Enforcement of Civil Judgments in the Former Socialist Countries: Agency Design and Agency Mission in the Russian Bailiffs Service

Peter L. Kahn[1]

February 20, 2002

[1] The author is a lawyer and economist in a private consulting practice in Washington, D.C. I would like to thank several individuals for their thoughtful comments at various times during the writing of this article, including Georgy Azarov, Omar Azfar, Philip Evans, Mikhail Meshkov, Charles Nihan, Leonid Polischuk, Irina Reshetnikova, Karen Russell, and William Schroeder. I would also like to thank my colleagues on the Bailiffs Assistance Project, Elena Aslanyan, Irina Alexandrova, and Arkady Lee, as well as Georgy Azarov, for all they did to make the project so successful and such fun. I am grateful for the support provided to the Bailiffs Assistance Project by the U.S. Agency for International Development, and its representative in Moscow, Patrick Murphy. I offer my gratitude to reviewers Robert Sharlet and Peter Solomon for their detailed and insightful comments. However, I alone am responsible for the arguments made here, and any errors are my responsibility alone.

In 1997, the Russian government, in response to widespread concern about the inability of its legal system to enforce judgments,[2] created a new agency charged specifically with that responsibility.[3] Prior to this time, drawing on both recent socialist practice and the czarist past, judgments had been enforced by special enforcement agents of the courts, under the direction of judges who were largely uninterested in the unglamorous task of supervising a large staff engaged largely in routine tasks. The new agency, called the Bailiffs Service, was placed administratively in the Ministry of Justice, and a number of improvements were made in the legal powers of enforcement agents. One thing, however, did not change: the bailiffs retained their legal monopoly on the compulsory enforcement of all civil judgments.

In the context of the legal reform movements taking place in Russia in the middle 1990's, this was a rather remarkable event. In many respects, the Russian government had made a significant effort to reduce the mandatory intrusion of the state into legal affairs by placing considerably greater powers in the hands of individual litigants to control the conduct of their litigation, and to challenge the actions of other private citizens and the state by relying on an independent judiciary. The courts were made more independent, able to reach judgments independently of the executive branch and with relatively less concern for executive branch censure of its rulings. The role of private attorneys in the legal system had been considerably expanded since the end of the Soviet period. Parties had considerably more choice of legal forum, as the system of *gosarbitrazh* was expanded to allow private arbitration across a wide range of subjects and many arbitration panels were opened across the Russian Federation. Instead of following that pattern, however, the government chose to invest the newly-created Bailiffs Service with a near-absolute monopoly on the enforcement of civil judgments. Indeed, this pattern is followed, apparently uniformly, across the former Soviet world.

Thus, while private parties to litigation can choose their attorney, and to some extent their legal forum and substantive and procedural rules, they are absolutely barred from any choice whatever in the means by which any judgment they obtain may be enforced. With some limited exceptions which in practice are of minor importance, all judgments and arbitral awards, from whatever court or arbitral body, whether rendered inside Russia or outside by a foreign court, must today be enforced by the local

---

[2] By "enforcement of civil judgments," I mean the compelled implementation of the decision of a court, such as the seizure of funds from the defendant/debtor to pay the value of the judgment award to the plaintiff/creditor, or the compelled performance or non-performance of some specific act by the defendant. The parties to an enforcement proceeding are the judgment creditor, who was awarded a judgment by the court which must be collected, and the judgment debtor, against whom judgment was entered and from whom the debt is to be collected. The parties may be individuals, a legal entity such as a registered business, or an agency of the state or some public body

[3] The change was embodied in two separate laws adopted simultaneously by the State Duma: the Law "On Bailiffs," Federal Law No. 118-FZ ("O sudebnykh pristavakh," *Vestnik Vysshego Arbitrazhnogo Suda*, Special Supplement to No. 10 (1997), pp. 4-14) and the law "On Enforcement Proceedings," Federal Law No. 119-FZ ("Ob ispolnitel'nom proizvodstve," id., pp. 15-50). These laws were passed by the State Duma on the same day, and were viewed as constituting a single package designed together to address the need for improved enforcement of civil judgments.

representatives of the Department of Bailiffs of the Ministry of Justice. The judgment creditor or its representative, under penalty of criminal sanction, cannot play anything more than the most minor of roles, supplementing to a limited degree the information available to the bailiff and (later) complaining to the court in the event of the bailiff's misfeasance, but otherwise excluded entirely from the legal enforcement process.

Though this system has history on its side in Russia, it surely was not an obvious choice to make in policy terms. If the goal of the system is to achieve an effective enforcement of judgments, it would seem to make little sense to deny any role whatever to the private judgment creditor. In most Western European countries and in the U.S., the judgment creditor has a significant role to play in the collection of his judgment, though the exact parameters of that role vary from country to country. After all, the judgment creditor is the party with the strongest interest in seeing that the judgment is collected, since the judgment creditor will be the direct beneficiary of whatever funds are collected in satisfaction of the judgment. The judgment creditor also has a strong interest in preserving the value of the judgment by avoiding inflicting compensable damages on the judgment debtor in the process of collection, and thus has reason to play by the rules and not inflict injuries on the debtor. The judgment creditor is the same individual that made the decision to pursue the lawsuit in the first place, and thus is clearly not sleeping on his rights -- and in any case, if he did, it would normally be only himself whom he would be injuring, since the debt to be collected is in his favor. Nor does this system apparently represent any significant threat to public order, the argument most frequently offered against permitting participation by the judgment creditor in the enforcement process: the judgment enforcement process in the West is a peaceable one, mostly performed through paper acts such as liens and garnishments, with agents of the state (sheriffs, in most U.S. jurisdictions) intervening only when direct contact between the parties conceivably could give rise to physical conflict.[4] Rather than adopting what might be called the consensus solution to the problem of enforcing judgments, however, Russia (and, for that matter, many of the other former Soviet countries) has chosen to place the task in the hands of a large, national bureaucracy, staffed by inadequately equipped and inadequately trained individuals with almost no personal interest in the outcome of the cases they enforce.[5]

While it is intrinsically difficult to assign motives to a government, I believe explanation for the exclusion of the judgment creditor from the collection process, and the creation of a legal enforced monopoly of the state, can most plausibly be found in the desire to access a significant source of revenue on behalf of the national government, as well as to increase the power of the executive branch of the central government at the expense of competing governmental institutions. Once a plaintiff has obtained a judgment in court, that judgment opens a reasonably clear path to collecting potentially sizable sums from the judgment debtor. It is the judgment creditor, not the state, which

[4] Indeed, Great Britain appears to go even a step beyond the U.S. by allowing private bailiffs, with only the endorsement of court certification, to engage in physical entry into debtor's premises and seizure of property. **Kruse, John**, *Distress and Execution: A Guide to Bailiffs' Law and Practice* London: Association of Civil Enforcement Agencies, London, 1998.

bears the risks, costs, and burdens of litigation, yet the state's monopoly control of enforcement allows the state to share in the rewards of litigation while bearing none of its risks and few of its costs. Most significantly, the Russian bailiffs system provides that the government and the individual bailiff share in fees, taking a percentage of the value of the amount collected from the debtor, with the state taking by far the larger share of that sum.[6]

Whatever the motive, this design has critically undermined the ability of the agency to collect judgments. The design of the agency is such that it provides a significant source of revenue to bailiffs, their supervisors, and the state – while neglecting the interests of the judgment creditors themselves, the parties supposedly served by a system of judgment enforcement. In short, the agency's putative mission of enforcing civil judgments has become subordinated to the self-interested behavior of stakeholders at all levels of the government – from ordinary bailiffs trying to maximize their incentive income, to the senior management of the agency trying to increase the overall revenue intake of the system, and indeed to the managers of the federal budget who have come to view the bailiffs as a way to achieve other revenue-raising goals unrelated to the original agency mission of judgment enforcement.

As I will demonstrate in this paper, a series of key agency characteristics have worked to subvert its mission of fair and effective enforcement of civil judgments.

First, serious distortions of the incentives facing bailiffs have worked to undermine the enforcement effort. The agency's legal monopoly on enforcement, combined with a persistent excess demand for bailiffs' services and a commission structure fixed at an artificially low level, has resulted in incentives not to enforce judgments effectively, leading bailiffs to devote minimal time and effort to any case even when greater enforcement effort would be economically justified. While the entire caseload is affected by these incentives, the impact is greatest on those cases which are the most economically significant, generally business and commercial cases.

Second, ambiguity in the statutory provision for control of agency revenue has created a significant power struggle within the agency. Since the relevant statute provides no certainty as to the eventual proprietor of agency revenue, there is an unwillingness to invest in the agency, since the returns from any investment may ultimately redound to the benefit of others, either within the agency or within the larger federal budget. As a result,

[6] While the sums involved are not enormous, they are not trivial, and seem potentially sizeable. L.V. Kuznetsova, the Chief Accountant of the Russian Federation Bailiffs Service, reports that the agency collected more than $30 million in fees during the year 1998, the agency's first year of operation, compared to total federal tax revenues of some $13 billion. **Kuznetsova, L.V.**, Presentation to IRIS conference, Ekaterinburg, September 1999. (For data on the government's budget, *see* RECEP, "Russian Economic Trends: Monthly Update," 8 December 1999, Table 11. This assumes an exchange rate of about 17 rubles to the dollar, the approximate rate that prevailed through much of 1998.) It should be noted that the State Duma did not pass the budget for the newly formed Bailiffs Service until March of 1998, limiting the size of the revenue during this year. Given the expanding caseload and the fact that this data reflects only the agency's first year of operations, those revenues seem likely to grow significantly over time.

basic investments in the agency – from training to basic office equipment to computer systems – go unmade, to the detriment of the agency's productivity. While the ambiguity in the statute presumably could be fixed, the potential for claims on the revenue has played a major role in eliciting the participation of both regional officials and the central hierarchy in the enforcement system.

Third, the administrative design of the agency creates an almost impossible problem in monitoring the activities of the bailiffs. Even if the agency leadership were motivated to protect the interests of litigants by ensuring an effective enforcement process, the agency design inhibits their ability to do so. The current structure of the agency creates a virtual conspiracy between working bailiffs and their immediate supervisors, who together face incentives that undermine effective enforcement, while more senior supervisors are unlikely to perceive or control the resulting behavior. Judges, who also have statutory power to supervise the enforcement of cases, are excluded from a system that distributes financial rewards to everyone in the system except themselves, and for that reason and others feel little incentive to undertake those tasks. The parties to enforcement actions are left effectively without recourse for violations of their rights.

Fourth, the structure of the agency has diverted attention from the agency's fundamental task of enforcing judgments, towards a variety of other goals, in at least three ways. The agency structure has created significant opportunities for corruption, which have redounded partly but not exclusively to the benefit of working bailiffs. Since the government has strong economic and political interests of its own, and at most a secondary interest in the private parties who win judgments and need enforcement services, the work of the agency has been diverted from serving private parties to serving the interests of the state itself, principally in the collection of taxes and customs charges. These collections benefit the state directly and are undiminished by payouts to private litigants, and for that reason these activities (rather than collecting judgments on behalf of private litigants) have become a principal area of attention for the agency's hierarchy in Moscow. Finally, by placing the agency in the executive branch, the ability of the courts to deliver independent and meaningful judgments has been jeopardized. The rationale for moving supervision of the bailiffs into the Ministry of Justice and out of the courts was that it would enhance the separation of powers by placing the bailiffs, as an enforcement agency, within the executive branch. The real impact has been the opposite. In effect, the executive branch has been given a limited but extralegal veto over the power of the courts – the courts may rule as they wish, but the executive branch can choose whether or not to enforce, and in some cases it has chosen to exercise that discretion.

These problems all result, in one way or another, from the structure of the agency: a state monopoly, an incentive structure unsupportive of the agency mission, inadequate statutory definition of monetary flows, excessive concentration of receipts and expenditures in the central agency, with little attention to the incentives of senior bailiffs and judges, all located in the executive branch of a government with strong interests of its own to be served by the activities of enforcement agents. While these problems can be addressed, it is unlikely that they can be resolved by superficial reforms within the existing structure of the agency. Efforts to change the commission structure, for example,

would either undermine the incentives of bailiffs to enforce cases at all, or would dramatically impact the government's revenue, or both. The more certain path to reform is through mechanisms to place a greater share of the responsibility for the enforcement of civil judgments on the judgment creditors, the very party the judgment is supposed to benefit.

I. Prologue

Soviet courts were weak institutions, dependent on the political branches of the state for budgets, judicial salaries, and career advancement; with limited power and jurisdiction compared to their counterparts in non-Socialist countries; and generally deprived of public respect, status, and significant rewards.[7] The jurisdiction of courts in the USSR was limited to such matters as the enforcement of criminal law and the resolution of minor civil disputes such as divorce and alimony, housing, inheritance, and labor disputes. Courts played only a minor role in the resolution of commercial disputes, as conflicts between state-owned firms were handled by officials of the state *arbitrazh* (a set of tribunals wholly separate from the courts). The Ministry of Justice administered the courts, controlled their budgets, and evaluated performance, leaving judges fundamentally dependent on the Ministry's decisions.

Beginning in about 1988, the Soviet government began to recognize a more important role for the courts, expanding their jurisdiction, enhancing the independence of judges from local political power, and instituting a limited form of judicial review. The pace of reform quickened with the end of the Soviet Union. In 1991, the Russian legislature approved an ambitious and radical program of judicial reform including a reworked conception of the judicial career designed to promote greater independence, greater funding for the courts, a restructuring of the court system, and the importation of a number of Western doctrines and institutions designed to enhance judicial independence and the rights of the criminally accused.

The reorganization of the court system effectively created a system with three kinds of courts, a structure which remains in effect to the present time. First, *arbitrazh* or commercial courts (distinct from the previous institutions of state *arbitrazh* and unrelated to Western conceptions of alternative dispute resolution[8]) were newly created,[9] with

[7] The description in this paragraph and the next three paragraphs of the status of the courts at the end of the Soviet era, and of early reform efforts after the collapse of the Soviet Union, is drawn largely from Peter Solomon's and Todd Fogelsong's excellent account in Courts and Transition in Russia: The Challenge of Judicial Reform (Boulder: Westview Press, 2000), chapter 1.

[8] Arbitration in the Western sense is embodied in the private arbitration bodies called the *treteiskie sudy*. The commercial (*arbitrazh*) courts are full-fledged courts and not arbitral tribunals, but they are responsible for enforcing decisions of the *treteiskie* courts by issuing appropriate enforcement orders, which can then be submitted to the local bailiffs' office by the creditor for implementation.

[9] There were elements of state *arbitrazh* which carried over from the previous period, but the new courts were independent of the older state agency in conception and design. State *arbitrazh* was not a court, but a quasi-administrative agency that resolved disputes between state enterprises. Its criteria for resolving such

jurisdiction over business-related or economic disputes between legal entities and supervised by a Supreme Commercial Court. Second, courts of general jurisdiction were assigned considerably expanded jurisdiction and powers in non-commercial disputes: in addition to their usual cases involving crimes, family disputes, administrative fines, and labor relations, the general courts gained the power to review complaints against government officials, greater control over the process of criminal detention and search, and the right to review the constitutionality of laws and government regulations when such questions arose in deciding cases. Appeals from the general jurisdiction courts normally are made to the Supreme Court. Finally, to provide for a more direct form of constitutional review, a separate Constitutional Court was created to review the constitutionality of legislation and other normative acts of the federal government and subjects of the Russian Federation, and upon request to interpret provisions of the constitution.[10]

Though the early "radical" program of judicial reform achieved significant early successes, it had largely stalled by the middle 1990's. In its place, a more moderate reform agenda began to emerge. This moderate agenda focused on immediate operational and pragmatic concerns, in contrast to the more principled and conceptual concerns which had dominated judicial reform in the immediate post-Soviet period. One element of that program was to shift the administration of the courts from the Ministry of Justice to the recently-created Judicial Department of the Supreme Court. A variety of simplifications in trial procedure were introduced to reduce the caseload burden on the courts, including the development of a separate set of tribunals within the general jurisdiction courts to serve as a small claims court with greatly simplified procedures.

Another element of this moderate reform agenda was the creation of a new national agency to provide more effective enforcement of court judgments. The enforcement of civil judgments had been the responsibility of so-called court bailiffs (*sudebnye ispolnitel'ni*).[11] These officials, whose offices had significant historic antecedents in Russia,[12] had served district courts under a double system of supervision:

---

disputes was not compliance with legal standards, but with plan fulfillment. The transition to *arbitrazh* courts, which implemented commercial law in disputes involving private business organizations as well as state entities, involved a number of changes, including, prominently, efforts to improve the enforcement of decisions. **Hendley, Kathryn**, "Remaking an Institution: The Transition in Russia from State *Arbitrazh* to *Arbitrazh* Courts," *American Journal of Comparative Law* **46**:93 (1998).

[10] **Solomon, Peter H., Jr., and Todd S. Fogelsong**, *Courts and Transition in Russia: The Challenge of Judicial Reform*. Boulder, CO: Westview Press, 2000, at 196.

[11] Current authority for these officials, their administrative structure, and their legal procedures, were defined under Article 348 of the Civil Procedure Code (CPC) of the Russian Soviet Federated Socialist Republic (RSFSR) (adopted October 1, 1964), and Article 77 of the Law on the Organization of Courts of the RSFSR (adopted July 8, 1981).

