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Working Paper # 28
January 1987

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Funding for the research which resulted in this report was provided by the U.S. Department of State, which however, is not responsible for its contents or findings.

Data for this study were produced by the Soviet Interview Project. This project was supported by Contract No. 701 from the National Council for Soviet and East European Research to the University of Illinois Urbana-Champaign, James R. Millar, Principal Investigator. The analysis and interpretations in this study are those of the author, not necessarily of the sponsors.

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In the modern state, where policing and prosecution are conducted by public officials, criminal trials usually result in convictions of the accused. Yet even with the best efforts of police and prosecutors, a small portion of cases still come apart at trial and result in acquittals. This was the pattern in Soviet Russia during the first three decades of Bolshevik rule. However, in the late 1940's, the rate of acquittals in Soviet court started a decline so drastic that by the 1970's and 1980's acquittals had "practically disappeared". At first glance this development seems strange, for it occurred at a time when the observance of the rules of criminal procedure was being strengthened and the opportunities for defence counsel at trials expanded.

To discover the reasons for the decline of acquittals and probe its meaning calls for inquiry into the practice of Soviet criminal justice. The conduct of investigators, procurators and judges in the USSR reflected more than the duties established for them by the law. As employees of bureaucratic agencies Soviet legal officials were influenced by the way their bureaucratic and political superiors assessed their performance. To accommodate the criteria used in assessing their work, these officials developed a set of informal norms of conduct that governed the handling of criminal cases. Substituting other measures for acquittals turns out to have been one of those norms.

It should come as no surprise that the conduct of legal officials in the USSR reflected the criteria used to evaluate their performance. Such considerations are known to have influenced the conduct of police, prosecutors and even judges in some Western countries. Moreover, Sovietologists have long understood how indicators of plan fulfillment affected the conduct of economic managers. Yet, Western writing on
criminal justice in the USSR has paid little attention to the assessment of legal officials or its influence on their behaviour.  

This essay examines the system of evaluating the work of investigators, procurators and judges in regard to criminal cases and the norms of conduct that resulted from it, paying particular attention to the problem of the vanishing acquittal. The inquiry is meant to advance our understanding not only of the operation of the agencies of criminal justice in the USSR but also of the opportunities for the Soviet defense counsel. As we shall see, what the advocate can obtain for his client is determined in large part by the interests of the officials with whom he must deal.

In writing this paper, I have drawn upon a special source that was unavailable to most previous writers on Soviet criminal justice. I have used information, ideas and reminiscences obtained through a series of interviews with jurists who emigrated from the USSR during the mid and late 1970's and early 1980's. Of the fifty-odd persons interviewed (in North America and Israel) half had direct personal experience working in the procuracy or the courts. While this experience was concentrated in the years 1945-1960, six of these informants continued working in the procuracy until the late 1960s. For purposes of this inquiry, the timespan of my informants' direct experience in the legal agencies proved fortuitous, for it was precisely in the late 1940s and 1950s that the current system of assessment and resulting informal norms emerged. The other jurists interviewed spent their whole careers as criminal lawyers in a variety of locations within the USSR. (For a fuller description of these informants and their biases see Appendix A).

The essay begins with an analysis of the system of assessing the
work of investigators, procurators and judges that emerged in the 1940s and prevailed in the 1950s and 1960s. It goes on to examine and illustrate the practices used by Soviet legal officials to accommodate this system, especially with regard to acquittals. Then, the paper provides evidence of the continuation of these practices into the 1980's and the emergence of a controversy about their suitability. Finally, it explores the implications of these informal norms for the defense of accused persons.

The System of Assessment

The decline of acquittals in the late 1940's and early 1950's stemmed from the new stigma attached to acquittals in the evaluation of the investigators and procurators and readiness of judges to defer to the interests of their colleagues.

Before World War II there was little, if any, pressure upon legal officials to avoid acquittals. The chiefs of Soviet justice agencies did rely upon a variety of statistical indicators to monitor the performance of their subordinates (including a record of verdicts) but for the most part they treated the results tolerantly. Central legal officials recognized that it was unrealistic to expect a high level of performance from the uneducated and inexperienced cadres who staffed the legal agencies. Under the circumstances high rates of acquittal, return for supplementary investigation and changes in sentence or verdict on appeal appeared to be necessary correctives. 5

Toward the end of the 1930s--after Stalin had endorsed the movement to restore and strengthen the law--that tolerance started to fade.
Despite the fact that the quality of legal officials had not improved (after the Great Terror many procurators and judges were fresh recruits), central legal officials demanded better performance. As part of this effort, the chiefs of the justice agencies asserted more control over their subordinates, insisting that the latter improve their records on a variety of statistical indicators of performance. In the procuracy before World War II indicators of the efficiency of investigative work (length of investigation, caseload handled, proportion of cases sent to court) assumed greater significance than indicators of quality of case preparation. But the issue of quality was ripe for confrontation. In 1940, one out of ten cases ended in acquittal; nearly as many were returned by the courts for supplementary investigation; and more than thirty percent of those cases appealed (half of the remainder) had verdict or sentence changed.

After World War II the efforts to improve the performance of legal officials not only resumed but also took a new intensity. One reason was the new attention paid to the administration of justice by leading politicians. In 1946 an edict of the CPSU Central Committee made the acquisition of higher legal education a requirement for all investigators, procurators and judges (an attribute possessed by a small minority) and alerted the chiefs of the justice agencies to their responsibility for the maintenance of a well-operating system of criminal justice. During 1947 and 1948 the leaders of the procuracy began to focus attention on the quality as well as the efficiency of case preparation. According to the 1948 instructions on compilation of statistical reports, such indicators as rates of acquittal, return for supplementary investigation, and the fate of accused held in custody
before trial were being used to assess procuracy officials at all levels of the hierarchy.10

The testimony of jurists who worked in the procuracy during the late 1940s suggests that the shift was even more dramatic. Former investigators and procurators agreed that as of the late 1940s the quality of the product delivered to the court had become the most important criterion of assessing their work. In the eyes of their bureaucratic superiors the worst form of "defective goods" in the production of both investigators and the procurators supervising their work consisted of "failures in court", that is cases that had been investigated and sent to trial but failed to produce a conviction. Outcomes like acquittals or returns to supplementary investigation assumed greater significance when the accused had been held in custody before trial, for under the circumstances his acquittal (or release after an unproductive supplementary investigation) made his period in custody "unjustified." Since the procurator of the raion or city was obliged to approve personally each instance of pretrial detention over 72 hours, he could be held responsible for any "bad arrests".

There were still grounds for concern about the quality of the investigative product. Soviet investigators, the bulk of whom lacked both training and experience, did do some shoddy work, and many instances of acquittal, supplementary investigation, or changes of decisions on appeal could have been avoided had the investigators done their jobs properly. Moreover, one should remember that in Soviet criminal justice, as in other inquisitor systems where the prosecutor had the right to stop cases, the preliminary investigation was meant to establish a case that, in the absence of new unexpected evidence, would
stand up in court. A combined rate of acquittals and returns to supplementary investigation of fifteen percent in 1945 suggested not just inadequate preparation of cases but also failure of preliminary investigation to perform its function.\textsuperscript{13}

But no substantive rationale could explain the ferocity of the campaign against acquittals and returns to supplementary investigation that began in the late 1940's. The speeches at a conference of investigators in 1950 indicated that the chiefs of the procuracy sought not just to reduce the number of cases that were inadequately prepared but also to eliminate all "failures in court" even those that were unavoidable and seemingly justified.\textsuperscript{14} In interviews former investigators and procurators agreed that each instance of an acquittal, bad arrest, or return to supplementary investigation was treated as an "extraordinary event."

