Prosecuting Russian Organized Crime Cases

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In November 1996, a Moscow-based Russian organized crime group headed by a former KGB official carried out an enterprising crime. The group kidnapped, in Moscow, the father of a US businessman, and held him for ransom in a KGB/FSB-owned office suite. The group then extorted funds from the US businessman, in Los Angeles, in exchange for his father’s release. As an Assistant US Attorney in LA, I was put in charge of the investigation and prosecution. The case would take me to the former Soviet Union several times, both to lead an investigatory team and ultimately to take the first-ever criminal depositions by a US law enforcement official on Russian soil, and, a few months later, the first-ever criminal depositions on Armenian soil. In many ways, however, it was a standard case, typical of the dozens of cases I would handle as a Russian organized crime prosecutor for the Justice Department.

In this perspective I first give a very brief background of Russian organized crime and its reach into the US. I then describe this particular kidnapping case in more detail. Finally, I outline some of the legal challenges we faced in prosecuting this case.

I. BACKGROUND

I never set out or planned to be in charge of Russian organized crime (“ROC”) cases; instead, I began my career as a Deputy DA, far removed from the prosecution of international criminal enterprises. However, in the mid-1990s—after ten years of handling street crimes, or “knife and gun club” cases—I was looking for a new challenge. Along with everyone else at the time, I followed news accounts of the revolutionary changes that were taking place in the former Soviet Union. It seemed it would be an interesting challenge to play at least a minor role in those events.

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Since I spoke some Russian (and, more importantly, was willing to work for free) I was able to land an assignment with the American Bar Association’s Central European and Eurasian Law Initiative (“CEELI”). Since 1995, CEELI’s criminal law program has worked in Russia to make available the legal expertise of the US bar. Working with CEELI, I spent a year in Russia providing technical assistance and training to Russia’s legal community. Upon returning to the US, I looked around for a job that might combine my prosecutorial experience with what I had learned in Russia. I ended up in the US Attorney’s Office in Los Angeles, where the immigrant community from the Newly Independent States (“NIS”) of the former Soviet Union numbers approximately 600,000. The vast majority of these NIS émigrés to the US are law abiding (and highly educated). In fact, one of the least reported facets of Russian organized crime (which can denote crime in, or originating from, any of the former Soviet republics) is that very often its victims are NIS immigrants, as ROC groups often prey upon their own communities.

II. A Very Brief History of Russian Organized Crime

The Russian mafiya has only recently begun to receive attention, even though its origins trace to pre-twentieth century times. Seventeenth and eighteenth century bandit groups, or razboiniki, have been immortalized in Russian folk songs and literature. The vorovskoi mor (“vory”) was the first modern organized crime group in Russia. Its code of conduct began to form in the 1930s and included a complete rejection of all aspects of state rule, including marrying, joining public groups, engaging in business, and testifying in court.

World War II caused a division in the ranks of the vory. Despite the vory code’s prohibition against dealing with the government, many members of the vory served in the Red Army. They became known as suki (bitches) to the old-line vory. These turncoats, who inevitably ended up in prison after the war, were dealt with more harshly by the loyal vory than by the government. In what became known as the Scabs War, hundreds, possibly thousands, of suki convicts were murdered in the GULAG. The suki who survived had little incentive to follow any other vory tenets, such as prohibitions against engaging in black market businesses, illegal trade, and drug

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1. For more information on CEELI, see the CEELI web page at <http://www.abanet.org/ceeli/home.html> (visited Aug 24, 2002).
2. Thomas Carney, Moscow 90210, LA Mag 112 (Mar 1999).
3. The term “mafya” is used herein to distinguish the Russian version from the Italian “mafia.” As noted previously, the term “Russian” organized crime, or “Russian mafiya,” is given its familiar interpretation. For example, it can denote crime in, or originating from, any of the former republics of the Soviet Union, including Russia. The mafiya might be Armenian, Azerbaijani, Chechen, Georgian, etc.
5. Stephen Handelman, Comrade Criminal: Russia’s New Mafia 41 (Yale 1995).
6. Id.
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DeVille

trafficking, and they conducted these activities in large numbers upon release from prison. These suki formed the basis of the modern Russian mafiya.

