

AN ANALYSIS OF THE RUSSIAN FEDERATION'S
PROSECUTIONS OF ALEXEI NAVALNY

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EXECUTIVE SUMMARY

Alexei Navalny is a 36-year old Russian lawyer and political activist. As Mr. Navalny's political activities and efforts to expose public corruption in Russia became increasingly publicized during 2010 and 2011, the Wall Street Journal identified him in a headline as "the man Vladimir Putin fears most."¹ Observers both in and outside of Russia expressed surprise that Mr. Navalny had not been arrested, jailed and accused on trumped up criminal charges. As demonstrated by the cases of Mikhail Khodorkovsky, Platon Lebedev, Leonid Nevzlin and other leaders of the former Yukos Oil Company, that has become the standard Kremlin method to eliminate or isolate those perceived as acting contrary to the political or economic interests of Mr. Putin. This misuse of the Russian criminal justice system has been recognized as such by the international community, including by governments, domestic and international courts, democratic legislative bodies, human rights NGOs, academics and the public at large. It has been condemned by political leaders and, in case after case, courts in democratic nations have refused to accord the resulting proceedings the presumption of regularity accorded legitimate criminal prosecutions. In December 2011, any surprise over Mr. Navalny's apparent freedom to dissent ended when he was arrested and jailed while participating in peaceful street protests to reputedly corrupt elections in Russia.

Mr. Navalny spent 15 days jailed after his participation in the December 2011 protests. Since then, he has been jailed for another 15 days and has been named in multiple criminal cases. The announcement of those cases, and Mr. Navalny's harassment related to them, often related

¹ Matthew Kaminski, *The Man Vladimir Putin Fears Most*, THE WALL STREET JOURNAL (March 3, 2012), <http://online.wsj.com/article/SB10001424052970203986604577257321601811092.html>.

in time to significant political events in which he was to participate. Not one of these cases withstands even cursory scrutiny, however. To the contrary, the facts in each only highlight that the prosecutors and investigators have acted based on political direction and not legitimate law enforcement concerns.

Thus, on July 12, 2012, Mr. Navalny was charged with “embezzlement”. The charge arises from Mr. Navalny’s work as a volunteer advisor to the Kirov regional government in 2009. Kirovles, the state-owned timber company in the region, was at the time looking for new customers. To assist it, Mr. Navalny introduced Kirovles to a consulting company called VLK. VLK did find new customers for Kirovles, but the government determined that the new customers were not, as a whole, sufficiently profitable. Accordingly, the VLK contract was terminated. The circumstances of the consulting agreement were investigated contemporaneously and the investigators determined that there was no evidence of criminal conduct. Nonetheless, Mr. Putin’s Investigative Committee in Moscow reversed that determination and Mr. Navalny was charged with “embezzling” \$500,000 USD worth of Kirovles timber. This case has now been forwarded to the Russian court for trial and it is expected the case will go to trial this Spring.²

On December 14, 2012, the day before Mr. Navalny was to lead an opposition rally, a new investigation was announced. This time, it was said that Mr. Navalny and his brother, Oleg, conspired to steal \$1.8 million USD between 2008 and 2011 by their involvement with a company that provided private courier services, allegedly overpriced by the amount “embezzled.”

² *Criminal Case Against Opposition Activist Navalny Forwarded to Court*, INTERFAX (March 20, 2013), http://rbth.ru/politics/2013/03/20/high-profile_opposition_activist_concerned_about_criminal_charges_24074.html.

On December 24, 2012, a third criminal investigation of Mr. Navalny was publicly announced. In that case, it is asserted that a company associated with Mr. Navalny overcharged the Union of Right Forces opposition party for advertising. It made no difference that a former leader of that party – the putative “victim” – publicly denied any wrongdoing by Mr. Navalny.

Finally, on February 27, 2013, the Investigative Committee in Moscow announced that its investigation had uncovered that Mr. Navalny had illegally obtained his law license.³ The Committee has alleged that Mr. Navalny submitted “inaccurate” information to the bar because his application stated that he had two years of legal experience in the company Allekt.⁴ The Committee stated that, while Mr. Navalny listed his experience at Allekt as deputy director in charge of legal affairs, Mr. Navalny had also been the company’s general director at the time.⁵ The Committee further alleges that Allekt did not exist during the period Mr. Navalny claimed he gained legal experience there.⁶ It is not yet known what laws Mr. Navalny allegedly broke and what the charges associated with these accusations might be. Mr. Navalny has denied these accusations, like the rest against him, as “rubbish.”⁷

As these cases have been brought one after the other, in a pattern reminiscent of those against Yukos’ leaders, Mr. Navalny, the political organizations with which he has been involved, and his family and colleagues, have been the subject of harassment, police raids and document seizures. The Kremlin has thus executed on its Yukos-tested method of misusing the

³ *Navalny Fraudulently Obtained Lawyer Credentials, Investigators Say*, THE MOSCOW TIMES (Feb. 27, 2013), <http://www.themoscowtimes.com/news/article/navalny-fraudulently-obtained-lawyer-credentials-investigators-say/476140.html>

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

Russian criminal justice system for political ends. Indeed, it has been reported that Mr. Putin has assigned the Moscow-based Investigative Committee, led by Alexander Bastrykin, the “mission” of shutting down the political opposition, acting as Mr. Putin’s “de facto political police.”⁸

This paper reviews additional facts concerning Mr. Navalny, the cases against him, and the harassment that both he and those associated with him have suffered as a result of his efforts to oppose the status quo and to expose public corruption in Russia. It is based on a combination of direct information from Mr. Navalny, review of the public record, and review of court papers from the cases themselves, and in particular, in the Kirovles case.

