Y. ZAITSEV and A. POLTORAK

FOREIGN LANGUAGES PUBLISHING HOUSE
MOSCOW 1959

PUBLISHERS' NOTE

Arkady Poltorak and Yevgeny Zaitsev, the authors of the present work, are members of the Moscow and Leningrad Bars respectively, and have had a wealth of experience in the practice of the law. In 1945-46 Poltorak had functioned at the Nuremberg trial in the capacity of Secretary to the Soviet delegation on the International Military Tribunal.

The book informs the reader of the fruitful work of the Bar in the Soviet Union. Its sources are the authors' own extensive experience and that of several of their colleagues.

The Foreign Languages Publishing House would greatly appreciate receiving from its readers an expression of their opinion of the present book. Address: 21, Zubovsky Boulevard, Moscow, U.S.S.R.

TRANSLATED FROM THE RUSSIAN BY I. LASKER

CONTENTS

FROM THE AUTHORS

When our book was ready for publication the December 1958 session of the Supreme Soviet of the U.S.S.R. adopted a number of new laws which take into account the decisive economic, political and cultural changes that have occurred in the country and which more completely reflect the aims of the Soviet state. They will make an important contribution to the further reinforcement of socialist legality and of law and order, to the extension of the rights of the Union Republics and to the consistent development of the democratic principles of Soviet justice. The new laws replace legislation which has been in force for more than 30 years and which has in many respects become outdated. But it would be incorrect to suppose that all the old legislation was so outdated that it has been completely revised. The new laws retain many important clauses which have stood the test of time.

At the same time it should be emphasized that the new laws, as we shall see, contain a number of fundamentally new clauses whose implementation will have a great influence on all aspects of the work of the investigating bodies, Procurator's Office, courts and places of detention. They will also exert a varied influence on the work of the Soviet Bar. We therefore consider it necessary to give a general outline of the new laws.

The Supreme Soviet adopted the Fundamental Principles of the Criminal Legislation of the U.S.S.R. and the Union Republics, the Fundamental Principles of the Criminal Procedure of the U.S.S.R. and the Union Republics, the Fundamental Principles of the Judicial System of the U.S.S.R. and the Union Republics, a Law on Criminal Liability for State Crimes, a Law on Criminal Liability for Military Crimes and a Law approving the Statute on Military Tribunals. Laws were also adopted on changes in the procedure for electing judges and people's assessors and abolishing disfranchisement by decision of the courts.

The role and importance of these laws can be fully appreciated by linking them with a number of other important measures which the Soviet state has taken during recent years to strengthen socialist legality. In implementing these measures, the Soviet state proceeds from the fact that the socialist legality is an impor-

tant component part of socialist democracy and one of the most important factors in the stability of the Soviet political and social system. The Twentieth Congress of the Communist Party of the Soviet Union in 1956 boldly exposed past violations of socialist legality, and placed the responsibility for vigilantly ensuring the observation of Soviet laws, exposing all who infringe socialist law and order and the rights of Soviet citizens and for sternly checking the slightest symptoms of illegality or arbitrary action upon Party, governmental and trade-union bodies.

The system by which cases could be settled otherwise than through the courts and also special courts were abolished in September 1953. The Special Conference of the Minister of Internal Affairs of the U.S.S.R. was abolished. Earlier violations of socialist legality were corrected. The normal procedure of investigation and examination in the courts, without exceptions or restrictions, was fully restored.

The Statute on Procuratorial Supervision approved by the Supreme Soviet in 1955, containing a clear-cut outline of the work of the procuratorial organs in the struggle for the strict observance of the law by every Soviet institution, official and citizen, was an extremely important measure designed to reinforce socialist legality.

Measures to improve the work of the Ministry of Internal Affairs of the U.S.S.R. and its agencies were also of great importance in this respect. The local Directorates of the Ministry and of the militia have been reorganized to form unified Directorates of Internal Affairs under the Executive Committees of Regional (Territorial) Soviets of Working People's Deputies. Militia units in cities and rural districts now constitute Militia Departments of the Executive Committees of the appropriate Soviets. In this way the local agencies of the Ministry of Internal Affairs have become a component part of the local Soviets, controlled by them.

Important new measures to reinforce socialist legality have been introduced in correctional labour establishments. Local Soviets have been drawn into the work of re-educating detainees. Supervisory Commissions have been set up by the Executive Committees of the Soviets. Their members include officials and representatives of trade-union and Young Communist League branches, and of health, educational and cultural authorities, etc. Invested with substantial powers, these commissions keep a constant check on the observation of the law in correctional labour establishments, and on measures to reform those detained.

All Soviet people know that socialist legality has been re-established and its violators exposed and punished.

Under the 1936 Constitution, civil, criminal and procedural legislation, and also laws on the judicial system, lay within the competence of the Soviet Union as a whole. But since 1936 great changes have taken place. Alongside the country's over-all successes, the Union Republics have made great progress in the political, economic and cultural fields. There are now large numbers of trained personnel with great experience in political development, which makes it possible to carry out major political tasks.

On the basis of the decisions of the Twentieth Congress a series of extremely important measures were adopted extending the rights of the Union Republics in all fields of economic and cultural activity.

The Sixth Session of the Fourth Supreme Soviet (1957) passed a law designed considerably to extend the rights of the Union Republics in the legislative field.

The law placed legislation on the judicial system and the adoption of Civil, Criminal and Procedural Codes within the competence of the Union Republics.

Since this by no means excludes the need for a uniform solution to fundamental problems in all the Union Republics, the Supreme Soviet retained the right to issue laws dealing with the fundamental principles of criminal and civil law, and also of the judicial system.

The need for uniformity in the struggle against crimes affecting the basis of the Soviet system and undermining the defence capacity of the Soviet Union required that laws on state and military crimes and, if necessary, other crimes directed against the interests of the U.S.S.R., should remain within the competence of the all-Union Supreme Soviet.

The Supreme Soviet at the same time approved the Statute on the Supreme Court of the U.S.S.R., extending the rights and enhancing the role of the legal organs of the Union Republics.

In accordance with these decisions, draft Fundamental Principles of Legislation for the Soviet Union and for the Union Republics were drawn up in 1958. These covered criminal procedure, criminal legislation and the judicial system. Draft laws on criminal liability for state crimes, military offences and a Statute on Military Tribunals were also drawn up.

These key drafts were the fruit of a great deal of collective work by officials of the Procurator's Office and legal bodies, of the Committee of State Security and the Juridical Commission of the Council of Ministers of the U.S.S.R. Great assistance was given by legal research institutions, by law faculties and institutes and also by leading academic lawyers. The drafts of the all-Union

laws were distributed in all the Union Republics, where they were discussed and amended. A large number of deputies participated in the discussion of the drafts in the Commissions of Legislative Proposals of the Soviet of the Union and the Soviet of Nationalities.

Six months before their discussion by the Supreme Soviet the draft laws were published in the country's leading legal journals such as *Soviet State and Law, Socialist Legality,* etc., on behalf of the Commissions of Legislative Proposals. A lively discussion ensued in the journals, whose participants included both legal officials and academic lawyers. The Commissions of Legislative Proposals regularly received proposals designed to improve the drafts. Many valuable proposals came from the Academies of Sciences of the Union Republics, and from law faculties and institutes. Many letters were also received from members of the public.

A large number of the proposals received were taken into account in drawing up the final draft. It is sufficient to compare the drafts published in the press with the texts of the laws as finally adopted to see the influence of the extensive discussion on the final formulation of the laws.

What are the basic, fundamental postulates of the new legislation as a whole? We should above all note the increase in the powers of the Union Republics in criminal law, criminal procedure and the judicial system.

The legislation adopted by the Supreme Soviet in December 1958 simply formulates the basic and fundamental principles of the respective branches of law. All the rest—their practical application, their concrete formulation and the drawing up of practical measures to implement them—is the responsibility of the Union Republics.

The maximum terms of imprisonment are considerably reduced. Criminal responsibility for the less serious offences is narrowed and relaxed.

But within the framework of the new maximum terms, the liability of the more dangerous criminals, in particular recidivists, is increased.

The rules of analogy are excluded from Soviet criminal legislation and the inviolable postulate that there can be criminal liability only for an act directly provided for by criminal law laid down.

The number of representatives of the public (people's assessors) participating in the administration of justice is increased, and the institution of social prosecutors and defenders introduced.

To ensure the further strengthening of the ties between legal organs and the public, not only are People's Courts made account-

able to the electors, but all other courts also become accountable to the Soviets of Working People's Deputies, Supreme Soviets of Union and Autonomous Republics and to the Supreme Soviet.

The aim of the new laws is the rapid and complete disclosure of offences and the unmasking of the guilty, and the correct application of the law to ensure that every criminal should receive his just deserts, while no innocent person should be condemned.

The question of the protection of the citizens' rights in criminal cases receives special attention in the new laws. The rights of the accused and of Soviet citizens who have suffered as a result of his actions are substantially extended.

Increased public participation in the struggle against crime is a feature of the new laws.

Despite the sharp decline in crime, there are still many offences against public order; they must be resolutely resisted. The Soviet public has an important part to play in this.

Noting the increasing role of public organizations in the strengthening of legality and public order N. S. Khrushchov in his report to the Twenty-First Congress of the C.P.S.U. in 1959 said: "We are approaching a situation when the functions of safeguarding public order and security will be performed, parallel with such government agencies as the militia and the courts, by public organizations. That process is now on. We have drastically reduced the size of the militia and very considerably cut down the state security bodies. Socialist society forms such voluntary organizations for safeguarding public order as the people's militia, courts of honour and so forth."

The new laws are designed to promote the further strengthening of socialist legality in the battle against crime at the present stage of history.

Let us examine each in turn. We will first consider the Fundamental Principles of Legislation Regarding the Judicial System of the Union of Soviet Socialist Republics, and of the Union and Autonomous Republics.

In our booklet we describe the Soviet judicial system in the light of the most recent legislation. Therefore we will here deal only with that which distinguishes the newly-adopted Fundamental Principles from the law on the judicial system previously operating.

It should be emphasized that the new Fundamental Principles proceed from the fact that there is no need for any substantial reform of the existing system. The system which grew up in the early days of Soviet rule has in the main justified itself. Shortly after the October Revolution a new type of judicial system was

set up, of which the basic link was the People's Court, founded on the genuinely democratic principles of election and organized in accordance with the administrative and political division of the country. The main principles of the structure of the Soviet judicial system, established by the Statute on the Judicial System of the R.S.F.S.R. and the other Union Republics adopted in the early twenties, have been preserved (the People's Court, the Gubernia—now Regional, Territorial—Court and the Supreme Court of the Union Republic). The changes made are in the main the result of changes in administrative and political divisions.

What, then, is the characteristic feature of the new law? In what way does it differ from that previously existing?

Under the terms of the Fundamental Principles, the administration of justice in criminal cases is carried out not only through the punishment of the guilty but also through the acquittal of the innocent. This postulate is indivisibly linked with the demand for the establishment of the truth in every case and with Article 2 of the Fundamental Principles of Criminal Procedure, which lays down that not a single innocent person be condemned.