Like most campaigns in the USSR the campaign for the perfection of investigatory work lasted only a few years, but the stigma attached to acquittals and return of cases to supplementary investigation persisted. A clue to the underlying reason both for the campaign and its legacy was provided by Deputy Procurator General Mokichev. In a speech to the conference of investigators in 1950 Mokichev stressed that in evaluating the statistics on "defective investigations (any that produced acquittals or returns), "we must take the position of state interests. Acts of the procuracy must not discredit the authority in whose name we act..."\textsuperscript{15} Mokichev was saying that failures in court represented more than a sign of weak performance by investigators and procurators. They constituted as well a source of embarrassment - at the very least to the higher officials of the procuracy, if not also to their political
masters in the party apparatus. The message was out. Soviet legal officials could no longer display signs of weakness; they were now expected to attain a level of perfection suitable for representatives of Soviet power.

To keep embarrassing failures to a minimum, officials in the upper and middle ranks of the procuracy had to monitor and respond to their occasional manifestations. During the 1950s and 1960s officials used both formal and informal methods of discovery. The formal means of keeping track of acquittals, returns to supplementary investigation, and bad arrests were the annual checkups (proverki) and the monthly and quarterly reports. The annual checkups by higher level procuracy agencies rarely produced evidence of serious trouble. To be sure, if done correctly -- with four to five operational workers of the oblast spending up to a month examining every aspect of the work of the raion procuracy -- the checkups could be revealing.16 But, as my informants pointed out, the "annual" checkups were often three years apart and as a rule employed as scrutineers officials who were themselves responsible for the daily supervision of the work of the investigators and procurators they were now checking. As a result of this conflict of interest, the inspectors tried to uncover enough small errors to show that they had done a proper checkup but nothing so major as to reflect badly upon themselves -- "so that the wolves would be sated but the sheep left whole."17 Where this conflict of interest was not present, as when a raion procuracy office was selected for examination by a republican procuracy as part of its check of an oblast procuracy office, then the scrutiny could be more serious.18

More reliable and timely signals of "defective investigations" were
provided by the monthly and quarterly reports that raion and city procuracy offices had to provide to their superiors. Not only did the reporting forms call for full information on the numbers and rates of acquittals, returns to supplementary investigation and bad arrests, but the compilers were asked to provide "comparative diagrams for the most important indicators" that identified which particular investigators or procurators were responsible and juxtaposed the records of one with another. In addition, both the procurators compiling the reports for the raion and those who summarized them at the oblast procuracy on behalf of their republican masters were expected to explain any untoward developments, such as the "worsening of this or that indicator" or "obvious differences" among the work records of particular investigators or procurators over a period of months. 19

Even more important for the identification and handling of "failures in court" than annual checkups or periodic reports were the direct informal relationships between raion-level investigators and procurators and their oblast supervisors. Investigators in a raion procuracy office not only served their procurator but worked under the supervision of a staff procurator in the investigatory department of the oblast procuracy, and this vertical master often became involved in his casework. 20 Typically, the oblast supervisor cared most about those cases that would show up later on as problems in the monthly reports. Thus, the head of the investigatory department in the Dneppetrovsk oblast procuracy kept a special record of all cases of acquittals (he insisted on being informed at once). 21 A former procuracy worker from Lvov reported that all cases that extended beyond the time limits were taken over for personal supervision by the procurators in the
investigatory department. According to an experienced procurator from Uzbekistan every instance of a return for supplementary investigation was treated as an "extraordinary event" and checked out by all concerned. An investigator from Moscow oblast reported that there was an "unwritten rule" that in the case of a bad arrest the procurator would write an explanatory note to his direct superior. Of course, the higher procuracy officials had every reason to learn about these calamities as early as possible, for as supervisors, they could be held responsible for the bad performances of their charges. And, the earlier they learned about a misfortune, the earlier they could start to cover the tracks, undo the errors (through protests to higher courts), or, if need be, punish the guilty, that is the investigators or procurators who were "responsible". 22

What did this responsibility mean in practice? The consequences for individual investigators and procurators of failures in court varied with their frequency and gravity. In the words of a procurator from Irkutsk, a few instances of "return for supplementary investigation" were "unpleasant but not fatal." Only a consistently bad record that included, say, a number of acquittals in a series of reports would lead to disciplinary measures or firing. 23 But even "unpleasantness" was worth avoiding. A former procurator turned journalist recently described what an instance of "unpleasantness" might mean. During a stint as acting assistant procurator during the late 1950s the case he was prosecuting at trial came apart. Defense counsel had succeeded in calling into question the validity of the accused's confession and the rest of the evidence no longer appeared sufficient to convict. When defense requested that the case be returned for supplementary
investigation, the writer faced a dilemma. He recognized that by rights he should support his colleague's request, but he was wary of the costs.

Already being an investigator, I was well aware that cases returned by the courts for supplementary investigation spoiled the statistical indicators of quality both of the investigator and of the supervising procurator: in a word defective work (brak v rabote). For this they humble the guilty at meetings or conferences and in every sort of report, and you can read about them even in the prikazy of the oblast procurator. There really is nothing pleasant about it.24

When, despite forebodings, the author did the right thing and supported the petition, he received a visit from his supervisor in the oblast procuracy. The latter promptly accused him of "undermining the authority of the procuracy" and insisted that he change his stance and press for a protest in cassation "before it was too late." Naturally, our hero refused, but he knew that he would have to face the consequences: "I could agree with this procurator about one thing. Returning a case for supplementary would be an extraordinary happening. For such things the bosses, naturally, do not say thank you."25

Such "extraordinary happenings" were bound to take place on occasion. For however much investigators and procurators might want to avoid failures in court, they could not control the events of the trial. Even cases that were well prepared sometimes fell apart when the defense produced new evidence or expertise. For acquittals to "virtually disappear" from Soviet courtrooms required co-operation from another actor, the judge. Why, one might ask, would Soviet judges (and the assessors subordinate to them) become disinclined to award acquittals and turn instead to a variety of alternatives?

One possibility was the evaluation of judicial work by
administrative superiors. Like their colleagues in the procuracy, peoples' court judges (narsudy) were subject to close supervision, in the post-war period by officials in the oblast administrations of the Ministry of Justice. Established in 1939, the administrations took over from oblast courts (oblsudy) the responsibility for processing the reports of the narsudy and conducting period checks on their work. The quality of the checks (revizii) was so weak as to mute their potential effect upon the conduct of judges, but judges did feel obliged to produce the right statistical indicators of performance for the periodic reports.26 Prewar assessment of judicial performance may have discouraged the awarding of an abnormally high number of acquittals but the normal rate of acquittals stayed above 10%.27 By the post-war period "undue leniency" replaced insensitivity to class background of the accused as one of the major sins for a judge. Authorities started to treat acquittals -- along with conditional sentences and sentences to terms below the limits prescribed by law -- as signs of leniency and gave them a prominent place in the statistical reporting forms. But the tendency of judges to err on the side of severity was tempered by the use of "stability of sentence" as the other major indictor of the quality of a judge's performance. A judge whose sentences were too severe risked having them changed on appeal. A judge who convicted without grounds might find the verdict quashed, especially if the case reached the USSR Supreme Court.28

While the assessment of judicial performance made judges cautious about acquittals, the real deterrent lay elsewhere. According to former judges and procurators alike, the main reason for judges to avoid giving acquittals was fear -- fear of irritating the procurator and through him
alienating the party bosses at the raikom. The dependence of judges upon
party officials was much greater than that of investigators or deputy
procurators. Unlike the latter, judges faced periodic reelections, and
the decisions about which judges would be renominated were in the hands
of the party secretaries. Support from the Ministry of Justice was
usually necessary for renomination, but it was not sufficient. Judges
who failed to fulfill the expectations of the raikom were rarely allowed
to run for reelection and even risked an early recall.