I. Mr. Navalny’s History and Activism

Mr. Navalny was born June 4, 1976 in Butyn, Odintsovsky District, Moscow Oblast. He was educated at Yale University in the United States, the Finance University under the Government of the Russian Federation and the Peoples’ Friendship University of Russia. Mr. Navalny currently lives in Moscow with his wife and two children.

As noted, Mr. Navalny works as a lawyer and activist. He has used a variety of means to challenge and expose public corruption, including specifically by Mr. Putin’s United Russia Party, which Navalny has famously coined the “Party of Crooks and Thieves.”⁹

⁸ *Accountable Only to Vladimir Putin, Russia’s Top Cop Sets Sights on Protest Movement*, WASHINGTON POST (April 1, 2013), http://www.washingtonpost.com/world/europe/accountable-only-to-vladimir-putin-russias-top-cop-sets-sights-on-the-protest-movement/2013/03/28/9cb13dc8-978f-11e2-b5b4-b63027b499de_story.html. This story reports how Mr. Bastrykin took an opposition journalist into the woods and “threatened to behead and dismember his body so that it could not be found.” Later, Bastrykin apologized for what he referred to as an “emotional outburst.”

⁹ Tom Parfitt, *Russian Blogger Alexei Navalny Faces Criminal Investigation*, THE GUARDIAN (May 10, 2011), <http://www.guardian.co.uk/world/2011/may/10/russian-blogger-alexei-navalny>.

Beginning in 2007, Mr. Navalny began a campaign of so-called financial activism. He began to acquire stock in Russia's large state-owned companies and to use his standing as a shareholder to expose the lack of transparency and, in many instances, the outright fraud, that characterized those companies. This has included publicizing the disparity between the small dividends paid to investors in these companies and the soaring commodity prices, and profits, that the companies otherwise enjoyed.¹⁰ As discussed further below, it has also included publishing documents that evidence corruption within Mr. Putin's inner circle. Mr. Navalny has filed dozens of shareholder lawsuits against some of the largest Russian corporations – including Rosneft, Gazprom, Transneft, Bank VTB and Surgutneftegaz – to try to enforce minority shareholder rights, mandate transparency and eliminate fraud.¹¹ These efforts, predictably, have been rebuked by the Russian courts to date.¹²

In 2008, Mr. Navalny began his blog on the site "LiveJournal," through which he writes about political issues and official corruption, including at Russian state-owned or controlled enterprises.¹³ Internet outlets like LiveJournal are essential to dissent and/or commentary in Russia, because the general media outlets have been taken over and coopted by the government

¹⁰ Julia Ioffe, *Net Impact: One Man's Cyber Crusade Against Russian Corruption*, THE NEW YORKER (March 28, 2011), http://www.newyorker.com/reporting/2011/04/04/110404fa_fact_ioffe?currentPage=all; Nataliya Vasilyeva, *Activist presses Russian Corporations for Openness*, SEATTLE TIMES (ASSOCIATED PRESS) (April 1, 2010), http://seattletimes.com/html/business/technology/2011498772_apeurussiacorporategadfly.html.

¹¹ *Id.*

¹² *Id.*

¹³ Stephen Ennis, *Profile: Russian Blogger Alexei Navalny*, BBC NEWS EUROPE (August 7, 2012), <http://www.bbc.co.uk/news/world-europe-16057045?print=true>.

itself.¹⁴ In November 2010, Mr. Navalny used his LiveJournal blog to publish previously confidential Transneft documents that he claimed showed that about \$4 billion USD had been stolen by government-controlled Transneft's leadership during the construction of the Eastern Siberia – Pacific Ocean oil pipeline.¹⁵

In December 2010, Mr. Navalny launched the anti-corruption website RosPil, which focused on bringing to light corruption with respect to government contracts.¹⁶ Visitors to the site can submit a government request for tender—which, by law, is publically available—for scrutiny by fellow RosPil members and by experts who can evaluate whether the price, parameters and schedules are reasonable.¹⁷ If not, the contract is highlighted on the website as fraudulent, or potentially fraudulent, which often results in the agency at issue receiving scores of complaint letters.¹⁸

On May 30, 2011, Mr. Navalny posted on his LiveJournal blog the launch of RosYama, another website focused on combatting fraud in the road construction sector.