[12] In the 16th century, Rus adopted the Pskovskaya Sudnaya Charter, which assigned enforcement functions to an official crier, or bailiff. A specialized agency for this purpose appears to have first been created in the 18th century with the establishment of a special enforcement branch of court police, the *sudebniye pristavy*, as part of the administrative structure of the district courts. **Yarkov, V.V.**, et al.,. *Nastolnaya Kniga Sudebnogo Pristava-Ispolnitelya* (Desk Manual for Enforcement Bailiffs). Moscow: Bek, 2000.

appointed by the Ministry of Justice, they were subordinate to the presiding judges of district courts[13] and the Ministry of Justice,[14] and were supervised by the judge of the relevant district court.[15] At this time, of course, the courts themselves were the direct administrative responsibility of the Ministry of Justice, and the judges were employees and agents of the Ministry; Ministry control was thus exercised directly through the judge of the court to which the court bailiff was attached. Thus, in addition to their judicial tasks, local judges had responsibility for supervising sometimes significant staffs of court bailiffs engaged in routine administrative activities.

Advocates of pragmatic judicial reform in the mid-1990s came to perceive this enforcement system as inadequate for a number of reasons. The results in terms of enforced judgments were widely perceived as unsatisfactory. This was a matter of particular urgency for the commercial (*arbitrazh*) courts. Solomon and Fogelsong cite "conventional wisdom" in Russian legal circles of the period that "well under 40 percent of the decisions of the arbitrazh courts in disputes among private firms achieved implementation."[16] While enforcement success rate statistics are generally unavailable or unreliable (particularly in the period before the creation of the new Bailiffs Service in 1997), enforcement in non-commercial cases appears also not to have been highly successful. The development of specialized commercial courts led to concern that the existing court bailiffs, untrained in modern law and unused to the specialized issues and forms of property presented by commercial litigation, would be unable to cope with those problems without significant new training and resources; yet providing those resources and training would require funds not available under the existing administrative

---

Enforcement procedures were further defined in the Civil Proceedings Charter of 1864. Under this Charter, the activities of bailiffs were under the complete control of the court for which they worked. In general, this institution survived into Soviet times, though the nature of court judgments changed dramatically. Still part of the administrative structure of the courts, court enforcement officers were largely restricted in their enforcement activities to the relatively limited domain of private property, as government, cooperative, and public property was protected by substantial limitations on penalties that could be levied against government enterprises, institutions, organizations, collective farms, cooperative and public organizations. Though the institution was somewhat restructured in 1964, it strongly resembled the pre-existing system of court bailiffs and retained the existing near-absolute control of the enforcement process in the courts. See 1964 Civil Procedure Code, chapter 40, Russian Soviet Federated Socialist Republic.

[13] Article 26(5), Law on the Organization of Courts of the RSFSR.

[14] Provision No. 1187 for the Russian Federation Ministry of Justice, issued Dec. 4, 1993.

[15] Article 340, CPC.

[16] **Solomon, Peter H., Jr., and Todd S. Fogelsong**, *Courts and Transition in Russia: The Challenge of Judicial Reform*. Boulder, CO: Westview Press, 2000, at 164. It is intrinsically difficult to measure the effectiveness with which civil judgments are enforced. One intuitive measure of the difficulty in enforcing judgments is the ability of enterprises to forestall payments to their suppliers and employees, since non-payment would normally evoke litigation to force payment. RECEP (the Russian-European Centre for Economic Policy) reports that total overdue payments of enterprises has grown dramatically in the recent past, rising from some 238.9 billion Rbl in 1995 to some 1053.4 billion Rbl in 1999. Approximately half of these amounts were owed to suppliers, with the balance divided between unpaid tax obligations and unpaid wages. RECEP, "Russian Economic Trends: Monthly Update," 8 December 1999.

structure.[17] Furthermore, the rise of quasi-criminal private "enforcement agencies" and mafia-style organizations raised concern that court bailiffs would not be able to handle problems of judgment enforcement under Russian conditions.[18] Most court bailiffs were middle-aged women thought unsuited to rugged conditions of law enforcement; further, under law, bailiffs were not permitted to carry weapons, and received no training to enable them to use weapons effectively. Since the profession of court bailiff was perceived by the public as a women's profession with low status and pay, bailiffs faced unnecessary obstacles in eliciting compliance with their orders. In addition to the problems with the staff of the court bailiff system, the court bailiffs lacked resources for activities required for judgments enforcement, such as the movement and storage of seized goods, as well as arranging the sale of those goods. In addition, judges did not manifest much enthusiasm for the task of supervising a staff of court bailiffs. Their high workloads and low pay, the tangential nature of enforcement to their fundamental tasks of adjudicating cases, and the administrative burdens on each local judge of supervising a staff, all worked to reduce judges' willingness to bear those responsibilities. Finally, the fact that bailiffs reported directly to judges of courts of general jurisdiction appeared to bias the enforcement process against cases arising in the newly-created commercial courts, raising concern that those new courts, so crucial to the development of the commercial economy, would be rendered ineffective.[19]

The response to these concerns was the creation of a new national agency,[20] the Bailiffs' Service (*Sluzhba Sudebnich Pristavov*), under the administrative responsibility of the Federal Ministry of Justice.[21] Its responsibilities, at least initially,[22] were two: to implement the orders of courts,[23] principally by collecting funds from judgment debtors

---

[17] **Yarkov, V.V.**, et al.,. *Nastolnaya Kniga Sudebnogo Pristava-Ispolnitelya* (Desk Manual for Enforcement Bailiffs). Moscow: Bek, 2000, at 7.

[18] **Yarkov, V.V.**, et al.,. *Nastolnaya Kniga Sudebnogo Pristava-Ispolnitelya* (Desk Manual for Enforcement Bailiffs). Moscow: Bek, 2000.

[19] **Yarkov, V.V.**, et al.,. *Nastolnaya Kniga Sudebnogo Pristava-Ispolnitelya* (Desk Manual for Enforcement Bailiffs). Moscow: Bek, 2000, at 7; **Solomon, Peter H., Jr., and Todd S. Fogelsong**, *Courts and Transition in Russia: The Challenge of Judicial Reform*. Boulder, CO: Westview Press, 2000, at 165-166.

[20] This was accomplished through the enactment of the two statutes: O sudebnykh pristavakh, (Law "On Bailiffs,"). Federal Law No. 118-FZ, *Vestnik Vysshego Arbitrazhnogo Suda Rossiyskoy Federatsii*, Special Supplement to No. 10 (1997), pp. 4-14; and Ob ispolnitel'nom proizvodstve," (Law "On Enforcement Proceedings,") Federal Law No. 119-FZ, Vestnik *Vysshego Arbitrazhnogo Suda Rossiyskoy Federatsii*, Special Supplement to No. 10 (1997), pp. 15-50.

[21] O sudebnykh pristavakh, (Law "On Bailiffs,"). Federal Law No. 118-FZ, *Vestnik Vysshego Arbitrazhnogo Suda Rossiyskoy Federatsii*, Special Supplement to No. 10 (1997), pp. 4-14, Arts. 5(1), 7(1).

[22] Other duties were later added. These are discussed in detail in Section IV(b) of this paper.

[23] In addition to the writs of execution issued by the courts described above, Article 7(1) of the law "Ob ispolnitel'nom proizvodstve," (Law "On Enforcement Proceedings,") Federal Law No. 119-FZ, Vestnik *Vysshego Arbitrazhnogo Suda Rossiyskoy Federatsii*, Special Supplement to No. 10 (1997), pp. 15-50 (hereinafter "Enforcement Procedure Code" or EPC), also provides for the enforcement by the bailiffs of the following: decisions of the International Commercial Arbitration Tribunal and other arbitration

to satisfy monetary judgments but also by enforcing non-monetary judgments;[24] and to provide for the physical protection and security of courts, judges, and all other persons and activities taking place within the courthouse.[25] The organization of this new agency was to be strictly hierarchical, with a Deputy Minister of Justice designated as Chief Bailiff of the Russian Federation at its head, with subordinate heads of the agency ("regional chief bailiffs" herein) appointed for each of the subjects of the Russian Federation, [26] and with supervisory bailiffs at the head of local divisions directly accountable to the regional chief bailiff concerning the work of the ordinary bailiffs in his or her division.[27] The new bailiffs were to be equipped with firearms[28] and had the right to use physical force when necessary,[29] and staff was to be selected in part on the basis of "personal characteristics"[30] that would enable them to fulfill that part of the job, thereby addressing at least in principle the widely-expressed concern that middle-aged women could not handle a job as dangerous as that of bailiff. The new statutes also gave the bailiffs a broad range of powers to enforce judgments.[31]

The new statutes granted the bailiffs the exclusive power to rely on legal process to enforce court judgments and certain other official acts.[32] Though the enforcement

---

tribunals; decisions of foreign courts of justice and arbitration courts (in practical terms, this means only those foreign courts whose governments have entered into treaties providing for mutual recognition of judgments with the Russian government); and the rulings of a number of administrative agencies relating to family disputes, labor law, bank regulation, and other bodies which may from time to time be specified elsewhere in federal law.

[24] O sudebnykh pristavakh, (Law "On Bailiffs,"). Federal Law No. 118-FZ, *Vestnik Vysshego Arbitrazhnogo Suda Rossiyskoy Federatsii,* Special Supplement to No. 10 (1997), pp. 4-14, Art. 12.

[25] O sudebnykh pristavakh, (Law "On Bailiffs,"). Federal Law No. 118-FZ, *Vestnik Vysshego Arbitrazhnogo Suda Rossiyskoy Federatsii,* Special Supplement to No. 10 (1997), pp. 4-14, Art. 11.

[26] O sudebnykh pristavakh, (Law "On Bailiffs,"). Federal Law No. 118-FZ, *Vestnik Vysshego Arbitrazhnogo Suda Rossiyskoy Federatsii,* Special Supplement to No. 10 (1997), pp. 4-14, Art. 5(1).

[27] O sudebnykh pristavakh, (Law "On Bailiffs,"). Federal Law No. 118-FZ, *Vestnik Vysshego Arbitrazhnogo Suda Rossiyskoy Federatsii,* Special Supplement to No. 10 (1997), pp. 4-14, Art. 10.

[28] O sudebnykh pristavakh, (Law "On Bailiffs,"). Federal Law No. 118-FZ, *Vestnik Vysshego Arbitrazhnogo Suda Rossiyskoy Federatsii,* Special Supplement to No. 10 (1997), pp. 4-14, Art. 15.

[29] O sudebnykh pristavakh, (Law "On Bailiffs,"). Federal Law No. 118-FZ, *Vestnik Vysshego Arbitrazhnogo Suda Rossiyskoy Federatsii,* Special Supplement to No. 10 (1997), pp. 4-14, Art. 16.

[30] O sudebnykh pristavakh, (Law "On Bailiffs,"). Federal Law No. 118-FZ, *Vestnik Vysshego Arbitrazhnogo Suda Rossiyskoy Federatsii,* Special Supplement to No. 10 (1997), pp. 4-14, Art. 3(1).

[31] O sudebnykh pristavakh, (Law "On Bailiffs,"). Federal Law No. 118-FZ, *Vestnik Vysshego Arbitrazhnogo Suda Rossiyskoy Federatsii,* Special Supplement to No. 10 (1997), pp. 4-14, Art. 12(2).

[32] Article 3(1) of the EPC states: "Compulsory enforcement . . . of judicial acts . . . shall be imposed by the action of the officers of justice . . . and by the actions of the officers of justice of the judicial bodies of the subjects of the Russian Federation. . . . " Ob ispolnitel'nom proizvodstve," (Law "On Enforcement Proceedings,") Federal Law No. 119-FZ, Vestnik *Vysshego Arbitrazhnogo Suda Rossiyskoy Federatsii,*

statutes did recognize the possibility of certain exceptions to the bailiffs' exclusive prerogative (which exceptions were to be defined explicitly by federal law),[33] the list was short. The creditor could seek voluntary payment or a settlement agreement from the creditor before submitting the judgment order (*ispolnitel'nyi list*) to the bailiff to seek coerced payment,[34] and Article 6 of the Enforcement Procedure Law allowed the creditor to forward the judgment order to the debtor's bank to seize the debtor's funds.[35] The plaintiff could petition the court to freeze the defendant's assets during the trial, or after the trial before the judgment order becomes final.[36] No other use of legal process such as liens, attachments, seizures, receiverships, garnishments, levies, restraining notices, subpoenas, legally-compelled examination or freezing of assets after judgment, or any

---

Special Supplement to No. 10 (1997), pp. 15-50. Art. 1 of Federal Law 118-FZ, "On Bailiffs," (passed by the State Duma on the same date) states, "The officers of justice shall be entrusted with the tasks involved . . . in the execution of the court acts and of the acts of other bodies stipulated by the Federal Law on Enforcement Procedure." O sudebnykh pristavakh, (Law "On Bailiffs,"). Federal Law No. 118-FZ, *Vestnik Vysshego Arbitrazhnogo Suda Rossiyskoy Federatsii,* Special Supplement to No. 10 (1997), pp. 4-14

[33] Ob ispolnitel'nom proizvodstve," (Law "On Enforcement Proceedings,") Federal Law No. 119-FZ, Vestnik *Vysshego Arbitrazhnogo Suda Rossiyskoy Federatsii,* Special Supplement to No. 10 (1997), pp. 15-50, Art. 5(2).

[34] Ob ispolnitel'nom proizvodstve," (Law "On Enforcement Proceedings,") Federal Law No. 119-FZ, Vestnik *Vysshego Arbitrazhnogo Suda Rossiyskoy Federatsii,* Special Supplement to No. 10 (1997), pp. 15-50, Art. 9(1). Under Article 14(1) of the same law, the order must be filed within a limited time (in commercial cases, within six months of the date of issue of the court order.

[35] "Ob ispolnitel'nom proizvodstve," (Law "On Enforcement Proceedings,") Federal Law No. 119-FZ, Vestnik *Vysshego Arbitrazhnogo Suda Rossiyskoy Federatsii,* Special Supplement to No. 10 (1997), pp. 15-50, Art. 6. The practical significance of this maneuver is slight. The long-standing Russian bank practice of keeping track of depositors' debts through *kartotecki*, or records in which debts presented are immediately and involuntarily charged against the account, has made it impractical for enterprises to use banks to hold their funds. "The peripheral role of banks in the lives of ordinary Russian industrial enterprises is well-known. . . " **Hendley, Kathryn**, "How Russian Enterprises Cope with Payments Problems," *Post-Soviet Affairs* 15: 201 (1999), at 229. Hendley goes on to describe a variety of strategies Russian enterprises employ to avoid placing funds in banks. Hendley concludes: "Debtor enterprises demonstrated remarkable ingenuity in circumventing . . . contacts with banks. . . . [C]reditors who file lawsuits to recover overdue payments typically win in court, but then discover their debtors' bank accounts are empty." Id. at 229-30. This was borne out by our survey evidence. We asked bailiffs to estimate what percentage of their caseloads could be collected simply by levying against the debtor's bank; the median estimate was only 3%. I conclude that a bank levy is productive neither for the judgment creditor nor the bailiff.

[36] Arbitrazhny protsesual'nyy kodeks Rossiyskoy Federatsii (1995) (*Arbitrazh* procedural code of the Russian Federation). *Vestnik Vysshego Arbitrazhnogo Suda Rossiyskoy Federatsii*, 6:25-79, 1995, Article 136. Such measures occur relatively infrequently. Requests for asset freezes by plaintiffs have traditionally been regarded in Russian business culture as an act of disrespect, and are made infrequently. In 1996, such requests were made in about 11 percent of business disputes in the commercial courts of Moscow and St. Petersburg. **Solomon, Peter H., Jr., and Todd S. Fogelsong**, *Courts and Transition in Russia: The Challenge of Judicial Reform*. Boulder, CO: Westview Press, 2000, at 171. Hendley reports that judges in Moscow approve less than 40% of such requests. **Hendley, Kathryn**, "An Analysis of the Activities of Russian *Arbitrazh* Courts: 1992-1996," *Report to the National Council on Soviet and East European Research*, Contract No. 811-18, 17-19 (cited in **Solomon, Peter H., Jr., and Todd S. Fogelsong**, *Courts and Transition in Russia: The Challenge of Judicial Reform*. Boulder, CO: Westview Press, 2000, at 171.

other form of enforcement action utilizing legal process, was left to the judgment creditor's action, decision, or request; such powers were reserved exclusively to the bailiff.[37] The creditor makes no decisions in the enforcement process as to timing of legal actions,[38] choice of strategy, requests to the court or the court's agents for legal process, or any other aspect of compulsory legal process.[39] Since the bailiff's monopoly under the Enforcement Procedure Law extends only to "*compulsory* enforcement,"[40] there is in principle nothing which prevents the creditor from seeking voluntary collection of the debt before the bailiff has begun compulsory process. However, essentially all use of legal process is exclusively reserved to the bailiff.[41]

---

[37] Arbitrazhny protsesual'nyy kodeks Rossiyskoy Federatsii (1995) (*Arbitrazh* procedural code of the Russian Federation). *Vestnik Vysshego Arbitrazhnogo Suda Rossiyskoy Federatsii*, 6:25-79, 1995, Article 198(3).

[38] The creditor may choose to delay filing the judgment order with the appropriate bailiffs' office, Ob ispolnitel'nom proizvodstve," (Law "On Enforcement Proceedings,") Federal Law No. 119-FZ, Vestnik *Vysshego Arbitrazhnogo Suda Rossiyskoy Federatsii*, Special Supplement to No. 10 (1997), pp. 15-50, Art. 9(1), though under Article 14(1), the order must be filed within a limited time (in commercial cases, within six months of the date of issue of the court order).