By the early 1960s, the more practical, less restrained suki had largely supplanted the traditional vory. By the 1970s and 1980s, complicity between corrupt government officials and mafiya-run black market businesses was commonplace. By the early 1990s, Communist Party and government officials had actually joined forces with Russian mafiya organizations, and their plunder of state assets contributed to organized crime coffers.

It would not be long before the reach of ROC groups extended to the US and elsewhere. As of 1997, ROC groups were active in fifty countries, up from twenty-nine countries in 1994. Some Russian mafiya members operating in the United States, like Semion Mogilevich and Vyacheslav Ivankov, are famous for the sophisticated and violent nature of their crimes, while most others have become involved with more ordinary criminal schemes. Overall, some “200 large, sophisticated ROC groups are now operating worldwide.”

III. UNITED STATES V. KHATCHATRIX

A. BACKGROUND

The Khatchatrix case demonstrates the reach that ROC groups have developed. In November of 1996, Spartak Babaian, the father of Armen Babaian, a Russian-American furniture manufacturer, was residing in Moscow. The American businessman was engaged in a dispute over finances with another Russian-American, Khatchik “Chris” Khatchikian, then living in the US. Spartak Babaian was a prominent sculptor in Russia who had run one of the first semi-private enterprises, or cooperatives, in the Soviet Union. He had known Khatchikian for many years, as both lived in Armenia in the 1970s. In 1990, Spartak’s son Armen had emigrated to

7. Id at 41–42.
10. See Robert I. Friedman, The Most Dangerous Mobster in the World, Village Voice 37 (May 26, 1998). Mogilevich was actually born in Ukraine, not Russia. His activities include selling stolen Warsaw Pact weapons to Iran, hiring veterans of the Afghanistan War to train his mob enforcers in methods of torture, and making large-scale purchases within the Hungarian arms industry.
11. Ivankov was accused at one time of being the godfather of Russian organized crime in New York City's Russian expatriate community. See Maisie McAdoo, Jury Selection Begins in Russian Mob Trial, Moscow Times (May 22, 1996); Scott Anderson, Looking for Mr. Yaponchik: the Rise and Fall of a Russian Mobster in America (Vyacheslav Kirillovich Ivankov), Harper's Mag 40 (Dec 1, 1995).
the US, and initially worked in Khatchikian's Los Angeles furniture business. In 1993, after a business dispute, Armen Babaian left Khatchikian's company and opened his own furniture manufacturing business. Angered over what he saw as a betrayal by Armen, Khatchikian flew to Moscow and contacted Spartak, complaining that Armen had stolen materials from Khatchikian's business and had opened a competing business.

While in Moscow, Khatchikian complained to his friend, Hrachik Khatchatrian, about his treatment by Armen. He also described how successful Armen had become in the US with his competing furniture business. Ultimately, two Russian mafia confederates of Khatchatrian became involved in the business dispute: Migran Chigarian and Avetis Abramian. All three lived in Moscow. Khatchikian and his three confederates conspired to kidnap Spartak in an effort to obtain a ransom from Armen.

B. THE CRIME

On November 1, 1996, Spartak received a telephone call at his art studio in Moscow from Khatchatrian. Khatchatrian told him that he had some artwork he wanted Spartak to appraise. Spartak met with Khatchatrian and another man previously unknown to Spartak, Avetis Abramian, outside Spartak's art studio. Unsuspecting, Spartak agreed to go with the two men to the Hotel Beijing, in Mayaikovski Square in Moscow, to view the artwork. Unknown to Spartak, the wing of the hotel in which they met was formerly owned by the KGB and was still under the ownership of the KGB's successor agency, the FSB.