In 2011 and 2012, Mr. Navalny helped to organize peaceful political street protests. Thus, on December 2, 2011, after accusations of fraud during the Russian parliamentary elections that favored the United Russia Party, Mr. Navalny participated in 6,000-person protests

¹⁴ Garry Kasparov, *Time*, *The 100 Most Influential People in the World: Alexei Navalny*, TIME (April 18, 2012), http://www.time.com/time/specials/packages/article/0,28804,2111975_2111976_2112167,00.html. Mr. Navalny has been banned from state-controlled television. Matthew Kaminski, *The Man Vladimir Putin Fears Most*, THE WALL STREET JOURNAL (February 24, 2012), <http://online.wsj.com/article/SB10001424052970203986604577257321601811092.html>.

¹⁵ *Russia Checks Claims of \$4bn Oil Pipeline Scam*, BBC NEWS EUROPE (November 17, 2010), <http://www.bbc.co.uk/news/world-europe-11779154>.

¹⁶ J. Ioffe, *Net Impact*, *supra* n. 9.

¹⁷ *Id.*

¹⁸ *Id.*

in Moscow.¹⁹ As noted above, Mr. Navalny was among the hundreds of protestors rounded up by police and he was sentenced to 15 days in jail – the maximum sentence – allegedly for disobeying police instructions.²⁰ He was thus still in custody on December 10, when he was scheduled to help lead a demonstration for which Moscow authorities had granted a 30,000-person permit.²¹ In her remarks at the December 8, 2011 Conference on Internet Freedom at The Hague, then United States Secretary of State Hillary Clinton cited Mr. Navalny’s arrest as an example of state power being used to censor political opposition.²² On December 24, 2011, Mr. Navalny rallied a protest estimated as large as 50,000 people who demanded that the then upcoming March 2012 presidential election be free and fair.²³

Mr. Navalny was an active and public critic of Mr. Putin in the run up to the March 2012 presidential election. After that election, he led a protest of between 14,000 and 20,000 people in Moscow’s Pushkin Square, following which he was detained by police again.²⁴

On May 8, 2012, the day after Mr. Putin was inaugurated, Mr. Navalny was again arrested at an anti-Putin rally and he was again sentenced to 15 days in jail.²⁵ This caught the

¹⁹ Peter Van Dyk, *Kremlin Cracks Down, Arrests Prominent Critic*, NATIONAL PUBLIC RADIO (December 8, 2011), <http://www.npr.org/2011/12/08/143356663/kremlin-cracks-down-arrests-prominent-critic>.

²⁰ *Id.*

²¹ Ellen Barry, *Rousing Russia With a Phrase*, THE NEW YORK TIMES (December 9, 2011), http://www.nytimes.com/2011/12/10/world/europe/the-saturday-profile-blogger-aleksei-navalny-rouses-russia.html?_r=0.

²² TRANSCRIPT OF DECEMBER 8, 2011 REMARKS BY HILLARY CLINTON AT THE CONFERENCE ON INTERNET FREEDOM, <http://www.state.gov/secretary/rm/2011/12/178511.htm>.

²³ *Huge Protest Demanding Fair Russian Elections Hits Moscow*, CHRISTIAN SCIENCE MONITOR (December 24, 2011), <http://www.csmonitor.com/World/Europe/2011/1224/Huge-protest-demanding-fair-Russian-elections-hits-Moscow>.

²⁴ *Russia Election: Police Arrest 550 at City Protests*, BBC NEWS EUROPE (March 5, 2012), <http://www.bbc.co.uk/news/world-europe-17265820>.

attention of the heralded NGO, Amnesty International, which publicly declared Mr. Navalny a “prisoner of conscience,” that is, a political prisoner.²⁶

On June 12, 2012, Mr. Navalny was set to participate in the “March of Millions,” a mass demonstration in central Moscow calling for freedom, state accountability and fair elections. That day, Russian law enforcement officials searched Mr. Navalny’s home and office, along with the homes of other organizers and their families.²⁷ They seized computers, papers, and visual materials prepared for the demonstration.²⁸ Following the searches, Mr. Navalny and some of the others received summonses to appear for questioning on June 12 at 11:00 a.m., just an hour before they were to participate in the planned demonstration.²⁹ The NGO, Human Rights Watch stated in its report on these actions that: “[A]gainst the backdrop of the new restrictive legislation [relating to protests] as well as the timing of the searches and the interrogations, these measures appeared designed to prevent the recognized leaders from attending the rally. . . .”³⁰

Mr. Navalny was arrested again in October 2012 for violating public order following his participation in a Moscow protest to the alleged kidnapping and torture of another opposition activist, Leonid Razvozhayev.³¹ This prompted the Swedish Foreign Minister to post on his

²⁵ *Amnesty Calls Navalny, Udaltsov ‘Prisoners of Conscience’*, RADIO FREE EUROPE (May 18, 2012), <http://www.rferl.org/articleprintview/24584838.html>.