[39] However, the judgment creditor may assist the enforcement process in limited ways. The creditor may supply the bailiff with information about the debtor's assets which the creditor may have already acquired independently of the enforcement process, say through normal business dealings, though all investigations post-judgment to locate the debtor or the debtor's assets are to be performed only by the bailiff. Ob ispolnitel'nom proizvodstve," (Law "On Enforcement Proceedings,") Federal Law No. 119-FZ, Vestnik *Vysshego Arbitrazhnogo Suda Rossiyskoy Federatsii*, Special Supplement to No. 10 (1997), pp. 15-50, Art. 28. Article 12(2) of the Law "On Bailiffs" instructs the bailiff to accept (from the creditor or any other source) information and reference notes (such as business records) which may be helpful in enforcing a judgment. O sudebnykh pristavakh, (Law "On Bailiffs,"). Federal Law No. 118-FZ, *Vestnik Vysshego Arbitrazhnogo Suda Rossiyskoy Federatsii*, Special Supplement to No. 10 (1997), pp. 4-14, Art. 12(2).

[40] This term is used in Articles 1 and 3 of the law "On Enforcement Proceedings," and specifically does not include the request for voluntary payment that the judgment creditor is permitted to make prior to submission of the judgment order to the bailiffs' office, nor the not-more-than-five-day period for voluntary payment which the bailiff allows the debtor under Article 9(3) of the same law prior to commencing efforts to compel payment. Law "On Enforcement Proceedings,") Federal Law No. 119-FZ, Vestnik *Vysshego Arbitrazhnogo Suda Rossiyskoy Federatsii*, Special Supplement to No. 10 (1997), pp. 15-50, Arts. 1 and 3.

[41] The creditor may attempt to induce voluntary payment by the use of moral suasion, threatened injury to the debtor's business reputation, and similar methods of persuasion. The adoption of the Federal law "On private detective and protection activity" in 1992 allowed the existence of agencies to provide services such as protection, contract enforcement, dispute settlement, debt recovery, and information gathering,. By the end of 1997 Russia had some 10,200 registered private protection and detective agencies, with over 140,000 employees. **Volkov, Vadim**, "Violent Entrepreneurship in Post-Communist Russia," *Europe-Asia Studies* **51**, 5, 741-754 (1999), at 749. These agencies are apparently involved in the collection of inter-firm debt, including debts arising as the result of court judgments, for example prior to submission of the judgment order to the bailiff. Such firms lack access to the mechanisms of legal process. The services they provide appears to include the use of illegal violence and threats of violence to compel payment; and blackmail of debtors by information acquired through both legal and illegal methods of information collection. **Volkov, Vadim**, "Violent Entrepreneurship in Post-Communist Russia," *Europe-Asia Studies* **51**, 5, 741-754 (1999), at 751. While the collection of information about a debtor's assets resembles normal methods of judgment collection, such illegal or quasi-legal methods clearly do not. Thus, these agencies do not intrude on the bailiffs' monopoly over the use of legal process. Furthermore, a recent study of more than 300 Russian firms' practices in enforcing contracts found that only three percent resorted to

The problems which had plagued the court bailiff system, and the significant obstacles facing the new system, led to concerns about the success of the reformed system. The new commercial court system, in particular, seemed to face particular challenges in ensuring that its judgments would be enforced. Economists had for some time urged the importance of contract enforcement to the success of capitalist activity.[42] For those reasons, the U.S. Agency for International Development (USAID) decided in 1998 to provide assistance to the newly-formed Bailiffs Service, and in October of that year awarded a grant to the University of Maryland's Center for Institutional Reform and the Informal Sector (IRIS) to undertake that program. The author of this article was appointed the director of this program, and served in that position from the inception of the program in October of 1998 till its termination in March of 2001.

Some of the evidence presented in this paper is based on a survey performed in 1999 by this USAID-funded project. Some 200 enforcement bailiffs, including supervisory bailiffs, from a wide variety of locations across Russia were surveyed. Approximately 60% of these individuals were surveyed with the cooperation of the Russian Law Academy, the principal institution responsible for providing formal classroom training to bailiffs, during the participation of those bailiffs in the Academy's training programs, and were drawn randomly from the Academy's attendees during training programs in October and November of 1999. The balance of interviews were performed in local bailiffs' offices with the cooperation of the regional chief bailiffs in Moscow City, Moscow oblast, Ekaterinburg, Samara, Tomsk, Karelia, Irkutsk, and Nizhny Novgorod.

I. Congestion and the Bailiffs' Incentive Structure

Bailiffs routinely are expected to enforce a shockingly large number of cases. The typical enforcement bailiff among the approximately 20,000 members of the Russian Bailiffs Service each routinely receive upwards of 100 *new* cases per month to enforce, and many receive well in excess of 200 new cases per month.[43] This figure does not include cases that have carried over in the bailiff's docket from previous periods, a

---

private enforcement. **Hendley, Kathryn, Peter Murrell, and Randi Ryterman**, "Law, Relationships, and Private Enforcement: Transactional Strategies of Russian Enterprises," *Europe-Asia Studies* **52**, 4, 627-656 (2000, at 642.

[42] In the view of one well-known analyst, the absence of a low-cost means of enforcing contracts is "the most important source of both historical stagnation and contemporary underdevelopment in the Third World." Douglas C. North, Institutions, Institutional Change, and Economic Performance (1990).

[43] In our survey of bailiffs, an average of 210 new cases were assigned to bailiffs during the prior 30 days. That includes 13 percent of respondents who had no new cases during the prior 30 days because they are supervisory bailiffs and do not handle an individual caseload. The minimum number of new cases per month reported by enforcement bailiffs (as opposed to supervisory bailiffs) in the survey was 45.

category that in itself typically includes hundreds of cases per month for each bailiff.[44] In order to enforce 100 cases in a month which includes 22 working days and 8 hours per day, bailiffs would have to complete enforcement on slightly less than one case every two hours, difficult in itself and leaving no time to devote to the hundreds of generally more difficult cases which the typical bailiff has in his caseload which have gone unenforced from previous periods.[45]

Many of these cases are quite small in value, and require only very simple activities to enforce. For example, many of the hundreds of cases routinely faced in the course of a month involve child support and alimony payments of small amounts; many others involve administrative fines (such as those related to street peddling) and traffic fines.[46] Enforcing such actions may involve little more work for the bailiff than sending a letter to the judgment debtor's employer to garnish wages, and a letter to the debtor's bank to garnish bank assets.

However, many cases necessarily involve significantly more time and effort than these initial actions. Enforcement could require, at a minimum, some form of investigation of the debtor to identify his assets[47]; legal efforts to gain jurisdiction over

---

[44] For example, in interviews conducted in six bailiff subdivisions in large cities of the Sverdlovsk region during May 2000, 17 of the 30 bailiffs carried a caseload of between 200 and 500 cases, 4 had caseloads of between 500 and 1000, and 5 had more than 1200. Each bailiff received between 90 and 95 new cases each month.

[45] In October 1999, the Minister of Justice argued in an interview that the size of the Bailiffs Service should be more than doubled, to approximately 49,000 bailiffs, because of the large number of cases facing each bailiff. "Each of the bailiffs has about 250 writs of execution to work on," said Minister of Justice Yuri Chaika. "That is no more than 40 minutes of the working time of each bailiff for a writ of execution." **Itar-Tass News Agency**, "Justice Minister Calls for Increasing Number of Bailiffs," October 29, 1999. See also **Borisova, Yevgenia**, "Legal Tangles Put Bailiffs at Governor's Mercy," *Moscow Times*, November 23, 1999 (citing Deputy Chief Bailiff Sergei Ruban's estimate that some 214,000 bailiffs (about ten times the current number) are needed to fulfill all court judgments).

[46] According to respondents to the 1999 survey, 23.4 percent of their caseload involved claims for child support payments, while 27.3 percent involved claims arising from administrative and traffic fines.

[47] It seems quite clear that bailiffs have authority to investigate judgment debtors and to seek information on their assets. Article 28(1) of the Federal Law "On Enforcement Procedure" (Ob ispolnitel'nom proizvodstve," Federal Law No. 119-FZ, Vestnik *Vysshego Arbitrazhnogo Suda Rossiyskoy Federatsii,* Special Supplement to No. 10 (1997), pp. 15-50) states in part: "The search for a debtor organization and for the property of the debtor (a citizen or an organization) shall be effected by the officers of justice service." Authority to demand such information from others is granted in Art. 46(3). For a description of the daily work of a skilled bailiff in performing such investigative tasks, see **Gurov, Sergei**, "Rozuisk imushestva dolzhnika pri ispolnenii reshenii arbitrazhnich sudov" (Search for Debtor's Assets Pursuant to Execution of Judgments of Arbitration Courts), in *Obrashenie Vziskaniya Na Imuschectvo, Rozisk Imushestva Dolzhnika* (Levy of Assets, Tracing of Assets). Moscow: IRIS, 1999; see also **Yarkov, V.V.**, et al.,. *Nastolnaya Kniga Sudebnogo Pristava-Ispolnitelya* (Desk Manual for Enforcement Bailiffs). Moscow: Bek, 2000, Chapter 10, sec. 3.

However, there seems to be a persistent belief that bailiffs do not have the authority to do so. For example, we were told by a successful and well-regarded supervisory bailiff in Moscow city that bailiffs do not have authority to investigate debtors, but that the Bailiffs Service was then in the process of establishing a special service, to consist of several people in each bailiffs unit (office) with that authority.

those assets; negotiations with the debtor over surrender of the assets; the utilization of available mechanisms of legal arrest, seizure and transfer of those assets, which may in some cases be time-consuming and involve legal challenges requiring appearances by the bailiff in court hearings; physical appearance at the location of the debtor's assets to seize them; and supervision of the seizure and storage process. In business cases, it is routine for judgment debtors to hide their assets, and apparently they are able to do so quite effectively. Frequently the only assets which may be found are the physical assets of the judgment debtor's business, yet it is impossible to seize these assets without a showing that there has been a legitimate effort to find "non-productive" assets such as cash, a showing which will certainly be subject to challenge and may be difficult to defend. Even then, seizing the physical assets of a business may involve significant costs, particularly in terms of the time of the bailiff. Typically bailiffs must travel to the location of the judgment debtor by public transportation; receive little or no support from the local police in demanding access to the premises; and orders to provide access and to permit lawful arrest and seizure of assets to proceed are frequently ignored and resisted. In complex cases involving significant resistance by the debtor, the probability of actual payoff may be quite low.

Even in cases that do not involve significant amounts of time because bailiffs undertake only a few simple routine enforcement activities, the probability that those actions will yield meaningful payoffs is uncertain.[48] For example, many employees evade judgments simply by failing to report their true employer, and evade collections against their bank accounts by refusing to give information about their bank assets to the bailiffs. Thus, even very simple cases are frequently unenforceable without at least some independent investigation by the bailiff. Larger cases may involve offshore accounts, creation of fake companies designed to hide assets, and an array of other tactics. The larger the case, the greater the incentive for the debtor to spend time and energy to hide his assets. Large cases tend to be difficult cases, and difficult cases are intrinsically uncertain in their payoff.

Bailiffs thus routinely face tremendous caseloads, and some cases may require significantly more time to enforce than others. These simple facts have a powerful impact on bailiffs' behavior, for a very simple reason: every time period that the bailiff spends on one case implies that that time is not available to work on other cases. The bailiff must calculate which course of action will yield the higher expected return -- devoting intense collections efforts to a single case (which may or may not have any payoff), or instead doing quick and easy actions to collect on a number of cases. Taking the relatively time-consuming actions which may be required in a single case will almost always mean

---

Private interview, December 5, 2000. The persistence of this belief is itself suggestive of bailiffs' unwillingness to engage in such activities.

[48] The majority of bailiffs indicated in the interviews that only about 50% of cases are concluded within the two-month timeframe established by the Law "On Enforcement Procedure," Article 13, item 1 ("Ob ispolnitel'nom proizvodstve," (Law "On Enforcement Proceedings,") Federal Law No. 119-FZ, Vestnik *Vysshego Arbitrazhnogo Suda Rossiyskoy Federatsii,* Special Supplement to No. 10 (1997), pp. 15-50).

foregoing the opportunity to collect a number of cases with relative certainty by taking quick and easy actions to collect the debt.

It is the contention here that bailiffs typically will react to the scarcity of their time and their overwhelming caseload by devoting little extra time to enforcing any case, accepting that some will go uncollected in order to maximize their income from the many cases that can be collected easily and without significant effort beyond the minimum effort required in all cases. The result is that easy cases are enforced, while more difficult or complex cases effectively go unenforced. Cases which involve significant time mean numerous other cases and commissions are foregone, and difficult cases are in any case intrinsically uncertain and unlikely to yield any payoff.[49]

---

[49] One piece of evidence that suggests this result is the dramatic disjunction between judgment awards and bailiff department revenues. According to the presentation made by L.V. Kuznetsova, Chief Accountant of the Russian Federation Bailiffs Service, to an IRIS conference in Ekaterinburg in September 1999, execution fee revenues throughout Russia totaled Rb 678 million in the first half of 1999. In the same time period, awards for collection against all parties, including both legal entities and persons, totaled some Rb 175 *billion*, implying execution fee revenues totaled about three-tenths of one percent of the judgment amounts. This suggests the bailiffs are collecting far less than the judgment amounts; if full judgments were collected in every case, revenues would presumably be 7% of judgments, or Rb 12.25 billion. Yet Ms. Kuznetsova also asserts that "claims were fully satisfied under 3 million execution instruments," or 45% of the total judgments in the same period. (According to Minister of Justice Yuri Chaika, about 11 million writs of execution were issued in the first ten months of 1999, or approximately 6.6 million in the first six months of 1999. Alexander Shashkov, "Justice Minister Calls for Increasing Number of Bailiffs," Itar-Tass News Agency, Oct. 29, 1999.)

Similar evidence is presented in evidence about the Moscow City Bailiffs Department. According to a senior bailiff of Moscow City, citing an analysis for the year 2000 conducted by the Russian Ministry of Justice, "more than 211 million rubles were remitted to treasuries of various levels, while the bailiffs of Moscow sought for recovery more than 25.5 billion rubles with a recovery rate of approximately 80%." **Yartsun, Sergei**, "Na Gosudarevoi Sluzhbe: Staraya Byurokratiya V Novoi Rossii" (In the Imperial Service: Old Bureaucracy in the New Russia) *Pravo I Ekonomika* #3 (2000). Assuming that the "211 million rubles" refers only to fees collected by the Bailiffs Service (and not any portion of the judgment creditors' substantive recoveries) and further assuming that all judgments on which fees are paid were fully collected, then the 211 million rubles constitutes about 5% of total sums collected by these bailiffs (assuming this excludes any portion of the fees paid to bailiffs themselves, which is implausible, since bailiffs' commissions are paid to them through the federal treasury), meaning they collected just over 4 billion rubles in recoveries during 2000. Yet this constitutes not quite 17% of the 25.5 billion rubles for which recovery was sought. The assumptions made in this calculation were intended to show the highest possible recovery rate, yet it is far below the 80% recovery rate cited by the Russian Ministry of Justice. One possible explanation for the difference between the high stated recovery rate of 80% and the comparatively low achieved monetary recovery rate of only 17% is that bailiffs may have chosen to focus on relatively small cases involving small sums, thus achieving high success rates in solving total numbers of cases but leaving most of the monetary value uncollected

A third piece of evidence suggesting this result comes from the continuing reluctance of businesses to use the commercial courts, in important part because of pessimism over enforcement.. Since commercial courts are likely to hear many of the largest cases in monetary value, pessimism over collections suggests the larger cases face a low probability of collection.

Finally, evidence that bailiffs in fact do devote an initial effort to the resolution of a case, and then devote little subsequent effort and have little expectation of benefit from further effort, comes from our 1999 survey. We asked bailiffs to estimate the percentage of cases in their caseloads for differing periods of time were "completed and closed," which we defined in the survey questions as meaning "no further actions will be taken by you or any other bailiff." For cases assigned to the interviewees within the prior 30 days, both mean and median estimates were 40%, with estimates ranging as high as 75% and as low as 0%

Bailiffs have significant discretion as to how they handle their cases, both in law and as a result of the management style of many bailiffs' offices. While there are certain actions a bailiff is required to perform in every case,[50] his legal discretion beyond those minimal actions is significant, and even within that more directed zone, judges intervene only infrequently.[51] As I will argue later in this paper, the administrative hierarchy has little meaningful ability to affect the day-to-day activities of bailiffs. The result is that the bailiff can make significant choices as to which cases he or she should devote time.[52]

The presence of performance incentives in the pay structure of bailiffs, combined with significant discretion, presents the possibility that bailiffs will alter their behavior to raise their incomes. Performance incentives exist, though they are severely limited. Bailiffs are paid in two forms: first, a flat salary of about 1300 rubles per month, the same for all enforcement bailiffs throughout the country; and second, a commission theoretically related to their success in collecting judgments. While the enforcement fee

---

(interestingly, the answer for as many as 10% of respondents). Estimates did rise somewhat when we asked the same questions concerning cases that had been in their caseloads for sixty days -- mean and median rose to 50% for those cases, with the maximum rising to 80%. But for periods beyond 60 days, there was little benefit from additional time working on cases. Mean and median estimates of "completed and closed" cases stayed at 50% when we asked about periods of six months and one year, while the maximum percentage estimated rose to 85%. This evidence suggests that there is a slight payoff in improved collections from longer time periods, but that extra benefit is quite small and occurs largely within the second month of enforcement, with almost no benefit thereafter. Allowing cases to stay in the caseload for periods longer than two months has almost no benefit in terms of improved collections under these conditions.