At the hotel they were met by a third man, Migran Chigarian. Also unknown to Spartak, Chigarian was an investigator for the KGB for many years and still maintained an office in the FSB-owned property. Instead of showing artwork to Spartak, Khatchatrian produced a file of documents and told Spartak that the file proved that Spartak's son, Armen, had stolen money from Khatchikian in the US. A telephone call was then made by one of the men from the hotel to Armen in Los Angeles. Spartak attempted to leave the room, an argument ensued, and Chigarian raised a heavy object over Spartak's head in a threatening manner. Spartak was instructed by Khatchatrian to get on the telephone and tell his son Armen that he had been kidnapped by three men in Moscow and that Armen needed to pay Khatchikian $550,000 for his release. The men told Spartak that if Khatchikian were not paid, they would kill him. They then instructed Spartak to call his residence in Moscow and tell his family that he would not be coming home for a few days because of business engagements. While being held hostage, Spartak overheard the three men mention Chris Khatchikian by name several times while speaking on a cellular telephone.

Khatchikian, who was back in Los Angeles at the time of the kidnapping, later claimed that he had tried to intervene and that he had explained to Khatchatrian that one could not do "this kind of thing" in the US, but that Khatchatrian had replied, "This is the way we do things in Russia." Despite his denials, the evidence was clear
that Khatchikian was part of the criminal plot. Khatchikian later admitted to FBI agents that he had reluctantly agreed to take advantage of a kidnapping that had already taken place and had further agreed to pay Khatchatrian and the others $200,000 as a "collection fee" once Armen paid him the $550,000.

After Khatchikian learned that Armen did not have the $550,000 requested for the release of his father, he suggested to Khatchatrian that they have Armen write a "note" promising to pay Khatchikian the money within one year. Khatchikian told Khatchatrian that once Armen paid him, he would pay Khatchatrian his share.

Khatchatrian was not convinced that Armen would pay the money once his father was released. However, Khatchikian and Chigarian reassured him that as long as he had the note, Armen would be forced under ROC rules to pay up. Khatchatrian agreed to the plan and told Khatchikian to fax him the note after receiving it from Armen.

On November 2, 1996, Armen handwrote the note as Khatchikian instructed and delivered it to Khatchikian's place of business in the Los Angeles area. Khatchikian refused to accept the note because he wanted it written on Armen's business letterhead and for it to specifically state that Armen promised to pay the "debt owed" to Khatchikian. Armen handwrote a second note as instructed and had an intermediary deliver it to Khatchikian. Khatchikian approved of this note and faxed a copy to the office in Moscow where Spartak was being held. At approximately 2:00 a.m. on November 3, 1996, Spartak was released unharmed.

A few hours later, Spartak reported his kidnapping to Col. Alexei Lebedev of the Russian MVD. Ultimately Russian authorities decided not to file criminal charges in the matter. Spartak believes that those authorities were bribed by the suspects.

After his release, and after receiving no assistance from the Russian authorities, Spartak fled to the US. On December 27, 1996, Armen filed a complaint with the FBI. The FBI spoke to the intermediary who had delivered the note to Khatchikian on Armen's behalf. The intermediary confirmed Armen's report of the events. The US Attorney's Office in Los Angeles then obtained a search warrant for Khatchikian's business. Upon searching the business, FBI agents recovered from a safe the original note that had been written by Armen for Spartak's release. After initially denying involvement, Khatchikian later admitted his role in the kidnapping and extortion.

IV. LEGAL CHALLENGES

We faced a number of challenges in prosecuting this case, including obtaining US jurisdiction, "extraditing" suspects without an extradition treaty, proving extortion with only a promissory note, and using the then new mutual legal assistance agreement between the US and Russia.

14. The Russian Ministry of the Interior (abbreviated MVD in Russian) controls all regular police agencies (militsia) in the country, although there are also more specialized agencies with police functions.
Obtaining jurisdiction over the kidnapping was not possible, as that crime occurred entirely on Russian soil. However, the demands for money had been transmitted over US telephone lines. Therefore, we were able to charge the suspects with extortion in a US court. It is not our job to prosecute crimes that occur in Russia; after all, there is plenty of criminal activity to keep us busy in the US. However, this crime and many others like it victimize businesses and individuals here in the US, and, therefore, must be dealt with in US courts. On November 26, 1997, Khatchikian was indicted on the charge of extortionate collection of credit. On January 5, 1998, he pleaded guilty in the United States District Court in Los Angeles, California, to this charge.

