

The Magnitsky Affair

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Last May, a money-laundering suit brought by the United States against Prevezon Holdings Ltd., a Cyprus-based real estate corporation, was unexpectedly settled three days before it was set to go to trial. The case had been at the center of a major international political controversy. Prevezon, which is owned by a Kremlin-connected Russian businessman named Denis Katsyv, was accused by the US government of using laundered money from a 2007 Russian tax fraud to buy millions of dollars' worth of Manhattan real estate. The fraud, which was discovered by a Russian accountant named Sergei Magnitsky, involved companies owned by Hermitage Capital Management, a Moscow-based hedge fund run by the American-born British financier William Browder.

In 2009, Magnitsky died in police custody, where he had been held in abject conditions for nearly a year; three years later, President Obama signed legislation named after Magnitsky that placed heavy sanctions on numerous Russians involved in this affair. Several Russian lobbyists with close ties to the Kremlin have urged Donald Trump and members of Congress to reconsider those sanctions. "In view of recent revelations regarding Russia's outsized influence," William H. Pauley III, the presiding judge in the Prevezon trial, observed in November, "there may have been more to this money laundering case than a few luxury condominiums."

The Magnitsky affair begins with Browder. In 2005, the value of Hermitage Capital Management reportedly reached \$4.5 billion, and Browder had become a vocal cheerleader for Vladimir Putin, issuing a report for Hermitage that hailed Putin's reforms. At the same time, he was leading a successful campaign against corporate abuses by the Russian oil giant Gazprom. In his best-selling 2015 book, *Red Notice*, Browder writes that he assumed that Putin shared his desire to get rid of corrupt oligarchs and also that, as a foreigner, he was "somehow exempt from the informal rules [of minding one's own business] that governed everyone else's lives in Russia." But as the Russian journalist Anna Arutunyan pointed out in 2014, Browder "crossed the line by presuming a degree of closeness and loyalty that no foreign investor could ever have." Putin's administration, she wrote, "turned away from him and left him at the mercy of the paper law [written law that is not usually enforced]," making "it clear to law enforcement predators that he was fair game."

Browder was banned from entering Russia in November 2005, labeled a "threat to national security," and forced to relocate to London. In February 2007, an officer with the Ministry of Internal Affairs (MVD) named Artem Kuznetsov hinted that a bribe could help resolve Browder's visa problem, but Hermitage rejected the suggestion. "It was only a matter of time," Arutunyan noted, "before law enforcement officials who worked the protection racket dug up enough on his company to put someone in jail."

Four months later, in June 2007, Kuznetsov and his colleague Pavel Karpov presided over a raid of Hermitage's Moscow offices, along with those of its attorneys, Firestone Duncan. On the pretext that they were investigating Hermitage for tax evasion, the officers stole corporate documents and official seals, which they used to illegally transfer ownership of three



Spencer Platt/Getty Images

President-elect Donald Trump with Ivanka Trump, Donald Trump Jr., and Vice President-elect Mike Pence at a news conference at Trump Tower, New York City, January 2017

Hermitage companies to a criminal organization associated with a convicted fraudster, Dmitri Klyuev. Then the new owners filed for a tax refund of \$230 million from the Russian Treasury on the false grounds that those three companies had suffered financial losses. The money was siphoned through a tangled web of shell companies, and approximately \$1.9 million was traced to Prevezon.

Sergei Magnitsky was, at the time, an employee of Firestone Duncan, which provided auditing services to Hermitage. Hermitage enlisted him to investigate the circumstances surrounding the raid. The same MVD officers who oversaw the raid, Karpov and Kuznetsov, had Magnitsky arrested for tax evasion on Hermitage's behalf in November 2008, after he testified against them to the Russian prosecutor's office. Russian human rights groups established that Magnitsky was subjected to treatment by prison officials "comparable to torture," apparently to get him to retract his statements. He developed acute pancreatitis that went untreated and died an anguished death in November 2009. Andreas Gross, a Swiss member of the Parliamentary Assembly of the Council of Europe (an international organization dedicated to upholding human rights), observed in his exhaustive, meticulously documented report on the case:

Instead of receiving the urgently needed treatment, Sergei Magnitsky was "tranquillised" by a beating with rubber batons, handcuffed and thrown into a holding cell, alone and without any medical attention.