[50] For example, the Law on Enforcement Procedure (Ob ispolnitel'nom proizvodstve," (Law "On Enforcement Proceedings,") Federal Law No. 119-FZ, Vestnik *Vysshego Arbitrazhnogo Suda Rossiyskoy Federatsii*, Special Supplement to No. 10 (1997), pp. 15-50) requires the bailiff to accept for enforcement valid enforcement orders (Article 9 section 1), notify the debtor of a period allowed for voluntary payment (Art. 9, sec. 3), institute an enforcement action at the end of that period (id.), notify the creditor and the debtor of the action (Art. 9 sec. 4, Art. 10 sec. 1), and so on. Certain rules apply as to the period within which enforcement is to be completed (Art. 13 sec. 1), as to the grounds for termination of a proceeding (Art. 23), and so on. The law specifies the actions that are to be taken under compulsory enforcement (Art. 45) and specifies in some detail how those actions are to be taken. In many ways, however, this detailed specification is an illusion. The reality is that the bailiff can make decisions which determine the meaningfulness of the enforcement process, such as how hard to pursue certain assets, when they should be regarded as non-existent or beyond reach, the value of the seized assets and the necessity for seizing more, and so on.

[51] See the discussion in Section III of this paper for a description of the problems with judicial oversight of the enforcement process.

[52] One way in which that discretion is manifested is in the large number of cases that are routinely uncompleted after the end of the legally allowed two-month period during which enforcement is expected to be completed. No significant consequence ensues to the bailiff from allowing a case to exceed the two month period. Another measure of discretion is the relatively large number of enforcement bailiffs in remote locations that must be supervised by a regional chief bailiff. The small number of complaints brought in court against bailiffs, despite the value to the debtor of a complaint in delaying completion of the enforcement action, also suggests bailiffs face relatively little threat from judicial supervision.

by law is 7% of the judgment award,[53] the commission paid to the bailiff who collects the judgment is only two percentage points of that seven.[54] This commission rate, fixed by law, is far less than private protection enforcers earn on their cases,[55] and also far less than is typically earned by enforcement lawyers in the U.S. or enforcement personnel elsewhere.

However, there are several caveats which considerably reduce the value of the case to the enforcing bailiff even below this allowed 2% fee. First, the individual bailiff's fee in any single case is limited by law to ten minimum monthly salaries, or about 800 rubles (or about $35), regardless of the size of the case. Second, the total amount the individual bailiff earns in fees is also limited, by practice though not by formal rule. Individual bailiffs' monthly earnings from commissions typically are not permitted to exceed a range of between 5000 rubles ($175)[56] and 10,000 rubles ($350), depending on the region in which they work.[57] Still, commission pay typically constitutes about 15% of bailiffs' income.[58]

Bailiffs' income thus is weakly related to their performance. With low pay and weak incentives, it would be unrealistic to expect bailiffs to be highly motivated in enforcing judgments. However, bailiffs can increase their incomes simply by changing the way in which they handle their caseloads, and the incentive structure gives them

---

[53] The fee is levied on the debtor, not the creditor; in other words, the debtor is required to pay the fee of 7% in addition to the full judgment amount. Thus, the bailiff should collect 107% of the judgment.

[54] The remaining five percentage points are transferred in part to a special fund described in Article 81 of the Enforcement Code as "the off-budget fund for executory processes," and in part to the federal treasury. "Ob ispolnitel'nom proizvodstve," (Law "On Enforcement Proceedings,") Federal Law No. 119-FZ, Vestnik *Vysshego Arbitrazhnogo Suda Rossiyskoy Federatsii*, Special Supplement to No. 10 (1997), pp. 15-50, Article 81.

[55] The charge for debt recovery by those marginally legal companies which use illegal or marginally legal methods varies between 15% and 40% of the debt. **Volkov, Vadim**, "Violent Entrepreneurship in Post-Communist Russia," *Europe-Asia Studies* **51**, 5, 741-754 (1999), at 751.

[56] The lower amount was reported to us in Karelia oblast; the larger amount in Moscow city. These limits apply no matter how many cases the bailiff enforces or would otherwise earn in fees. These restrictions on payments are generally enforced as a result of policies of the regional chief bailiff. The excess of fees earned over fees paid to bailiffs appears generally to be retained by the regional bailiffs' department, theoretically to be spent on investments in the local bailiffs' service but generally without any formal accounting process.

[57] In a private interview with project staff, one of the drafters of the 1997 law "On Bailiffs" stated that the reason for the cap on the size of a fee collected in an individual case was that "We don't want state servants to earn too much."

[58] By law, all bailiffs earn a base salary of 1300 rubles per month (about $45). In addition, our survey indicates that the average bailiff earns about 230 rubles per month in commission income. Three quarters earn less than 700 rubles per month in commission. According to RECEP (Russian-European Center for Economic Policy), the average monthly wage in Russia during the year 2000 was 2262 rubles. **RECEP**, "Russian Economic Trends: Monthly Update," 8 December 1999.

reason to do that. The presence of a link between amounts collected and bailiffs' income, combined with their monopoly position and the presence of persistent excess demand for their services, gives bailiffs a reason to select carefully the cases to which they will devote the bulk of their time.

The bailiff is likely to prefer a strategy of investing little time in every case, avoiding big investments of time even when necessary to enforce large and valuable cases. Even if large and small cases yielded the same expected return from a given effort, bailiffs are likely to adopt a strategy of enforcing large numbers of small cases. Bailiffs, who hold low-paying low-risk government jobs with absolutely no possibility of advancement in the agency or increases in their base salaries, are likely to be risk-averse, and that implies they prefer a diversified portfolio of cases which will pay off in a steady and predictable proportion. A time-consuming case may not pay off, leaving the bailiff without an income for that effort, and having foregone the opportunity to invest lesser cases with greater certainty. However, it is unlikely that small and large cases have the same expected payoff for a given level of effort. The larger value of the case to the judgment debtor provides an incentive to hide assets; to use resources to avoid and delay collection; to complain in court about the bailiff's action as a strategy of delay and deterrence; and to hire attorneys and other professionals to assist in the effort. Larger cases are likely to be more difficult and less likely to pay off.

The low fixed commission rate and the monopoly position of the bailiff mean that the creditor cannot compensate the bailiff for bearing the risks of attempting to enforce high-risk cases. In attempting to enforce difficult cases, the bailiff risks a significant share of his monthly income, with a low probability of receiving any reward for doing so. Even if the expected return from the two strategies were the same, the bailiff's risk-aversion would make him unwilling to take the higher-risk strategy; the judgment creditor would have to pay enough to make that risk worthwhile. This the creditor cannot do.

Judgment creditors may not enforce the judgment themselves, nor may they use outside suppliers such as attorneys, nor may they negotiate with the state over the 7% enforcement fee, or the bailiff's own 2% share (up to the cap) of that fee. The large number of cases, and the significant rates of non-enforcement and non-completion, suggests that there is significant excess demand for enforcement services. If the state were not a monopoly supplier of enforcement services, the commission rate could be renegotiated to allow the judgment creditor to pay the full cost of enforcement. Indeed, the typical creditor would undoubtedly rather pay a much larger share of his award for enforcement than effectively to lose the award altogether through non-enforcement. But the bailiff and its client cannot renegotiate their fees. The bailiff, under the circumstances, cannot work for the highest bidder at a price which is enough to compensate for the foregone opportunities; the bailiff must work at the rate set by the state, with the state taking by far the greatest share of the fee and limiting the bailiff's share to a relatively tiny amount. Under these circumstances, the bailiff's strategy to maximize his income must be different.

Furthermore, since the bailiff's fee is limited to no more than 800 rubles in any case, the bailiff cannot collect any fee on amounts in excess of 800 rubles. Thus, the bailiff has no incentive to expend incremental effort to enforce cases over 40,000 rubles in value (800 being 2% of 40,000), or approximately $1500. Why spend one's time seeking to recover for the judgment creditor when there is no payoff to oneself from the effort? This reality limits the potential payoff even from the successful large case, and makes it still less likely that the bailiff will work on large cases.

The judgment creditor, by contrast, would likely find those large cases worth pursuing, if only he or she had the power to do so. Both the costs and the benefits that are borne by the bailiff are quite different from those that face the judgment creditor. The creditor reaps the full reward from enforcement (and presumably would be willing to bear costs up to the amount of expected benefit). [59] But the bailiff bears a significant time cost resulting from the foregone cases, which does not fall on the creditor and for which the bailiff is not compensated. Furthermore, the bailiff reaps only a tiny portion of the reward or payoff. The creditor has an incentive to invest significantly more time and resources in enforcing a case than would the bailiff, and because of the below-market fixed commission rate is likely to find the bailiff unwilling to devote effort to enforcing judgments that the creditor would be more than happy to pay to enforce. This is obviously inefficient, from the perspective of enforcing all cases for which the expected benefit to the consumer (the creditor) exceeds the cost of doing so.

While it may appear to be an unusual use of monopoly power to hold rates inappropriately low, there are a number of benefits to the state from this arrangement. First, it is not the state which bears the loss from this price-fixing, but the bailiff, whose efforts might be better compensated under private contracting arrangements, given the persistent excess demand. The state captures the lion's share of the enforcement fee, which it would not get at all if it did not possess a legal monopoly. While commissions to private enforcement parties (such as lawyers) could be taxed, the Russian government has a significant problem collecting taxes. Thus, with this structure, the government collects the enforcement fee through its own agents, and controls the money from the very moment of collection.[60] Relying on a system which involved collecting some form of excise or income tax from private parties thus might well reduce the government's overall take. Furthermore, the low rates themselves yield some undeniable benefits. Many cases are very small in amount, and taking a larger share in those cases might force

[59] At least in theory, a risk-neutral judgment plaintiff contemplating suit should be willing to spend on enforcement a maximum of the total amount of the expected judgment (net of his litigation costs), times the probability of recovery -- in other words, the expected net gain from the litigation.

[60] Indeed, the collection fee traditionally has been the portion of the judgment collected first, in other words, the bailiff and the state are paid first out of any sums collected, with the creditor paid out of any subsequent funds collected. Of course, this reduces the bailiffs' incentive to continue collection efforts. This practice would be changed by amendments to the law "On Bailiffs" under consideration in Duma at the time of this writing, which would allow the bailiffs service to take only 7% of whatever funds are collected, thus forcing the collection of the entire debt before the service could realize its full potential fee. O sudebnykh pristavakh, (Law "On Bailiffs,"). Federal Law No. 118-FZ, *Vestnik Vysshego Arbitrazhnogo Suda Rossiyskoy Federatsii*, Special Supplement to No. 10 (1997), pp. 4-14.

litigants to contemplate private mechanisms of enforcement,[61] undermining the state's monopoly; to some extent this has already happened in larger cases.[62] The excess demand allows the bailiff, and the Bailiffs' Department, to engage in case selection, with both possible political benefits to the government and possibilities for illicit revenue to parties throughout the agency structure.

It should be noted that this effect probably has its largest impact on cases decided by the commercial courts.[63] Business-related cases will typically be the largest cases, and are most likely to involve effective legal representation, efforts to hide or fraudulently to transfer assets, and complex forms of assets that may be conceptually more difficult to seize. Thus it is the business economy that is probably most directly affected by the failings of the Bailiffs Service. Indeed, businesses apparently rely little on the courts, and

[61] By "private mechanisms," I mean such informal methods as stopping or threatening to stop trade with the other party, reporting the enterprise to a federal government organ for a regulatory violation, or reporting the enterprise to a business association or financial association to injure reputation, as well as illegal or quasi-legal methods such as violence, threats, blackmail, or libel.

[62] **Hendley, Kathryn, Peter Murrell, and Randi Ryterman**, "Law, Relationships, and Private Enforcement: Transactional Strategies of Russian Enterprises," *Europe-Asia Studies* **52**, 4, 627-656 (2000).

[63] The general hostility among bailiffs towards commercial court judgments might stem from the economic incentives described here. "I would like to point out that there is a point of view that judgments of Arbitration Courts do not need to be executed with all due dispatch and speed. It is much more important, it is alleged, to do executions on judgments in cases where parties are individuals, whereas legal entities may afford to do a little bit of waiting. I believe this point of view is not only erroneous but also dangerous." **Gurov, Sergei**, "Rozuisk imushestva dolzhnika pri ispolnenii reshenii arbitrazhnich sudov" (Search for Debtor's Assets Pursuant to Execution of Judgments of Arbitration Courts), in *Obrashenie Vziskaniya Na Imuschectvo, Rozisk Imushestva Dolzhnika* (Levy of Assets, Tracing of Assets), Moscow: IRIS, 1999.

enforcement is a principal deterrent to their use.[64] Bailiffs report that commercial cases constitute a small share of their caseloads.[65]

II. Investment in Enforcement Activities and the Struggle for Control Over Revenue

The reliance on a fee structure for enforcement has created a significant stream of revenue to the state.[66] These revenues have become the source of a major struggle for power within the Ministry of Justice for control of the funds. This struggle for control has apparently resulted in dramatic underinvestment in the resources needed to enhance the productivity of the Bailiffs Service.

While the Bailiffs Service does not manifest an environment of extreme destitution, it seems clear that even basic investments in the operation of the Bailiffs Service are largely going unmade. 85% of respondents to our survey indicated that they had received no training prior to starting their jobs as bailiffs, and of those who did receive training, less than 3 days was typical; while 56% stated that they had received some training since beginning work with the bailiffs, the training was in almost all cases

---

[64] Hendley, Ickes, Murrell, and Ryterman reported in 1997 that, based on their survey evidence, "Russian enterprises make little use of law and legal institutions in structuring their relationships. . . . All the enterprises interviewed had made use of the *arbitrazh* courts, but rated such courts very poor on enforcement. **Hendley, Kathryn, Barry W. Ickes, Peter Murrell, and Randi Ryterman**, "Observations on the Use of Law by Russian Enterprises, *Post-Soviet Affairs* **13**, 1 pp. 19-41, at 20. In an article published only three years later and relying on a similar methodology involving interviews with enterprise managers, the same authors reach the opposite conclusion, finding that "Many enterprises use the courts." **Hendley, Kathryn, Peter Murrell, and Randi Ryterman**, "Law, Relationships, and Private Enforcement: Transactional Strategies of Russian Enterprises," *Europe-Asia Studies* **52**, 4, 627-656 (2000), at 628. Nevertheless, their later data still indicates that only 25% of the surveyed enterprises had used the commercial courts at some time to resolve disputes with suppliers, and gave no indication of how many or what percentage of disputes among those firms are resolved through the courts; given the range of alternative dispute resolution mechanisms they describe, it seems quite plausible that many disputes even among that limited subset of firms are resolved outside the courts, and indeed they do not contend that the courts are a preferred mechanism of dispute resolution. Interestingly, inadequate enforcement was rated by their respondents as the most significant problem in using the commercial courts, and the most significant deterrent to using them. Dissatisfaction with enforcement remained the largest difficulty with the commercial courts over the period between these publications despite the reorganization of the Bailiffs Service in 1997.

[65] The 1999 survey indicates that the mean percentage of bailiffs' caseloads that originate in commercial court is 15.5%, and that on average 11.2% of caseloads involve executing a judgment against a private entrepreneur. By contrast, an average of 54 percent of bailiffs' caseloads originate in general court, and 29.4% of caseloads result from administrative agencies such as the Ministry of Internal Affairs, the State Traffic Safety Inspection, and tax agencies.

[66] See *supra* note 7.

less than five days in length.[67] There are insufficient spaces in the sole institution in the country for training bailiffs; and training in that institution until recently was provided without textbooks.[68] Over 30% did not have a telephone at work. While many had access to a computer, sharing that computer between five or more people is common. 15% were not provided with basic office supplies. 54% claimed not to have sufficient office space to perform their work adequately. [69] Until last year, no manuals or procedural guides existed to provide legal information to bailiffs, though their work is highly dependent on substantive law and court procedural rules. That manual was created only with foreign assistance funds. Bailiffs must typically use public transportation in traveling to a debtor's location to seize property or serve papers.

Investments such as training, legal information, and basic office equipment seem likely to yield payoffs in increased returns. There is a legitimate question as to why the small amounts of money necessary to develop training materials, legal information manuals for bailiffs, and other basic activities were not invested internally within the Bailiffs Service. The evidence seems to suggest that many small cases were enforced, but the actual yield in revenue was dramatically below the amounts that might have been expected from this caseload.[70] Why wasn't there an effort to increase the yield by making capital expenditures?[71]

One explanation for the state's reluctance to invest in the agency, even though doing so may result in more revenue, is that the statute is unclear as to control of the revenues. Though Article 81 of the Law on Enforcement Procedures[72] specifies that the portion of enforcement fee revenues not paid to the enforcing bailiff shall go to the "off-budget fund for the development of enforcement processes," the statute nowhere defines that fund; nor does it state where the fund is to be held, how it is to be spent, or who is to control it.

