

The New York Times

Business Day

TALKING BUSINESS

Unyielding, an Oligarch vs. Putin

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Published: November 5, 2010

I wish I had enough space to reprint in its entirety Mikhail B. Khodorkovsky's closing statement, as his latest sham trial in Russia came to an end earlier this week. I have never been so moved by the words of a businessman.



Dmitry Kostyukov/Agence France-Presse — Getty Images

Stripped of his company, which was sold off to politically connected insiders, Mikhail Khodorkovsky was convicted of trumped-up tax charges brought by prosecutors acting on behalf of Vladimir V. Putin, who had come to view Mr. Khodorkovsky as a threat.

Not that Mr. Khodorkovsky is a businessman anymore. Once the most famous of the Russian oligarchs, he ran Yukos Oil, which under his leadership became the best-run, fastest-growing, most transparent company in the country — a gleaming symbol of hope for Russian industry. Mr. Khodorkovsky, however, has spent the last seven years in prison, much of that time in Siberia. Stripped of his company, which was sold off to politically connected insiders, Mr. Khodorkovsky and his business partner, Platon Lebedev, were convicted of trumped-up tax charges brought by prosecutors acting on behalf of Vladimir V. Putin, who had come to view Mr. Khodorkovsky as a threat.

Then, in 2007, with the prospect of parole on the horizon, the same prosecutors — with what appears to be the complicity of PricewaterhouseCoopers, Yukos's longtime accounting firm — indicted the two men again, bringing a new round of Kafkaesque charges.

That trial ended on Tuesday. The verdict will most likely be announced in December, not that anyone doubts the outcome. Nor can anyone doubt Mr. Khodorkovsky's status in Russia. He has become in the Putin era what Andrei Sakharov once was, a courageous dissident standing up to an authoritarian regime, a living, breathing rebuke to the absence of the rule of law.



Alexey Sazonov/Agence France-Presse — Getty Images

Mikhail Khodorkovsky in his glass cage in court in Moscow.

With the courtroom packed with supporters, Mr. Khodorkovsky stood up in the glass cage that has kept him imprisoned even during the trial. He talked for about 15 minutes, barely mentioning the charges against him. Instead, he spoke profoundly about what his case meant for his country.

“What must be going through the minds of the entrepreneur, or the senior manager, or simply an ordinary educated, creative person, watching our trial, and knowing that its result is absolutely predictable?” he asked. “The obvious conclusion is chilling in its stark simplicity: it is that the siloviki can do anything,” he added, using the Russian slang for the powerful bureaucrats in Mr. Putin’s circle.

“Millions of eyes throughout Russia and the world are watching this trial,” he said. “They are watching with the hope that Russia will still become a country of freedom, and law is above the bureaucrat. Where supporting opposition parties is not a cause for reprisals. Where special services protect the people and the law, and not the bureaucracy from the people and the law. Where human rights no longer depend on the mood of the czar, good or evil.”

“I am not a perfect person, but I am a person with an idea,” he added. “For me, as for anybody, it is hard to live in jail, and I do not want to die there. But if I have to, I will. The things I believe in are worth dying for.”

“Your Honor!” he said, looking directly at the judge. “Much more than our two fates are in your hands. Here and now the fate of every citizen of our country is being decided.”

When he finished, the courtroom erupted. As the crowd yelled “Freedom,” the judge banged his gavel and declared the trial over. At which point, Russia’s most prominent political prisoner was handcuffed and led back to his jail cell.

There are tragedies within tragedies in the story of Mikhail Khodorkovsky. There is the personal tragedy, of course, of a man tried and convicted of crimes he never committed. There is the tragedy of the Russian political system, once on the verge of real democracy, now little more than an enrichment scheme for Kremlin officials, a mind-set that accelerated once Mr. Khodorkovsky was disposed of.

There is also the tragedy of Russian business. Did Mr. Khodorkovsky do his share of unseemly deals in becoming an oligarch? Almost surely; all the oligarchs did during the early 1990s, an era in Russia now called the Wild, Wild East. But by the late

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1990s he had become determined to turn Yukos into a model company, one that would help lead the way toward a new entrepreneurial spirit in Russia.

“He was the most visionary of all the Russian oligarchs,” said William Browder, who runs the Hermitage Fund, and was once the largest portfolio manager in Russia. “He understood that the way to get the best valuation was to run the most transparent company.”

To that end, he brought in Western board members who understood the principles of good corporate governance. He hired foreigners to critical executive positions, unheard of in Russia. A big reason that Russian companies had low valuations was that investors simply didn’t believe their stated numbers — and had no idea how much of the company’s cash flow was diverted for graft. Mr. Khodorkovsky changed that perception at Yukos by working hand in glove with the company’s accountants in the Russian office of PricewaterhouseCoopers, who created an accounting structure that allowed Yukos to report earnings that met Western accounting standards, while satisfying the Russian tax authorities, no mean feat.

According to Bruce Misamore, an American who spent several years as the chief financial officer at Yukos, when Mr. Khodorkovsky was arrested in October 2003, he was in the process of selling a stake of the company to either Exxon Mobil or Chevron, both of which were eager to make an investment. He was also preparing to list Yukos on the New York Stock Exchange. He was worth a reported \$15 billion.