²⁶ *Id.*

²⁷ *Russia: The ‘March of Millions’*, HUMAN RIGHTS WATCH, <http://www.hrw.org/news/2012/06/13/russia-march-millions>.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ Maria Tsvetkova and Gleb Bryanski, *Russia Activists Detained After Opposition Council Meets*, REUTERS (October 27, 2012), <http://www.webcitation.org/6BjXwrjUI>.

Twitter account: “Reports about new arrests of democratic opposition activists in Moscow. Many signs point to much harsher regime attitude.”³²

Amidst all of his activism, Mr. Navalny continues to practice law. In January 2012, Mr. Navalny joined the team of attorneys working on Yukos-related cases, as he took on the defense of former Yukos lawyer Pavel Ivlev, who will be tried in absentia in Russia in the coming months. Mr. Navalny has been, and remains, unbowed regardless of the pressure that the Kremlin and Mr. Putin attempt to exert on him. He continues his efforts to expose corruption and to encourage transparency within Russia.

II. Mr. Putin’s Response to Mr. Navalny

As noted above, in addition to his arrests and imprisonments related to participation in the street protests discussed above, the Kremlin has responded to Mr. Navalny’s activism with a series of investigations and, in one case so far, formal criminal charges.

The first of these was the Kirovles case, which was based on a closed investigation in which investigators had already reached the conclusion that there was no evidence of wrongdoing. That investigative conclusion of no wrongdoing was reversed by the Investigative Committee in Moscow in April 2011, just one month after Mr. Navalny had used his LiveJournal blog to post documents evidencing the \$4 billion USD contract fraud at Transneft.³³ The formal indictment in the Kirovles case came one week after Mr. Navalny published a series of documents suggesting that Mr. Bastrykin, as noted the head of the Investigative Committee and a close ally of Mr. Putin, concealed from Russian officials that he owned property in the Czech

³² *Id.*

³³ J. Ioffe, *Net Impact*.

Republic and had acquired the right to live there.³⁴ Mr. Navalny also publicized Mr. Bastrykin's threats to kill journalists who published statements about which he disagreed.³⁵ According to a report in RIA Novosti news, Mr. Bastrykin had demanded that his subordinates explain why the probe into Navalny's alleged embezzlement of the Kirovles timber company was closed.³⁶ Speaking at the assembly in St. Petersburg, Mr. Bastrykin chided the Investigative department for Kirov region for closing the probe.³⁷ Ultimately, pressure from the Kremlin and Mr. Bastrykin led to the case being reopened and, as noted, now sent to court for a trial – after which Mr. Navalny could face up to 10 years in prison.

The Kremlin has kept up the pressure on Mr. Navalny, publicly announcing the three additional criminal investigations that were noted at the outset of this paper. Below, each set of allegations is reviewed, focusing primarily on the Kirovles case because it is the most mature and the largest amount of documents exist regarding that case.

III. The Kirovles Case

A. General Factual Background and Key Individuals

The Kirov Regional State Unitary Enterprise, commonly known as “Kirovles,” is the state-owned forestry products and services company of the Kirov Region.³⁸ Kirovles was

³⁴ Tom Parfitt, *Alexy Navalny Charged With Embezzling £320,000*, THE DAILY TELEGRAPH (July 31, 2012), <http://www.telegraph.co.uk/news/worldnews/europe/russia/9441074/Alexei-Navalny-charged-with-embezzling-320000.html>.

³⁵ *To Justice Lt. Gen. A.I. Bastrykin, Russian Federation Investigative Committee Chairman – regarding unfinished cases*, <http://www.novayagazeta.ru/columns/53061.html>.

³⁶ *Bastrykin incensed by subordinates' mooing [sic] in the Navalny case*, LENTA.RU, <http://lenta.ru/news/2012/07/05/mooo/>.

³⁷ *Id.*

³⁸ The facts discussed in this section are taken from the Decision to Terminate Criminal Case, dated April 10, 2012, which was prepared by the primary investigators of the Kirovles

primarily engaged in the Kirov Region's forestry operations, including logging and wood processing for government contracts. In December 2007, V.N. Opalev was the appointed general manager of Kirovles and remained in that position in 2009, the year relevant to the indictment. In 2009, due to the global economic downturn, a low demand for forestry products and internal management problems, Kirovles was struggling financially and was seeking the help of the regional government. Also in 2009, Mr. Navalny began as a volunteer advisor to the Kirov Regional Governor, N. Yu. Belyx.³⁹ When Mr. Navalny first began advising Ms. Belyx, forestry was one of the general areas he was asked to oversee. Accordingly, he met with Mr. Opalev in January and February 2009 to discuss Kirovles' problems.