There were a variety of ways of disappointing the raikom. Failure
to respond to the demands of the latest law enforcement campaign for
which the raikom was responsible -- e.g. by not giving the maximum
sentences allowed by law for cases that were now "topical" (aktualyni)
-- reportedly led to the dismissal of some judges. Or, unwillingness to
cooporate in the rare request about a particular case might lead to a
confrontation.29 However, the key to the reputation of most narsudy at
the raikom was the opinion of the procurator of the raion. After all,
the procurator himself was a member at least of the raikom if not also
of the raikombiuro and as a rule he had a personal relationship with the
raikom first secretary that few narsudy possessed. When the procurator
complained to his political chief, possibly also a drinking companion,
that a particular judge was "undermining the authority of the Soviet
state" or merely making him the procurator of the raion look bad by
handing out acquittals or returning too many cases for supplementary
investigation, his remarks often fell upon sympathetic ears. The party
secretary might initiate a discussion of the conduct of the judge in the
party cell of the judicial agencies. (Outside of the largest cities the
procurators and judges belonged to the same party group). Alternatively,
he might summon the judge for a conversation at the raikom. Lurking behind such "friendly" advice or admonishment was the threat that further abuse would lead to party censure or ultimately loss of position.30

There were even instances when a raikom decided to resolve the problem of outcomes embarrassing to the procurator and the Soviet state. One former judge from Belorussia reported receiving word from the raikom that acquittals were to stop altogether (he gave out only two in the next two years); and the same raikom expressed its disapproval of his substituting for acquittal return to supplementary investigation (producing two-three of these a month). Finally, in one exceptional situation replete with irony a representative of the party actually encouraged a judge to send cases back for supplementry. Unknown to the raion procurator, an official in the apparat of the obkom was writing a dissertation on returns to supplementary investigation and wanted to ensure that he had enough examples. So he called up a judge and arranged to pay a fee for every case the judge sent back! The scam was revealed when, at the initiative of the procurator whose reputation had suffered from all the returns, a special check was launched against the judge. Scandal and all, the judge got off lightly, simply losing his post and being allowed to resume work as an advocate in another town.31

To almost any pattern of behaviour, there are exceptions. While deferring to the interests of the procurator and avoiding acquittals was the prudent course for most judges, some judges did get away with acquittals, for example judges of long-standing or better education than the procurator, who might be new on the job, or, simply a particular articulate judge who defended his action well. But, as a rule, by the beginning of the 1950s judges realized that success in their careers
required getting along with the procurator, and there was no easier way to spoil those relations and bring down the wrath of the local political establishment than by giving out acquittals, large numbers of returns to supplementary investigation, or verdicts that gave the procuracy the headache of a "groundless arrest."

The Pattern of Accommodation

As soon as investigators and procurators were being held responsible for their failures in court, they started to find ways of avoiding them. Whatever actions they could take on their own they pursued with vigor, but the most important forms of accommodation to the new demands for perfection required the cooperation of judges. Fortunately for the investigators and procurators the judges were sufficiently dependent upon their good will to respond to their needs.

The most obvious way procuracy officials could themselves reduce the likelihood of acquittal, supplementary investigation, or bad arrest was to keep away from the courts any cases where the evidence was not ironclad. Already in the early 1950s, according to veterans of the procuracy, investigators were stopping an increasing number of cases during the preliminary investigation. This remedy had its drawback, though, for investigators could also be chastized for a low rate of completed investigations. For them stopping cases was another form of "defective work," albeit not as serious as having cases returned from court.

In order to avoid at one and the same time both types of investigative failure, Soviet investigators devised the practice of the
"pre-investigation." Before starting a case officially and "under the guise of checking the materials" investigators conducted an inquiry into the evidence that amounted to an investigation. Only after they had determined the quality of the evidence would they formally start the preliminary. Despite the efforts of central procuracy officials to stop the practice of "pre-investigations," it became an entrenched routine. In the 1950s it was especially common in cases involving economic crime, where losses had been reported but it was uncertain whether there would be evidence to show theft. In adopting this practice, investigators of the procuracy were taking a lesson from the police, who also ran "checks" on the facts of cases before starting their formal inquiries and dropped many reported incidents from the criminal record when they had no suspect.

The preinvestigation had an additional benefit for investigators. It delayed starting the clock of the formal investigation, thus giving the investigators more time to complete those cases that they actually decided to pursue. Of course, when the police started an inquiry, the clock was also supposed to start ticking, but some investigators made a habit of discounting the time a case resided with the police. Investigators also found ways of ensuring that they completed the required number of cases for each reporting period. One expedient was to avoid more difficult cases that might use up too much of their time (a star investigator who was frequently given the most difficult cases complained about the effects upon his record). Another approach, when an investigator was already engaged in a difficult case, was to start some easy cases for the sake of the "ticks" in the boxes on the reporting forms (для палочки). Until 1956 a favorite candidate was
cases of self-induced abortions.\textsuperscript{37}

Investigators and procurators showed much ingenuity in fulfilling the expectations of their superiors, but there were limits on what they could do. Alone they could not stop failures in court, for decisions about vertices were in the hands of the judges. While in theory procurators could reduce the likelihood of a "bad arrest" by approving fewer of the arrests proposed by police or procuracy investigators, they denied few of these requests. The established practice was that persons to be tried for a serious offense (and almost any offense involving physical force) be held in custody before the trial. During the 1960s the rate of pretrial detention (or arrest) hovered above the mark of fifty percent.\textsuperscript{38}

In the 1950s and 1960s Soviet judges did try to help their colleagues in the procuracy by reducing the frequency of acquittals and avoiding outcomes that produced bad arrests. When cases came apart at trial, judges favored responses that did minimal damage to the interests of their colleagues. In place of outright acquittals they came to rely upon a series of alternative remedies that still gave the defense something of the victory it deserved without hurting the interests of the procuracy or the Soviet state.

The first choice, and most common substitute for an acquittal, was returning the case for supplementary investigation. Once the case was back in the hands of the investigator he would be able to drop the case quietly for lack of evidence, thus ending the proceedings. Consider for example a case of murder in the Ukraine during the mid 1950s. The evidence against the accused was sufficiently shaky that the republican Supreme Court had insisted on a retrial. Already in its third trial at
the oblsud the case disintegrated when the advocate discovered foul play. The investigator had removed from the case file pages of testimony from the preliminary investigation that contradicted his inferences and conclusion. His fatal error was forgetting to remove the material from the duplicate copy of the dossier held by the defense. When counsel brought this machination to the attention of the judge, the latter summoned the investigator to chambers for a confrontation. The final result, however, was not an acquittal. The case was returned for the fourth time to supplementary investigation, where it was finally dropped for insufficient evidence and the defendant released from jail.

From the point of view of the accused return to supplementary investigation was the best alternative to acquittal itself, for it did not produce a conviction, but for the investigators and procurators it was an imperfect result. To begin with, returns to supplementary also stood as black marks on the record of investigators, although not as bad as acquittals. Moreover, if the accused had been held in custody, there was still the problem of a "bad arrest." The other substitutes for acquittals, though less advantageous for the accused, avoided these consequences.