The Fundamental Principles of Legislation Regarding the Judicial System make some changes in the terms of office of the people's judges, prolonging them from three to five years.

The five-year period applied previously to courts at all other levels in the Soviet judicial system. Experience has shown that it was also necessary to prolong terms of office of the people's judges. This will undoubtedly enable them, as a result of a closer knowledge of local conditions, to deal with both criminal and civil cases more successfully and to carry out their work for the prevention of crime.

As before, people's judges will be elected by citizens of the district or city on the basis of universal, equal, direct and secret ballot. The election of the people's assessors, which was hitherto conducted in the same way as that of the people's judges, will henceforward take place at general meetings of factory and office workers and peasants at their place of work or residence. They will serve for a period of two years.

This will enable every elector to acquire a greater knowledge of the candidates put forward by organizations and to keep a closer check on their work in the courts and to replace them more frequently. All this will widen the circle of citizens drawn into the administration of justice and improve the link between the people's assessors and their electors.

These changes are fully in line with Lenin's oft-repeated injunctions regarding the need for the development of democratic

forms in the organization of the Soviet Court and the extensive involvement of the masses in its work.

In accordance with the Constitution of the U.S.S.R., the principles of socialist justice, indicative of the genuinely democratic nature of the Soviet judicial system and guaranteeing the achievement of the aims and purposes of the administration of justice, are set out in the Fundamental Principles of Legislation Regarding the Judicial System. These principles include equality in the eyes of the court and the law, regardless of social, property and official position, nationality, race or religion; the establishment of all courts on the basis of election and collegial examination of cases in all courts; the independence of judges; legal proceedings in the national languages; the public hearing of all cases, unless otherwise provided for by the law, and the guaranteed right of defence for the accused.

The law introduces new courts in the National Areas and cities.

The establishment of courts in the National Areas and the creation of Presidiums is a further development of the Leninist national policy. The courts of the National Areas have the same rights as those in the Autonomous Regions and the Supreme Courts of the Autonomous Republics. They function as courts of first instance, courts of appeal and organs of judicial supervision.*

The establishment of City Courts in some Union Republics, which are not divided into regions (territories), makes it possible to create an intermediate link between the People's Courts and the Supreme Courts of these republics.

Another important feature is the creation of Plenums in the Supreme Courts of the Union Republics. This is inseparably bound up with the decision to give the Union Republics the right to issue their own criminal, civil and procedural codes.

While the Plenum of the Supreme Court of the U.S.S.R. will give rulings regarding the application of all-Union legislation, rulings regarding the application of republican legislation will be given by republican Supreme Courts. Under the terms of the law, the Supreme Court of a Union Republic will include both a Plenum and a Presidium.

* Soviet autonomy allows for the most varied forms and degrees in its development. There are at present in the Soviet Union Autonomous Soviet Socialist Republics, Autonomous Regions, and also, to ensure the free national economic and cultural development of the small national groups in the R.S.F.S.R., National Areas forming part of a region or territory.

The law envisages an increase in the qualifications required of candidates for the posts of judges and people's assessors, laying down that every citizen of the U.S.S.R. with electoral rights and having reached the age of 25 on the day of the elections may be elected. This will make it possible to attract more mature people with greater experience into the administration of justice.

The article defining the tasks and principles of the Lawyers' Collegium is an extremely important part of the Law on the Fundamental Principles of Legislation Regarding the Judicial System. Soviet law attaches great importance to the participation of lawyers in ensuring the defence of the rights and interests of the accused, and also in providing other legal aid both to individuals and organizations.

Unlike at present, when lawyers function on the basis of a uniform statute approved by the Council of Ministers of the U.S.S.R., the new law lays down that in each Union Republic the Supreme Soviet shall adopt its own statute on this matter in accordance with the national characteristics of the Republic concerned.

The Statute on Military Tribunals is closely linked with the Fundamental Principles of Legislation Regarding the Judicial System. Its basic postulates are in essence the same, because military tribunals are a part of the uniform judicial system of the Soviet Union, the part set up to administer justice in the armed forces. A military tribunal is guided by the same laws and principles as any other court.

But nevertheless the structure and competence of military tribunals do have some special features due to the nature of life in the armed forces. Military tribunals are organized not on the basis of administrative and territorial divisions but in accordance with the structure of the armed forces. That is why supervision of this legal work and also their organizational guidance are exercised directly by the Military Collegium of the Supreme Court of the U.S.S.R.

Such are the main features of the new law on the judicial system.

We will now consider the Law on the Fundamental Principles of the Criminal Procedure of the U.S.S.R. and the Union Republics.

Like the law on the judicial system, this law is permeated with the idea of enhancing the educational role of Soviet law. This will be understood if it is borne in mind that all the objective conditions now exist for the complete elimination of crime in the U.S.S.R.

The new law pays considerable attention to the rights of the accused and to guarantees ensuring their implementation.

We have already pointed out that the law contains not only the demand that every crime receive its due punishment, but also firmly lays down that not a single innocent person be unjustly condemned. The law lays down that only the courts can decide the question of guilt and impose sentence.

It is also stressed that no one can be charged otherwise than on the basis of and in the manner provided for by the law. The law lays down the responsibility of the court, procurator and investigator and of the person conducting the inquiry to examine all aspects of the case thoroughly and objectively. The investigating authorities and the courts are forbidden to place the onus of proof on the accused. The passing of a case to the court does not predetermine the question of guilt.

The law clearly formulates the requirements which a sentence must satisfy, pointing out that sentence must not be based on supposition and can only be passed when the guilt of the accused has been proved. When such proof is lacking the accused must be acquitted.

The question of how the law interprets the concept of evidence is of substantial importance in this connection.

"*Facts on the basis of which circumstances relevant to the case are established are the only evidence.* The statements of witnesses and of the accused, etc., are only *means of establishing the facts,* which constitute proof."

This new approach to one of the most important questions of the law of evidence is of great significance, above all in that it clearly indicates that all the conclusions of the investigating organs, the procurator and the courts must be founded on facts. Dozens of witnesses may be questioned, but if their evidence does not contain data regarding the reliability of facts, it cannot constitute the basis for any conclusion other than that of the need to continue or discontinue the investigation.

So the law's postulate that sentence cannot be based on supposition is supplemented by a precise definition of what constitutes proof. This combination of fundamental postulates is a substantial guarantee of the rights of the accused.

The law enumerates the rights of the accused: to know of what he is accused and to give explanations regarding the charge, to submit evidence, to lodge appeals, to familiarize himself with the material in the case at the end of the investigation, to be defended, to participate in the hearing of the case in the court of first instance, to make challenges and to lodge complaints regarding the actions and decisions of the investigator, the procurator and the court.

The accused has the right to the last word.

The law does not confine itself to the declaration of these rights but, as is a feature of Soviet law, places the emphasis on guarantees for their realization, pointing out that the court, the procurator, the investigator and the person conducting the inquiry must explain to the parties in a case their rights and *ensure that they are able to exercise them.*

In the light of the guarantees for the inviolability of the person clear regulations are laid down regarding arrest and detention in connection with investigations in a criminal case.

The arrest of a person suspected of an offence making him liable to imprisonment is permissible only when the person concerned is caught in the act or directly after it, or when witnesses, including the victims, directly point him out as the person responsible or, finally, when clear traces of the offence are found on his clothes, in his possession or at his place of residence.

When other grounds for suspicion exist, the person can be detained only after attempted flight, when he has no fixed abode or when his identity has not been established.

A person detained on suspicion has the right to appeal against the actions of those conducting the investigation, of the investigator or of the procurator, to give explanations and to petition.

In every case when a person suspected of committing an offence is detained a motivated protocol is drawn up giving the grounds for the detention and the procurator informed within 24 hours. On receipt of this protocol the procurator must within 48 hours sanction the continued detention of the person concerned, or have him released. When a suspect is detained until a charge is made, it must be made within 10 days of his detention. The person arrested has the right to appeal against the actions of the person conducting the inquiry, the investigator or the procurator, to give explanations and submit petitions.

Only persons suspected of crimes making them liable to imprisonment can be held during the investigation, and detention must not last more than two months. Any extension requires the sanction of a procurator of higher standing.

The Fundamental Principles of Criminal Procedure also enhance the effective guarantees of the inviolability of the Soviet citizen's home set out in Article 128 of the Constitution of the U.S.S.R.: a search, other than in cases of urgency, cannot be carried out except with the sanction of the procurator.

Even in cases of urgency, the investigating organs must inform the procurator within 24 hours.

The seizure of correspondence and its extraction from postal and telegraphic establishments can be carried out only with the sanction of the procurator or by decision of the court. Both search and extraction are carried out in the presence of witnesses selected from among those in the vicinity.

In examining the Fundamental Principles of Criminal Procedure, it is necessary to consider the question of the participants in a hearing and their rights and duties.

The law, while enhancing the role of the procurator, the investigator and the defence lawyer, at the same time reflects the Leninist idea of the decisive role of the court in all trial procedure. Only the court can take the final decision and only the court can declare the accused to be guilty and impose punishment.

The role of the procurator is very clearly defined. Here, as in all other fields, the procurator is primarily the champion of legality. He must at all stages promptly take the steps provided for by the law and eliminate any violations from whatever source they may come.

The powers which are given to the investigating officer are of great importance. They reinforce his authority and independence. In particular, in the event of disagreement with the instructions of the procurator regarding the lodging of a charge, the definition of the offence and the scope of the indictment, the handing of the case to the court or its cessation, the investigator has the right to pass all the material to a higher procurator, setting out his objections.

In such circumstances the procurator must either countermand the instructions of the subordinate procurator or transfer the case to another investigator. These rules are of fundamental importance. They mean that the investigator cannot be forced to decide against his own will questions upon which the whole course of a given case depends in greater or lesser degree.

We have already discussed the extension of the rights of the accused during the trial. The most important innovation is that the accused has the right to a defending lawyer not from the time his case is transferred to the court, as was the position hitherto, but from the moment the completion of the investigation is announced and the documents handed to him for study. In the case of minors and persons who because of their physical or mental deficiences cannot themselves exercise their right to defence, the lawyer is permitted to take part in the preliminary investigation from the moment the charge is made.

When admitted at the stage of the preliminary investigation, the defence lawyer has the right to obtain information from the

accused, to study all the materials in the case and to apply for all the necessary information, to submit proof, to lodge appeals and challenges and to make complaints against the decisions and actions of the investigator and procurator. In addition, with the permission of the investigator, he may be present during the interrogation of the accused and during other processes in the investigation carried out at the request of the accused or his lawyer.

The law clearly lays down the rights and duties of the defence lawyer. "The defence lawyer must make use of all the resources and means of defence laid down by the law in order to clarify circumstances acquitting the accused or alleviating his guilt and give the accused the necessary legal assistance.... The lawyer does not have the right to retire from the defence of the accused, once having undertaken it."