Khatchikian had been arrested in LA, but getting his codefendants to the US was problematic, as the US has no extradition treaty with Russia. In exchange for a possible reduced sentence, Khatchikian decided to cooperate with US authorities. After discussions with his lawyer, Khatchikian agreed to assist us in a ruse to get Khatchatrian into US custody. With the permission of the Department of Justice and the US Ambassador to Moscow, we had Khatchikian make a monitored call to Khatchatrian in Russia and offer him a free airline ticket to come and visit his comrade in LA, “where the living is easy and the women are beautiful.” The lure worked: Khatchatrian took the bait, and much to his surprise we arrested him on his plane when it landed at LAX on August 27, 1998. He never set foot as a free man in the US. An alternate—and entirely legal—means of extradition had been found. Unfortunately, however, two suspects remained abroad and word of our ruse had quickly spread—it was unlikely to work again. But at least we now had half of the criminal crew in custody.

Proving extortion where no money exchanged hands also would be difficult. In ROC circles, an extortion that results in a mere promise to pay is not at all unusual. This “promise” is entirely enforceable by extralegal means. However, proving this to a US court would be another matter. After all, most American extortion victims would happily write out a promise to pay any amount, knowing full well that as a product of duress such a promise would be unenforceable in a court of law. As a result, in the minds of an American jury we ran the risk that they might feel that no extortion, and therefore no crime, had occurred. What we needed to prove was that while the defendants never intended that this note be enforceable in a court, it would be entirely enforceable in ROC circles.

A colleague from Moscow put me in contact with a former Russian Interior Ministry officer who once specialized in ROC cases before emigrating to the West. He now resided in Washington, and agreed to testify as an expert witness. He explained that in ROC circles, a promissory note often was the initial product of an extortion. If the promissor did not subsequently pay as agreed, the ROC group then would carry out its threats of violence. In other words, the ROC groups preferred

money to blood, but would take the latter if necessary. With this testimony, we had the proof of extortion we needed to proceed under US law.

Our final legal challenge was getting testimony from witnesses in Russia and Armenia. Ultimately, I took testimony in both countries. However, getting permission to do so was a major bureaucratic undertaking. The US negotiates treaties with numerous foreign governments for the purpose of joint cooperation on criminal cases. These most often take the form of Mutual Legal Assistance Treaties ("MLATs"), which provide formalized procedures for cooperation on all aspects of criminal cases, including obtaining witness testimony. Recently, in the wake of 9/11, the US entered into an MLAT with Russia, which replaced the non-binding Mutual Legal Assistance Agreement ("MLAA") previously in place. But at the time of our prosecution, the US and Russia still operated under the prior MLAA regime. The MLAA provided for essentially the same legal cooperation as the current MLAT, but without the binding effect of a treaty. This case was one of the first to put the US-Russian MLAA to the test and was the very first to use it so extensively.

The US–Russian MLAA obligated the two countries to subpoena witnesses requested by the other side. This feature was invaluable in procuring witness testimony in Russia. It also allowed law enforcement officials from the two countries to travel to each other’s countries to conduct investigations and take witness testimony. In reality, this was a complex procedure, with laborious approval processes and close supervision abroad. After all, each country was understandably reluctant to have foreign law enforcement officers on its soil.

In the two instances in this case when I obtained witness testimony in Russia, the Russian authorities were not always cooperative. The Russian government is very “personality driven” in that results depend greatly upon the individual with whom one is dealing. This is very different from the US system, which has an institutionalized bureaucratic system in which the individual bureaucrat with whom one deals is not as important to success as is the overall power and efficiency of the given agency. This aspect of the Russian government makes it crucial to find an individual with whom to deal and to use this contact throughout the process of obtaining witness testimony in Russia. The contacts I made when I lived in Russia were invaluable in moving things along.