The second alternative to acquittals was reducing the charge to a less serious offense, convicting the accused, and sentencing him to a lenient, non-custodial sanction such as corrective work or suspended sentence. This option worked especially well when the accused was not in jail before trial and no "bad arrest" could ensue. Typically these cases involved charges of theft of state or socialist property, launched as a rule against lower or middle ranking officials in enterprises rather than career criminals or rowdies. The cases began when financial or
other inspectors uncovered losses or missing resources that could not be explained. The investigators tried to press charges of theft against the suspects, but often discovered that the evidence would not support the charge. Sometimes the investigators themselves requalified the cases before trial but as often the cases went on to the court where the judge had to make the change after the defense counsel had shown the weakness of the evidence. Two articles in the criminal code served as residual charges in these cases: misuse of official position (Art. 109 before 1960, Art. 170 after 1960) and negligence (Art. 111 before 1960, Art. 172 after 1960). From the late 1940s on, the charge of negligence was used almost entirely for this purpose. Investigators did not start cases of negligence; they simply used the charge as a substitute for theft. The replacement of theft with negligence was such a routine phenomenon that my informants had trouble remembering particular examples.

The third option to an outright acquittal differed from the second in only one particular, the sentence. Again the judge requalified the case and convicted the accused of a lesser crime, but gave as a sentence a prison term equal to that he had already served in custody awaiting trial. This was the classic compromise that suited the interests of all concerned. It was especially attractive whenever the accused had been held in custody before trial, because it avoided the generation of a "groundless arrest". Thus, in a town in Southern Russia the police discovered a man from Kiev selling kerchiefs at the market and promptly arrested him for speculation. The procurator approved the arrest without hesitation and passed the case to an investigator. However, the accused informed the latter that his wife had knitted the handkerchiefs, and a visit to the couple's modest quarters in Kiev proved that this was so.
The case was spoiled. The man would not be found guilty of speculation because he had not purchased goods and resold them. He had merely sold the product of his wife's work. But he was already in prison! The investigator found an exit by requalifying the case as "engaging in a forbidden trade." "In a formal sense the new charge covered the situation" and the judge cooperated by sentencing the accused to "time served," as it happened a month and a half. The investigator conceded that an acquittal would have been more appropriate, but, he explained, "the man had already sat, and I had to maneuver somehow." This solution was reportedly common in cases of murder or assault (where the accused was almost always in custody). If the original charge did not hold, the backup might be "illegal possession of firearms," a residual charge sometimes used by district attorneys in the United States for plea negotiations in cases of assault!

Here is another case with a compromise solution that accommodated the needs of the procurator. Eight top officials in a wine-producing factory were accused of stealing some of the by-product used to make spirits. The case for the prosecution rested upon the calculations of an expert who insisted that there was a much lower amount of the by-product in store than he would have expected. The defense lawyers managed to fly in another expert in winemaking, a recently designated Hero of Socialist Labor, who demonstrated at the trial that there were so many factors that could influence the amount of by-product produced that the theft could not be proven. The case had been broken, but what would happen next? The accused had sat already eight months, so that "if the judge acquitted them, the procurator who had sanctioned the arrest would receive a censure, perhaps even along party lines. And he would then
become the personal enemy of the judge." The defense counsel thought about the situation, and, having been deputized by his colleagues the other advokaty, approached the judge and requested an acquittal. The judge answered frankly "You have lost your senses. What will I do with the procurator?" Fortunately, my informant knew where he was going. "The judge and I," he reported, "discussed the situation and bargained a little. He did not want us to write complaints or the procurator to protest an acquittal. He wanted everyone to be quiet. So we agreed that the court would find the accused guilty of negligence...and that he would sentence them to eight months..." Summing up the situation, the defense counsel put it this way. "Were the advocates content? Were those who had sat [the accused] content? Yes, they were pleased, because they had been threatened with 25 years, but just got their sentences and went home. Was the judge content? Yes, he was. And the procurator also was content -- there would be no censures. All were content. This is the essence of the Soviet system."39

The cumulation of outcomes of this kind had the desired effect. Relying upon supplementary investigations and compromise solutions, judges at the trial level did reduce substantially the frequency of acquittals. Whereas in 1945 8.9% of accused had been acquitted in Soviet courts, by the late 1950s the percentage was down to the 2% range, soon to plummet even further. The return of cases to supplementary investigations also decreased from 6.4% in 1945 to about 2% in 1959-1960.40

But this was not the whole story. At the same time as it was becoming hard to achieve a verdict of not guilty at trial, so too acquittals were becoming rare in appeals proceedings, at both the
cassation and the supervisory instances. Throughout the Stalin years the hierarchy of appeals courts played a major role in correcting bad decisions and providing guidance to inexperienced and poorly educated judges. Even in the late 1940s, when the cassation courts had entered a period of relative slack, they were still changing more than one fifth of verdicts or sentences appealed to them. In addition the USSR Supreme Court was using its broad supervisory discretion to review 75,000 criminal cases each year, and it changed verdict or sentence in most.41

In the mid 1950s the significance of appeals in Soviet criminal justice was drastically curtailed, and it became hard to get changes in sentence, let alone verdict, at the higher instances. To begin, the USSR Supreme Court, by all accounts better qualified, more independent, and often more liberal than lower courts, lost its right to scrutinize cases until supervisory hearings had been completed at a republican supreme court or the revived praesidia of the oblsudy. Only a portion of these cases would eventually reach the USSR Supreme Court by this tortuous route.42 Secondly, with the liquidation of the administrations (upravleniia) of the Ministry of Justice, responsibility for the supervision of the narsudy was assumed by the oblsudy, the very bodies whose cassation panels handled most appeals of their decisions.43 The result was a conflict of interest. Judges hearing appeals from trial courts were themselves being assessed in part on the basis of how well the judges in those trial courts performed. The more sentences that the oblsud changed in cassation, the worse would be the sentencing records of "their" narsudy, and this would reflect badly upon the quality of the supervision that they were exercising.44

This conflict of interest was the result of Khrushchev's reforms in
the administration of justice, reforms that Western observers have generally applauded. To be sure, the reforms served worthwhile goals, including both decentralization of authority (with republican governments assuming more power than under Stalin) and administrative efficiency (the justice administrations struck even many jurists as prototypes of red tape). Yet while accomplishing these goals the reforms also produced a substantial decrease in the percentage of verdicts and sentences changed on appeal. By 1967 the national rate of changes in cassation was down to 13.9% of decisions appealed (from 21.5% in 1949) and the overall likelihood of a change (cassation and supervision combined) had gone down by 50% between 1950 and 1968.

These national figures conceal important regional variations. In the capital city the decline of changes of trial court decisions on appeal was much more pronounced. Already in 1957 the Moscow gorsud changed but 4.9% of sentences and verdicts. No wonder this court became known to lawyers in the capital as Moscow's rubberstamping bureau (Mosgorshtampt).

As hard as it was to get a change in sentence, gaining an acquittal through cassation became even more difficult. For whenever a cassation court took the initiative and changed the verdict, it produced a black mark for his charges at the narsudy, not to speak of difficulties in dealing with the procuracy. Moreover, multiple instances of acquittals could resound badly for the higher court as well. Rather than change a verdict to acquittal, the cassation court judges preferred to send the case back for supplementary investigation and retrial. Once the case arrived at the trial court the informal norms that worked against acquittals there came back into force. The alternative for a cassation panel that was confronted with a flaw in the evidence was to find a
compromise solution, such as lowering the sentence down to time served as of the hearing. This alternative was reflected in a popular joke reported by one of my informants. Two friends from law school meet years later when one has become a lawyer, the other a judge on the Moscow city court. The lawyer asks the judge, "Say what are you doing there at the court. You leave all the sentences in force." The other answers "What are you saying? If the man is not guilty, we lower the penalty." Hyperbole, to be sure, but one that captures an element of truth.