Russian prosecutor-general Yuri Chaika was responsible for handling the Magnitsky case and received numerous complaints from Hermitage lawyers and human rights activists both before and after Magnitsky's death. His office conducted several perfunctory investigations, but only filed charges against two prison doctors. The charges against one were later dropped, and the other doctor was acquitted. In March 2013, the case was officially closed.

In the meantime, Russian authorities revisited an old tax dispute with Hermitage involving two shell companies set up by the hedge fund in the region of Kalmykia that offered significant tax breaks to firms that invested their profits there and employed disabled people. The authorities claimed that, in taking advantage of the tax breaks, Hermitage had falsified its tax statements for 2001. The case had been closed "for lack of evidence" in 2005, but it was reopened in 2008, shortly after Magnitsky testified about the office raid. In November 2012, Browder and Magnitsky (posthumously) were charged with tax evasion. In July 2013 Browder was convicted in absentia and sentenced to nine years behind bars.

Why did Russian authorities at the highest level go to such lengths—allowing Magnitsky to be arrested and tortured to death in prison and reopening the tax charges against him and Browder—to cover up a crime perpetrated at the expense of the Russian government by mid-level officials like Kuznetsov and Karpov? As the Gross report points out, Russia is a mafia state whose leaders ignore the crimes of their underlings in exchange for absolute loyalty. Additionally, the Kremlin itself benefits from such crimes. It has an immense "parallel budget" of black funds from tax reimbursements and kickbacks from state contracts.

Most importantly, the Kremlin is, on principle, deeply resentful of Western efforts to interfere in Russia's internal affairs. Putin and his colleagues know that their political legitimacy, which depends on a steady stream of state-sponsored propaganda and appeals to patriotism, is fragile. They consider all outside influence to be aimed at regime change.

This resentment explains why Putin and his allies have been so critical of the 2012 Sergei Magnitsky Rule of Law Accountability Act, under whose terms the United States sanctioned eighteen Russian officials allegedly complicit in Magnitsky's persecution. The act prevented the Russians named from entering the US and froze their assets in US banks; Browder's lobbying and testimony had a significant part in getting it passed. Russia responded by banning American adoptions of Russian children and establishing its own list of sanctioned Americans.

The list of those sanctioned under the Magnitsky Act was expanded several times, most recently in December 2017, when the notoriously ruthless and corrupt Chechen president Ramzan Kadyrov was added, along with four others. It now includes forty-nine people, but only two—Kadyrov and Aleksandr Bastrykin, head of the Russian Investigative Committee—are high-level officials close to Putin. Notably absent is Yuri Chaika, the *éminence grise* of the entire Magnitsky affair,

although his son Artem was recently sanctioned under the 2016 Global Magnitsky Act, which authorizes the president to impose sanctions on foreigners worldwide for human rights abuses and corruption. (Britain, Canada, Estonia, and Lithuania have passed similar legislation.) The sanctions imposed on Russia after its invasion of Crimea in 2014 have had a far greater effect on it than the Magnitsky ones, touching on high-level officials and causing serious harm to the Russian economy. But as onerous as the Crimea-related sanctions are, they do not address Russia's behavior toward its own citizens, as the Magnitsky sanctions do.

Natalia Veselnitskaya, the Russian defense lawyer in the Prevezon case, and a Russian-American former Soviet intelligence officer named Rinat Akhmetshin have been waging a determined Kremlin-inspired campaign against the Magnitsky Act since early 2015. The two have operated under the auspices of their lobbying group, the lofty-sounding Human Rights Accountability Global Initiative Foundation. Despite her claims to the contrary, Veselnitskaya is close to Putin's circle of *siloviki*—officials from the security, military, and police agencies. After an early career as a Moscow regional prosecutor, she successfully defended the Federal Security Service (FSB) in land disputes and became a protégé of Chaika, who has made repealing the Magnitsky Act his top priority.