The defence of the lawful interests and rights of the accused, not the defence of his illegal claims, which would inevitably become the defence of the criminal and the crime, is the task of the defence lawyer.

We have referred to the rights and guarantees afforded the accused. But the Fundamental Principles of Criminal Procedure also pay great attention to extending the rights of citizens, taking the view that the criminal infringements of thieves, hooligans, burglars and murderers constitute the grossest violation of these rights. The whole force of the law is directed toward the defence of the interests of citizens who are the victims of crime, in every way safeguarding the life, health, dignity and property acquired by Soviet citizens through honest labour. In the light of this the rights of those who have suffered as a result of crime are substantially extended. The victim becomes an active participant in the criminal case. He is afforded procedural rights which also facilitate the establishment of truth and the administration of justice.

Hitherto the rights of the victim were confined to appealing during the preliminary investigation regarding the interrogation of witnesses and experts and for the gathering of other evidence (except when the victim was lodging a civil action, and also in cases of a private indictment embracing a number of minor offences).

The law decided to put an end to the state of affairs in which the victim of a crime had far fewer rights than the person accused of its commission.

Therefore, the victim is now included among the participants in the case as an equal, whereas formerly his role was virtually restricted to that of a witness.

The victim in accordance with this is the person to whom the crime caused moral, physical or material injury. He, or his representative, has the right to give evidence, present proof, lodge appeals, study the documents in the case when the preliminary investigation ends, to take part in the examination of evidence during the hearing, to make challenges, lodge complaints against the actions of those conducting the inquiry, the investigator, the procurator and the court and also to lodge complaints regarding the sentence or decision of the court or people's judge.

Thus a new participant enjoying full rights has appeared in Soviet criminal procedure, a participant who assists in the establishment of truth and in the correct administration of justice.

The principle of the independence of judges and of their subordination only to the law runs through the whole law on criminal procedure. As a characteristic factor affirming this postulate we may cite the relationships established by the law between the court of first instance and the appeal or the supervisory court.

This is what the law says:

"The court considering the case on appeal or exercising supervisory powers has no right to establish or consider as proved facts which were not established by the sentence or which were refuted by it; it equally does not have the right to decide in advance questions regarding the proving or otherwise of the accusation, the reliability of one proof or another or of the application by the court of first instance of a particular criminal law or punitive measure.

"Equally the court, in exercising supervisory functions or quashing decisions on appeal has no right to predetermine the conclusions which may be drawn by the appeal court during its second consideration of the case."

The law points out that supervision over the legal activities of judicial organs of the Union of Soviet Socialist Republics and also of the judicial organs of the Union Republics, is implemented, within the framework of the law, by the Supreme Court of the U.S.S.R.

In their turn the Supreme Courts of the Union and Autonomous Republics supervise the legal activities of the judicial organs of the appropriate republics.

Supervision over the precise observance of the laws of the U.S.S.R. and of the Union and Autonomous Republics in criminal cases is exercised by the Procurator General of the Soviet Union both directly and through his subordinate procurators.

The procurator must at all stages promptly take the measures envisaged by the law and put an end to all violations of the law, regardless of by whom they are committed.

The procurator exercises his powers independently of any organs or officials, subject only to the law and guided by the instructions of the Procurator General of the U.S.S.R.

That is how the law defines the functions of the Supreme Court of the U.S.S.R., the Supreme Courts of the Union and Autonomous Republics and procuratorial supervision in criminal procedure.

The Law on the Fundamental Principles of Criminal Procedure finally makes one more important innovation.

The militia and investigating organs have a most important part to play in the exposure of crime and those responsible. For the harmonious functioning of these two organs it is necessary that their competence be defined and at the same time reliable contact be established between them in their fight against crime.

To this end the law envisages that henceforward the preliminary investigation shall be carried out only by the investigating officers of the Procurator's Office, except in the case of certain state crimes, clearly enumerated in the law. In such cases the preliminary investigation may be carried out by investigating officers of the state security agencies. Thus there will now in the main be a unified investigating apparatus under the Procurator General. This will enhance the responsibility of the investigating officer and the procurator in the fight against crime. The investigator receives the right to give the organs conducting the inquiry assignments and instructions regarding searches and other measures. He is to receive every cooperation in conducting the investigation.

* * *

We will now give a short account of the Law on the Fundamental Principles of Criminal Legislation of the U.S.S.R. and the Union Republics.

Its important feature is that, as has been noted, the rules regarding analogy have been removed. Under these rules, when some socially dangerous act not directly provided for by the law was committed, liability for it and the limits of that liability were defined by applying the articles of the Code relating to similar offences.

The institution of analogy was included in the first Soviet Criminal Code of 1922 and has remained since then. The Soviet state did not then have legislation sufficiently developed to react flexibly to the new crimes and new forms of struggle against the socialist state which made their appearance during the revolutionary transformation of society. As the years went by, with the strengthening of the Soviet state and the development of legislation, the

need for the rules on analogy disappeared. This is confirmed by an analysis of legal practice, which shows that they were applied with extreme rarity. Their exclusion means that no one can be taken to court and subjected to punishment until it is established that the act committed is classified as an offence in criminal law.

The criminal law institutions regarding necessary defence and extreme necessity have been more precisely defined.

The new law lays down that actions committed in necessary defence or extreme necessity are not only not punishable (as was the case under the old law) but are not offences.

This change is based on a study of legal practice, which in a number of cases unjustifiably refused to apply the rules regarding necessary defence and extreme necessity.

The clarification of this question will enable the working people themselves to play an active part in the fight against state crimes and crimes against the individual.

The Fundamental Principles are imbued with real concern for the individual and for the fate of young law-breakers.

To this end the minimum age of criminal liability is increased.

A person committing an offence between the ages of 14 and 16 is criminally liable only for murder, deliberate bodily harm injurious to health, rape, banditry, theft, malicious hooliganism, deliberate destruction or damage of state, public or private property with serious consequences, and also for deliberate acts liable to cause train accidents.

In all other cases minors are liable only after reaching the age of 16.

If a person under the age of 18 commits an offence which does not constitute a serious social danger, the law provides for correction without the application of criminal law. The court can apply educational measures which do not constitute criminal punishment.

A number of special conditions governing the criminal liability of minors are envisaged; they are not liable to capital punishment, exile or deportation; they cannot be detained for periods of more than 10 years, and sentences must be served in special labour colonies for young people.

In addition, as we shall see, young offenders who by exemplary behaviour and an honest attitude to work and study show themselves to have turned over a new leaf become eligible for remissions or for less severe punishments. It should also be noted that the commission of a crime by a minor is in itself an extenuating circumstance.

In defining the concept of punishment, the Fundamental Principles lay down that punitive measures are not merely retribution

but are also designed to reform and re-educate the person condemned and to prevent the commission of new offences both by the person concerned and by other unstable elements.

Reflecting the socialist humanism of Soviet law, the Fundamental Principles point out that the aim of punishment is not to cause physical suffering or undermine human dignity.

Capital punishment is dealt with in a special clause. In so far as it is considered an exceptional measure, it is not included in the general system of punitive measures.

It is laid down that capital punishment is a temporary measure applicable only in exceptional circumstances, pending its complete repeal. It can be applied only to a narrow range of the gravest offences: treason, sabotage, espionage, terrorist acts, banditry, deliberate murder under aggravating circumstances and, in wartime or on active service, for other particularly serious offences laid down by legislation of the U.S.S.R.

Capital punishment cannot be applied in the case of persons under the age of 18 when the offence was committed or of women pregnant when the offence was committed, sentence passed or due to be carried out.

The substantial reduction in terms of imprisonment is an important innovation in the new Fundamental Principles of Criminal Legislation.

It will be recalled that formerly Soviet law provided for sentences of up to 25 years for the most serious offences.

Bearing in mind that exceptionally long periods of imprisonment are unnecessary under present conditions, the law lays down that as a general rule detention shall be for periods of up to 10 years. Only in the case of exceptionally serious offences and especially dangerous habitual criminals shall the maximum be 15 years.

The Fundamental Principles give the court substantial powers to impose differential punishments, depending upon the individual concerned. The court, taking into account exceptional circumstances and the character of the accused, and believing it necessary to impose a sentence lower than the minimum envisaged by the law for the offence in question, or another, less harsh, form of punishment, can do so on the basis of a reasoned motivation of its action.

The law gives the court the right in certain circumstances completely to acquit a person found guilty. A person who committed an offence may be acquitted if it is found that by the time the case is investigated or heard, as a result of changed circumstances,

the act committed by the accused is no longer socially dangerous or that the person has ceased to be socially dangerous.

The law also envisages that a person who committed an offence need not be punished if it is recognized that as a result of subsequent good behaviour and an honourable attitude to work he is by the time the case is heard no longer socially dangerous.

Suspended sentence occupies an important place in the general system of measures to fight crime and re-educate offenders. If in imposing punishment in the form of imprisonment or correctional labour the court, taking into account the circumstances of the case and the character of the accused, concludes that it is inexpedient that the accused should serve the punishment laid down, it can impose a suspended sentence.

In such a case the court resolves not to apply the sentence if during the probationary period the guilty person does not commit a similar or no less serious offence.

This rule existed in previous legislation. But its inadequacy as an educational measure made it necessary to make certain changes. These changes, or rather supplements, reinforce the educational aspect and draw the general public into the re-education of the offender. The Fundamental Principles point out that the probationary terms, methods of control over those serving suspended sentences and educational work must be determined by republican legislation. The law's ruling that, "taking into account the circumstances of the case, the character of the accused and also the requests of organizations or groups of factory and office workers and collective farmers at the accused's place of work for his suspended sentencing, the court can place upon these organizations or groups the responsibility for the re-education and correction of the person serving a suspended sentence," is extremely effective.

The Fundamental Principles set out in detail the rules governing remission and imposition of less severe punishments. The system has now been changed in a manner taking into account deficiencies in the application of the remission system which had aroused legitimate objections from the general public.

Hitherto there existed in places of confinement a system of calculating the working days of those confined. Depending upon the nature of the work, a day of work was reckoned as two and sometimes as three days towards the completion of sentence.

The calculations were carried out by the administration of the place of detention and automatically led to the early release of the person detained when he was considered to have served his sentence on this basis.

As a result it frequently happened that persons condemned to long periods of detention for serious offences were released long before the expiry of their terms. Returning to their homes, they frequently committed new offences.

This was so particularly in the case of habitual criminals.

Such a state of affairs meant that the sentences of the court were unreal and in fact amended by the administration of the place of detention.

The new law eliminates this defect. The institution of remission is retained. But an important change is made.

The question is now to be decided not by the administration at the place of detention but by the court. The administration merely makes the appropriate appeal in cases when the prisoner has by his exemplary behaviour and honest attitude to work demonstrated his reform.

The number of registered working days is now merely a factor indicating the character of the prisoner.

Before the question of remission or of a less harsh sentence can be considered, the prisoner must have served not less than half the sentence imposed by the court.