---

[67] The Bailiffs Department has itself established a rule that bailiffs are to receive 40 hours of training annually.

[68] The USAID-funded Bailiffs Assistance Project created the official desk manual and developed the official training materials for bailiffs used both in the Russian Law Academy and in field training in local offices.

[69] All numbers, survey of bailiffs, Nov. 1999.

[70] For evidence on the recovery rates achieved by the Bailiffs Service, see footnote 58, above.

[71] According to the Ministry of Justice's own estimate, for each budgetary ruble invested in the development of the Service, the government derives a revenue of almost seven rubles. This rate of return seems more than sufficient to attract additional budgetary investment. The Ministry's estimate is cited in **Yartsun, Sergei**, "Na Gosudarevoi Sluzhbe: Staraya Byurokratiya V Novoi Rossii" (In the Imperial Service: Old Bureaucracy in the New Russia) *Pravo I Ekonomika* #3 (2000).

[72] Ob ispolnitel'nom proizvodstve," (Law "On Enforcement Proceedings,") Federal Law No. 119-FZ, Vestnik *Vysshego Arbitrazhnogo Suda Rossiyskoy Federatsii*, Special Supplement to No. 10 (1997), pp. 15-50.

In fact, control of enforcement fee revenues has been a source of dispute since the agency came into being in late 1997. The battle for control has been waged along several fronts. The regional Chief Bailiffs have attempted to keep enforcement revenues under their control, to be spent in the regions where collected. The central Bailiffs Department in Moscow has opposed that, preferring that the funds be transferred to central Department control. At the same time, the Ministry of Justice (of which the Bailiffs Department is a constituent agency) has also attempted to gain control of those funds.

The matter was at least temporarily resolved in early 2000. At that time, the head of the Bailiffs Department (the Chief Bailiff of the Russian Federation) was removed from office, along with much of his staff. The change created an opportunity for the Ministry to seize control of the funds. In a decree issued in March 2000, the Minister of Justice ordered that all funds were to be transferred at the local level from regional Bailiffs Department control to the regional Ministry of Justice representatives, and transferred from there to the central office of the Ministry in Moscow. All accounting functions were to be relocated into the Ministry of Justice, and the Chief Accountant of the Bailiffs Department was required to leave her position. As a result of these actions, regional Chief Bailiffs have lost their control over money flows from local bailiffs.

The results of these events were dramatic. Of the 89 regional Chief Bailiffs of the component units of the Russian Federation, 15 resigned their positions in the three months between March and June 2000.[73] However, that did not end the matter. Control of the enforcement fund was again changed in the fall of 2000. Funds held in the "off-budget fund for enforcement purposes" are no longer held in an account directly controlled by the Ministry of Justice, which nevertheless retains putative responsibility for administering the Bailiffs Department. Instead, the off-budget fund is now held in a separate account in the central accounts of the Russian government, in the Ministry of Finance, with control over the fund now exercised by the Ministry of Finance. The statute does not require the funds to be spent on improving enforcement capabilities, and the Ministry of Finance can surely imagine other uses for the funds.

Since the law does not provide unambiguously for the control and use of the funds, there is nothing to ensure that this is the end of the story. Though control of the funds appears resolved for the moment, there is nothing to assure that the ability to control the funds for whatever purpose will stay the same in the future as it is now. The Ministry's control over the funds must be regarded as temporary, and dependent on future political events.

Totally apart from the rather ambiguous suggestion in the Law on Enforcement Procedure that the enforcement fee revenues are to enter a fund designated as "the off-budget fund for enforcement purposes," and thus presumably are to be used for enforcement purposes, this uncertainty as to control of the revenues creates the administrative equivalent of an unspecified property right. Without control of funds assured, any expenditure on bailiff productivity may have the effect of increasing the

[73] Interview with senior Bailiffs Department official, Moscow, July 2000.

funds in a budget that someone else may ultimately control, while reducing the net funds available to whomever controls the fund at the time the expenditure is made. Without a defined party with a right to control the funds and an equal responsibility to manage the development of the agency – in short, something analogous to an agency property right to the flow of funds from this governmental activity – there is legitimate doubt as to whether investments necessary to increase the flow of revenue through the system (and, incidentally, increase the effectiveness with which judgments are enforced) will ever be made without the subsidy provided by foreign assistance legal reform programs. All of this, of course, begs the question of how the funds are actually being spent. The creation of a revenue source without clear property rights over that revenue has had the opposite of its originally intended effect: rather than increasing the capabilities of the Service, it has diminished them.

III. Controlling the Actions of Bailiffs: Judicial and Administrative Monitoring.

Monitoring and control of the enforcement process to conform with the requirements of the law has been drastically affected by agency design. The current structure of the agency creates a virtual conspiracy between working bailiffs and their immediate supervisors against the agency hierarchy and the agency itself, as well as (more importantly) the interests of the parties to the litigation. The result is not simply that bailiffs on occasion fail to enforce cases; the parties to the litigation are effectively left without recourse for violations of their rights.

Two systems exist, in theory, to ensure bailiffs fulfill their duties and comply with law: judicial supervision arising as a result of the right of parties to file complaints with the court about bailiffs' actions, and administrative monitoring within the Bailiffs' Department. Neither system is effective.

While formally there is a system of judicial oversight, in fact that system works poorly. [74] Judges resist involvement, indeed the unwillingness of judges to devote significant attention to the myriad problems that arise in the enforcement of a flood of very small cases was an essential part of the justification for the relocation of the Bailiffs Service into the Ministry of Justice and out of the courts.

There are many reasons judges resist this role. Having already performed his or her principal task of deciding the case, the judge is confronted with the task of supervising its enforcement -- a task not simply less interesting for the judge, but also not rewarded in the judge's professional ethos. Judges are excluded from a system that distributes financial rewards to everyone in the system except themselves, and feel little

[74] When reviewing appeals filed against the actions of a bailiff, the court verifies the legality and validity of the bailiff's procedural actions. Both the actions and inaction of a bailiff may be appealed, as well as rulings for such matters as the imposition of fines, detainment, institution of enforcement proceedings, refusals to search for debtor property, postponement of enforcement actions, and the return to the creditor of unenforced enforcement orders.

incentive to undertake those tasks. The enforcement fee goes to the bailiff and not to the judge: should it not therefore be the bailiff's responsibility (and not the judge's) to ensure that the job is done correctly? Further, bailiffs have constant questions about their judgments and demand clarifications and are apparently often unable to complete their tasks adequately without direct intervention by the judge.[75] Judges have complained that bailiffs make mistakes of procedure on a fairly frequent basis, even when the enforcement issues are straightforward[76]; that they refuse to undertake searches to locate the debtor or the debtor's assets; that they fail to appear for hearings concerning appeals against bailiffs' actions; that they fail to provide supporting documentation and evidence as directed. Thus there is considerable repetition even of simple mistakes, each mistake resulting in hearings and more work for judges. Bailiffs have also allegedly not paid attention to decrees issued by the Constitutional Court, the Plenum of the Supreme Court, and regulatory measures of the Russian government relevant to enforcement proceedings. Bailiffs are not required to have any education in legal subjects as a condition of employment, and many do not; yet the Bailiffs Service has been slow about providing any training to bailiffs, leaving judges to deal with complaints stemming from bailiffs' legal ignorance. Finally, judges have complained that the appeals process may result in some protection for the parties but has no impact whatever on the behavior of bailiffs: since sanctions that arise from complaints against bailiffs apply only against the Bailiffs Service and not against the individual bailiff, those sanctions cannot act as a significant deterrent to his activity without significant administrative sanctions, which typically are not forthcoming. All of this results in unnecessary work for judges, and raises doubts about the effectiveness of management.[77]

Furthermore, the number of complaints in court against bailiffs seems surprisingly low. In our survey , some 30% reported that they had never been the subject of a formal complaint. Of the remaining bailiffs, 65% reported fewer than five complaints over their careers, while an additional 20% reported fewer than ten; thus, about 90% have had less then ten complaints over their careers. This should be seen in the context that bailiffs are presented with a mean number of new cases each month of over 200, and on average the interview subjects had worked for the bailiffs department or its predecessor agencies for over five years. There are many unsolved cases; bailiffs report that 40% of cases were "completed and closed" (a category including but not limited to cases which were fully

[75] Under Article 17 of the law "On Enforcement Procedure," a bailiff may at any time seek from the issuing court an explanation of any aspect of the court's judgment on which the enforcement action is based. Ob ispolnitel'nom proizvodstve," (Law "On Enforcement Proceedings,") Federal Law No. 119-FZ, Vestnik *Vysshego Arbitrazhnogo Suda Rossiyskoy Federatsii*, Special Supplement to No. 10 (1997), pp. 15-50, Art. 17.

[76] For example, in one case, the bailiff issued a ruling imposing an administrative fine on the debtor for failing to comply with a decree of the Land Administration Commission ordering payment of fines for violation of land legislation. The debtor subsequently filed a petition with the *arbitrazh* court disputing the finding of violation, but the bailiff failed to recognize this filing and issued the ruling for the administrative fine; this then resulted in an appeal and reversal of the bailiff's action.

[77] These complaints about bailiffs were voiced by judges at a seminar presented in September 1999 by the USAID Bailiffs Assistance Project.

collected), while they report that after six months, the percentage of cases "completed and closed" rises only to 49.2%.[78] Thus it appears many judgment creditors have unsolved cases for which progress is slow and success highly unlikely after the first month of collection effort, and thus might be thought to have reason to complain about the bailiff's actions. Furthermore, it is quite easy to file a complaint against a bailiff. From the perspective of the judgment debtor, filing has the benefit of significantly delaying the collection process. For whatever reason, the complaint process appears not to be an effective form of control over the discretion of bailiffs.

Administrative monitoring is equally problematic. Working bailiffs and their supervisors have interests directly contrary to the interests of the administrative hierarchy. The reason for the existence of the "cap" on commissions at 800 rubles[79] is that the central authorities want to limit the loss or leakage of revenue to persons at lower levels. The limits on bailiff income, however, may actually reduce agency revenue because it gives working bailiffs and their immediate supervisors an interest in very small cases to the exclusion of cases that have real value to the agency.

Given the distinction between the interests of bailiffs and the agency hierarchy, administrative controls are the only means available to limit those losses of agency revenue. For all practical purposes, administrative controls depend critically on the supervisory bailiff in local offices. Loosely speaking, local bailiffs' offices comprise two categories of workers: enforcement bailiffs (who are responsible for the actual work of enforcing judgments and carry a regular caseload of judgments to enforce) and supervisory bailiffs (who are responsible for managing the office and supervising the activities of the enforcement bailiffs).[80] The typical bailiffs' office includes approximately 11 enforcement bailiffs, though some offices may have as many as 50 or more,[81] and the number of bailiffs' offices in a region, or oblast, is typically around 25.[82] Thus, the supervisory bailiff managing a typical office will supervise about 11 enforcement bailiffs, while the typical Regional Chief Bailiff (the next level of hierarchy in the Bailiffs Department) will be responsible for some 275 bailiffs located in 25 remote locations.[83] For all practical purposes, therefore, the Regional Chief Bailiff simply cannot

[78] All figures, 1999 survey.

[79] This is the approximate monetary value of the "ten minimum monthly salaries" specified in the statute as the cap or limit to be paid to the enforcing bailiff in any single case.

[80] Local bailiffs offices also include "court bailiffs," who are responsible for courthouse security, and "specialists," who are responsible for a variety of activities to support the work of enforcement bailiffs.

[81] Bailiff survey, 1999.

[82] Bailiff survey, 1999.

[83] According to the 1999 survey, bailiffs' offices are typically separated by distances of about 35 kilometers from each other, though distances of 70 kilometers are not uncommon and in a few rare cases the distances between offices may be as large as 700 kilometers. These distances must be evaluated in terms of Russian highways, which generally offer much slower travel than, say, the U.S. Interstate Highway System.

monitor the day-to-day activities of individual enforcement bailiffs effectively, and the supervisory bailiff in each local office therefore as a practical matter has considerable discretion in supervising the activities of the bailiffs in that office.

Supervisory bailiffs earn no commissions of their own. The supervisory bailiff is compensated by an extremely small fixed salary (as are the bailiffs themselves), plus (typically) a share of the commissions earned by the bailiffs that that person supervises; both bailiffs and supervisory bailiffs depend on a share of the commissions earned by the bailiffs they supervise for the vast majority of their incomes, since the fixed salaries are extremely low. But supervisory bailiffs quite commonly have imposed or negotiated informal arrangements to share in the commissions to which the bailiffs they supervise are entitled, and frequently claim a share of the total fees collected by individual bailiffs each month.[84] Their income is dependent on bailiffs' efforts to increase commission income. Thus, the supervisory bailiffs, the only representatives of the agency hierarchy with sufficient information to monitor and affect the activities of enforcement bailiffs, can become complicit in enforcement bailiffs' efforts to maximize their incomes in light of the incentives created by the law.

In other words, the only supervisor with meaningful control over the bailiff is a direct beneficiary of the bailiff's actions, and shares his incentives. That person is likely to support bailiffs actions that increase commission take, even when those actions derogate from the ideal of full enforcement – when the bailiff ignores hard cases to increase his commission take, the supervisor benefits directly. The supervisor and the bailiff are thrust into a conspiracy against the system, which it is in their joint interest to conceal from the hierarchy. The hierarchy, in turn, has no particular reason to be aware of this behavior. Because they are far removed from the ordinary experience of bailiffs' day-to-day activities, they are not likely to have direct experience with the way bailiffs manage their time or the details of the relationships between ordinary and supervisory bailiffs.

IV. Corruption and Diversion of Agency Mission

Thus, the bailiff sits at the center of the system of state judgment enforcement, protected despite limited success in enforcing judgments by the agency's monopoly power, the complementary incentives of immediate supervisors, the lack of involvement of judges, the agency hierarchy's desire to reap as much revenue as possible for itself, and a quiescent and cynical clientele. These factors work to undermine the agency's ability to fulfill its core mission of enforcing the judgments of the state's courts.

The mission of the agency, however, is also undermined because a number of forces seriously distract attention from that mission to a variety of other, fundamentally irrelevant goals. Some of those, such as petty corruption, may be exercised by individual

---

[84] This practice was reported by several supervisory bailiffs with whom we spoke.

bailiffs or their immediate supervisors, as well as members of the agency hierarchy. However, the agency hierarchy and even the government administration itself also have found significant other ways to divert the agency from its fundamental mission and otherwise to misuse the agency.

(a) Traditional Corruption

The bailiff system presents nearly ideal conditions for corruption.[85] A state monopoly, its agents have nearly absolute control of a service which is potentially of great value to its clients. Since all judgments and other enforceable rulings must go through the funnel of the state agency to be enforced, with case assignments to individual bailiffs typically made on the basis of assigned territories or other non-competitive criteria, bailiffs have effective monopoly control of a resource which can be extremely valuable to a successful judgment creditor. As we have seen, the agency offers a high degree of discretion to its agents. It is difficult for the agency to monitor the actions of bailiffs, except through the local supervisory bailiff who may well be a beneficiary of any illicit payments made to the bailiff, because of the distances involved, the loose administrative structure of the agency, and the apparent absence of internal auditing mechanisms. Bailiffs are also paid extremely low legal incomes. Bailiffs – all enforcement bailiffs – earn a base salary of 1300 rubles per month (about $45 at current exchange rates); survey respondents indicate that their total monthly incomes average 1530 rubles, with about three-quarters earning less than 2000 and 90% earning less than 3400 rubles. Thus even the very highest earners in the system have incomes of less than $120 per month.[86] This incentive structure and the value of the resource they control would appear to give bailiffs significant reason and opportunity to engage in corrupt practices.

Of course, bailiffs may solicit or accept bribes from debtors who wish to avoid enforcement. While such cases have clearly occurred,[87] and state prosecutors are

[85] For a discussion of the incentives which might lead public officials to engage in corruption, see **Azfar, Omar, Young Lee, and Anand Swamy**, "The Causes and Consequences of Corruption," *Annals of the American Academy of Political Science*, **573**, 42 (2001): "Why does corruption exist?. . . When will the calculations work out in favor of a public official's being corrupt? Presumably, when the potential benefits of being corrupt are high (for example, the official has the sole discretion to provide an essential license or permit), the probability of being caught is small, or the official's wage is low." Klitgaard provided this widely cited formula: corruption = monopoly + discretion – accountability. **Klitgaard, Robert**, *Controlling Corruption.* Berkeley: University of California Press, 1988. Hendley et al. report that enterprise managers in Russia "almost uniformly" believe "honesty and ethical behavior" to be very low among institutions such as state administration and the police, and that "a high level of corruption is present in local administrations." **Hendley, Kathryn, Barry W. Ickes, Peter Murrell, and Randi Ryterman**, "Observations on the Use of Law by Russian Enterprises, *Post-Soviet Affairs* **13**, 1 pp. 19-41, at 21-22.

[86] RECEP reports that the average monthly wage in Russia during the year 2000 was 2262 rubles ($80 at current exchange rates). In other words, the average bailiff earns just two-thirds the average Russian monthly wage. RECEP (Russian-European Center for Economic Policy), "Russian Economic Trends, February 2001.