Petr Ofitzerov was acquainted with Mr. Navalny due to their previous mutual involvement in the Yabloko political party. Mr. Ofitzerov was interested in getting involved in the forestry products industry and, in March 2009, he formed the consulting company VLK for that purpose. Upon learning of Mr. Navalny's new position as a consultant to the Kirov Regional Governor, Mr. Ofitzerov contacted Mr. Navalny. Mr. Navalny in turn recommended to Mr. Opalev that he work with VLK to assist with some of Kirovles' sales issues.

case. This investigator's Decision contains factual detail whereas the Moscow Investigative Committee's Decision to Initiate a Criminal Case and the Decision to Indict consist of very few facts in favor of conclusions. The Decision to Terminate contains an overview of key witness interviews, documentary evidence and expert evidence. The inconsistencies between these three official documents are discussed in Part D, below.

³⁹ Ms. Belyx herself has dismissed the case described here as a form of political pressure against Mr. Navalny, noting that the local officials investigated and concluded that Mr. Navalny had committed no crime. *See* Mariya Karimjee, *Aleksei Navalny, Russian Blogger, Charged With Embezzlement*, GLOBAL POST (July 31, 2012), <http://www.globalpost.com/dispatch/news/regions/europe/russia/120731/aleksei-navalny-russian-blogger-charged-embezzlement>.

B. The Kirovles-VLK Contract

On April 15, 2009, Kirovles and VLK entered into the contract that forms the central basis for the Indictment. The contract was a master contract between the two parties. It did not list any particular deals, products, terms or prices. A series of amendments were appended to the master contract over the following several months. Each amendment outlined a specific deal for products, listing the customer, product, quantity, delivery terms and price. Some of the customers were previous Kirovles customers, while others were new customers located by VLK. Essentially, VLK functioned as a broker for Kirovles. Upon the signing of an amendment, VLK would purchase the products from Kirovles, and then provide the products to the customer at a price which would include VLK's profit.

As the arrangement progressed, Mr. Opalev determined that the arrangement with VLK was not profitable for Kirovles. He believed this was due to the costs of loading and transporting the products to locations from which the products were to be shipped. Accordingly, he permitted the branch directors of the various Kirovles locations throughout the region who complained of these problems to disregard the amendments and simply sell the products directly to the customers. Finally, he decided to terminate the contract, sending a termination letter to Mr. Ofitzerov on August 11, 2009, effective September 1, 2009.

Mr. Navalny was not party to the underlying contract in the case. He had no financial interest in VLK and never profited from any of the underlying transactions. As demonstrated by Mr. Opalev's direction to Kirovles staff that they were not required to engage in any transactions suggested by VLK that they did not choose, the contract was not mandatory and it was always for Kirovles to decide which transactions to participate in and which to decline. Mr. Navalny had no involvement whatsoever in that decision-making process and there is no evidence to suggest otherwise.

C. Reversal of the Investigative Conclusion of No Criminal Conduct

On December 9, 2010, the Russian Federation's Investigative Committee Divisions for the Kirov Region and Privolzhsky Federal District conducted an inquiry into Mr. Navalny and Mr. Ofitzerov's involvement with the Kirovles-VLK contract to determine whether there were any indications of criminal conduct. Those authorities determined that no wrongful acts had taken place and declined to pursue any further investigation or charges.⁴⁰

Despite this determination and decision, on May 10, 2011 the Russian Federation Investigative Committee's Main Investigative Division in Moscow initiated a criminal case against Mr. Navalny and Mr. Ofitzerov under RF Criminal Code Art. 165(3) for embezzlement. The case was sent for investigation that day to the Investigative Division in Kirov. The Division again terminated the criminal case, issuing a Decision to Terminate Criminal Case on April 10, 2012 for lack of wrongful conduct. The Decision contained factual and evidentiary detail, including the contents of witness interviews, documentary evidence reviewed and expert opinions. It concluded, among other things that "[t]he criminal case file [] contain[ed] no information evidencing a deception or abuse of trust by Navalny and Ofitzerov when entering into the agreement and its appendices between VLK and Kirovles."

As already noted above, this decision was annulled two weeks later by the Investigative Commission Central Staff and the investigation was resumed and sent for continued investigation by the Privolzhsky Federal District and, a few months later, to the Main Investigative Division in Moscow. On July 24, 2012, Mr. Navalny was sent a summons to

⁴⁰ Ellen Barry, *Russia Charges Anticorruption Activist in Plan to Steal Timber*, THE NEW YORK TIMES (July 31, 2012), http://www.nytimes.com/2012/08/01/world/europe/aleksei-navalny-charged-with-embezzlement.html?_r=0.

appear in the investigators' office on July 30 to be presented with an indictment. After a one-day postponement, the indictment was presented to Mr. Navalny on July 31, 2012.