In the case of those condemned for especially dangerous state crimes and also for other serious offences provided for by Union Republics legislation, remission and imposition of a less harsh sentence can take place only when at least two-thirds of the sentence imposed by the court has been served.

In the case of minors who commit offences before reaching the age of 18, remission can be granted by the court after at least one-third of the sentence has been served.

The law specially lays down that if a person released before expiry of sentence commits a similar or no less serious offence before the expiry of the full term, the court in passing sentence for the new offence may add the remitted part of the previous sentence in part or in full.

In so doing the maximum period laid down for the offence in question must not be exceeded.

The law specially lays down that remission shall not be applied in the case of particularly dangerous habitual criminals.

These changes will undoubtedly reinforce the educational significance of the remission system and the stability of the sentence.

The method of nullifying conviction has also been changed.

Previously persons sentenced to deprivation of freedom for periods exceeding three years could appeal only to the Supreme Soviet of a Union Republic or its Presidium for the nullification of conviction in the form of amnesty or pardon. Now the question,

regardless of the period of deprivation of freedom, lies entirely within the competence of the court.

Different terms according to the length of sentence are laid down. The rule that a person previously condemned must after expiry of sentence lead an honest life applies.

If the convicted person after his release proves by his exemplary behaviour and honest attitude to work that he has reformed, the court may in response to the request of organizations nullify his conviction even earlier. Here too the institution of nullification of conviction is employed as an educational institution. An important role is allocated to public organizations.

We will in conclusion consider the Law on Criminal Liability for State Crimes adopted by the U.S.S.R. Supreme Soviet. It is in two parts. The first covers particularly dangerous state crimes, such as treason, espionage, terroristic acts, sabotage, wrecking, anti-Soviet agitation and propaganda, war propaganda, the organization of acts calculated to lead to particularly dangerous state crimes, membership of anti-Soviet organizations, and particularly dangerous state crimes directed against other workers' states. The second part defines criminal liability for acts which, although they do not directly infringe the principles of the Soviet political and social system, nevertheless by their nature constitute a serious danger and affect the interests of the Soviet state as a whole (violations of national and racial equality, the disclosure of state secrets, loss of secret documents, banditry, smuggling, mass disorders, evasion of military service and certain other offences).

It should be noted that in the Soviet Union state crimes are now few in number. This is understandable, since the successes achieved by the Soviet people in the struggle for the building of a communist society and the further strengthening of the moral and political unity of the Soviet people could not but lead to a sharp decline in state crime.

In the Soviet Union, as was pointed out in N. S. Khrushchov's report to the Twenty-First (Extraordinary) Congress of the Communist Party of the Soviet Union in January-February 1959, there are no cases of persons being tried for political offences. There is no longer any one detained for political reasons. This is an indication of the unprecedented political unity of the Soviet people.

But although the number of state crimes is extremely small, they by their nature constitute a serious threat to the state.

The new law to a great extent repeats the crimes covered by the previously operative 1927 Statute on State Crimes, taking account however of the special features of legal practice regarding

this type of offence for the last 30 years. Some articles have undergone more or less substantial amendment, in the sense that what constitutes an offence is more precisely defined, or that punitive measures are relaxed. Some of the offences contained in the former Statute were not included in the new law since they have lost their relevance.

At the same time some new clauses are included in the new law.

The vigorous fight which the Soviet Union has for many years waged against the war propaganda conducted in many countries is well known. History, and especially the Second World War, has shown that such propaganda is always an important weapon in the preparation and perpetration of acts of aggression.

With this in mind, and believing war propaganda to be a dangerous international offence, the U.S.S.R. has for many years fought for the adoption of U.N. resolutions making such propaganda a criminal offence. Unswervingly adhering to a policy based on international security, the Soviet Union in 1951 adopted a law in defence of peace under the terms of which war propaganda in any form which undermines peace and creates a threat of a new war constitutes a most serious crime against humanity. The law laid down that "persons guilty of war propaganda should be handed over to the courts and judged as dangerous criminals."

This law is made more concrete in the new law on state crimes. Firstly, war propaganda, in whatever form, has been included in the section relating to particularly dangerous state crimes; secondly, it makes the person concerned liable to detention for terms of up to eight years.

Concern for peace and international security is also mirrored in another clause establishing criminal liability for a terrorist act against a representative of a foreign state in order to provoke war or international difficulties.

The great founder of the Soviet state, Lenin, invariably opposed personal terror as a political weapon. Soviet diplomacy, guided by this, has always supported measures designed to resist international terrorism. History has shown that terrorist acts against foreign representatives have repeatedly provided the pretext for aggressive war. The Nuremberg Trial showed that such acts were frequently an organic part of the plans of the Hitler clique.

That is why, being vitally interested in peace and hence in the prevention of any provocation which may lead to its violation, the Soviet state has considered it necessary to proclaim a terrorist act against a foreign representative with the aim of provoking war to be a most serious state crime. A person guilty of such an

offence becomes liable to detention for a period of from 10 to 15 years, or to the death penalty.

The Soviet Union and the People's Democracies constitute the united camp of peace, democracy and socialism. The common aim of building communism unites their peoples in a single alliance. The closest political, economic and cultural cooperation has been established between them.

They are linked by agreements on mutual assistance, should they become the victims of aggression.

Thus, on the basis of their common social and economic system, relations of equality, fraternal friendship and cooperation have been established between the peoples and states of the socialist camp. It is therefore natural that the Soviet Union should consider serious crimes against another workers' state as offences under Soviet law. That is why the Supreme Soviet included an article to the effect that in accordance with the principles of international working-class solidarity especially dangerous state crimes committed against another workers' state shall be subject to the same punishment as if they were directed against the Soviet Union.

It should in conclusion be said that the law on state crimes combines the application of harsh punitive measures to malicious enemies of the Soviet state with opportunities for the re-education of those who, although guilty of such offences, can be won back to an honest life of work.

It is clear that the measures enumerated are of very great importance to Soviet society as it enters the new stage of the comprehensive building of communism.

INTRODUCTION

This happened several years ago. A good-looking girl stepped into the office of the Moscow lawyer Arkadyev. Her greeting betrayed a nervous strain. She made an effort to say something, but her lips began to quiver. Dropping into a chair she burst into tears, concealing her face in the palms of her hands.

"A love affair," was Arkadyev's snap judgment. So he poured some water into a tumbler and silently offered it to his fair visitor, knowing full well that in that state people are beyond all comforting. The lawyer lit a cigarette and pretended to be deeply immersed in his documents.

"That's simply impossible," the girl suddenly exclaimed in unexpectedly firm tones, as she spun around to face the man of law. "He's not guilty of anything.... You simply must believe me, he's innocent. You'll see that yourself. I'm going to tell you everything...."

Arkadyev made himself comfortable in his armchair, reached for a batch of blank paper and prepared to listen.

...The tall, fleshy figure of the writer S., an admirer of curiosities, and a man of great, austere taste, was well known in the antiquity shop located in Arbat Street.

He could spend hours admiring the delicate design of an ancient cast-iron grating, the rim of an old chandelier, the vignette gracing the pedestal of a vase made of ancient Russian plate-glass.

Latterly S. had been frequenting the store more often than before. The birthday of his only daughter was approaching, and the man of letters had decided to present her with a fine old chandelier. But nothing worth having turned up.

One fine day the young salesman greeted the antique hunter with a broad grin. "This is your lucky day," he addressed him. "I've the very thing to suit your taste." And he led off his prospect to the furniture and lamp department.

From still far off S. espied a big bronze chandelier fixed up, he suspected, to pass as an antique in the eyes of a none-too-critical customer. On closer inspection the connoisseur convinced himself that his hunch had been right, that it was an imitation.

In the evening of the same day the writer's son-in-law, who had also been out in quest of a chandelier, told how he managed to appropriate one, a unique and antique specimen, in a second-hand shop, and of course it was the fake the writer had already seen.

The two made a tour of inspection and discovered scores of such "unique" bronze chandeliers in a dozen or so second-hand shops, each loaded down with the most vulgar cut glass. Crude, hastily made handicraft ware was evident in abundance.

Then involuntarily the question arose: where did individual handicraftsmen get the bronze to make these chandeliers? For in the Soviet Union non-ferrous metals, because of their relative scarcity, may be employed industrially only by state or cooperative enterprises.

These "antique" chandeliers were the clue that helped to unravel a whole tangle of crimes. A large group of

criminals were brought to the bar of justice. Among them second-hand shop employees who had accepted and sold goods made of illicit metal, handicraftsmen who had unlawfully procured the metal and finally the systematic pilferers of the metal.

Alexei Korkin, the father of the girl who went to see the lawyer, was held for trial as the main purveyor of the bronze. The charge against him was that while working as the superintendent of an art foundry he, utilizing metal surpluses not accounted for, misappropriated and sold to handicraftsmen art castings manufactured in the shop for the use of the plant; and furthermore that on the private orders of these same handicraftsmen he manufactured various chandelier parts in the shop from metal belonging to the plant.

According to the data of the preliminary investigation, Korkin misappropriated about 20 tons of metal and caused the plant a loss amounting to 38,647 rubles.

The excited account given by Korkin's daughter Natasha and her replies to his questions enabled the lawyer gradually to get a clear picture of the circumstances of the case. Her father's personality also began to assume more definite shape.

The jurist was struck first of all by the discrepancy between the moral cast of the man accused and the crime with which he was charged.

Of Russian peasant stock, Alexei Korkin was a highly skilled artificer, a natural genius; to "shoe a flea" was not beyond his ken. He could boast a labour record of thirty years in the field of casting works of art; but his life's path had been far from easy and covered enormous ground—from errand boy to shop superintendent. Being a great specialist, he had been associated with the erection of some of the finest monuments of art in the Soviet capital. And such a man stood accused of engaging in shady business, the systematic pilfering of parcels

of bronze from the plant in which he had worked for so many years and where everyone knew and esteemed him.

But the evidence pointed against him. In solid array the charges menacingly confronted him, roughly trampled upon and dragged into the mire his hitherto untarnished reputation.

The investigating authorities conducted an examination by a technological expert for the purpose of establishing how the metal in question came to be stolen from the shop superintended by Korkin. The expert engaged was a high-calibre authority from a research institute. His signed statement showed that in a number of test meltings the loss in unretrieved waste amounted to five per cent. But the forensic accountants produced records in which Korkin's shop was credited with ten per cent waste, i.e., twice as much as burnt up in the melting process. A simple calculation was then made. The shop consumed annually 400 tons of bronze. The ten per cent waste allowance, or 40 tons, should have been five per cent, or 20 tons. The theft was therefore fixed at 20 tons a year.

But besides the expert's testimony there was that of the craftsmen, who claimed they bought the bronze for their chandeliers from Korkin and no one else.

One of the foundrymen, Kirpichov, further deposed that Korkin regularly made chandelier parts in the shop on orders he received from private customers who came for them from time to time.

"Once," the witness related, "the investigating authorities summoned Korkin. He was very irritable on his return. He sent for me and told me that there might be a shop inspection the next day and all the parts made for the private craftsmen would have to be melted down. Not the slightest trace of them was to be left. Well, we're but small fry and so we did as we were told. That's all there is to it."