[87] See, e.g., **Zhilyakov, Viktor**, "Two Court Bailiffs Arrested in Southern Russia for Bribery," Itar-Tass News Agency, January 18, 1999.

sufficiently concerned about this problem to threaten bailiffs with prosecution at nearly every opportunity,[88] it is impossible to tell how extensive such cases are. Because of their extraordinary caseload, case selection is another possible way to increase their take. Bailiffs may selectively choose cases for enforcement, accepting bribes or currying political favor in their choices. Instead of marketing their services to debtors seeking to avoid debt payment, bailiffs instead could market their services to creditors seeking to speed up payment; indeed "speed money" is a common form of governmental corruption.[89] The large number of cases which most bailiffs carry from month to month unresolved certainly would seem to present an attractive setting for speed money to be paid.

(b) Diversion of Agency Mission

Because the agency is directly under the control of the executive branch of the government, and because the government has significant economic and political interests of its own, the agency might reasonably be expected to divert attention from private litigants and pay greater attention to the needs of the government itself. While the enforcement of civil judgments may be of considerable social and legal benefit, the direct financial yield to the state treasury is comparatively small, and the attention of the Bailiffs Department might well be diverted to tasks which are more immediately productive to the state's own interests. In fact, exactly that kind of agency diversion has occurred.

Since the creation of the agency, the Bailiffs Department has been drafted to undertake two significant additional duties. Both serve the direct interests of the state, in the sense that they yield the full amount collected by the bailiffs directly to the state, with no deduction either for the bailiff nor for any private litigant. In October 1999, the Bailiffs Department entered into an agreement with the State Customs Committee to form a joint service of bailiffs for the purpose of collecting customs duties. Under that agreement, formed in response to instructions issued from within the executive branch to both agencies, the agency was to assume the duty of enforcing customs rulings and court decisions relating to Customs regulations.[90] Subsequently, in January 2000, the Bailiffs Service was assigned the responsibility of collecting all unpaid tax arrearages. Both are significant new duties for the Bailiffs Service; both are only tangentially related to its core mission. The agency was already burdened with a volume of cases beyond the agency's ability to handle, as the leadership of the agency acknowledged.[91] These new

---

[88] For example, at several IRIS seminars for bailiffs on technical legal subjects, state prosecutors made unsolicited appearances to warn bailiffs publicly of the penalties for bribery.

[89] See, e.g., **Lanyi, Anthony, Walter Guevara, and Sarah Bell**, "Bolivian Customs Reform: A Case Study of Consolidating Democratic Institutions," IRIS Center, November 22, 2000.

[90] **Interfax News Agency**, "Ministry of Justice, Customs Agencies Set Up Joint Bailiffs Service," October 19, 1999.

[91] **Itar-Tass News Agency**, "Justice Minister Calls for Increasing Number of Bailiffs," October 29, 1999.

responsibilities are likely to reduce the likelihood of enforcement of private cases and the speed with which such cases are enforced.[92]

The new responsibility of collecting tax arrears has arguably become a major focus of the agency's concern. The Minister of Justice made clear his focus on the bailiffs' obligations to collect taxes in what was virtually his only public commentary on the operations of the bailiffs in over a year. In a conference call held with officials of the Bailiffs Department and disclosed to the public in a press release, Justice Minister Yuri Chaika announced that the amount of taxes owed by (and not collected from) private taxpayers from the previous year had doubled, that the government was dissatisfied with that situation, and he warned in blunt terms that the Bailiffs Department had better do better in collecting taxes in the future or face serious consequences.[93] He urged that the bailiffs "step up [their] work in this respect."[94]

The fact that the bailiffs were assigned quite significant and difficult responsibilities to collect tax arrears[95] well after the agency had been created, after it had become clear that bailiffs already faced overwhelming responsibilities to collect ordinary judgments, and that bailiffs were lectured specifically on their shortcomings in performing this new duty, suggests that the original mission of the agency had been somewhat demoted in importance and that the concern of the government had shifted to this new area.[96] Because of the monopoly position of the state, enforcement of civil judgments on behalf of private parties – the agency's original mission – is undermined by these alternative but apparently urgent new duties.

(c) Selective Enforcement

When the agency was created, the enforcement function was moved from the courts into the executive branch Ministry of Justice to provide better management and greater resources, and no doubt this has occurred. Yet centralizing the enforcement of judgments in the Ministry of Justice was not really necessary to achieve those goals. Effective administration could have been provided through the Judicial Department of the Supreme Court, created in 1989 to provide administrative services to the courts themselves.

---

[92] The author was told in a March, 2000, meeting with the Chief Bailiff of the Russian Federation and his staff, that they had been "informed" by the Minister that their success in implementing the new responsibilities of collecting state revenues was critical to their own survival in their present positions.

[93] **British Broadcasting Corp**., *Summary of World Broadcasts*, March 6, 2001.

[94] **British Broadcasting Corp**., *Summary of World Broadcasts*, March 6, 2001.

[95] Over 40% of respondents to our survey listed tax-related cases as one of the three most difficult kinds of cases to enforce.

[96] Indeed, members of the project staff were informed by the leadership of the agency, shortly after they assumed their offices in early 2000, that their survival in their new jobs depended fundamentally on their ability to achieve success with the newly-assigned responsibilities of collecting tax arrearages.

Budgetary resources should flow from a policy commitment, not from assignment to one agency instead of another.

Whether intended or not, the practical result of moving responsibility for the bailiffs from the courts to the Ministry has been to raise questions about the independence of the courts by subjecting the decision to enforce their judgments to the choices of political actors, possibly the Ministry of Justice, regional governors, or other political authorities. Indeed, a high Administration official has publicly described the government's own view that the execution of decisions against state organizations and entities financed through the state budget, as well as organizations in which the state holds a majority interest, "must be differentiated, not blind."[97]

A few examples may serve to indicate the plausibility of political bias. In June 1999, bailiffs accompanied by 20 armed men with faces hidden in ski masks installed new management at Vostoktransflot, a major shipping company in Vladivostock, on Russia's Pacific coast. The bailiffs were acting under a injunction from the district court to overturn decisions made at a company board meeting two years earlier. The losing side, evicted from control of the company, had consisted of Moscow-based investors, who claimed that the bailiffs were acting at the behest of the Primorye regional governor. Immediately following this turn of events, the Moscow investors sought and received orders from the Vladivostock State Arbitration Court reinstating those managers, but the bailiffs declined to implement those decisions, claiming the press of other activities.[98] A similar case involved the ouster of the president of Transneft, Dmitri Savelyev. Claiming that efforts of the federal government (a part owner of the company) to oust him were illegal, though based on a court order, the president locked himself in Transneft's Moscow headquarters. He was ejected from the premises by a squad of armed bailiffs who used a chainsaw to cut their way in to enforce a court order for his removal. However, when he obtained another court order reinstating him, he was accompanied by a single bailiff who was unable to obtain entrance into the company building. The second court order was never implemented, and Savalyev never regained control of the company.[99]

An excellent example of real or apparent manipulation of enforcement for political purposes involves the contrasting cases of Russian Public Television (ORT) and the recent controversy involving Media MOST, the independent and politically outspoken television station owned by the alleged "oligarch" Vladimir Gusinsky who has become a target of Putin Administration hostility. While the actions of the bailiffs towards the state-owned television station were unusually lenient in the face of court orders – indeed, the

[97] **Ivanova, Tamara**, "Actions Against Russian Public Television Smack of Politics," ITAR-TASS News Agency, November 19, 1998. The quotation occurs in a context which makes it clear that the Russian government expected the behavior of bailiffs to be show favoritism to government enterprises as compared to private enterprises.

[98] **Borisova, Yevgenia**, "Legal Tangles Put Bailiffs at Governors' Mercy," *Moscow Times*, Nov. 23, 1999.

[99] **Borisova, Yevgenia**, "Legal Tangles Put Bailiffs at Governors' Mercy," *Moscow Times*, Nov. 23, 1999.

bailiffs appear to have been ordered to act in a lenient manner from within the executive branch – the attitude of bailiffs towards Media-MOST was exactly the opposite.

In the ORT case, the national television company (which was 51% owned by the state, with the remainder held by public investors including the President of the Russian Federation, Boris Yeltsin[100]) was sued for a variety of debts by several creditors, including its communications workers, a number of regional television and radio broadcasting centers, and another broadcast company. The Moscow Ostankino Municipal Court ordered the property of ORT confiscated for payment of its debts, and issued an enforcement document ordering the bailiffs to seize the property.[101]

This immediately evoked a series of actions by government officials to head off the bailiffs. On November 18, 1998, Igor Shabdurasulov, the director-general of ORT, began the public relations war by suggesting that the seizure procedures begin with his own office, explaining what he called a "desperate gesture of hospitality" on the grounds that this might enable the editorial offices and studios to continue functioning a bit longer.[102] The next day, the head of the Federal Television and Broadcasting Service of Russia, Mikhail Seslavinsky, attacked the effort to seize the property, saying that "such vulgar methods have a political tint in the current situation in the economy and the mass media."[103] Finally, he noted that the Federal Television and Broadcasting Service had applied directly to the Chief Bailiff of the Russian Federation, asking him to suspend the implementation of the writs of execution.[104]

That evening, the Chief Bailiff, Boris Kondrashov, appeared on television to state that the Ministry of Justice had no interest whatever in hampering the activities of ORT public television, and that, given the "great social significance" of the television company, the Bailiffs Department of the Ministry of Justice had taken the proceedings against ORT under "special supervision."[105] Indeed, that very day, Kondrashov had issued an order to the bailiffs in his department to halt all activities which might make it impossible for the company to operate.[106] By this time, the enforcement bailiffs enforcing the ORT

---

[100] ORT also played a significant role in Yeltsin's election to the presidency in 1996.

[101] **Ivanova, Tamara**, "ORT Chief: Moves Against ORT Have Political Undercurrents," ITAR-TASS News Agency, November 18, 1998.

[102] **Ivanova, Tamara**, "ORT Chief: Moves Against ORT Have Political Undercurrents," ITAR-TASS News Agency, November 18, 1998.

[103] **Ivanova, Tamara**, "Actions Against Russian Public Television Smack of Politics," ITAR-TASS News Agency, November 19, 1998.

[104] **Ivanova, Tamara**, "Actions Against Russian Public Television Smack of Politics," ITAR-TASS News Agency, November 19, 1998.

[105] **Ivanova, Yelena**, "Russia Bailiff Assures Ministry Is Not Keen to Thwart ORT," ITAR-TASS News Agency, November 19, 1998.

[106] **ITAR-TASS News Agency**, "Russian TV Channel May Air Without Video Footage," November 19, 1998.

judgment were demanding keys to the premises, title documents to company cars, company financial records, and a list of property items, and ORT director-general Shabduraslov complained publicly that "either the order has not reached the bailiff in charge of the activities, or it has been deliberately sabotaged." In addition, he noted that senior Cabinet officials "are trying to help and are negotiating the withdrawal of bailiff orders."[107]

By the next day, Alexei Miroschnichenko, the Chief Bailiff of Moscow City, whose bailiffs were responsible for the enforcement of the action against ORT, announced the suspension of all enforcement actions.[108] This decision was taken, he said, "to prevent escalation of tension and allow the disputing parties to agree on debt payment or settlement." Property which previously had been subject to seizure, he said, was now merely to be shown to the bailiffs but not turned over to them, and bailiffs were to continue to make an inventory of ORT property.[109] Even this went too far for the government, however. The very same day, Deputy Prime Minister Valentina Matviyenko announced that the Russian government had "instructed" the communications enterprises who were ORT's judgment creditors to withdraw their legal actions against ORT, and sent a letter to Miroschnichenko asking him to suspend all enforcement activity including the creation of a property inventory.[110] Later that day, Miroschnichenko announced that the bailiffs had indeed suspended all operations.[111] Legal actions against the station were dropped, and the government eventually reached a debt rescheduling plan with ORT's creditors, who had become more reasonable in light of the bailiffs' unwillingness to enforce the court judgment they had obtained.[112]

The contrast with the Media-MOST story could not be more stark. Media-MOST was controlled and partially owned by Vladimir Gusinsky, one of the "oligarchs" who had benefitted personally from the privatization of Russian enterprises in the early 1990s. The television network which Media-MOST controlled, NTV, was until 2001 the only broadcast media not directly controlled by the government and NTV exercised its independence vigorously, frequently criticizing the Putin Administration. Shortly after President Putin entered office, a campaign was initiated against Gusinsky, NTV, and

---

[107] **ITAR-TASS News Agency**, "Russian TV Channel May Air Without Video Footage," November 19, 1998.

[108] **Interfax News Agency**, "Moscow Bailiffs Suspend Actions Against ORT," November 20, 1998.

[109] **Ivanova, Yelena**, "Bailiffs Ease Sanctions Against ORT Television," ITAR-TASS News Agency, Nov. 20, 1998.

[110] **British Broadcasting Corp.,** "Russian Government Calls An End to Legal Action Against TV Company," November 20, 1998.

[111] **British Broadcasting Corp.**, "Russia's ORT to Resume Television News as Normal," November 20, 1998.

[112] **ITAR-TASS News Agency**, "ORT Bailout Ahead," December 1, 1998.

Media-MOST, based on arguments over the legitimacy of Gusinsky's business practices. While those arguments remain unresolved at the time of this writing, control of NTV has passed firmly into the hands of the government, in part through actions of the Bailiffs Service which appear not to have been entirely lawful. The apparent silencing of the sole independent broadcaster in Russia was accomplished through a well-designed plan in which a number of government-controlled parties played critical roles. The Bailiffs Service was one of the agencies which played a role in this drama.

Some 49% of the shares in Media-MOST were owned by Gusinsky himself. The bulk of the remaining shares, some 46%, were owned by Gazprom, a large oil company which itself is majority-owned by the Russian government and whose chairman, Alfred Koch, owed his job directly to President Putin. In addition to its share ownership, Gazprom was also owed some $300 million in debts by Media-MOST, secured by Gusinsky shares equal to some 19% of the total outstanding shares. When Gusinsky found a foreign investor willing to buy those shares for an amount sufficient to pay off the debts to Gazprom, the chairman of Gazprom immediately filed a request with the commercial court asking that the shares be arrested so as to prevent their sale, though seizure of the shares could not be justified under the loan agreement for several additional months. The commercial court did arrest the shares pending hearing on the case. However, the bailiffs not only enforced this arrest of shares, but also banned the voting rights on the shares, an action which was not justified by the court ruling and which prevented Gusinsky from voting the shares against the Gazprom action. Furthermore, the chairman of Gazprom announced the intention of the bailiffs to do this before the bailiffs themselves had announced their intention publicly, creating the appearance that chairman Koch had inside knowledge of what the bailiffs intended to do. Thus, during this period, Gazprom became the effective majority shareholder, and immediately held a shareholders' meeting to install its own candidates to the board of directors. Thus, Gazprom, and indirectly the government, seized control of Media-MOST through the sympathetic actions of the bailiffs. The appearance is that the bailiffs have become part of the structure by which the government exercises political control.[113]

Rethinking the Enforcement of Judgments in Russia

Despite the hopes for improved enforcement embodied in the newly-created Bailiffs Service, many of the problems which led to the creation of this agency remain. Though enforcement rates are difficult to calculate, the evidence does not show a striking improvement in collection success. Where anecdotal evidence suggested dissatisfaction with pre-agency collection rates of "well under" 40%,[114] available numbers suggest that monetary recoveries today, as a percentage of judgments for which recoveries were

[113] **Russia Journal**, "Even Foreigners' Money Won't Save NTV This Time," Feb. 3, 2001.

[114] Solomon and Fogelsong, *supra* n. 17.

sought, remain below that standard, with little evidence to date of improvement.[115] Hendley's survey data on users of the commercial courts suggests continuing high levels of pessimism about enforcement of court judgments, though not about the capabilities of the commercial courts.[116] While the agency is still less than five years old and may yet show results, it has not yet built a persuasive case for its success.

Many of the elements of the enforcement structure which the reformers had hoped to improve similarly do not show significant change, though there may be tentative evidence of some progress. Where reformers envisioned a new staff of bailiffs with advanced legal training, firearms, and the muscle to use real force when necessary, in fact a high percentage of bailiffs today were employed in essentially identical positions under the "old" court bailiff system, and fewer than half have completed education beyond secondary school.[117] For better or worse, the government has chosen to give the power to sell seized assets, not to the bailiffs but to another new federal agency called the Federal Debt Center, with a separate accounting and administrative structure, thereby depriving the bailiffs of one of the very functions originally envisioned for them. Judges continue to have significant supervisory responsibilities over bailiffs, and resentment over the obligation to administer staffs of bailiffs has been replaced by a new set of resentments and duties rooted in the inadequacies of bailiffs and the Ministry of Justice.[118] The higher level of funding apparently flowing into enforcement activities has been accompanied by demands that bailiffs take on significant new duties unrelated to the enforcement of judgments on behalf of private litigants, at times compromising the integrity of the judgments themselves.

It must be recognized that the agency is still relatively new, and that changes are still ongoing. Further, there is no lack of good intentions in the agency about achieving an effective Bailiffs Service, and hard work towards that goal. However, many of the obstacles or frustrations which face the agency are a consequence of some critical elements of agency design, rather than a failure of good intentions or a lack of effort. I would suggest focusing attention on two fundamental aspects of agency design.

First, the decision to place the Bailiffs Service within the executive branch Ministry of Justice, rather than under the control of the courts, has placed unintended limits on the independence of both the courts and the Bailiffs Service; and facilitated the

---

[115] *See supra* n. 54. The Ministry has claimed much higher rates of success in terms of total numbers of execution writs collected, but the available numbers suggest much less success in terms of the monetary amounts recovered. See supra n. 54. Solomon and Fogelsong, supra n. 8 at 170, report official "success" rates of 48% by late 1998, but this refers only to "implementation of court decisions," which means the successful processing of enforcement documents and not necessarily successful enforcement of cases.