D. The Indictment is Inconsistent With the Facts and Does Not Describe any Crime

In the indictment, Mr. Navalny, Mr. Ofitzerov and Mr. Opalev have all been named co-conspirators in an embezzlement scheme that allegedly deprived the Kirov Regional Government of the forestry products sold through the amendments to the Kirovles-VLK contract. Mr. Opalev was previously interviewed as a witness in the investigation of whether Messrs. Navalny and Ofitzerov somehow defrauded Mr. Opalev and Kirovles. There do not appear to be any reasons – other than his statements exculpating Mr. Navalny – for why this man (who canceled the Kirovles-VLK contract less than a year after it was signed) is now named as a co-conspirator. Critically, the indictment describes no conduct that was not already found by the prior investigation to have been lawful, but fails substantively to support why those same facts now form a legitimate basis for criminal indictment. Not surprisingly, given that Mr. Navalny was the main target for persecution, the indictment alleges that he organized and developed the conspiracy, assigning secondary roles to Mr. Ofitzerov and Mr. Opalev.

The theory behind the indictment is that the contract amendments had Kirovles selling forestry products at prices between 3 and 24% below what they should have been and that the prices were “deliberately understated by the accomplices in comparison to the price at which Kirovles products were sold to other counter-parties.” No examples are provided relating to these other counter-parties nor the basis for which any higher amount would have been charged. Nonetheless, the indictment alleges that the men embezzled 10,068.119 cubic meters of forestry products allegedly worth 16,165,826.65 Rubles, or about \$526,000 U.S. dollars. There is no

explanation of how either Mr. Opalev or Mr. Navalny profited in any way from the alleged conspiracy.

In stark contrast to the indictment, the Decision to Terminate Criminal Case sets forth detailed facts – from fact witnesses, from state-hired experts and from the government’s own review of documentary evidence – that are completely and utterly contrary to these allegations and conclusions. For example, the accounting documents seized at Kirovles and VLK showed that while there were amendments to the Kirovles-VLK contract for sales to previous Kirovles customers, most of the amendments were with new customers. Thus, VLK did locate new customers for Kirovles at a time when low demand was a central problem for Kirovles. This supported the initial investigator’s conclusion that in the context of the economic crisis and falling demand and prices for forestry products, VLK found new buyers for Kirovles’ products and several of the branch managers found that the venture with VLK was profitable with respect to some of the customers. Kirovles Directors could learn which customer contacts were profitable and only sign those amendments. The Kirovles Regional Directors were interviewed and several made statements that Mr. Opalev instructed them not to act on the VLK contract for amendments that were unprofitable, and instead to sell directly to those customers.

Perhaps the starkest finding in the Decision to Terminate Criminal Case is the total lack of victim or damage. A forensic accounting expert opinion obtained by the investigators on December 12, 2011 stated that the difference in price between what VLK paid Kirovles and the price at which it sold the same products to the customers over the course of the contract was 1,221,893.87 rubles, about \$40,000 USD.⁴¹ The investigator found that this amount, earned by

⁴¹ Along these lines, an economic forensic examination found that the portion of Kirovles products sold under the VLK contract represented just 5% of all Kirovles forest product sales during that time period. For the contracts with Kirovles current customers, the difference

VLK over the course of the contract and its amendments, was simply profit for services rendered in finding deals for Kirovles. Nowhere in any of the Decisions by the first-hand investigators is there any suggestion that this profit was unreasonable. Moreover, a financial-economic forensic examination of Kirovles' accounting reports found that Kirovles' financial situation was deteriorating during the term of the contract, but that the 1.2 million rubles commissions earned by VLK over the course of the contract was inconsequential to Kirovles' financial well-being. Kirovles' founder, the Kirov Property Department, filed no claim of any property damages by reason of the VLK contract.

Given these facts and the primary investigators' well-supported conclusion of no criminal conduct, the only explanation for Moscow's reversal of that decision, and the ensuing indictment against Mr. Navalny, is political motivation. Patrick Ventrell, the Director of the Press Office of the United States Department of State, addressed the indictment the day it was issued during the Department's daily press briefing, stating that the Department was "concerned by the new charges" brought against Mr. Navalny, a development which "raise[s] serious concerns about the politically motivated prosecutions of the Russian opposition and pressure on those who express dissenting views."⁴² This sentiment has been echoed by others. Former Kremlin political consultant, Gleb Pavlovsky observed that "[m]aybe the people who made this decision think it is a short period of intimidation, which will be followed by a return to more velvet methods."⁴³

between what VLK paid Kirovles for the products and what it was paid by those customers was 589,110.87 Rubles, or about \$19,000 USD, with the remaining approximately \$21,000 USD earned by VLK relating to new customers introduced by VLK to Kirovles.

⁴² TRANSCRIPT OF JULY 31, 2012 U.S. DEPARTMENT OF STATE DAILY PRESS BRIEFING, <http://www.state.gov/r/pa/prs/dpb/2012/07/195911.htm>.; *see also* TRANSCRIPT OF OCTOBER 25, 2012 STATE DEPARTMENT DAILY PRESS BRIEFING, <http://translations.state.gov/st/english/texttrans/2012/10/20121025137965.html#axzz2DTJMXyhe>.

⁴³ Barry, *Russia Charges Anticorruption Activist in Plan to Steal Timber*.

Another interpretation, supported by the subsequent accusations against Mr. Navalny, is that this case represents another round of Kremlin misuse of the Russian justice system, similar to that evidenced by the Yukos cases.