But the expert's statement was the most damaging piece of evidence against the accused. And it was that which the lawyer tackled first.

Expecting Korkin to have a ready explanation of why he allowed ten per cent waste and not five, Arkadyev went to see his client, taking along a copy of the statement.

"You see, I'm not a technologist, and I simply can't grasp how this discrepancy could arise. Can you?"

"Ten per cent is right," Korkin calmly assured him.

"Then why does it say here five?" and the lawyer handed him the document.

After reading and rereading it carefully his client handed it back, commenting quietly that the expert had made a mistake.

"I do not know how it happened. I cannot offer any explanation. I haven't got his education." Then he added, in a still lower voice: "The percentage I gave was right. I didn't take that metal."

The lawyer decided to get at the truth himself. He went to the factory in the expectation of discovering there some written scrap of evidence on the basis of which the metal waste was calculated. He learned there from an engineer that shortly before the events leading to the trial the plant management had decided on a fundamental change in the foundry's output and had therefore asked a designing office to carry out a bronze-melting test to ascertain the percentage of waste. The test certificate was turned over to the jurist for his perusal.

He at once pounced on the conclusive figures. A "5" again stared at him in the column headed "percentage of waste."

But, strange as it might seem, the more he pored over the paper, the stronger became his conviction that he had already read its contents somewhere some time be-

fore. Just where and when he could not then recall. He anxiously ran over the document once more, and now a relieving smile came over his lips. He had reached a spot where "kw." had been typed instead of "kg." He definitely remembered having seen this identical word mistyped in the expert testimony at the preliminary investigation. He hastily got it out of his brief case and, sure enough, the two texts read alike.

All the melting figures given in the expert report coincided with those of the designing office. The only conclusion one could draw was that the judicial expert, instead of making a test melt himself, as under the Expert Testimony Regulations he was obliged to do, simply copied the text of the designing office.

In conversation with people employed at the plant Arkadyev found out that the judicial expert once came there and displayed an interest in the technical documentation that warranted the established standard of waste. Among other papers he was given the designing office certificate. A typist in the office of the management well remembered striking off a copy of the certificate at the request of the forensic expert. One of the two other copies made at the same time the lawyer requested for his own file.

This was a signal victory for the defence. It now had proof of the expert's unscrupulous method of work and was entitled to ask the court to set aside his findings and appoint a new expert in the case.

In going through the pile of technical documents at the plant where Korkin worked the lawyer laid his hands on one more paper of very great interest to him. A huge building facing the Kremlin was being converted into a department store. The order for the required bronze fittings was given to Korkin's shop. Unable to cope with it alone, a part of the order was passed on to another plant, which was given the requisite metal and blueprints.

What was the waste allowance made by that second plant for the same parts as were produced at Korkin's shop? A trip to that second plant fetched the news that 89.5 per cent of the bronze it received was returned in the shape of finished products. Hence the waste was 10.5 per cent. This wastage the plant officially certified, adding another weighty link to Arkadyev's chain of disproof.

But two points were still to be clarified. Why was the waste allowance five per cent at Korkin's plant while ten per cent was the allowance sanctioned by practice?

Taking advantage of his stay at the works, Arkadyev asked the chief engineer for permission to watch the casting of parts in the foundry. He stayed there a whole day. Everything went the way he thought it should. A definite amount of metal was taken, melted and poured into forms prepared for the purpose. Thus a ready cast was obtained. On weighing it, it proved to contain about 60 per cent of the metal taken; 35 per cent was accounted for by the pouring gates and other wastes. "A lot of waste," a thrifty man like Arkadyev thought disapprovingly. He turned around to the foundryman and asked: "Isn't that a lot of metal you're leaving in the pouring gates? Can't you help that somehow?" "Why should we?" was the smiling reply. "It doesn't get lost. We hack it off and back it goes into the furnace."

"Back into the furnace?" Arkadyev almost stopped breathing with excitement. "Back? And then—more waste?"

"What do you think? Of course, more."

"Another five per cent?"

"Yes, and even more if only waste goes into the charge."

The worker was only too glad to talk about his work with somebody new to it.

Arkadyev's pencil could not keep pace with the rush of thoughts that flashed through his mind. "At last, at long last the whole thing is unriddled! Here is where all those enigmatic surplus percentages accumulate from! They return to the production cycle. Waste materials are melted over again. Then 'waste' recurs, and in even greater quantities!"

Perplexed the worker looked at the blissfully smiling face of this man who but a few moments before had been seriously worried.

"Well, thanks a lot," Arkadyev said ardently, shook the worker's hand and dashed out of the shop.

As was to be expected, the court-room was packed when the Korkin case was called. Nothing out of the ordinary occurred until after the accused was questioned. Alexei Korkin had pleaded not guilty. Considering that the trial would reach its culmination at the examination of the expert, Arkadyev advised his client not to mention in his testimony what his lawyer's research had ascertained.

Now the presiding judge called upon the technologist, summoned as expert to inform the court about the results of his investigation. Not anticipating the crushing blow that would soon descend upon him, the expert monotonously read off the conclusions he had reached.

Arkadyev then cross-examined him.

"Please tell the court whether you performed all the test melting personally," asked the lawyer.

"That's answered in my findings," the expert replied evasively.

Arkadyev then increased the pressure on the witness.

"Look at page five of your findings, where they state the amount of metal charged. The amount is given in kilowatts instead of kilograms. How's that?"

"Oh, that? That's obviously a typist's error," the

expert hastened to reply, feigning surprise at the lawyer's naïveté.

"Then please tell the court whether you happen to have seen this document." Saying this Arkadyev held out to the court and the expert a copy each of the designing office certificate from which the expert had copied his so-called findings.

The expert's face flushed crimson as he glanced at the proffered paper. But before he regained his equanimity, Arkadyev pounded him further.

"Read the part where it says 'kw.' instead of 'kg.'" The expert did.

Then defence counsel sprung the following query:

"Do you not find suspiciously great similarity between this document and your findings?"

"I don't understand what you're driving at," the expert quailed disconcertedly.

"All I want to say is that you copied your findings straight from this certificate, thus grossly neglecting your duty as court expert. It was your duty to base your findings on tests performed by yourself."

The court then interrogated the head of the non-ferrous metal-casting department of the Moscow Metallurgical Institute, whom the defence had called as a witness. He testified that the standard non-ferrous metal-casting waste was 9-12 per cent. The lawyer also submitted the above-mentioned certificate issued by the plant by way of cumulative evidence.

The expert was completely cornered. He tried to explain away his failure to make the tests himself by averring that he had full confidence in the men of the designing office who had issued the certificate. He knew them well, he alleged. They were big specialists. He admitted that fixing five per cent as the standard of waste was based on a single cast, but since the waste was re-

melted three times, as was established in court, the percentage should have been raised to nine or ten per cent.

Other counts of the indictment were likewise punctured by the lawyer. The worker Kirpichov, who had stated at the preliminary investigation that on Korkin's instructions he had melted down a considerable number of parts intended for private craftsmen, failed to appear in court, though summoned twice. The state prosecutor, not sure of his case, suggested to do no more than make public the testimony Kirpichov had given. But then defence counsel submitted to the court a copy of an official report Korkin had made to the factory director in which he asked that Kirpichov be discharged for systematic drunkenness and absenteeism. This, of course, cast an illuminating light on the credibility of the witness.

Other witnesses established that at the end of every month, before the remnants of metal in the shop were removed, Korkin had all scrapped parts remelted into pigs to make it easier to account for the metal. The court, at the lawyer's request, compared the date mentioned by Kirpichov with the inventory date and the date the metal remnants were removed from the shop. The defence proved its case beyond any doubt. The witness who bore Korkin a grudge had committed perjury and preferred not to answer his summons.

As for the last link in the chain of evidence against Korkin, the testimony of the handicraftsmen, this also was proved in court to be a tissue of lies. The defence had petitioned the court even before the trial to appoint a commission of experts to establish whether the bronze parts confiscated from the craftsmen when their homes were searched belonged to the plant at which the accused worked. The chandeliers brought to the second-hand shops to be offered for sale were also examined. The experts found that the kinds of bronze used in the parts

in question and their configuration were different from those produced in Korkin's shop.

By the end of the trial the court possessed cogent evidence that the craftsmen had connections at a different bronze-casting plant and had falsely accused Korkin to retain their present source of supply.

With regard to Alexei Korkin, the court's verdict pronounced the charges against him not proved and acquitted him. A sigh of vast relief was heaved by many in the audience.

As the public was about to leave, the presiding judge read out a special finding which severely condemned the conduct of the unscrupulous judicial expert.

In order to restore to health or preserve the life of a human organism as a whole, a surgeon is at times compelled to remove, excise or amputate a diseased limb or other part—a hand, a foot, the appendix or thyroid gland. A conscientious physician will long deliberate before deciding on amputation. He will first make a careful study of the entire case history and will scrupulously weigh all relevant circumstances, assaying all the possible after-effects upon the patient that surgical intervention may bring on.

A circumspect, thoughtful physician is aware of the tremendous responsibility he assumes in recommending such a radical remedy as amputation: for one thing, his responsibility to the individual to whom for the time being the operation would mean a certain physical or physiological handicap, though performed with the best of intentions; and then the responsibility to society of which that individual is a member and in which he will cease to function as a constituent unit possessing in full his former value.

It hardly would require proof to show what a fatal, irretrievable mistake it would be to resort to an amputation of fingers or a hand where that was avoidable and

where the operation was performed exclusively as the result of a wrong diagnosis, the result of insufficient thought and excessive haste, especially in the case of a turner, a tailor, a painter, a sculptor.

All that has been said above applies in full measure to the work of the criminal court.

If the mistake of a surgeon who amputates on an insufficiently grounded diagnosis may be characterized as horrible, a judicial error is no less horrible when an accidental concurrence of circumstances creates the semblance of a crime and inadequate deliberation or haste on the part of the investigating authorities or the prosecution may lead to a miscarriage of justice and bring about the judicial condemnation of an innocent person, that is, his removal from the life of society for a specified time. Fortuity can never atone for an erroneous conviction, a sentence pronounced in violation of the rights and interests of the individual and of the state as a whole.

Was not this what occasioned Marx to write with such force and conviction:

"Is not every citizen connected with the state by a thousand sinews of life?... The state will therefore look also upon a purloiner as a human being, a living limb in which its heart-blood courses, a soldier who must defend his fatherland,... a member of the community who has to discharge public functions, the father of a family whose existence is sanctified, but above all a citizen of the state, and the state will not lightly exclude one of its members from the performance of all these tasks—for the state amputates itself every time it makes a criminal out of a citizen."*

* Marx-Engels, MEGA, Erste Abteilung, S. 278, Bd. I. Marx: *Debaten über Holzdiebstahlgesetz* (*Debate on the Law against the Theft of Wood*).

Before classifying a person as a criminal and treating him as such not a stone must be left unturned to convince oneself that he actually committed the crime charged.