Mr. Khodorkovsky’s arrest — widely assumed to be the result of his willingness to back political parties opposed to Mr. Putin — was a critical moment in modern Russian history. Before his arrest, it was thought that wealth brought protection from arrest and imprisonment. Sending the richest man in the country to Siberia shattered that illusion. The other oligarchs either fled the country or began currying favor with the Kremlin, which often meant cutting officials in on deals.

The “takeover” of Yukos also emboldened Kremlin officials. In their grab for money and power, officials trampled over the rule of law. Thomas Firestone, a Justice Department lawyer working in the United States Embassy in Moscow, wrote a paper in 2008 titled “Criminal Corporate Raiding in Russia.”

“The illegal takeover of businesses,” he wrote, “differs greatly from U.S. hostile takeover practice in that it relies on criminal methods such as fraud, blackmail, obstruction of justice and actual and threatened physical violence.” Yukos, which had become one of the half-dozen largest oil companies in the world, was by far the biggest company ever brought down by the siloviki. But it was hardly the only one.

Take what happened to Mr. Browder, the fund manager. Frustrated by widespread corporate graft, he transformed himself into a shareholder activist, using forensic research and the press to expose corruption, and pushing companies to reform. A few years after Mr. Khodorkovsky was arrested, Mr. Browder was deported. The

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police then raided both his and his law firm's offices, carting off thousands of documents, which they then used to forge and backdate fake contracts, creating a fictitious liability of \$1 billion. Then the officials behind this scheme hired lawyers to "represent" Hermitage, who pleaded "guilty" in court.

In the coup de grâce, they then went to the tax authorities and requested a \$230 million tax refund, the largest in Russian history, on the grounds that the fine had caused \$1 billion in real profits to disappear. The tax refund was granted in 24 hours — no questions asked.

Meanwhile, Mr. Browder's lawyers, who reported the crime, were hounded out of the country. All except one, Sergei Magnitsky, who refused to leave Russia and testified against the officials who had pulled off the scheme. Shortly thereafter, he was arrested and put in prison, where he became increasingly ill in the harsh conditions. Nearly a year ago, in need of an operation that the authorities refused to allow, he died. Thus is business now conducted in Russia.

Which brings me back to Mr. Khodorkovsky. The first time around, he and Mr. Lebedev were convicted of tax fraud, a standard ploy in Russia when prosecutors want to put away a businessman for no legitimate reason. This time around, the two men were accused of "embezzling" all of Yukos's oil between 1998 and 2003, presumably to siphon off the profits for themselves. Part of their defense, however, was that Pricewaterhouse had audited Yukos's books during those years, and the audits accounted for every drop of oil the company sold.

You can guess what happened next. Pricewaterhouse's Russia offices were raided. A tax investigation — completely unrelated to Yukos, of course! — was opened. Pricewaterhouse executives were questioned and then questioned again, which is often a lead-up to arrest. And all the while, prosecutors pushed for the accounting firm to disavow 10 years' worth of Yukos audits.

For several years, Pricewaterhouse held firm. But according to Mr. Khodorkovsky's supporters, the pressure eventually became too much for the firm's executives to bear. In June 2007, the accounting firm withdrew its support for the audits it had once conducted with such pride. Soon thereafter the prosecutors brought their case.

Pricewaterhouse adamantly insists that it did not fold under pressure. The prosecutors, the firm claims, uncovered "new information" that made it impossible for the company to stand by its audits. In a statement, the firm said that this information suggested "that Yukos's former management may have made inaccurate representations to PwC during the course of PwC's audits." A spokesman told me the firm's professional standards gave it no choice but to turn its back on its audits.

But Mr. Khodorkovsky's lawyers have filed a brief in California (where a former key auditor on the Yukos account now lives) that makes it pretty clear that the "new information" was facts Pricewaterhouse had long known and had deemed

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immaterial. The former chairman of the Yukos Board of Directors Audit Committee, Jacques Kosciusko-Morizet, a respected French banker, testified at the trial that Pricewaterhouse partners he had spoken to expressed embarrassment at the auditor's actions.

Mr. Browder, for his part, had once been a substantial investor in Yukos. When I asked him about the accounting firm's actions, he said, "They should rot in hell for what they did to Khodorkovsky."

A final note. On Thursday, I called the State Department to ask if the administration had done anything to protest the persecution of Mr. Khodorkovsky and Mr. Lebedev. Although I couldn't get a definitive answer, it is clear that the United States government has done nothing publicly to protest the trial. Mr. Khodorkovsky appears to be low on the list of human rights priorities for the administration.

He shouldn't be. It should make no difference that he was once rich and once an oligarch. What matters is that Mikhail Khodorkovsky is fighting for political freedom and the rule of law, putting his life on the line for ideals we claim to hold dear. "He has become a prisoner of conscience, and he deserves the sympathy and help of the world community," said Elie Wiesel, the Nobel laureate.

Read Mr. Khodorkovsky's statement. Excerpts are posted with this column on NYTimes.com, and elsewhere online. I don't think you'll disagree.