Chaika has served as prosecutor-general since 2006 and was reappointed for a third term in 2016, despite highly publicized corruption allegations against his family. The democratic opposition leader and Russian presidential candidate Aleksei Navalny, who made those allegations in an incendiary 2015 documentary video, put it this way:

Everyone knows that Chaika is a thief and a murderer.... This guarantees Putin the main quality that is demanded in the country—loyalty. Chaika knows that he and his family and his deputies could all be imprisoned (rightly) for twenty years at any time. And he will do anything to earn mercy and security.

Not surprisingly, the Russians' main target is Browder, who was not only the driving force behind the Magnitsky Act but also initiated the Prevezon case by filing a complaint in December 2012 with the Manhattan district attorney's office. In December 2015, Chaika wrote a fiery letter to the Russian newspaper *Kommersant* denouncing Browder as a swindler and a criminal and accusing him of financing, with the complicity of Western secret services, Navalny's video about his family's corruption. A few months later, the Russian nightly television program *Vesti Nedeli* revealed a complex plot, allegedly inspired by the CIA, to "undermine the constitutional order of Russia." The two main figures in the plot were Browder ("Agent Solomon") and Navalny ("Agent Freedom"), who supposedly joined together in 2006 to mount an information attack on social media with the intention of discrediting officials in Putin's government, specifically Chaika. The program, which featured an appearance by Veselnitskaya, also claimed that Browder had conspired with agents from Britain's MI6 to have Russian prison officials cause Magnitsky's death.

The *Vesti Nedeli* broadcast was hard to take seriously, with its far-fetched premise and obviously faked documentation. More successful at undermining Browder was an English-language film by Andrei Nekrasov, *The Magnitsky Act: Behind the Scenes*, which was screened at the Newseum in Washington, D.C., in June 2016. Kyle Parker, a staffer on the House Foreign Affairs Committee who played a significant part in the passage of the Magnitsky Act, noted in an e-mail to his colleagues that the film had "nothing new, just the same MVD lies repackaged." But for those who have less knowledge about the Magnitsky case, the film is persuasive, especially since Nekrasov is an award-winning Russian filmmaker who in the past produced documentaries highly critical of the Putin regime.

The Magnitsky Act depicts Nekrasov initially believing Browder's testimony and then discovering that he fabricated the case in order to hide his and Magnitsky's own tax fraud. Nekrasov claims that Magnitsky never testified against Karpov and Kuznetsov, when in fact he mentioned them more than once in testimony he gave the police in June 2008 and reaffirmed the following October. Nekrasov also denies that Magnitsky was deprived of medical care and beaten shortly before his death. Valerii Borshchev, the chairman of a Russian public commission that concluded that Magnitsky's death was the result of torture he suffered in prison, was outraged by the film: "It negates everything we did." Liudmila Alekseeva, the head of the Moscow Helsinki Group, noted: "I have no idea who was behind this film and commissioned

the film-maker. But one thing is clear: these are people for whom it is very important to disavow the evidence of corruption that emerged from the Magnitsky case.”

Nekrasov insisted in an e-mail to me that, despite reports to the contrary, Veselnitskaya was not involved in making or promoting his film. But the film reproduces video clips of Browder running away as he is being served with a subpoena to testify in the Prevezon case and of his April 2015 deposition, both of which were likely passed on to Nekrasov by Prevezon’s defense team. When Congressman Dana Rohrabacher visited Moscow in April 2016, Veselnitskaya discussed Nekrasov’s film with him and gave him a copy. Rohrabacher, known to be a supporter of the Kremlin, dutifully promoted the film in Washington. After the screening, which Veselnitskaya attended, she joined Rohrabacher for dinner, along with Nekrasov and Akhmetshin.

As emerged from his recently released August 2017 testimony to the Senate Judiciary Committee, Glenn Simpson of the firm Fusion GPS arranged for people to view the Nekrasov film. He had been hired by Prevezon’s defense team to gather evidence against Browder and serve him with subpoenas. Amazingly, Simpson claimed that his firm did not believe that its work for Prevezon benefited the Russian government, despite the fact that his materials against Browder were used by Veselnitskaya and Akhmetshin for lobbying against the Magnitsky Act. Simpson repeated this claim during questioning by the House Committee in November.