In the solution of this problem an enormous responsibility falls upon counsel for the defence, whose duty it is to render all possible assistance to the court in the application of the great principle enunciated by Marx:

"The state can and must say: I guarantee right against every fortuity."*

In the hurly-burly of life, in its multifariousness, where the interests and moods, thoughts and emotions of millions and tens of millions of people differing in character, mentality and volition, in their purposes and destinies cross each other, collide and intertwine, personal conflicts are always possible.

And always there is present here the possibility of chance combinations of circumstances that create the appearance of the perpetration of crime. Often only the clever spade-work of the court, a procurator and an astute lawyer for the defence, all primed to pile argument upon argument in favour of the accused, can disentangle the separate facts and reduce them from a seemingly formidable charge to an innocuous conglomeration of circumstances.

The Soviet Bar is faced with tasks of paramount importance. The entire activity of its members in defending the rights and interests of the citizens fosters primarily the strengthening of socialist legality, makes it easier for the morality of the new, socialist society to penetrate the minds of the masses.

The lawyers' collegiums are voluntary associations of persons engaged in the legal profession. Their purpose is

* *Ibid.*, p. 298.

to defend people in the courts and to give other legal assistance to individuals, factories, offices and organizations. The Statute on the Legal Profession is approved by the Supreme Soviet of the Union Republics.

It is the purpose of the present book to give the reader an idea of the lawyers' association in the Soviet Union, of the principles and methods it employs and of its social activities. The book also sheds light on how problems arising in the practice of law are handled by Bar members and what role is assigned to them in criminal and civil trials.

As lawyers devote a considerable part of their time to court-work, it may be best to describe in brief the Soviet judicial system and the general principles on which it is based.

According to the Fundamental Principles of the Judicial System of the U.S.S.R. and of its Union and Autonomous Republics it is the function of the administration of justice to protect the social and state structure of the country, the socialist system of economy and socialist property established under its Constitution and the Constitutions of the Union and Autonomous Republics against all encroachments thereon; furthermore to protect the political, labour, housing and other personal and property rights and interests of Soviet citizens guaranteed by its Constitution and the Constitutions of the Union and Autonomous Republics, and also the legally safeguarded rights and interests of state establishments, enterprises, collective farms, cooperative and other public organizations.

The administration of justice in the Soviet Union aims at the exact and unswerving execution of the law by all institutions, organizations, officials and citizens.

Through its entire work the court educates Soviet citizens in the spirit of patriotism and of loyalty to the communist cause, in the spirit of the exact and un-

deviating fulfilment of Soviet laws, respect for Socialist property, the observance of labour discipline, and an honest attitude to state and social duty, respect for the rights, honour and dignity of citizens and for the rules of socialist human relations.

In imposing sentence, the court not only punishes the offenders but also aims at their re-education and reform.

The successful fulfilment of these complicated, many-sided tasks requires an appropriate judicial system based on the principles of consistent democracy and asserting itself first and foremost in the enlistment of people from all walks of life in the administration of justice.

In the Soviet Union all courts when exercising primary jurisdiction consist of one judge and two people's assessors. Courts of cassation,* when given jurisdiction by law to review cases, consist of three judges without people's assessors.

That judges and people's assessors must be elected is a principle consistently carried out in the Soviet Union.

The presiding judge and people's assessors enjoy complete equality of rights. This principle governs every case, civil or criminal, tried in any Soviet court of first instance, even in military tribunals, which administrate justice in the Soviet armed forces.

The equality of judges and assessors is reflected in the fact that the court's decision, guilty or not guilty, can be taken on the basis of the assessors' votes against that of the people's judge. The judge then has the right, like any other member of the court, to append his dissenting opinion to the decision, setting out the legal basis for his attitude. His dissenting opinion has no other procedural significance, and it does not constitute grounds for the quashing or review of the sentence.

---

* See p. 176.

That judges and people's assessors are independent and subject only to the law is also proclaimed in the Soviet Constitution.

The consistent democracy of the Soviet judicial system finds further expression in the fact that all courts are uniform, irrespective of the social origin and property status of the parties involved, their standing in their trade or profession, their nationality and race. Equality before the law has been instituted for all.

The *open* hearing of all cases in all courts, coupled with such rules of trial procedure as a) that all testimony must be given *orally*, b) that the judges must acquaint themselves *directly* with all the materials, c) that the trial must be *contested*, i. e., must be a bipartite contest between the parties and actively participated in by the court to clarify the issues and ascertain the truth, comprises the elements entering into the spirit of democracy pervading the Soviet courts.* This democracy is further attested by the fact that the proceedings are carried on in the language of the Union or Autonomous Republic in which the court is sitting. Persons who do not know that language are made thoroughly acquainted with the material of the case by an interpreter and are given the right to address the court in their native tongue.

Additional corroboration will be found in the right of the accused to counsel for defence in all the courts and in the absolute equality of the prosecution and defence.

How are the judges of the different courts elected?

The people's judges in District or City People's Courts are elected for a five-year term by the citizens of the district or city on the basis of universal, equal and direct suffrage with secret ballot. The people's assessors are elected at general meetings of factory and

* These principles are further elucidated in Chapter II, pp. 141-143.

office workers and collective farmers at their place of work or residence, and by military units for a period of two years.

The right to nominate candidates for people's judges and people's assessors is vested in public organizations and societies of the working people: Communist Party organizations, trade unions, cooperatives, youth associations and cultural societies and also meetings of workers and office employees at factories and institutions, of servicemen in military units, and of peasants. Every organization that has nominated and duly registered a candidate and every individual citizen are guaranteed the right of unimpeded agitation for this candidate at meetings, in the press and in other ways.

The Courts of Territories, Regions, Autonomous Regions and National Areas, and also City Courts in large centres (judges and people's assessors) are elected by the respective Soviets of Working People's Deputies for a term of five years. The Supreme Courts of the Union and Autonomous Republics (judges and people's assessors) are elected by the Supreme Soviets of the respective republics for a like term of five years. The Supreme Court of the U.S.S.R. (judges and people's assessors) is elected by the Supreme Soviet of the U.S.S.R. for a similar term. Finally, the judges of the military tribunals are elected by the Supreme Soviet of the U.S.S.R. for a term of five years.

The people's assessors of military tribunals are elected from among citizens doing military service. Any serviceman is eligible. They are elected by open vote at general meetings of the members of a unit or establishment for a two-year term of office. In fulfilling their duties as people's assessors on a military tribunal they have all the rights of a judge.

The procedure in the lower and higher courts in criminal and civil cases and the review of judgments by

way of supervision are explained in detail in the corresponding chapters of this book. Here the reader is given only a general outline of the structure of the Soviet judicial system.

In this system the People's Courts form the backbone. They have extensive jurisdiction and handle the bulk of the criminal and civil actions. They try homicide cases, offences against the health, liberty and dignity of citizens, cases of defamation, disorderly conduct, libel and slander, brigandage, robbery, larceny, swindling, extortion, etc. Cases of misappropriation or theft of socialist property, crimes committed by officials in the exercise of their duty, etc., also come under their jurisdiction. It extends to all civil cases in which at least one party is a private citizen. The People's Court also examines complaints against court executors and notaries public.

The Courts of Territories, Regions, Cities, National Areas and Autonomous Regions and the Supreme Courts of the Autonomous Republics have original jurisdiction to hear the more important and complicated criminal and civil cases, as is specially provided by law: in the criminal line, offences against the state (excluding espionage), premeditated murder and aggravated rape; large thefts of socialist property; particularly important cases of malfeasance in office. In the civil line these courts hear divorce cases, disputes between state and public organizations, except such as are assigned by law to a special agency, the State Arbitration Chamber.

Simultaneously these courts have cassational jurisdiction in cases involving the cassation of any sentence, decision or special finding of any People's Court.

For the performance of their functions these courts constitute themselves into collegiums for civil cases,

collegiums for criminal cases and presidiums. The presidium is composed of the President of the court, his deputies and two members of the court. It is empowered to review, by way of supervision, on the protest of the presiding judge of the court concerned or of a regional, territorial or city procurator, a procurator of a National Area, an Autonomous Region or of a Republic, in the cases specified by law, any sentence or decision of a People's Court already in effect and any cassational findings of its collegiums, whether criminal or civil. This procedure makes it possible speedily to correct any error of law that a court of primary or appellate jurisdiction may have been guilty of.

The Supreme Court of a Union Republic is its highest judicial body. It must exercise supervision over the actions of all courts within the territory of the republic, with the exception of the military tribunals, which are supervised by the Supreme Court of the U.S.S.R. The Supreme Courts of Union Republics likewise function in the form of civil and criminal collegiums and presidiums. They are cassational tribunals to which parties may take their appeals from sentences, decisions and special findings of the Courts of Territories, Regions, Cities, National Areas and Autonomous Regions and of the Supreme Courts of Autonomous Republics. The Presidium of the Supreme Court of a Union Republic may revise, by way of supervision, sentences, findings and decisions of the above-enumerated courts of the Republic already in effect, and also cassational findings of its collegiums.

In accordance with the Fundamental Principles of the Legislation of the U.S.S.R., Union and Autonomous Republics adopted by the Supreme Soviet in December 1958, Plenums are also formed in the Supreme Courts of Union Republics. The question of the continuance or formation of Presidiums is a matter for the

legislation of the Union Republics. So also are their powers.

In Union Republics that are not divided into regions the Supreme Courts hear, as courts of primary jurisdiction, such cases as fall under the jurisdiction of regional and territorial courts, and also complaints and protests against sentences and decisions of the People's Courts.

As a court of first instance, or primary jurisdiction, the Supreme Court of a Union Republic may place upon its calendar any case which it considers of major political or public importance or deems particularly complicated, even if lower courts could exercise jurisdiction in the case in question.

All servicemen accused of crime are tried by military tribunals.

Civilians are answerable only to civil courts for offences they may be charged with. Espionage cases form an exception. Of these crimes the military tribunals are given jurisdiction, as they directly jeopardize the defence capacity of the country.

The Supreme Court of the U.S.S.R. is the highest judicial organ. At the present time its functions are defined by a regulation approved by the Supreme Soviet of the U.S.S.R. in 1957. According to this regulation the Supreme Court for the exercise of its functions may be constituted into a court in banc, a Judicial Collegium for Civil Cases, a Judicial Collegium for Criminal Cases, and a Military Collegium. The composition of the Supreme Court of the Soviet Union includes not only its members, elected by the Supreme Soviet of the U.S.S.R., but also the Presidents of the Supreme Courts of the Union Republics, who, according to the new regulation, are ex-officio members of the U.S.S.R. Supreme Court. This enhances the contact between the U.S.S.R. Supreme Court and the Supreme Courts of

the Union Republics and tends to ensure uniformity of judicial practice over the entire territory of the Soviet state.

In its capacity of a court of original jurisdiction the Supreme Court of the U.S.S.R. hears and determines civil and criminal cases of utmost importance assigned to it by law.