IV. Additional Investigations and Accusations Against Mr. Navalny

Since the Kirovles indictment was returned, Mr. Navalny has, in fact, been subjected to a string of equally spurious additional accusations. While at present there is less available information about these allegations than there is with respect to the Kirovles case, which has been reduced to indictment and has now been sent to court for trial, the pattern is apparent by which the Kremlin utilizes these charges at key points in time to harass and attempt to silence Mr. Navalny and those around him.

A. Courier Company Fraud and Money Laundering Charges

On December 14, 2012, one day before a planned opposition rally which Mr. Navalny was scheduled to lead, the police publicly opened a new criminal investigation against him.⁴⁴ The new charges accuse Mr. Navalny and his brother, Oleg, a post office employee, of conspiring to steal 55 million rubles (about \$1.8 million USD) between 2008 and 2011 by overcharging for the services of a private courier company and then laundering the money through a company owned by their parents.⁴⁵ In a statement by the Investigative Committee, it alleges that Oleg obtained a contract from a company to ship parcels along the route between

⁴⁴ Andrew E. Kramer, *Russia Opens New Inquiry Targeting an Activist*, THE NEW YORK TIMES (December 14, 2012), <http://www.nytimes.com/2012/12/15/world/europe/russian-police-open-new-case-against-aleksei-a-navalny.html>.

⁴⁵ *Id.*; *Navalny: Russian Opposition Figure Charged with Fraud*, BBC NEWS EUROPE (December 20, 2012), <http://www.bbc.co.uk/news/world-europe-20798023>.

Moscow and Yaroslavl.⁴⁶ French cosmetics producer Yves Rocher appears to be the company allegedly victimized by the courier company, Glavnoye Podpisnoye Agentstvo.⁴⁷

The Investigative Committee used this investigation as a pretense to search Mr. Navalny's office, his brother's office at the postal service and the factory owned by their parents.⁴⁸ According to Mr. Navalny, eleven investigators were put on the case.⁴⁹ Mr. Navalny denies these charges or his involvement in the underlying facts.⁵⁰ The fraud and money-laundering charges carry fines and prison sentences of two and three years, respectively.⁵¹ Notably, the Post of Russia has stated that it has no connection to the charges and has no claims against Oleg.⁵²

B. Union of Right Forces Fraud Investigation

Yet another investigation was publicly commenced against Mr. Navalny in early 2013 based on unfounded accusations that he stole 100 million rubles (\$3.3 million USD) from the now-defunct Union of Right Forces liberal opposition party in 2007.⁵³ The investigation alleges that an advertising company headed by Mr. Navalny accepted the money in exchange for

⁴⁶ Kramer, *Russia Opens New Inquiry Targeting an Activist*.

⁴⁷ Oleg Sukhov, *Bloggers Promise to Boycott Yves Rocher*, THE MOSCOW TIMES (February 7, 2013), <http://www.themoscowtimes.com/business/article/bloggers-promise-to-boycott-yves-rocher/475227.html>.

⁴⁸ Kramer, *Russia Opens New Inquiry Targeting an Activist*.

⁴⁹ Alexei Navalny, *Bastrykin's Eleven*, THE BLOG OF ALEXEI NAVALNY IN ENGLISH (Jan. 19, 2013), <http://navalny-en.livejournal.com/2013/01/19/>

⁵⁰ *Id.*

⁵¹ *Navalny: Russian opposition figure charged with fraud*.

⁵² Alexei Navalny, *Brother 2*, THE BLOG OF NAVALNY IN ENGLISH (Dec. 15, 2012), <http://navalny-en.livejournal.com/2012/12/15/>

⁵³ Yekaterina Kravtsova, *Navalny Ally's Apartment Raided*, THE MOSCOW TIMES (February 7, 2013), <http://themoscowtimes.com/print/article/navalny-allys-apartment-raided/475229.html>.

providing advertising services to the party, but that the services were never performed.⁵⁴

However, former top figures in the party have said no fraud had taken place.⁵⁵ Thus, Leonid Gozman was questioned by investigators in the case, and commented: “From my viewpoint, sad as it is, law enforcement agencies and the Investigative Committee pose as a means of political vendetta, which is bad for the country, not only for Navalny.”⁵⁶ Former SPS leader Nikita Belykh likewise denied that the underlying contract obligations were not fulfilled.⁵⁷ Similarly, former SPS leader Boris Nemtsov, and SPS member Maria Gaidar have refuted any claims against Mr. Navalny and Mr. Nemstov stated that he considers the charge politically motivated and without basis in fact.⁵⁸ There are no stated victims in the case and the only stated basis by investigators for opening the case was that they had not found any document confirming that the contract for the services had been fulfilled, notwithstanding the statements by party leaders exculpating Mr. Navalny.⁵⁹

Again, investigators used the investigation as a pretense to conduct harassing raids, this time, on February 7, 2013, raiding the apartment of Vladimir Ashurkov, the anti-Kremlin activist and director of the Navalny-founded Foundation for Fighting Corruption.⁶⁰ During that raid,

⁵⁴ *Russian Opposition Leader Navalny Faces Third Inquiry*, BBC NEWS EUROPE (December 24, 2012), <http://www.bbc.co.uk/news/world-europe-20836116>.