[116] *See supra* n. 63.

[117] 1999 survey. In early 1998, shortly after the creation of the new Bailiffs' Service, some 10,000 of the former judicial enforcers underwent review (*pereattestatsiia*), and 9,000 of the passed and gained reappointment as bailiffs in the new Bailiffs Service. Solomon and Fogelsong, supra n. 8, at 167.

[118] *Supra* text accompanying notes 82-87.

diversion of the agency from its original mission of serving judgment creditors to other missions, essentially unrelated, which serve separate interests of the government. Second, the decision to deny any significant role in the enforcement process to the judgment creditor has severely undermined the success of the agency in enforcing judgments, with particularly detrimental impact on the judgments of the commercial courts. It has allowed a distorted system of incentives to undermine agency performance. It has also made significantly more difficult the monitoring of bailiffs activities, since it has forced that entire process onto a bureaucratic structure not well designed to perform that task, and prevented the development of market mechanisms to promote the efficiency of bailiffs.

Thus, I would argue that the Russian government should place the agency under the control of the Judicial Department of the Supreme Court, fund that agency adequately to perform its tasks, and focus the mission of the Bailiffs Service to a limited number of core tasks while expanding the scope of permissible private activity in the enforcement process. Each of these conclusions is explained below.

Restoring the Bailiffs to Judicial Branch Control

Placing the Bailiffs Service within the executive branch Ministry of Justice was originally justified as a means of providing more resources to the process of judgment enforcement; of improving the capabilities of the agency's staff; and improving both overall enforcement outcomes and, in particular, the performance of the relatively new commercial courts.[119] Concerns expressed about the resources available for enforcement activity, so long as that activity remained structured within the judiciary, become plausible in light of the extraordinary budget crisis the judiciary faced in the middle 1990's, and which continues to the present time.[120] The Russian government repeatedly budgeted inadequately to cover even the basic operating expenses of the courts, and then refused repeatedly to meet even those limited budgetary commitments. As a result, the courts have developed quite significant debts to staff and to suppliers of basic services such as electricity. These problems have significantly compromised the independence of the courts from the executive branch which controls the budgeting process, the local governments which provide financial "help" to local courts, and the companies which have become significant creditors of the courts.[121]

[119] One astute observer of the Russian legal environment has suggested to the author in private correspondence that another possible reason for the change in structure may lie elsewhere: When the Ministry lost jurisdiction over the courts, it may have sought control of the bailiffs to recover some of its lost administrative authority and prestige, particularly in its struggles with the State Legal Administration.

[120] The difficult struggle of the courts to receive adequate funding is detailed in Todd Fogelsong, "Judicial Independence in Russia," in Peter H. Russell and David M. O'Brien (eds.), Judicial Independence in the Age of Democracy: Critical Perspectives from Around the World (Charlottesville: University Press of Virginia, 2001), at 69-74.

[121] Id. at 70-71.

In light of this persistent refusal to fund the courts adequately, the argument that the Bailiffs Service would receive more adequate funding if it were administratively under the Ministry of Justice, and not the courts, must have appeared quite plausible at the time the new system of enforcement was designed. The Russian government has indeed budgeted a reasonable level of funding for the new agency.[122]

Nevertheless, the rationale hardly seems persuasive. Underfunding of any agency associated with the courts is not inevitable -- it is a political choice, particularly in light of the more adequate funding for the same agency as part of the executive branch. The budgetary process for the Russian government does not entail separate revenue sources for the judicial and executive branches.[123] Using the adequacy of funding to justify the relocation of the agency seems strategic rather than principled; it has surely resulted in an aggrandizement (whether planned or not) of power within the executive branch, limiting the independence of a putatively independent branch of government.

The courts, though structurally independent, face a challenge to their independence from severe underfunding. The Bailiffs Service faces exactly the same problem, for exactly opposite reasons. While finding resources sufficient to provide adequately (though not lavishly) for the agency, it has on occasion subjected the agency to direct political control, subverting the willingness of litigants to rely on the courts, and it has also diverted the agency to unrelated activities, undermining its effectiveness. The independence of the courts, as well as the mission of the bailiffs agency, would be served well by returning the agency to the control of the courts and funding it adequately to perform its mission.

Separating the bailiffs from the executive branch, and returning them to the control of the courts, need not require a return to the unworkable administrative structure of the middle 1990's. The Judicial Department of the Supreme Court was designed to provide for the administrative requirements of the court system, including staffing, operations, and resources (such as providing buildings, equipment, technical support, and so forth). The goal when the Judicial Department was created in 1988 was to ensure the administrative competence of the courts while freeing judges of the burdens of local court administration, and assuming responsibility for administrative supervision of the bailiffs fits into that mission very naturally. While the Department remains severely underfunded, placing the Bailiffs Service within the Department should be accompanied by the funds now spent on the bailiffs.

Using the administrative structure of the Judicial Department for this purpose is not a new idea. The Russian Federation Council of Judges, in a series of letters to the Russian Ministry of Justice, has already recommended transferring to the Judicial

---

[122] The draft budget for the Russian government for 1998 included an allocation of 290 million rubles to support the Bailiffs Service (including court bailiffs), a sum that was raised to 400 million rubles in the actual 1998 budget. Solomon and Fogelsong, supra n. 8, at 168.

[123] The Russian Constitution requires that courts be financed directly from the federal budget. Article 124, Constitution of the Russian Federation.

Department of the Supreme Court the responsibilities of bailiffs to maintain courthouse security and protect judges, an idea which was supported by the Plenum of the Supreme Court on September 11, 2000. Similarly, the Fifth National Congress of Russian Federation Judges issued a decree on November 29, 2000, indicating its support for the transfer. The letters from the Council suggest considerable dissatisfaction among judges with Ministry of Justice management and a willingness on the part of the Supreme Court to assume administrative responsibility for the bailiffs system.

The question of whether the Judicial Department could also administer an enforcement system is first and foremost a matter of the availability of resources, which is of course a question of political will. Strong reasons of principle justify restructuring the agency to return administrative control to the judiciary, and the bureaucratic structure would appear to be in place to make that restructuring feasible. What is required is the political will of the government to ensure the independence of the courts.

Creating a Stronger Role for Private Activity in the Enforcement Process

Many of the problems with the current operation of the Bailiffs Service identified in this paper have their roots in the decision to structure the enforcement of judgments as a government agency, relying essentially exclusively on paid employees of the state to enforce every judgment, and to structure that agency as a single national hierarchy.

The problem of incentives described in this paper can only be addressed by allowing fees, which now are artificially fixed at unviably low levels, to "float" to reflect the full alternative cost of bailiffs' time, and by applying a market (cost-benefit) test from the creditor's perspective to decisions about how much time and effort to spend in the enforcement process. Under the aegis of the Ministry or of the courts, there is significant hostility to allowing bailiffs to receive anything like full compensation for their efforts, and considerable interest in sharing in those rewards. Until bailiffs are compensated for the full alternative cost of their time, they will engage in strategies which conflict with the interests of the judgment creditor.

Problems of supervision are similarly better addressed by private markets than by bureaucratic exhortations. If creditors had choices among enforcement agents, as they do among attorneys, market pressures (as well as the law of agency) would work to encourage effective and law-abiding performance. The diversion of the mission of the bailiffs away from the interests of the judgment creditor, and thereby indirectly that of the legal system generally, has been a consequence of bureaucratic control; if creditors could hire their own enforcement agents, that diversion would end.

Under a more private system, what would be left to return to the control of the Judicial Department, as recommended just above? The short answer is, that the reconstituted court bailiffs should retain the traditional role of law enforcement officials in the judgment enforcement process -- providing assistance to the judgment creditor in dealing with those situations in which the threat of violence between the parties may be

present. In short, the Russian bailiffs should play the same role that sheriffs play in the U.S., or that *Gerichtsvollzieher* play in Germany, or that *huissiers* play in France, or that bailiffs play in England[124]: that of handling intrinsically conflict-prone situations, such as the physical seizure of movable goods and a few other situations. All other enforcement activities invoking the mandatory power of the state could and should be undertaken by judgment creditors, relying on the court enforcement order and bureaucratic processes of the court to accomplish those goals. Garnishments, liens, and other "paper acts" to seize or control the debtor's assets should be invoked by the judgment creditor, at its discretion, by going to the court clerk, showing the appropriate court-issued judgment order, and requesting that the clerk issue a notice to the debtor of the action taken.

Two reasons have been repeatedly offered for maintaining a monopoly public system which entirely excludes the judgment creditor from the enforcement process. The first is a concern for protecting lower-income persons, who might not have the resources to make a private system work for them. The second is the problem of public safety associated with private enforcement agents. Both of these concerns are entirely misplaced.

(a) Protecting the less affluent

The income distribution concern appears the least substantial. The profit motive would giver preference to large judgments over small ones, and richer clients over poorer. Ensuring equal justice for those who are not affluent is an essential goal of any justice system.

It is surely true that some persons will be able to afford a higher quality of legal representation than others. Yet no one will normally enforce a judgment if it costs more to enforce than the judgment is worth. The costs of enforcement are normally paid out of the amounts collected, independently of the prior wealth of the client. Furthermore, exactly the same problem exists before judgment, with respect to legal representation in the litigation process: the same logic would forbid private lawyers.

Concern for those without access to resources often leads governments to provide legal clinics, small-claims courts with simplified procedures, and public representation for low-income litigants. The enforcement process could similarly make provision to assist in cases of poorer creditors and smaller claims. Those activities which are costly to perform or which typify large and difficult cases, such as investigations of debtor assets, recovery of business assets, attempts to dissolve fraudulent transfers, could be delegated to the judgment creditor, while the bailiff could retain responsibility for dealing with simple cases and routine activities. Efforts to make accessible to the public certain aspects of public support for private enforcement, such as the administrative issuance of liens and garnishments, should be attempted, while also attempting to lower the cost of accessing them.

---

[124] *See infra* text accompanying notes ___.

On the other hand, enforcement should meet a basic test of rationality -- a case should not be enforced if its economic value to the client is less than the anticipated costs of enforcing it. This suggests that, if the cost of enforcement is not allowed to fall on low-income litigants, some mechanism (such as a minimum judgment size) should be employed to mimic the decisions they would make if they did bear those costs. And the desire to provide low-cost representation to some should not prevent a more effective system for all.

(b) Preserving public order

There is no question that the judgment enforcement process conceivably could give rise to violence between creditor and debtor as the creditor tries to take the resources of the debtor to satisfy the judgment, and allowing the judgment creditor or its representative to take those actions could be a threat to public order. One can easily imagine debt collection as a violent process, accompanied by threats, blackmail, or actual violence. Any country would be justified in taking actions to prevent such outcomes, and this concern has been widely offered in Russia to justify the exclusion of the creditor from the judgment collection process. Yet that concern misunderstands the role that private parties could and should play in the process of judgment enforcement.

Judgments sometimes are enforced by physically going to the home, business, or location of the debtor and seizing the assets found there. Because there is a risk that the debtor may be present, and may not be willing to submit to the seizure of his or her property, this form of seizure does present a risk of violence. For that reason, levy of movable goods is performed in many Western legal systems by a public official such as a sheriff. "Self-help" is widely frowned upon, and can give rise to liability or even criminal charges for the incautious creditor.

Yet this is not the only form in which judgment enforcement occurs; indeed, it is unlikely to be the first, or the most commonly used, or the most successful. The property of the debtor can often be reached by legal process instead -- indeed, in many cases, the property can only be reached by legal process, and it is usually cheaper, safer, and more reliable than more physical methods. The debtor's wages (as well as other forms of regular income (pensions, interest, dividends, rents), and the debts owed to him by another person) can be garnished by court order; this would require that the debtor's employer (or payor, or debtor) to pay part or all of the sum due to the creditor instead. Bank accounts and other forms of financial assets can be seized simply by court order requiring the bank to release the funds to the owner's creditor. Automobiles may have their operating licenses suspended, rendering them useless to debtors even without their physical seizure. Liens may be placed on land and many other assets to prevent their transfer to a buyer, forcing the owner to pay debts before the lien can be lifted. Professional or business licenses may be suspended, or renewal made dependent upon payment. Businesses may be placed in receivership or sequester, inhibiting the debtor's ability to operate the business until the debt is paid. In short, there are a multitude of means by which legal process alone can effectively seize, immobilize, and transfer a debtor's assets, or otherwise put pressure on the debtor, with essentially no need for

physical confrontation. The risk to public order from such methods is normally non-existent. All these methods normally operate by routine administrative action, initiated by the judgment creditor but controlled by the court, after the judgment has been entered. There will surely be circumstances in which direct physical seizure of assets becomes unavoidable, and the assistance of a public official may in those cases be necessary to avoid conflict. But in the ordinary case that should not be necessary.

Oddly, however, the Russian model today presents exactly the opposite set of choices. Essentially there is no form of legal process in Russia by which the judgment creditor may take the income or assets of his debtor to satisfy the judgment -- reliance on the bailiff is the creditor's only real option. Yet physical confrontation is built into the system. As Vadim Volkov has made clear, there is a thriving industry today in Russia to provide "roof" services to businesses, to use physical intimidation, blackmail, or other means to enforce debts and judgments, and such businesses are legal (though their methods sometimes are not).[125] Surely this is the worst of both worlds: a kind of tacit acceptance of physical violence to enforce judgments, combined with a public monopoly on the very enforcement actions which private parties could do without risk to public safety -- all the while justifying the ban by a concern for public safety.[126] This situation should be exactly reversed. Bailiffs should control situations in which the threat of physical violence may be present, but need play no role whatsoever where that risk is absent.

(c) International Practice

The near-absolute monopoly on enforcement activity granted to state officials in Russia is unusual, in the sense that none of the major countries in the West grant such a monopoly to state officials to control the pace, timing, and strategy of the enforcement of judgment orders. The fact that a number of the former Soviet states adopted the same strategy as Russia (for example, Ukraine[127]) suggests that this approach may have its roots in shared Soviet or pre-Soviet conceptions or institutions.

All of the major Western European countries, as well as the U.S., use systems that allow the judgment creditor to control much of the enforcement process, and to choose the specific actions taken to enforce that judgment. These actions include a variety of tools of legal process which, though they depend on the cooperation of a court or other

---

[125] *See* Volkov, *supra* n. 6.

[126] The current system is not free from threats to public order, though it is a public system. *See supra* text accompanying note 71.

[127] Ukraine has closely followed the Russian pattern of judgment enforcement. *See* Laws of Ukraine, "On Enforcement of Judgments," (enacted April 21, 1999), and "On the State Bailiffs Service," dated March 24, 1998. The State Bailiffs Service is the only entity authorized to collect judgments from debtors' assets, with certain minor exceptions for tax agencies and banks. The role of the creditor and its attorney is essentially the same as in the Russian model. *See* Peter L. Kahn, "Enforcement of Contracts and Judgments in Ukraine," IRIS Report (June 25, 1998). Armenia has followed the same pattern, with a single state agency with sole authority to collect judgments compulsorily.

official body, are operationalized and brought into play by the action of the judgment creditor. All treat the use of coercive physical force in the enforcement process quite carefully, and place significant sanctions around the issue of misbehavior or overreaching by the judgment creditor.

The principal distinction among Western countries appears to be whether a state agent is required to take those specific actions which conceivably could give rise to physical confrontation between the parties or present certain other problems arising from contact between the parties, such as the physical seizure of the judgment debtor's movable (personal) property, or whether, instead, a private party is allowed to do so under the risk of potential sanction from the state in the event of misbehavior. Those enforcement actions, however, which rely solely on legal process and avoid all direct contact between debtor and creditor, such as the placement of liens against title to real property or the garnishment of an employee's wages from the employer, uniformly among the U.S. and major European countries avoid any fundamental reliance on a bailiff and allow the creditor to seek those actions directly from the court; generally they are handled purely administratively by the relevant court. Those actions which do involve possible confrontation between the parties may or may not require the services of a public official to avoid that confrontation, but still allow the action to be controlled and initiated by the judgment creditor.

In this respect, Germany and the U.S. are rather similar to each other, while France and England have taken a somewhat different, more liberal approach, permitting an even greater range of actions to private parties and their representatives. In both the U.S. and Germany, a state employee is required to undertake those actions in which the risk of physical confrontation is significant or some other clear rationale exists, while allowing the judgment creditor to retain control of the use of the elements of legal process which do not carry such risks.

In Germany, the closest analog of the Russian bailiff is a court employee called a *Gerichtsvollzieher*. This official is a civil servant who receives both regular remuneration and a percentage of a "successfully executed" judgment order.[128] The *Gerichtsvollzieher* alone is permitted to take personal property into custody, or to place under seal those components of personal property left under the control of the debtor. Similarly, public sale or auction of personal or real property is to be performed by the *Gerichtsvollzieher*.[129] Non-monetary claims for delivery or recovery of specific goods (replevin, in the English common law or American system) are also dealt with by requiring this state agent to receive the goods from the debtor and to turn them over to the creditor[130]; non-monetary claims requiring some personal performance are ultimately

[128] Harald Koch and Frank Diedrich, Civil Procedure in Germany (The Hague: Kluwer Law International, 1998), at 67, n.2.