Only the Military Collegium of the Supreme Court of the U.S.S.R. acts in the capacity of a cassational tribunal. As such, it reviews cassational complaints and protests against sentences, actions and decisions pronounced by military tribunals of military districts, large units, fleets and separate armies. This results from the fact that sentences and decisions handed down by the Supreme Courts of Union Republics acting as courts of original jurisdiction are final under the law and cannot be appealed to a court of cassation. As for the cassational review of sentences and decisions of other courts, that is attended to, as we have seen above, by the courts of the respective territory, region, autonomous region and the Supreme Courts of the Union and Autonomous Republics.

It must be noted here that the inclusion of a Military Collegium in the composition of the Supreme Court of the U.S.S.R. is a practical application of the principle of uniformity of the judicial system in the Soviet state.

According to the regulation the following power to supervise sentences and decisions already in legal force and effect is now vested in the Supreme Court of the U.S.S.R. The Judicial Collegiums and the U.S.S.R. Supreme Court sitting in banc may examine protests of the President of the U.S.S.R. Supreme Court and of the Procurator-General of the U.S.S.R. against a decision, sentence or special finding of a Supreme Court of a Union Republic only in the event that such decision, sentence or special finding contravenes an all-Un-

ion law or encroaches upon the interests of another Union Republic. Decrees of Presidiums of Supreme Courts of Union Republics can be reviewed only by the Supreme Court of the U.S.S.R., sitting in banc, but not by its Collegiums. This restriction of the U.S.S.R. Supreme Court's supervisory power betokens the tendency of Soviet legislation to enlarge the sovereign rights of the Union Republics, including their sovereignty in the field of the administration of justice. At the same time this shrinkage in the volume of work to be transacted by the Supreme Court of the U.S.S.R. as judicial supervisor will permit that august institution to concentrate its attention on the study of judicial practice.

When necessary, the Plenum of the Supreme Court of the U.S.S.R. shall, as a result of the study of such legal practice, give guidance to the courts on the application of legislation.

The regulation governing the Supreme Court of the U.S.S.R. imposes upon it, among other things, the duty of organizing on a Union-wide scale the keeping of forensic statistics and of analysing them to ascertain the causes, tendencies and nature of crime so that measures may be taken to combat it.

Lastly, the empowering of the Supreme Court of the Soviet Union to exercise legislative initiative is of paramount importance.

Let the above serve as an outline of the Soviet judicial system—its structure and the rights and functions of its separate links.

Chapter One

THE SOVIET BAR—A DEMOCRATIC, SELF-GOVERNING PUBLIC ORGANIZATION

History abounds in examples when the Bar played an exceedingly important part in social life, when its most talented members were to the minds of their contemporaries the personification of all that was advanced and progressive. This was the case when these personages correctly read the behests of the day and placed their knowledge and experience at the service of advancement and justice.

It would be difficult to find any other profession that had been assessed and judged so variously as the legal profession.

Whereas Robespierre considered lawyers "the bulwark of innocence and the scourge of crime," Frederick the Great styled them "leeches" and "pernicious reptiles," promising to "string up" any advocate for merely handing him a soldier's petition for a pardon, to string him up "without mercy or charity and hang a cur beside him." Napoleon threatened "to cut out the tongue of any lawyer who uses it against the government." The Emperor of the French was not prone to

share Cicero's opinion that the legal profession was a "noble" one and even "worthy of a ruler." Incidentally, Napoleon was by far not the only "prosecutor" of lawyers.

In the Soviet Union the right to defend oneself, or to counsel for defence, is proclaimed not only as a principle of procedural law but as a constitutional guarantee that ensures the observation of the rights and lawful interests of the accused.

Soviet legal defence had its birth in the very first days of existence of the world's first socialist government. Lenin considered it necessary to institute a Soviet Bar as an element of the democratic administration of justice. In the first Decree on the Courts, issued on November 24, 1917, special attention was drawn to the need for organizing a legal defence system. It is a characteristic fact that the point in the draft law dealing with legal defence was formulated by Lenin. In the second Decree on the Courts he wrote himself that legal defence should assume the form of a permanently functioning collegium.

The Soviet Bar has changed its mode of organization several times since then, but has invariably remained an important means of consolidating socialist legality throughout the country.

The Soviet Bar functions on the basis of a Regulation approved by the Council of Ministers of the U.S.S.R. on August 16, 1939. This act sets forth the aims and purposes of the Bar, its organizational structure and its procedure.

In pursuance of the ordinance, lawyers' collegiums —voluntary associations of persons engaged in the practice of law—are formed in the territories, regions, and Union and Autonomous Republics not divided into regions.

The principal problems concerning the organization

and functioning of the lawyers' collegium are settled by the general meeting of the collegium membership. It has become the accepted practice to call such general membership meetings at least once a year. The general meeting elects a presidium of the collegium by secret ballot for the term of two years. The presidium is its executive and is accountable to it in every respect. In like manner and for a like term an auditing committee is elected to verify the finances of the collegium. The general meeting hears the reports on the activities of the presidium and the auditing committee and takes the necessary action on them. The general meeting likewise endorses the composition of the managerial staff, the estimate of expenditures by the collegium and the rules governing the conduct of their business. Between general meetings the presidium conducts all practical activities of the collegium.

To carry out the actual practice of the law, the rendering of legal assistance to private citizens, factories, institutions and organizations, legal consultation offices are established. Their location is determined by the respective collegium presidium but must be agreed to by the Ministry of Justice of the Republic concerned.

The lawyers for these offices are appointed by the collegium presidium, which must be guided by the following considerations. The lawyers of each consultation office must be numerous enough to satisfy completely the requirements for legal advice of the entire population of the locality where the office is situated. Moreover, it is advisable to arrange in each consultation office for a harmonious combination of legal practitioners of the older generation possessing greater skill and experience with energetic and inquisitive young members of the Bar. Lastly, each office must, if at all possible, have on its staff specialists in the various branches of the law and not only its principal divi-

sions, criminal and civil law. Bearing the above in mind the collegium presidium arranges with each lawyer what consultation office he is to be sent to. Transfers from one office to another are attended to in similar fashion.

Each legal consultation office operates under the direction of a manager appointed by the presidium of the lawyers' collegium and accountable to it. His main duties are to see that the jurists do their work well and are paid fees neither above nor below the amounts officially allowed. The manager receives a salary fixed by the presidium. This does not bar him from practising law so long as he does not neglect his administrative functions.

In addition to the manager, each consultation office usually has its secretary, who also acts as treasurer, and a typist. The secretary-treasurer attends to the financial dealings with the clients of the office, makes appointments for them with their lawyers and in urgent cases makes immediate contact when possible. Many offices also have court-calendar clerks who watch the position of cases in which their office is involved. They keep the lawyers posted on when their cases will be heard or tried or otherwise be up for a ruling requiring their presence in court.

Naturally, such a technical apparatus at the office is of great help to the lawyers, as it allows them to concentrate exclusively on their professional business.

The presidium also admits new members to the collegium or expels them from it.

According to the regulation any person possessing a higher legal education or any person not possessing such education but having worked for not less than three years in the capacity of a judge, procurator, judicial investigator or legal consultant may become a member of a collegium of lawyers.

This rule was laid down twenty years ago when the country experienced a shortage of legal personnel with a higher education. It was therefore deemed possible to admit to the Bar persons without special schooling but with considerable practical experience. The general cultural development of the Soviet people since has brought with it a general spread of legal training.

Soon after the termination of World War II, measures were taken to improve legal education in the country. There was an increase in the number of students in the law departments of universities and colleges; new departments of law were opened at the Rostov, Tomsk, Kharkov, Odessa, Central Asian and Byelorussian universities. Several new institutions of higher legal education were also set up. Thanks to these measures each Union Republic was enabled to train its own national legal personnel.

As a result the number of persons in possession of a higher legal education rose sharply. Whereas in 1947, 2,000 graduated from law colleges and university law schools or departments, in 1955 that figure increased to 7,800.

This extension of higher legal training was secured not only through day and evening courses at universities, but also by numerous correspondence courses. Thirteen branches of the All-Union Correspondence-Course Law Institute, correspondence-course departments of institutes and correspondence-course sections of law schools made possible the graduation between 1947 and 1955 of fifteen thousand legal practitioners with complete higher education acquired during their spare time.

The successful development of legal schooling throughout the country made it possible to alter the 1939 Bar regulations. Now only applicants for

admission who possess a higher legal education are accepted. In the Moscow City Collegium 87 per cent of the membership consist of such highly qualified lawyers.

Yet such a law college education alone is not sufficient to qualify for admission to a lawyers' collegium. Besides theory, practical experience, the know-how of the profession, is needed. Law graduates must first serve a definite period as probationers.

A lawyer may be disbarred, by expulsion from his collegium, on such grounds as the commission of a crime established by a court, conduct unbecoming to a Soviet advocate, etc. Minor infractions of rules of professional conduct are punished by such disciplinary measures as a rebuke, censure, severe censure, or suspension from practice for a period not exceeding six months.

The regulation provides that a presidium decision refusing admission to the Bar, decreeing disbarment or inflicting disciplinary punishment may be appealed to the Minister of Justice of the Republic.

Members of lawyers' collegiums may not serve in state or public institutions or enterprises. Exceptions are made in the case of persons holding elective office, of college teachers and scientific workers. This eliminates the possibility of outside influence being brought to bear on a lawyer in the exercise of his profession (which might be the case if a lawyer were in the employ of some organization and became its administrative subordinate). Besides, this rule offers the lawyer every opportunity to perfect his professional accomplishments and fit him for scientific, literary or pedagogical work.

In this way a lawyer in the Soviet Union preserves his independence in the exercise of his professional

duties. In performing them he is guided solely by the law and his conscience.

Any Soviet lawyer has the right to practise in any court of the Soviet Union, including the Supreme Court of the U.S.S.R., and in any part of Soviet territory.

A lawyer's work in his consultation office consists in receiving clients, preparing their cases and conducting them in court.

Every client who applies for advice at a legal consultation office is absolutely free to pick his lawyer. He may directly ask for any legal counsellor personally known or recommended to him. If the client does not specify anyone in particular, he is attended to by one of the lawyers on duty. Clients are given the opportunity of consulting with others as to whom to entrust with his case. If the case is particularly involved the head of the consultation office will assist in making the choice.

The efficiency of a legal consultation office is gauged to a certain extent by the way it organizes its work. Every year the country's lawyers give legal advice to tens of thousands of working people orally and in writing in reply to concrete questions put to them. In the process they also draw up a vast number of legal documents. An experienced jurist knows that a mistake he makes during a consultation or in drawing up a document may seriously complicate a case or damage it beyond repair when heard in court.

It is often more difficult to give proper legal advice at a consultation office than to conduct a case in court. Preparation for the hearing may take days or weeks but office receptions last only hours or even minutes. In this short space of time the lawyer must hear out his client, determine the legal question involved and work out a correct and exhaustive reply.