⁵⁵ Kravtsova, *Navalny Ally's Apartment Raided*, *supra* n. 53.

⁵⁶ *Russian Liberal Gozman Questioned Over Graft Case*, RIA NOVOSTI (February 4, 2013), <http://en.rian.ru/russia/20130204/179227154.html>.

⁵⁷ *SPS Leader Nikita Belykh Denies that Navalny's Firm Embezzled Funds*, <http://www.echomsk.spb.ru/news/kriminal/lider-sps-otritsaet.html>.

⁵⁸ *Gaidar and Nemtsov Interrogated in the SPS case; his [Nemtsov's] Statements Appeared Beforehand on the Web*, <http://www.newsru.ru/russia/05feb2013/nemtsov/gaidar.html>.

⁵⁹ Kravtsova, *Navalny Ally's Apartment Raided*, *supra* n. 53.

⁶⁰ The Foundation is the umbrella body for many of Mr. Navalny's anti-corruption projects. *Id.*

they seized documents, computers and his cell phone.⁶¹ As Mr. Navalny was not acquainted with Mr. Ashurkov in 2007, the raid was apparently aimed more at shutting down the Foundation's activities than at locating evidence.⁶² Indeed, the investigators did not say what connection Ashurkov might have to the case.⁶³ Mr. Navalny again denies these accusations and has denounced the investigation as a blatant attempt to inhibit the work of the Foundation and to gather information to use against it.⁶⁴ If charged and convicted in this case, Mr. Navalny could face up to 10 years in jail.⁶⁵

C. Investigation Into Legality of Mr. Navalny's Attorney Status

The most recent accusations lodged against Mr. Navalny in the onslaught by the Investigative Committee has been the announcement by the Committee that Mr. Navalny illegally obtained his law license. At the end of 2012 and into 2013, investigators had been investigating Mr. Navalny's credentials, including by checking the authenticity of his diploma from the Finance Academy and conducting seizures and extensive interviews at the bar association where Mr. Navalny took his licensing exams.⁶⁶ One of the requirements for obtaining a law license in Russia is for an applicant to have at least two years of legal experience.⁶⁷ The Committee alleges that Mr. Navalny's listing of a position of Deputy Director of Allket as providing this experience was false, claiming the company did not exist at the time

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Alexei Navalny, *Ashurkov is Being House-Searched*, THE BLOG OF NAVALNY IN ENGLISH (Feb. 8, 2013), <http://navalny-en.livejournal.com/2013/02/08/>

⁶⁵ *Russian Opposition Leader Navalny Faces Third Inquiry*, *supra* n. 54.

⁶⁶ Alexei Navalny, *Inspectors*, THE BLOG OF NAVALNY IN ENGLISH (Feb. 24, 2013), <http://navalny-en.livejournal.com/58085.html>

⁶⁷ *Navalny Fraudulently Obtained Lawyer Credentials, Investigators Say*, *supra* n. 3.

of his claimed experience and also that Mr. Navalny had also held the position of Director in Allekt and thus could not have held both positions.⁶⁸ This announcement included issuance of a press release by the Investigative Committee Spokesman at 10:40 a.m. on February 27, 2013 that Mr. Navalny was questioned at Investigative Committee headquarters on the matter and had refused to discuss the issue on Constitutional grounds.⁶⁹ Mr. Navalny posted on his blog at 11:31 a.m. that he had not been to the headquarters at all that morning and had only received a request that day to go to the headquarters at noon.⁷⁰

The coming weeks will reveal what the Committee plans to do with these accusations and what charges, if any, will result.

V. Conclusion

Mr. Gozman, who was questioned in the latest investigation against Mr. Navalny, has aptly stated, “I think [the law enforcement agencies and the Investigative Committee] have been ordered to put Navalny in prison, and how they are supposed to do that is their problem.”⁷¹ There is no other rational explanation for the series of unsupported charges that are being levied against Mr. Navalny, one after the next. It is apparent that, as it has done in the past in its Yukos cases, the Kremlin has reverted to misuse of the Russian legal system to harass, isolate and attempt to silence political opponents, or at least those who are perceived to act contrary to the interests of Mr. Putin and his circle. This pattern is familiar and will not fool any observers of Russian affairs who are safely outside the country.

⁶⁸ *Id.*

⁶⁹ Alexei Navalny, “*The Investigation*” “*Determined*”, THE BLOG OF NAVALNY IN ENGLISH (Feb. 27, 2013) <http://navalny-en.livejournal.com/58811.html>

⁷⁰ *Id.*

⁷¹ *Russian Liberal Gozman Questioned Over Graft Case*, *supra* n. 56.