When the Ministries of Justice and their oblast administrations (now called departments) were reestablished in 1970 and assumed responsibility for administrative supervision of the courts, the oblsud's conflict of interest was apparently removed. The result was an immediate and in some places sharp rise in the number of sentences and verdicts that were changed in cassation during 1970 and 1971.48 But this change was short-lived. It appears that the reactivization of the cassation instance -- perhaps never more than a regional phenomenon -- was rebuffed. According to national sample data for 1974, only 4% of decisions from trial courts were changed in cassation, a figure well below the national average of 13% recorded in 1967.49

The Continuing Legacy

In analyzing and illustrating the decline of acquittals, we have focused upon the late 1940s and 1950s, the years when this process began and the substitutes for acquittals became widespread. The material presented, though, is of more than historical interest. For the norm of avoiding acquittals and the bureaucratic and political forces that lay behind it persisted to the second half of the 1980s. The actual awarding
of acquittals by Soviet judges became even rarer than it was in 1960. And, Soviet legal scholars started not only to write about this development but also to subject it to criticism.

During the 1960s the rate of acquittal in trials declined from a level of 2-3% (depending upon the location) to an average for the USSR as a whole of about 1%. Thus, in Tadzhikistan, the rate went from 2.5% in 1960 to 1.4% in 1966; in Moldavia from 4% in 1961 to 1.5% in 1967. The Ukrainian authorities reported a reduction by half in the rate of acquittals between 1963 and 1967; the data from an all-union sample taken in 1972 gave a figure of 1%. Acquittals on appeal (whether in cassation or supervisory instances became so rare that they were no longer reported separately in analyses of cassation and supervisory practice. For example, the national study of 1972 indicated that cassation courts had returned 0.6% of all cases heard at trial to supplementary investigation, and supervisory courts had done the same for 0.3%, but acquittals were not mentioned. By implication the rate of acquittals on appeal was negligible.

Former Soviet advocates agreed with the message conveyed by these data, insisting that the attainment of acquittals became virtually impossible. Highly successful and skilled lawyers could count on the fingers of one hand the acquittals they had obtained in this during the 1960s and 1970s.

How can one explain this further decline in the use of acquittals? One possibility, suggested by some veteran Soviet lawyers, was that the new decline represented the natural continuation of the trend of the previous decades. During the mid 1950s, some informants observed, Khrushchev's campaign to restore and strengthen legality seemed to have
emboldened some judges and produced a temporary rise in the rate of acquittals in some regions. Soon after, though, this countertrend was reversed. By 1960, when the campaign for socialist legality had run its course, the bureaucratic and political pressures to avoid acquittals exercised more power than ever.\(^{53}\)

Another factor, cited by some Soviet writers, was improvement in the quality of preliminary investigations, itself the consequence of the improved educational and professional standards of Soviet investigators. It is plausible to suppose that better case preparation may have contributed to the decline in acquittals not only in the 1960s but earlier as well. However, a leading Soviet analyst of the operations of justice agencies in the USSR, I.L. Petrukhin, concluded that the power of this explanation was belied first by the large number of investigative errors that still had to be corrected at higher instances and secondly by new data indicating that returns to supplementary investigation had been to increase during the 1960s. After having declined to a level of 2 - 2 and 1/2\% during the 1950s, returns to supplementary investigation climbed during the 1960s to a rate of 3 and 1/2\% to 4\%! In Petrukhin's view, this rise was entirely a reflection of attempts by judges to avoid acquittals. \(^{54}\)

In his articles of 1968 and 1970 and his book of 1979 Petrukhin allowed himself the luxury merely to imply criticism of the decline acquittals. Other scholars, however, took up the cudgels where he left off. In 1971 another student of judicial practice A. Boikov wrote an open denunciation of the avoidance of acquittals by Soviet judges. Boikov had himself questioned some judges about their "mistakes" and had received the answer that "they could not always counteract pressure
from outside." So they resorted to "so-called compromise decisions, when instead of an acquittal you convict and sentence to time served (в пределах отбытого) or make an unfounded determination to return the case for supplementary investigation." Boikov criticized these practices from a novel point of view, the position of court ethics. In allowing any kind of outside influence upon their decisions, "any consideration of possible benefits or losses to themselves," Soviet judges were failing to meet the high standards of judicial ethics set out by the prerevolutionary legal theorist A.F. Kon. And in failing to serve justice they were also hurting the state. "Some judges openly favor the interests of personal relationships with representatives of the agencies of investigation to the detriment of justice..." They missed entirely the fact that "a grounded acquittal of the accused would be an affirmation of judicial independence that would strengthen the belief that the state defends the legal interests of individuals."53

Boikov's stirring condemnation of the decline of acquittals and the Soviet judges who produced it had no practical consequences. As of the mid 1980s the practices that he had criticized were alive and well. But Boikov did plant the seeds of discontent so that in the post-Brezhnev era others adopted his critical posture and moved the issue into the public area.

In his last public appearance at age 88 the latterday maverick of Soviet criminal procedure M.S. Strogovich repeated the charges. Speaking at a meeting in the Institute of State and Law Strogovich called attention to the decline of acquittals (even disappearance in some courts, even whole cities) and described the now-familiar alternatives and compromised used in their stead. He then condemned these practices as
a violation of court ethics that was simply "inadmissible." Lenin himself had written Strogovich reminding his audience, "not only about the desirability but also about the utility, the pressing need to give acquittals in order to restore the honor and worth of the persons slandered..." by the accusation.56

Then, in March 1986, during Gorbachev's campaign for openness in public life, the veteran legal journalist Iuryi Feofanov took up the cause. He began by raising the issue of acquittals in an interview with Deputy Chairman of the USSR Supreme Court E. Smolentsev that was published in the national newspaper Izvestiia. Feofanov asked the judge "Tell us why the acquittal has practically disappeared from our courts?" The judge began his reply with the half-hearted defense that the law required the judge to choose return to supplementary investigation whenever it was impossible to prove innocence or guilt of the accused. But Smolentsev went on to admit that some judges did send back cases where there was nothing to reinvestigate in order to protect themselves, ("for reinsurance"). This practice, he admitted, was harmful to "state interests" (sic!) and deserved to be stopped.57

Encouraged by this response, Feofanov continued the discussion of acquittals in two further newspaper interviews with prominent jurists, Prof. Isaac Galperin from the Procuracy Institute and Minister of Justice B. Kravtsov. While Kravtsov was no less defensive than his colleague from the Supreme Court, Galperin took a different stance. The professor readily conceded that, like Feofanov, he too had been concerned about the replacement of acquittals by returns to supplementary investigations -- so concerned that he had explored the issue with a number of judges, former students and friends whom he knew...
to be "honest, intelligent and humane persons." Most of them admitted to their friend that they had not given acquittals for years. All explained this behaviour in the same way: "It is so risky, you can hardly understand." 58

Most of the criticism of the decline of acquittals shared a common assumption (at least in print) that it was up to judges to maintain an ethical posture and resist the temptation to yield to outside influences. Only Galperin (and by implication the journalist Peofanov) hinted that these influences were simply too powerful, and even he did not discuss openly the source of these influences or the reasons why most judges felt compelled to yield to them -- that is, the criteria used to evaluate the work of investigators and procurators and the alliance between procuracy and party officials that forced judges to accommodate the needs of the procuracy.

Opportunities for the Defense

The informal norms and practices of legal officials not only influenced how the agencies of Soviet justice worked. They also determined the kind of benefits that defense counsel could obtain for their clients in the USSR both at trial and in informal transactions.

As might be expected, former advocates from the USSR deplored the scarcity of acquittals in Soviet courts. But these jurists were keenly aware of the opportunities available to defense counsel in the USSR to achieve the alternatives to acquittals that still benefited their clients, such as returns to supplementary investigation and requalification with a lenient sentence. During the 1950s, 1960s and 1970s according to my informants Soviet advocates came to treat these
outcomes as "victories" and worked hard for their achievement.