In terms of actually taking the Russian testimony, the line prosecutors in Russia were more cooperative than the superiors with whom the initial negotiations had taken place. Russian Procuracy officials secured the presence of most of the witnesses requested, although a subsequent trip was necessary to secure the remaining witnesses. The Procuracy also provided facilities in which to take the depositions, with interpreters and videotaping equipment provided by the US.

The official procedure authorized by MLAAs/MLATs in taking foreign witness testimony is for the host country's officials to question the witnesses. The Russian authorities initially followed this procedure; however, after approximately twenty minutes of reading our questions, they decided to let us question the witnesses directly. This allowed the American attorneys to ask follow-up questions, instead of simply sticking to the script.

Witness testimony was more difficult in Armenia, as the United States and the Republic of Armenia do not have an MLAT or even an MLAA in place. Therefore, witness testimony was procured via letters rogatory, which are requests from one court to another, with no basis for action other than goodwill. Despite the absence of any formal law enforcement cooperation agreements, however, the Armenian authorities were quite cooperative. Even more than most NIS countries, Armenia is dependent on US assistance. Also, there is a large Armenian Diaspora community in the US, which further facilitates good relations between the two nations.

In both instances in which I took witness testimony in this case in Armenia, the Armenian Procuracy issued subpoenas to the witnesses and ensured their presence in Yerevan, the capital city, for the testimony. The Procuracy also provided facilities in which to take the depositions. Interpreters and videotaping equipment were provided by the US.

The formal procedure for taking foreign witness testimony via letter rogatory is for the host country's officials to question the witnesses, based upon the exhibits provided by the American lawyers. However, in each instance the Armenian procurators allowed the American lawyers to ask all questions of the witnesses, even though the witnesses were Armenian citizens. This of course was much appreciated by the American lawyers, since asking one's questions directly is preferable to having them posed by a foreign official. Although they did not ask questions, the Armenian representatives did monitor all of the deposition sessions.

Dealing with the US bureaucracy was nearly as frustrating as dealing with the Russian and Armenian bureaucracies. One cannot simply get on a plane and travel to these countries to perform law enforcement work. Every step is (and frankly should be) approved by Washington and the US Embassies abroad, which complicates the process. The problem is that these officials (at the Department of Justice's Office of International Affairs and the FBI Legal Attachés) often acted as if they were doing the

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18. The Procuracy is the system of state Procurators (or prosecutors) headed by the Procurator General. The Procurator General is the rough equivalent of the US Attorney General.
LA field office an extraordinary favor in helping to facilitate this work—it was as if we had disturbed them from their slumber by daring to ask that they do what it is the taxpayers pay them to do. But the bottom line is that fortunately, I was eventually able to take testimony from every witness I sought, as was the defense attorney in the case.

There were numerous other obstacles to overcome in prosecuting this case. For instance, it was extremely difficult to obtain permission to view and photograph the scene of the crime, since the crime took place on FSB/former-KGB property. After getting no further than the lobby for two days, only the intervention of a highly-placed contact in the Russian government secured permission for us to enter. Another obstacle was choosing a location in which to talk to witnesses. Many refused to talk in Russian prosecution offices, but when we met them in other places they were much more forthcoming. Consequently, we spent a fair amount of time meeting with witnesses in some less-than-safe clubs in Moscow.

V. CONCLUSIONS

Considering how little time has passed since the US and Russia were enemies, the cooperation we were able to obtain in this case is remarkable. To be sure there were bureaucratic hurdles to overcome on both sides, but we were ultimately able to achieve real results. Through international cooperation we were able to obtain a conviction and prison sentence on Khatchikian, and we gathered intelligence (which unfortunately cannot be discussed here) that was useful in prosecuting other Russian organized crime cases. In a post-9/11 world, such international law enforcement cooperation is more vital than ever to US security.

19. At the time of this writing the second defendant, Hrachik Khatchatrian, is in custody and is expected to enter a guilty plea soon.