham. They visited Washington, DC with calls on Congressman Bass,

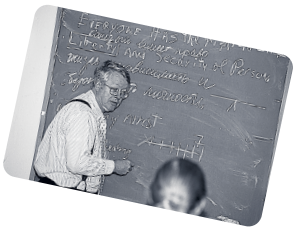
a visit to the Supreme Court and the Smithsonian. They departed in May.

In May, Law Center Professors Joseph Dickinson and Peter Wright and Professor Cathy Frierson from the University of New Hampshire visited Vologda where they delivered lectures and consulted with the law department administration to formulate future programs.

The values in western style rule of law are alien to the social, political and legal culture in Russia. Thus even if the Russians accept the end results as desirable goals, they must effect a major cultural adjustment to reach those goals. Younger faculty, judges, students and citizens are relatively anxious to find ways to improve all aspects of their life. There is far less self-delusion, defensiveness and fear of change among the young. But there is also an air of despair bordering on hopelessness among students which encourages them to seek ways out of Russia rather than seeking to improve Russia. The work ethic and the maximization of opportunity have not been part of the common ethic.







In conclusion let me say that the experience with the Russians has been one of the most inspiring and the most frustrating experiences in my life. The Russians are gracious and generous people. They are also a proud people who have recently suffered a series of blows to their national pride and to their self-esteem. I would like to believe that we would be as gracious and generous if we found ourselves in the same situation. I know that the work in and for Russia is just beginning and if I may borrow from the Chinese culture, the journey of a thousand miles begins with a single step. We have taken that first step and perhaps more. And we are prepared for the fact that some of our uncertain steps will force us to retreat. But the goal is worthy, the need is clear and the spirit is willing. It is in our mutual interest to help the Russians to reach that goal.

Professor Hesse directs the Law Center's "sister" law school project with Vologda Law School in Russia through a grant from the United States Information Agency. He is a nationally recognized civil rights advocate and constitutional law scholar. He also serves on the New Hampshire Commission for Human Rights and on the Legal Panel of the Civil Liberties Union. An authority on professional ethics and judicial conduct, he has served as an expert witness in numerous cases involving professional ethics and malpractice.

1. *Professor Joseph Dickinson, one of several Law Center faculty who participated in the Russian program, meets his interpreter.*

2. *Faculty members arrive at Vologda State Pedagogical Institute of Law*

3,4. *Russian students attend class.*

5. *Professor Joseph Dickinson teaches a class.*