Soviet advocates had considerable success in helping their clients, more than some Western observers would assume. A particularly thorough study by Petrukhin traced the fate of a national sample of criminal cases through Soviet courts during 1972. To begin, courts of the first instance gave acquittals in 1% of trials; sent the cases back for supplementary investigation in 3.7%; and stopped another 3.4% -- making a total of 8.1% of court hearings that did not produce convictions. (The cases stopped on the grounds that there was no crime in a legal sense included disputes brought by private accusers who were later convinced by the judge to drop their claims). Furthermore, judges themselves requalified the charges in another 8.7% of the cases, making a total of 16.8% that did not result in conviction as originally prosecuted. Above and beyond this, 4% of all decisions of the trial court were changed in cassation (of these 0.6% returned for supplementary investigation) and 2.28% were changed in a supervisory instance (0.3 to supplementary). Discounting for some instances of repeated changes in the same cases in various instances, one could still conclude that prosecutors failed to achieve their initial claims in two out of nine criminal cases, and most of the time the changes would not have occurred without the actions of the advocate. Moreover, this figure does not include the consequences of the advocate's efforts in other cases to obtain a lenient sentence (the plea in mitigation), which is a regular part of every trial in the USSR.

Most of the benefits that Soviet advocates obtained for their clients resulted from the standard activities of the defense -- careful and insightful analysis of cases (locating inconsistencies in testimony;
recruiting new expertise) and presentation of arguments in court. But, the interviews suggested, this was not all. In the USSR as in other countries, advocates were sometimes able to advance cases outside of the courtroom through personal contacts with legal officials. Thus, a former assistant procurator from a Baltic capital reported that he used to hold unofficial conversations with advocates over cases. In one theft case that he recalled as typical, he had instructed the counsel "Do not make a big show (kontsert) in court, for the evidence is weak. I will ask for 111", that is requalification to a charge of criminal negligence, conviction for which would bring either a non-custodial sanction or time served. In another case reported by an advocate from Kiev, defense made good use of a mistake by a secretary in the procuracy. Through an error in copying, the date given on the report from the accounting expert fell after the conclusion of the preliminary investigation, and on this basis the advocate could have requested and obtained a supplementary investigation. The advocate was aware that while the supplementary would appear as a black mark for the investigator, it would not help his client in the long run, for the evidence in the case was sound. So he made a deal with the procurator. The advocate agreed to forget about making the petition for supplementary in exchange for the procurator's word that he would request a light sentence. In both of these examples, defense was able to negotiate favourable outcomes by helping the procurator avoid a result detrimental to his interests.

Arrangements of this kind would come as no surprise to a North American lawyer versed in plea negotiation, but on the Soviet scene they do not appear to have been commonplace. While they occurred with some regularity in the Ukraine (especially the Southern part), Moldavia, and
the Baltic provinces,\textsuperscript{62} they appear to have been rare in most of the RSFSR, and especially in Moscow, where relationships between advocates and legal officials were more formal. Yet, even in the capital city, lawyers used their access to the investigator at the end of the preliminary investigation to exchange views about the case at hand. In 1960 advocates in the USSR had gained the right to familiarize themselves with the case file that resulted from the preliminary investigation and to make petitions to the investigator before the formal closing of the preliminary, and they used this right in most cases with serious charges.\textsuperscript{63} In so doing, they would meet the investigator, if only briefly, to obtain the file of the case and then again some hours later to inform him which petitions they would enter at this time. Some of the more skilled advocates discovered that some of the investigators were willing to say a few words about the case and that in the discussions gains could be made. If defense could show the investigator a key flaw in the evidence, the latter might protect himself from trouble later on by dropping the case or at least requalifying the charge. One former advocate proudly reported his successful use of such a discussion. A group of teenage delinquents had stolen hard currency from the Moscow office of a French business firm. The lawyer for one of the boys suggested to the investigator that with the boys apprehended and the money returned, it made little sense to pursue the case. For if the Frenchmen had to appear in court and the trial were covered by French newspapers, the incident would "constitute a blow to the prestige of the Soviet Union." The investigator was convinced and, to the delight of the lawyer, dropped the case.\textsuperscript{64}

As a rule, most lawyers in the USSR -- like most judges,
procurators and investigators -- kept their activities on behalf of clients within the boundaries of the law. But a minority of advocates, especially but not exclusively in the Asiatic parts of the USSR, regularly delivered bribes on behalf of clients to the judges hearing their cases. What the judge could offer in return for a bribe was dictated by the same informal norms that governed the outcome of cases not tainted with corruption. An acquittal was out of the question, and even a return to supplementary investigation ran the risk of incurring the procurator's wrath and eventual detection of the bribe. In places where bribery was routine and at times when no campaign against bribery was underway, judges commonly awarded sentences milder than that stipulated for the offense (using article 51 of the pre-1960 criminal code, article 43 of the 1960 one). Otherwise, they had to resort to subtle combinations of requalification and lighter penalties, outcomes that procurators could protest but would not rouse undue suspicions. On occasion, judges reportedly tried to arrange the evidence to support the lesser charge (e.g. by not calling a witness). In short, even the fruits of corruption had to conform to the rules of the game in order to "appear right."

Concluding Thoughts

The decline of acquittals in Soviet courtrooms resulted from the cooperation of judges with the needs of investigators and procurators to avoid incidents of failure for which they would be held responsible. Sometime in the late 1940s both acquittals and returns to supplementary investigation acquired the status of failures for procuracy officials, a status that lasted for at least four decades. It is worth reflecting
upon the origins of the decline of acquittals, its persistance during the post-Stalin period, its meaning in comparative context, and its future.

The underlying reason for the stigmatization of acquittals in the late 1940s remains something of a puzzle. The original attack came from high officials in the Procuracy, but it seems to have reflected more than a concern with defending that agency's corporate honor. It is my hunch that it reflected a change in Soviet public culture during the era of mature Stalinism in which the appearance of shortcomings of any kind became an acute source of embarrassment to the Soviet leadership. If this interpretation is correct, and it requires confirmation, the question still is why? Why should Soviet leaders become so concerned that their institutions appear to be the best in the world, if not also perfect? I can only speculate about the reasons, but one factor that probably mattered was the new place of the USSR on the world scene. On the one hand, the USSR had become locked into a competition with its new rival the United States, in which claims to priority and achievement dominated the propaganda front. On the other hand, with the establishment of the people's democracies in Eastern Europe, the actual practice of socialism in the USSR had become the source for the model toward which the governments of the new client states were meant to aspire. The new roles both as combatant in a war of propaganda and guiding example for the rest of the Warsaw Pact may have made the face of a well-operating government sine qua non. The trial courts were a particularly visible part of that government which displayed to the public the products of Soviet law enforcement agencies.

The continuation of the decline in acquittals during the Khrushchev
period flies in the face of other trends that have made the conventional wisdom about Soviet justice in this period distinctly positive. Among other things, the excessively severe punishments for some crimes that had characterized Soviet law in the last years of Stalin were reduced; the attachment to the forms of criminal procedure increased; and the status and opportunities for defense counsel raised. In short, under Khrushchev there was process of normalization in the legal realm and some liberalization besides. Even the awarding of acquittals may have been affected temporarily by these trends. Some informants reported that at the height of Khrushchev's campaign for socialist legality (1957 - 1958) acquittals became somewhat easier to obtain. However, as we have seen, the overall trend during the 1950's and first part of the 1960s was down, down from the already low levels of the late Stalin years.

The decline of acquittals under Khrushchev may contradict the other trends, but it does not call for a wholesale revision of the history of Soviet justice. The elements of normalization and liberalization under Khrushchev continue to impress many former Soviet lawyers, notwithstanding the decline of acquittals. That decline does remind us, however, how intricate and many-sided is the process of change. In the legal world, as in other realms, post-Stalin change in the USSR did not move only in one direction. Nor were all of the changes reflections of the same political forces. While the increasing respect for legal procedures and opportunities for the defense drew support from the legal community, the decline of acquittals reflected the lasting preoccupation of Soviet officialdom with appearances.