Four days before the screening of the Nekrasov film, on June 9, 2016, Veselnitskaya and Akhmetshin had met with Trump’s team in Trump Tower. According to an e-mail sent to Donald Trump Jr., Chaika initiated the gathering when he met on June 3, 2016, with Trump’s friend Aras Agalarov, an Azeri businessman and client of Veselnitskaya who sponsored Trump’s 2013 Miss

Universe contest in Moscow. Chaika asked Agalarov to arrange a meeting between the Veselnitskaya group and members of the Trump campaign, offering “high level and sensitive information” against Hillary Clinton. Agalarov would have gladly obliged Chaika, since the two are allies. (Agalarov defended Chaika in a fiery letter to *Kommersant* after Navalny’s exposé on Chaika’s family.) According to Agalarov’s American attorney, Chaika vetted the talking points that Veselnitskaya used for the Trump Tower meeting, which focused on the Magnitsky Act rather than on Clinton.

Veselnitskaya said recently that Donald Jr. promised her that his father, if elected president, would reexamine the Magnitsky Act. An important question this raises is what the Russians offered in return. They had unsubstantiated information about an American firm tied to Browder, Ziff Brothers, which had supposedly evaded Russian taxes and might have contributed money to the Clinton campaign. What else did they promise? Did the Russians tell the Trump group that they were working behind the scenes to influence the elections in Trump’s favor and that they had provided WikiLeaks with hacked e-mails from the Democratic National Committee?

If we are to believe the Christopher Steele dossier, the Russians also had *kompromat* on Trump, some of it originating from Agalarov. The dossier cites a Russian émigré source reporting in July 2016 that the Kremlin had given its word not to deploy this *kompromat*, “given how helpful and cooperative his [Trump’s] team had been.” Because the dossier was commissioned by Fusion GPS and Simpson was in frequent contact with Veselnitskaya and Akhmetshin—he had dinner with both of them on June 10—this source may well have been Akhmetshin.



Yury Martyanov/Kommersant/AP Images

Natalia Veselnitskaya, a Kremlin-linked lawyer who met with Donald Trump Jr. in June 2016

Donald Jr. apparently followed up on his promise to Veselnitskaya because the president has on several occasions expressed reservations about sanctions against Russia. Last summer, at the G-20 meeting in Hamburg, he even went out of his way to speak to Putin privately about the Magnitsky Act. (We know this because afterward Trump said that the two had discussed American adoptions of Russian children, which the Russians had banned in response to the Magnitsky Act.) More recently, after discussions with Putin during his trip to Asia, Trump said at a news conference in Hanoi on November 12 that “people don’t realize Russia has been very, very heavily sanctioned.... It’s now time to get back to healing a world that is shattered and broken.”

On Trump’s inauguration day, former national security adviser Michael Flynn told a business colleague that one of Trump’s first acts would be to “rip up” sanctions against Russia. But Trump’s authority over sanctions on Russia is limited. In August, he signed a new law called Countering America’s Adversaries Through Sanctions, but only because Congress would have overridden his veto. The law, which is separate from the Magnitsky Act, instructs the Trump administration to provide, by January 29, 2018, a list of key Russian political and business figures who might in the future be sanctioned, along with their families, for corruption and human rights violations. Not surprisingly, Trump has said that the law is seriously flawed because it restricts his ability to negotiate with Russia and to ease or lift sanctions without congressional approval.

After the meeting between the Russians and the Trump group came to light last July, Democratic members of the House Judiciary Committee sent a letter to Attorney General Jeff Sessions expressing concern that the Trump Tower meeting had contributed to the decision to settle the Prevezon case. Trump’s abrupt dismissal of Preet Bharara, the US attorney prosecuting the case, in March 2017 added to speculation that his administration had pushed for a settlement.