[129] Werner F. Ebke and Matthew W. Finkin, Introduction to German Law (The Hague: Kluwer Law International, 1996, at 376.

[130] Id. at 378.

enforced by the threat of arrest for contempt of court. All of the foregoing actions present rather obvious reasons for relying on a state agent: the need to prevent contact which potentially could result in violent conflict between creditor and debtor in the specific context of a collection action, or the detention of an individual. However, in both German and U.S. practice, where such exigencies are absent, the law allows the judgment creditor to use legal process, such as garnishments, liens, and the like, to control the timing, pace, and choice of enforcement activity, subject to court supervision to prevent abuse. The judgment creditor can impose, subject to court review, such actions as garnishments of wages and salaries,[131] garnishment of debts from a third-party debtor,[132] attachment of property interests such as inheritance or other property rights,[133] sequestration of real property,[134] or placement of a lien on a debtor's realty. Furthermore, even those actions for which a *Gerichtsvollzieher* is required are generally commenced by the filing by the judgment creditor of a request or order for that action to be taken. They are "personally obliged to fulfill the mandate given to them by the parties, but at the same time are free to set the time and date for doing so,"[135] within certain limits. Their role in the enforcement process is crucial but limited, and is essentially the same as the role performed by a local sheriff in the U.S.[136] -- the judgment creditor runs the show, with the occasional assistance of a state official to perform certain intrinsically conflict-prone acts at the request of the judgment creditor.

The approach adopted by both France and England differs from the German-U.S. model, not because it provides less scope for private activity in the judgment enforcement process, but because it provides more. In both countries, private persons, employed not by the state or the court but by the judgment creditor, are empowered to undertake statutory remedies including those which do involve the actual physical seizure of the debtor's assets -- in short, those very activities that Germany and the U.S. assign to relatively disinterested state employees.

English bailiffs are of two general types: county court bailiffs, who are state employees, and private bailiffs (so-called because they offer their services to the relevant

---

[131] Id. at 376-377.

[132] Id. at 377.

[133] Id.

[134] Id. The sequestration is initiated by petition of the judgment creditor but is administered by a state agent. Id. at 377-378.

[135] Koch and Diedrich, supra at 67.

[136] Ebke and Finkin, supra, n. 128, at 377. "In respect to enforcing a judgment, they [the *Gerichtsvollzieher*] are generally in charge of executing pecuniary claims in movables and forcing the return of property, presupposing that the particular execution still belongs (exceptionally) to the court's tasks."

creditor on a commercial basis).[137] The ordinary civil courts are on two levels: the county courts, which deal with relatively small claims; and the High Court, a court of original trial jurisdiction, which deals with cases involving monetary amounts larger than a certain sum. While bailiffs who are state employees deal with certain categories of enforcement actions in the relatively small cases decided in county courts, private bailiffs deal with those same enforcement activities in the larger cases which come from High Court.[138] County court bailiffs are responsible for the seizure of the debtor's goods as a result of a warrant of execution issued by the court, which occurs after the judgment creditor has requested the warrant and transmitted it to the bailiffs' office; private bailiffs perform exactly the same tasks as the result of writ of *fieri facias* issued by the High Court.[139] Thus, in both cases, the judgment creditor decides that seizure of personal property is necessary, and obtains the necessary writ through a routine administrative procedure; in small cases, that results in levy and seizure by a state employee acting in response to that specific writ; in all other cases, that same task is performed by a privately-employed bailiff working directly for the creditor. All other enforcement actions -- garnishment of a debt, attachment of earnings, charging order on land, and so on -- are undertaken without the assistance of a bailiff of any kind, but rather through administrative action of the court, at the behest of the judgment creditor.[140] The English model differs from the German and American approaches in that in a significant number of civil cases (those heard in High Court), a private person working directly for the judgment creditor is permitted to take even those actions which risk physical confrontation with the debtor.[141]

---

[137] John Kruse, *Bailiffs Powers: A Debtor's Guide* (London: Easyway Guides, 2000, 2d ed.), at 8. So-called "sheriff's officers" are also private bailiffs in the employ of the judgment creditor, but subject to essentially the same rules of conduct as county court bailiffs in their judgment enforcement activities. Id.

[138] Peter Kaye, "England and Wales" in Peter Kaye, (ed.), *Methods of Execution of Orders and Judgments in Europe* (Chichester: John Wiley & Sons, 1996), at 51.

[139] Id. at 61. The same distinction applies in equitable action for recovery of goods, which also requires a bailiff to seize physical personal property. Id. at 67-68.

[140] Id. at 62-72.

[141] Furthermore, in England and Wales, no special qualification or license is normally required to serve as a bailiff. That is not true for certificated bailiffs, who receive a certificate upon examination by a judge as to matters of law and personal character. (Certificated bailiffs are required to collect certain administative penalties including parking fines and council (local) taxes.) Philip Evans, A Rough Guide to Bailiffs and Bailiff Law (Cheltenham: Kingsley Sureties Ltd., 1999), at 1, 4.

Clear controls exist which are effective against illegal action by the bailiff, in part because of legal process and in part because of the need to behave appropriately to attract business from knowledgeable creditor's representatives such as law firms. As agent of the creditor, the bailiff's misfeasance exposes the creditor to liability under agency law, leading creditor firms to seek professional bailiffs with a clear understanding of the law and with good performance records. Kruse, Bailiffs Powers, supra n. ___, at 93-94. Bailiff misfeasance exposes both bailiff and the creditor for whom he or she works to causes of action such as illegal distress, irregular distress, excessive distress, trespass to land, trespass to goods, conversion, and negligence. Id. at 100-105.

In France, the *huissiers de justice* are legal practitioners who buy a state position from their predecessors in the office.[142] The office entitles them to undertake certain actions in support of court orders; this includes certain enforcement actions, but their practice also includes such actions as serving notices and summonses as agents of the parties to the litigation, collecting debts outside the context of litigation; conducting appraisals prior to auctions and auction sales; and representing parties before certain agricultural land tribunals and commercial tribunals; and they can be retained by a private citizen to make *constats* (sworn statements). At the same time, the governmental administration regulates the decision as to whom is allowed to buy an office on grounds of competence and character, the rates charged by the *huissiers* as to certain services, the number of offices allowed to exist, and for certain purposes (including judgment enforcement) regards the huissiers as *officiers public* for the purpose of imposing sanctions on inappropriate conduct.[143] Thus, *huissiers* inhabit a somewhat undefined boundary area between public official and private agent. Nevertheless, their powers in the enforcement area are delimited in much the same way as their German or English counterparts: they play a critical role in the seizure of a debtor's physical goods, such as in the proceeding called *saisie-vente*, but they do so at the initiative of the judgment creditor[144]; but the bailiff's role in the rest of the enforcement process is generally minor or non-existent. Most importantly, the decisions about timing and the choice of specific actions are made by the judgment creditor, who can then either take action himself or request the assistance of the *huissier* as appropriate. Some of the actions which the creditor can take require that the *huissier* convey a notice to the debtor or to the third party, and again when any specific property under the control of the debtor is to be seized, the *huissier* is assigned a role.[145] But the choice of actions, and the initiation and timing of those actions, are all entirely in the hands of the judgment creditor.

I conclude from this review that the Russian decision to create a state service with a near-monopoly on enforcement actions represents a highly unusual arrangement by international standards; and that a system based on significant private involvement in the enforcement process has proven itself practical and effective. Such an unusual choice should be justified by reasons more compelling than those which have generally been

---

[142] Christian Dadomo and Susan Farran, The French Legal System (London: Sweet & Maxwell, Ltd., 1993), at 124.

[143] Id.

[144] Maxence Bloch, "France," in Peter Kaye (ed.), supra n. 145, at 97.

[145] For example, the *saisie-attribution*, in which the judgment creditor can attach sums held by a third party and owed to the judgment debtor, requires that the *huissier* provide *signification*, or notice, to the third party, but funds are conveyed directly to the creditor. The *apprehension des meubles*, in which movables are to be restored from the debtor to the creditor, also requires that the *huissier* convey notice and, again, actually seize the goods. On the other hand, the analog to wage garnishment, *saisie des remunerations du travail*, requires no participation from the *huissier*. Seizure of immovables (realty) requires notice to be conveyed by the *huissier*. *Astreinte*, a penalty imposed on the debtor for non-compliance, requires only an action by the court and no participation by the *huissier*. In any case, whether or not the *huissier* must participate in a particular action, decisions as to which actions to take, and when to take them, are solely in the hands of the creditor. Id. at 97-101.

offered. I believe that Russia has chosen a system which has little likelihood of real success; which in fact presents significant intrinsic problems; and which should be reconsidered.

Conclusion

Giving law enforcement powers to an agency of the government will not necessarily result in the intended law enforcement outcome. The design of the agency must be consistent with its objective. That requires a clearly articulated goal communicated effectively to the agents; an adequate monitoring system and a system of sanctions to enforce that behavior; and a positive set of incentives which will enlist the willing participation of the agents in that goal.

In the case of the Russian Bailiffs Service, the bailiffs charged with the responsibility of enforcing civil judgments were given incentives that seemed reasonable, yet those incentives had results not at all anticipated by the designers of the system. Performance incentives have been largely ignored due to a desire to ensure valuable revenue is not wasted on low-level employees. The state is not an innocent in this matter: it has found its own interests in the enforcement process. Even were they present, performance incentives cannot produce better performance absent a larger environment that supports that goal.

More fundamentally, however, the attempt to force all judgment creditors through the narrow funnel of an inadequately funded agency has created unsolvable dilemmas. The path to a solution cannot involve simply new training courses, or greater exhortations from the top. The solution must be to move towards a system of enforcement less dominated by the state, open to competition from the private sector, and more respectful of the capabilities and interests of the litigants which the system, after all, exists to serve.

REFERENCES

O sudebnykh pristavakh, (Law "On Bailiffs,"). Federal Law No. 118-FZ, *Vestnik Vysshego Arbitrazhnogo Suda Rossiyskoy Federatsii,* Special Supplement to No. 10 (1997), pp. 4-14.

Ob ispolnitel'nom proizvodstve," (Law "On Enforcement Proceedings,") Federal Law No. 119-FZ, *Vestnik Vysshego Arbitrazhnogo Suda Rossiyskoy Federatsii,* Special Supplement to No. 10 (1997), pp. 15-50.

Article 348 of the Civil Procedure Code (CPC) of the Russian Soviet Federated Socialist Republic (RSFSR) (adopted October 1, 1964)

Article 77 of the Law on the Organization of Courts of the RSFSR (adopted July 8, 1981)

Provision No. 1187 for the Russian Federation Ministry of Justice, issued Dec. 4, 1993.

Laws of Ukraine, "On Enforcement of Judgments," (enacted April 21, 1999), and "On the State Bailiffs Service," dated March 24, 1998.

Arbitrazhny protsesual'nyy kodeks Rossiyskoy Federatsii (1995) (*Arbitrazh* procedural code of the Russian Federation). *Vestnik Vysshego Arbitrazhnogo Suda Rossiyskoy Federatsii*, 6:25-79, 1995.

Azfar, Omar, Young Lee, and Anand Swamy, "The Causes and Consequences of Corruption," *Annals of the American Academy of Political Science*, **573**, 42 (2001).

Block, Maxence, "France," in Peter Kaye (ed.), *Methods of Execution of Orders and Judgments in Europe* (Chichester: John Wiley & Sons, 1996).

Borisova, Yevgenia, "Legal Tangles Put Bailiffs at Governors' Mercy," *Moscow Times*, Nov. 23, 1999.

British Broadcasting Corp., *Summary of World Broadcasts*, March 6, 2001.

British Broadcasting Corp., "Russian Government Calls An End to Legal Action Against TV Company," November 20, 1998.

British Broadcasting Corp., "Russia's ORT to Resume Television News as Normal," November 20, 1998.

Dadomo, Christian, and Susan Farran, The French Legal System (London: Sweet & Maxwell, Ltd., 1993), at 124.

Ebke, Werner F., and Matthew W. Finkin, Introduction to German Law (The Hague: Kluwer Law International, 1996, at 376.

Evans, Philip, A Rough Guide to Bailiffs and Bailiff Law (Cheltenham: Kingsley Sureties Ltd., 1999), at 1, 4.

Gurov, Sergei, "Rozuisk imushestva dolzhnika pri ispolnenii reshenii arbitrazhnich sudov" (Search for Debtor's Assets Pursuant to Execution of Judgments of Arbitration Courts), in *Obrashenie Vziskaniya Na Imuschectvo, Rozisk Imushestva Dolzhnika* (Levy of Assets, Tracing of Assets). Moscow: IRIS, 1999.

Hendley, Kathryn, "Remaking an Institution: The Transition in Russia from State *Arbitrazh* to *Arbitrazh* Courts," *American Journal of Comparative Law* **46**, 93-127 (1998).

Hendley, Kathryn, Barry W. Ickes, Peter Murrell, and Randi Ryterman, "Observations on the Use of Law by Russian Enterprises, *Post-Soviet Affairs* **13**, 1 pp. 19-41.

Hendley, Kathryn, Peter Murrell, and Randi Ryterman, "Law, Relationships, and Private Enforcement: Transactional Strategies of Russian Enterprises," *Europe-Asia Studies* **52**, 4, 627-656 (2000).

Hendley, Kathryn, "How Russian Enterprises Cope with Payments Problems," *Post-Soviet Affairs* **15**, 3, pp. 201-234 (1999).

Hendley, Kathryn, "An Analysis of the Activities of Russian *Arbitrazh* Courts: 1992-1996," *Report to the National Council on Soviet and East European Research*, Contract No. 811-18, 17-19).

Interfax News Agency, "Ministry of Justice, Customs Agencies Set Up Joint Bailiffs Service," October 19, 1999.

Interfax News Agency, "Moscow Bailiffs Suspend Actions Against ORT," November 20, 1998.

ITAR-TASS News Agency, "Russian TV Channel May Air Without Video Footage," November 19, 1998.

Itar-Tass News Agency, "Justice Minister Calls for Increasing Number of Bailiffs," October 29, 1999.

ITAR-TASS News Agency, "ORT Bailout Ahead," December 1, 1998.

Ivanova, Tamara, "Actions Against Russian Public Television Smack of Politics," ITAR-TASS News Agency, November 19, 1998.

Ivanova, Tamara, "ORT Chief: Moves Against ORT Have Political Undercurrents," ITAR-TASS News Agency, November 18, 1998.

Ivanova, Tamara, "Actions Against Russian Public Television Smack of Politics," ITAR-TASS News Agency, November 19, 1998.

Ivanova, Yelena, "Russia Bailiff Assures Ministry Is Not Keen to Thwart ORT," ITAR-TASS News Agency, November 19, 1998.

Ivanova, Yelena, "Bailiffs Ease Sanctions Against ORT Television," ITAR-TASS News Agency, Nov. 20, 1998.

Kahn, Peter L., "Enforcement of Contracts and Judgments in Ukraine," IRIS Report (June 25, 1998).

Kaye, Peter "England and Wales" in Peter Kaye, (ed.), *Methods of Execution of Orders and Judgments in Europe* (Chichester: John Wiley & Sons, 1996).

Klitgaard, Robert, *Controlling Corruption.* Berkeley: University of California Press, 1988.

Koch, Harald, and Frank Diedrich, Civil Procedure in Germany (The Hague: Kluwer Law International, 1998), at 67, n.2.

Kruse, John, *Distress and Execution: A Guide to Bailiffs' Law and Practice* London: Association of Civil Enforcement Agencies, London, 1998.

Kruse, John, *Bailiffs Powers: A Debtor's Guide* (London: Easyway Guides, 2000, 2d ed.), at 8.

Kuznetsova, L.V., Presentation to IRIS conference, Ekaterinburg, September 1999

Lanyi, Anthony, Walter Guevara, and Sarah Bell, "Bolivian Customs Reform: A Case Study of Consolidating Democratic Institutions," IRIS Center, November 22, 2000.

North, Douglas C., *Institutions, Institutional Change, and Economic Performance* (1990).

RECEP, "Russian Economic Trends: Monthly Update," 8 December 1999, Table 11.

Russell, Peter H., and David M. O'Brien (eds.), Judicial Independence in the Age of Democracy: Critical Perspectives from Around the World (Charlottesville: University Press of Virginia, 2001), at 69-74.

Russia Journal, "Even Foreigners' Money Won't Save NTV This Time," Feb. 3, 2001.

Alexander Shashkov, "Justice Minister Calls for Increasing Number of Bailiffs," Itar-Tass News Agency, Oct. 29, 1999.)

Solomon, Peter H., Jr., and Todd S. Fogelsong, *Courts and Transition in Russia: The Challenge of Judicial Reform*. Boulder, CO: Westview Press, 2000.

Volkov, Vadim, "Violent Entrepreneurship in Post-Communist Russia," *Europe-Asia Studies* **51**, 5, 741-754 (1999).

Yarkov, V.V., et al.,. *Nastolnaya Kniga Sudebnogo Pristava-Ispolnitelya* (Desk Manual for Enforcement Bailiffs). Moscow: Bek, 2000.

Yartsun, Sergei, "Na Gosudarevoi Sluzhbe: Staraya Byurokratiya V Novoi Rossii" (In the Imperial Service: Old Bureaucracy in the New Russia) *Pravo I Ekonomika* #3 (2000).

Zhilyakov, Viktor, "Two Court Bailiffs Arrested in Southern Russia for Bribery," Itar-Tass News Agency, January 18, 1999.