How much significance one attaches to the current scarcity of acquittals in Soviet courts depends upon one's perspective. An observer from an Anglo-American country would be tempted to treat the scarcity of
acquittals as a big flaw in Soviet criminal justice. For despite the prevalence of guilty pleas in American, English and Canadian courts the public in those countries holds fast in the belief, not entirely mistaken, that in contesting trial an accused stands a good chance of acquittal.\textsuperscript{71} Even in some Continental legal systems the rates of acquittal have been high, for example in Austria and Italy, where prosecutors are required to send to court any case whose investigation they have started. But in those inquisitorial systems of Europe where, as in the USSR, prosecutorial screening of weak cases is rigorous and these cases are routinely dropped before trial, the rates of acquittal tend to be low. Thus, in Finland, only \(1.5\%\) of all criminal cases ended in acquittal and of those contested in court (rather than processed by a written guilty plea) \(6.8\%\).\textsuperscript{72}

The extremely low rate of acquittal in the USSR may not be entirely anomalous, but it is contrived. By my estimate were there no incentives against acquittals, the USSR would have a rate of acquittal of \(4.5 - 5\%\) --- (the \(1\%\) it has now; plus half of the cases now sent of supplementary investigation, i.e. \(2\%\); plus another \(1.5\) to \(2\%\) coming from the pool of cases requalified by the judge).

Soviet critics like Boikov, Strogovich and Feofanov have argued with justification that the avoidance of acquittals harms the reputation of the administration of justice in the USSR. But their exhortation that the judges solve the problem by acting more "ethically" is unrealistic. No Soviet judge can be expected to render an acquittal when deserved, as long as this action threatens to undermine his relationship with the procurator and the raikom and ultimately cost him his job. To make judges ready to acquit requires the elimination of the stigma attached
to acquittals and its reflection in the criteria used to evaluate investigators and procurators.

Short of these improbable developments, a substantial number of potential candidates for acquittal would have their lots eased were Soviet authorities to reduce the number of accused persons held in custody before trial. Detention before trial greatly increased the likelihood of conviction and a custodial penalty. (This was true in Western countries as well, where prosecutors were not threatened with "bad arrests.") In the absence of pretrial detention cases with weak evidence might end with more lenient penalties or return to supplementary investigation. I have seen no discussion of the issue of pretrial detention in Soviet legal literature. Reformers of criminal procedure in the USSR would do well to address it.
APPENDIX A: The Interview Sample and its Biases

As of Sept. 1986 I had completed 48 interviews with 46 different respondents. Most of them had worked at more than one post in the course of their careers. The distribution of job experiences included in the sample as a whole is as follows:

<table>
<thead>
<tr>
<th>Role</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investigator</td>
<td>17</td>
</tr>
<tr>
<td>Senior investigator</td>
<td>7</td>
</tr>
<tr>
<td>(in raion, oblast, and republican procuracies)</td>
<td></td>
</tr>
<tr>
<td>Assistant procurator (raion)</td>
<td>6</td>
</tr>
<tr>
<td>Assistant procurator (city/oblast)</td>
<td>6</td>
</tr>
<tr>
<td>Assistant procurator (republic)</td>
<td>1</td>
</tr>
<tr>
<td>Acting procurator (raion/oblast)</td>
<td>3</td>
</tr>
<tr>
<td>Judge or acting judge (peoples court)</td>
<td>7</td>
</tr>
<tr>
<td>Ministry of justice officials</td>
<td>3</td>
</tr>
<tr>
<td>(including court supervision)</td>
<td></td>
</tr>
<tr>
<td>Advocates (criminal cases)</td>
<td>36</td>
</tr>
</tbody>
</table>

At the time of interview the average age of these informants was around sixty, most of them having started their careers after World War II. With only a few exceptions they were of Jewish nationality.

The status of my informants both as emigres and as Jews was bound to introduce bias into the sample. First, as emigres they might be expected to display anti-Soviet feelings that might in turn influence their answers. To be sure, I did encounter among some emigre jurists a strong dose of anti-Soviet feeling, but the bulk even of these
informants tended to report objectively about matters with which they had direct personal experience. In the absence of such experience personal dispositions were more likely to influence responses. A sizeable number of informants, particularly those who had worked in legal agencies and once been members of the party, showed little or no anti-Soviet sentiment, and there were a few who remained, if not pro-Soviet, at least fervently loyal to Soviet legal institutions.

Secondly, the Jewish nationality of my informants affected the sample. To begin, Jewishness kept these jurists out of line positions in the legal agencies (such as procurator of the raion or chairman of the city court) and limited their opportunities for pursuing careers in the legal agencies. As a result, I have had to learn about the work of such line officials second-hand, from persons who worked as their assistants. And, because of discrimination, only a small number of my informants continued working in the legal agencies into the 1960s (and none as judges). Moreover, reliance upon Jewish emigres introduced a geographical bias in favour of those parts of the USSR where Jews commonly lived, such as Moscow and Leningrad, the Ukraine, Belorussia, Moldavia, the Baltic republics, Georgia and Uzbekistan. Less well represented were the Russian provinces and Siberia; the Urals was missing altogether. Finally, my Jewish informants started their careers as better educated than most of their non-Jewish colleagues, especially within the legal agencies. Possible this might have made them more attached to legal values than their Russian or Ukrainian counterparts and less likely to defer to the realities of power, since they realized that their prospects for long-term careers in the legal agencies might be limited. On the other hand, the particular vulnerability of Jews to criticism or worse may have made some of them especially cautious.
These interviews serve as a good source of information about the practice of criminal justice in particular parts of the USSR at particular times. It would be inappropriate to treat the response as the embodiment of the attitudes or orientations of Soviet jurists as a whole, a group for which they do not constitute an adequate sample.

At all times I compare the findings emanating from the interviews with the evidence from other sources, such as publications from the USSR and interviews conducted there. Each of these various sources has its particular limitations that must be taken into account.
Notes

* Data for this study were produced by the Soviet Interview Project. This project was supported by contract No.701 from the National Council for Soviet and E.E. Research to the University of Illinois at Urbana-Champaign, James R. Millar, Principal Investigator. The analysis and interpretation in this paper are those of the author, not necessarily of the sponsors.

Research for this study was also supported by the Social Science and Humanities Research Council of Canada, the Lady Davis Foundation of Jerusalem, and the International Research and Exchanges Board.

I would like to thank my major research assistants: in Toronto, Dr. Gennady Ozernoi, and in Jerusalem, Mr. Konstantin Miroshnik. Alexander Guidoni and Kerry Watkins also made useful contributions to this project.


4. The exception is Alek Shtromas, "Crime, Law and Penal Practice in the USSR, Review of Socialist Law 3 (1977), 297-324. Rene Beermann referred to the decline of acquittals but did not probe its origins or


9. The party Central Committee obliged all legal officials to submit to higher legal education. See "O rasshirenii i uluchshenii iuridicheskogo obrazovaniia v strane," Postanovlenie TsK VKP(b) ot 5 oktiabria 1946 g., *SZ*, 1946, No. 11-12, On the effects of this edict see A.F. Shebanov, *Iuridicheskie vysshie uchebnye zavedeniia* (M., 1963), 69-94.


11. Interviews.

12. For a review of the legal obligations of the procurator in sanctioning arrests see D.M. Bakaev, *Nadzor prokurora raiona za rassledovaniem ugolovnykh del* (Moscow, 1979) chpt.3.


konferentsii luchshikh sledsvvennykh rabotnikov arganov prokuratoury. 1
(Moscow, 1951).