But there is no apparent evidence of interference by the White House in the case. The settlement was reached when Prevezon agreed to pay a fine of almost \$6 million, three times the amount that its owner, Denys Katsyv, had received from the tax fraud, while admitting no responsibility for Magnitsky’s death. (The complaint had charged that Prevezon was associated with the organization that indirectly caused his death.) In a November letter to the chairman of the House Judiciary Committee, Assistant Attorney General Stephen Boyd said that prosecutors in the case had no contact with Trump or any members of his administration or campaign staff regarding the case. Louise Shelley, a George Mason University expert on Russian crime who was to appear as a government witness at the trial, told me that “prosecutors for the Southern District always try to settle, because they want a high conviction rate.” And in this case, Shelley said, “the financial costs of a trial would have been huge, as it would have lasted for weeks. In complex cases like this one that go to a jury, the government is always at risk as they may recover less in damages after trial than they would if they had settled.”

Also, one of the defense’s main strategies would have been to challenge the credibility of Browder, whose Hermitage team had provided much of the documentation against Prevezon. The defense had won a bid to have Browder deposed a second time, which prosecutors probably wanted to avoid, since his earlier deposition had not gone smoothly. (Browder falsely insisted that Magnitsky was an attorney, despite the fact that he had no legal training; Browder also said he could not remember whether he had someone suggest to Magnitsky that he take responsibility for the tax returns.)

Even with the Prevezon case over, the Kremlin continues to rail against Browder and the Magnitsky Act. In October, at the annual Valdai Forum in Sochi, Putin insisted that behind the Magnitsky case are “the criminal activities of an entire gang” led by Browder. And Chaika recently sent two letters to Attorney General Sessions requesting him to open a criminal case against Browder and Ziff Brothers and asking that he reexamine the Magnitsky Act, which was “based only on submissions from criminal people.” Chaika made similar statements in November on the Russian television program *Vesti Nedeli*, which also featured Veselnitskaya and Nekrasov, again claiming that Browder used Magnitsky’s death to cover up his own corruption.

The Kremlin’s reactions to Browder and the Magnitsky law are eerily reminiscent of the Stalin era. In his almost maniacal obsession with Browder, Chaika recalls Stalin’s notorious prosecutor Andrei Vyshinsky, who lashed out against Stalin’s

perceived enemies with absurd accusations and vitriolic rhetoric. Under Stalin, the public was of course shielded from the facts. Today Navalny, who draws huge crowds at his campaign rallies despite having been refused a place on the ballot for the presidential election in March, has over two million followers on Twitter and 1.5 million subscribers on YouTube. But Putin, like Stalin, has absolute control over the security and law enforcement agencies, and he has shown that he can use them to attack his critics, sometimes with violence.

The democratic Russian politician Boris Nemtsov, who appeared before Congress to advocate expanding the Magnitsky Act, was gunned down on a bridge just outside the Kremlin in February 2015. His colleague Vladimir Kara-Murza, another vocal proponent of the act, was twice brought close to death by poisoning. Alexander Perepilichny, a Russian oligarch who gave Browder documents that incriminated a Russian tax official in the Hermitage fraud, dropped dead outside his London home at age forty-four in November 2012. As the inquest into his death continues, a highly classified 2016 US intelligence report on Russian political assassinations is said to assert that Perepilichny was killed on orders from the Kremlin. More recently, a lawyer for the Magnitsky family, Nikolai Gorokhov, almost died after a mysterious fall from his apartment window in Moscow in March 2017, shortly before he was to testify in the Prevezon case.

Browder has said many times that the Kremlin would like to assassinate him. One wonders why he still risks fighting for the Magnitsky cause. According to Andreas Gross, who was struck when he met Browder by his deeply emotional reaction to Magnitsky's death, Browder believes that he himself was the intended victim of the Russian conspiracy and that Magnitsky was targeted in his stead. "This goes a long way," Gross observed, "towards explaining [his] dogged, sometimes slightly overdone, worldwide lobbying campaign to obtain 'justice for Sergei.'" Perhaps, too, Browder realizes that the arbitrary, lawless Russian system that destroyed Magnitsky was the same system that allowed him to make such large amounts of money in the early Putin years.

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