15. Ibid., 5-6


17. Interviews.

18. When an inspector from the USSR procuracy visited a raion procuracy office in a Baltic republic, he fastened upon a case in which the investigator had reduced the charge from theft to negligence before sending the case to court. The inspector accused the investigator (my informant) of taking a bribe, but the latter was saved when his superior in the investigatory department of the republican procuracy defended his action. Interview.

19. Instruktsiia po sostavleniiu operativnykh statisticheskikh otchetov, 1, 18.

20. Interviews.


22. Interviews

23. Ibid.


25. Ibid., 45. In most situations of this kind the relevant bosses were the superior officials in the hierarchy of the procuracy. Matters of tutelage and discipline were handled for the most part within the procuracy itself. There were, to be sure, occasional incidents where party officials also became involved -- say with an acquittal in an important case. By and large, though, party censures (including the
approval of a firing) were reserved especially for procuracy officials, also party members, who had particularly bad quarterly reports or had committed an egregious sin. Interviews.


27. See, for example, "Opyt luchshikh sudebnykh rabotnikov," Sovetskia iustitsiia (hereafter SIu), 1938, no. 18, 32-35.

28. Spravochnik narodnogo suda (Moscow, 1946), 566 - 69; interviews.

29. The question of party intervention in particular cases is treated in another paper by this author "The CPSU and Soviet Criminal Justice."

30. Interviews.

31. Ibid.

32. Ibid. It is worth noting that decisions about verdict and sentence at trials in the Soviet Union have been formally rendered by a panel of three persons, the judge and two lay assessors. At least since World War II in all but the occasional case the word of the judge has been known to hold sway, especially with regard to the matter of verdict (on sentence there is more room for negotiation). For the lay assessors to defer to the professional judge was the natural course, especially when the assessors were themselves trusted party members who understand the prudence of conformity. In any case, throughout Soviet history, all bureaucratic and political superiors of Soviet judges have assumed that the latter could control both verdict and sentence and held them responsible for the results!

33. "O poriadke razresheniia pervichnykh materialov i soobshchenii o


36. Rabota luchshikh sledovatelei, 63; Interviews.

37. Interviews.

38. In criminal cases heard in Leningrad, the procurator sanctioned arrest before trial 52% of the time in 1966, 57% in 1967 and 59% in 1968. N.S. Alekseev and B.Z. Lukashevich, Leninskie idei v sovetskom ugolovnom sudoproizvodstve. (Leningrad, 1970), 68. The slight rise in the level of pretrial detention reflected the new requirement of 1966 to hold all persons accused of hooliganism.

39. Interviews.

40. Kozhevnikov, Istoriiia sovetskogo suda, 335; Rabota luchshikh sledovatelei, 13-14;31-32;65; F.N. Fatkulin, Obvinenie i sudebnyi prigovor (Kazan, 1965), 345-46. For useful compilation of these data and others, see Ger van den Berg, The Soviet System of Justice: Figures and Policy (Leyden, 1984), 250, 254.

41. "Mera otvetstvennosti," 3. N.F. Chistiakov, Verkhovnyi Sud SSR
The membership of the USSR Supreme Court reached 78 at this time.

42. T.N. Dobrovolskaia, Verkhovnyi sud SSR (Moscow, 1964), 39-51.

43. Kazakov, "Organyi sudebnogo upravleniia."

44. Interviews. See also Problemy sudebnoi etiki (Ed M.S. Strogovich, M., 1974), 54.


47. "Povysit trebovatelnost sudov k materialam predvaritel'nogo sledstviia", SIu, 1958, No. 3, 3; Interviews.

48. In the North Ossetian ASSR the cancellation of decisions in cassation increased from 9.2% in the first quarter of 1970 to 18.3% in the third, 32.5% in the fourth, and 33% in the first quarter of 1971! Comparable changes were recorded in the Chechen Ingush ASSR, the Tuvin ASSR, the Kabardino-Balkarskoi ASSR and the Daghestan ASSR. A. Nosenko, "Kassatsionnaia praktika v novykh usloviiakh organizatsionnogo rukovodstva sudami," SIu, 1972, No.8. 25-26. Whether these dramatic increases were unique to these minority regions of the RSFSR is not known.

49. I.L. Petrukhin, et al., Teoreticheskie osnovy effektivnosti v pravosudiia (Moscow, 1979), 215.

50. Petrukhin, "Prichiny sudebnykh oshibok," 105-6; Petrukhin, Teoreticheskie osnovy, 215-16; See Also Fatkulin, Obvinenie ikh sudebn...

51. In the national sample study reported by Petrukhin cassation courts returned 0.6% of cases reviewed to supplementary investigation and higher supervisory courts returned 0.3%. By implication the rate of acquittals was negligible. Petrukhin, Teoreticheskie osnovy, 216.

52. Interviews. When asked to recall the acquittals he had obtained, one advocate said "Yes, there were some, but they were ancient cases."

53. Interviews.

54. Petrukhin, Teoreticheskie osnovy. Note, however, that according to a study of the practice of criminal justice in Riazan oblast for 1968 only 15% of cases returned for supplementary investigation were eventually dropped. This figure is much lower than one would expect from Petrukhin's analysis. Possibly the overall number of supplementary investigations (and consequently the base figure) in Riazan was unusually high; or the number of persons held under arrest before trial also high, producing a larger proportion of compromise solutions. See I. Sirota, "Dopolnitelnoe rassledovanie mozhno predotvartit," SZ, 1969, no. 1, 20.

55. A. Boikov, 'Chto takoe sudebnaia etika?' SIu, 1971, no. 1, 7-9 (quotation from 8).


these articles.

59. Petrukhin, Teoreticheskie osnovy, 215-16. These data may well obscure some regional variations.

60. Most of the examples of success cited by former advocates fell into this category. Interviews.

61. Interviews.

62. One defense lawyer from Odessa reported "screening cases" on behalf of an investigator in the 1950s. Another advocated from the same location claimed to have been a regular advisor to judges on cases other than those in which he was a participant.


64. Interviews.

65. Former investigators and judges from the USSR testified that the temptation for them to take bribes was great. Until the 1970s salaries of procuracy and court workers were too low to live on. Moreover, the prevalence of corruption in other realms of public life (in some places involving even politicians) reduced the force of ethical deterrents. All the same, my informants generally agreed, the bulk of Soviet judges were honest, and only a minority could be bought. Note that according to a Soviet study reported by Simis two thirds of the judicial decisions by judges later caught taking bribes were correct from legal point of view notwithstanding the bribes! Konstantin Simis, USSR: The Corrupt Society (N.Y., 1982), 107. By common consent bribe-taking among legal officials was most widespread in the Asiatic republics like Georgia and Uzbekistan. For examples of corruption in the legal system and periodic
attempts to combat it, see Simis, USSR: The Corrupt Society, 96-125.

66. Interviews.

67. See Beerman, "The Rule of Law and Legality."

68. I am grateful to my assistant, Dr. Gennady Ozornoi, for stimulating this line of thought.

69. Harold Berman, Justice in the USSR (Revised edition; N.Y., 1963), chpt.2.

70. The bulk of former jurists interviewed considered these developments significant. The naysayers were mainly those with strong anti-Soviet biases.

71. Although acquittal rates in Canadian provinces were normally around 5% (including many petty cases), the rates in British crown courts for contested cases went as high as 45-50%. Assuming that one third of serious cases were contested, this meant an acquittal rate of 15%. See Adult Criminal Statistics (1980) British Columbia and Quebec, 14,28; M. McConville and S. Baldwin, Courts, Prosecution and Conviction (London, 1981), chpt.3.