Working in a legal consultation office one daily comes across a great variety of questions of law that

provide excellent practice, especially for young lawyers, who can here make use of the experience of their elder colleagues.

The lawyers are on duty at the office according to a calendar so drawn up that several specialists in the various departments of law, both young and old, both criminal and civil practitioners, are available at any time to choose from.

About every month a conference of the lawyers attached to it is called by the consultation office. It discusses routine problems, but mainly delves deeply into the more intricate problems that arise in current complicated and controverted lawsuits and require competent advice and handling. Here is where the expert knowledge of the elder members tells.

In addition to these periodic conferences any lawyer, uncertain of his next move in a difficult legal tangle, may apply for advice to any fellow-member or to the manager of the office, who will, if necessary, call in still others for wider consultation.

This systematic assistance rendered gratuitously by one's professional colleagues is a substantial advantage in the collegiate practice of the law.

Let us now examine how lawyers are paid for their work in the Soviet Union.

As a rule, all legal assistance rendered to individuals must be paid for. Only the conduct of suits for alimony, and the drawing up of applications for pensions or other social benefits and of legal documents for soldiers and sailors in the Soviet Armed Forces are free of charge. So is oral advice of an informative nature when no special legislation had to be looked up or documents brought by the client consulted. When a client wants to get compensation for an injury received at work, the consultation office also does not charge for such a suit, but if the court allows compen-

sation it must order the defendant to pay a specified sum to counsel for plaintiff.

When a lawyer is authorized by a private individual to conduct a case in court, he is paid on a piece-work basis.

As has already been stated, every person who applies to a consultation office for a lawyer may have his personal choice, whether it is a civil or a criminal case. Fees according to the case and personal choice act as a serious stimulus to each advocate to do his best. That is the only way for him to acquire a reputation and gain prestige.

For legal services rendered to private individuals anywhere in the Soviet Union specific fees are charged according to a uniform list approved by the Ministry of Justice.

A fee may be charged for drawing up a legal document, the amount payable depending on how long and complicated it is.

For the purpose of fixing fees, criminal cases are divided into simple and complex. A case is considered complex when, for instance, expert testimony is required necessitating the study and elaboration of special problems.

A fee not exceeding 500 rubles may be fixed by the office manager himself. But provision must also be made to cover cases where the record of the preliminary investigation is very bulky or difficult to study or where the hearing in court is protracted. No limit is fixed for fees in such cases. It is established by the presidium of the lawyers' collegium at its next regular meeting and depends on the amount of work done and the skill of the lawyer employed.

When the hearing of a criminal case in which the fee is fixed by the manager alone lasts more than three

days, an additional amount of not more than 75 rubles for each additional day must be added to the fee.

If a lawyer represents two defendants in a case, he may charge each 75 per cent of the full fee listed, and if three defendants—60 per cent.

Special payment is provided for handling criminal cases on appeal to a court of cassation. Counsel for defence who first enters a case on cassation is of course allowed a higher fee than one who conducted it in the lower court.

The lawyer's fee in a civil case depends on the amount involved in the suit. As a rule it should not exceed 600 rubles. If the consultation office manager considers the case too complex to be paid for by the usual fee he may apply to the presidium to fix a higher amount.

A special fee is charged in such categories of civil cases in which no definite sum is involved, as for instance in labour disputes, ejectment cases and the like.

If in a civil case the lawyer's fee was fixed by the office manager and the trial lasts more than three days, an additional fee may be charged for each additional day the same as in criminal cases.

For conducting cassation proceedings in a civil case the lawyer who handled the case in the lower court may charge no more than 40 per cent of the fee fixed there; a lawyer who came into the case only on appeal may charge no more than 80 per cent of the fee fixed in the lower court.

For conducting criminal and civil cases by way of supervision a special fee is provided for.

As a Soviet lawyer may practise in any court of the U.S.S.R., provision is made for payment for services rendered by him outside of his home town.

In certain cases it is the duty of the Soviet court to appoint counsel for the defence. This is so when a pub-

lic prosecutor is appointed but there is no agreement upon defence counsel; when the accused is a minor or is physically defective (deaf, dumb or blind), so that he cannot fully follow the court proceedings; lastly, when the accused is financially unable to pay for a lawyer.

Defending a case by court appointment is a form of social work and as such is considered an honourable duty. Labour expended by a lawyer on such work is compensated out of a special fund of the collegium.

Lawyers render legal services not only to private individuals but also to state and public institutions and enterprises. They may be called by them to act as each case arises or to take charge of all cases within a specified period of time. If the former is true, each case is paid for separately; if the latter, a special agreement is concluded between the consultation office and the organization requiring the legal services. The principle of personal choice applies to state and public bodies as well as to individuals in need of a lawyer, which likewise stimulates the latter to render good service. Fees fixed for each separate case are the rule. But state enterprises and public institutions may also pay their lawyer a flat salary which is adjusted to the average amount of legal work entailed.

All payments by clients to the legal consultation office are placed to the personal credit of the lawyer who performed the work paid for. At the end of each month each lawyer renders a bill indicating the services performed during that period, and the book-keeping department totals the amounts paid by the clients for these services. Thus the overall monthly income of each lawyer is determined.

According to the regulation a definite amount (25-30 per cent) is deducted to cover the various expenses of the collegium. As a matter of fact this sum

not only defrays administrative and managerial expenditures but actually returns to a large extent in some converted form or other to the lawyers from whom they had been taken.

The Leningrad Regional Collegium of Lawyers is more or less typical of medium-sized collegiums. It consists of 152 members. (In Leningrad and Moscow the regional and city lawyers are separately organized.)

In 1957, 12.5 per cent of the overall annual income of the Leningrad Regional Collegium went for the maintenance of its presidium and legal consultation offices. But here it must be taken into account that the staffs of the consultation offices and the presidiums rendered considerable assistance to the lawyers in their practice of the law and relieved them of much incidental work.

The amount deducted was also used for many other purposes. Thus 1.9 per cent was spent in providing advanced training for the collegium members; 2.6 per cent to pay lawyers appointed by court; 1.1 per cent to procure office paraphernalia and furniture and to make repairs, i.e., in the long run to improve the working conditions of the lawyers themselves; 0.15 per cent to amplify the law library; and 0.2 per cent to hold general meetings. An additional six per cent was deducted for the holiday fund, out of which each jurist was annually paid an average month's salary. Lastly, 4.6 per cent was contributed to the social security agencies who paid each lawyer his average salary during illness, and one per cent was taken for the mutual aid fund out of which lawyers receive loans and grants. Deductions made for the benefit of the mutual aid fund are not depersonalized but credited to the particular lawyer and in the event of his death or withdrawal from the collegium are returned to him or his heirs.

The collegium presidiums devote much attention to assisting ailing and aged lawyers and their families, and to the provision of proper cultural and living conditions for the members of the collegium. They also perpetuate the memories of eminent men of the law. Some collegiums organize mutual aid societies for this purpose; others set up special monetary funds. The amounts involved here are considerable. In 1955-56, for instance, the Moscow City Collegium alone spent 850,000 rubles under this heading. Another large item is summer camps for members' children and reduced-rate passes to holiday homes and sanatoriums, the presidium paying the balance. There is also the practice of presidiums awarding premiums to eminent veterans of the Bar on their jubilees.

The proper combination of the principles of collective work and personal material interest ensures the high standard of work of Soviet members of the Bar.

The problems a lawyer has to deal with in his daily practice are diversified indeed. This can readily be confirmed by taking a few concrete examples.

...Chief engineer Smirnov was sent abroad by the River Fleet Registry of the U.S.S.R. to take over a certain passenger ship. While testing the ship's machinery his head was injured by a snapping cable and he died within a few hours. His wife applied to a legal consultation office to help her obtain damages for herself and her family. The Fleet Registry told her that the party liable for the payment of damages was the foreign firm. The lawyer assigned to the case lodged a complaint against the Registry which had employed his client's husband, and drew up the requisite complaint in which he clearly showed that the Registry too was liable to damages, since, according to Soviet labour legislation, it was its duty to secure safe conditions of work for its employee and representative. He explained that the Reg-

istry could indemnify itself by suing the foreign firm primarily answerable for the engineer's death.

...A woman by the name of Andreyeva, who had no family and was no longer young, came to a consultation office to complain that a court had wrongly adjudged to her brother three-quarters of a house that had belonged to their deceased father. Several years prior to his death he had sold the house to her by a deed acknowledged before a notary. She told the lawyer that the local court had declared the sale fictitious, because the purchase price named in the deed was much below the actual value of the house and because even that price had not been paid. The court held that the fictitious sale was intended to damage the interests of the other heir, a son who, besides, had two children.

After fishing out all these relevant facts the lawyer, going still further beyond the strict record of the case, ascertained that relations between father and son had been the worst possible. The father had even laid a criminal charge against his son for publicly insulting him and at the trial, before the same court, had asked that the son be ejected from the house as it was impossible to live with him. After that the son moved out and failed to support his parent. As for the daughter, she took care of her ailing father for the last ten years, spent a great part of her wages on his support and gave up her personal life so as to be always with him. All these facts were carefully embodied by the lawyer in the cassational complaint he filed in the Regional Court.

He argued that the daughter's failure to pay the consideration named in the deed of sale for the house and its very low assessment were indications that the intestate actually intended to make a gift of the house to his daughter, who nursed him so tenderly during his

old age. The lawyer pleaded further that if the intestate did not express his will in the form of a deed of gift or a testament but in the form of an instrument of purchase and sale, then the case was covered by the well-known provision in the Civil Code of the R.S.F.S.R. that in this kind of transaction the consequences which the parties had in mind and which they wanted to ensue must be allowed to ensue, no matter what the form of the instrument in which they expressed their will. The court fully shared the views of the lawyer.

...An experienced lawyer specializing in civil cases was visited by a woman named Matlina in a highly nervous state. Her case was in brief: On leaving her place of work she forgot to switch off her electric heater. This started a fire which burnt a warehouse, causing considerable loss to the state. She was tried for criminal negligence and given a suspended sentence, on the basis of which the government, the owner of the warehouse, was suing her for damages. Quite a big sum was involved.

When she had told her story the lawyer did not let it go at that but delved into every detail, no matter how minute. Particularly he wanted to know why the fire was not put out in time, why it assumed such great proportions and caused so much damage. It transpired that disciplinary measures had been taken against quite a number of persons who had failed to provide the warehouse with enough fire-prevention and fire-extinguishing apparatus. Others had been censured for inaction.

The keen eye of the specialist at once saw that these facts extricated his client at least from sole responsibility. All persons guilty of neglect must be jointly sued and each contribute his share to make good the damage caused, he reasoned.

... Another Moscow consultation office reported: When Sevastyanova came for legal advice she had actually attained the age of 55, sufficient to become entitled to an old-age pension, according to Soviet law. Unfortunately she was several years younger, if you go by her passport, and therefore she could not yet draw her pension. "I was a great flirt in my days," she confided to the lawyer, lowering her eyes, "I wanted to be taken for younger than I was and now look at the result: a wrong date of birth in an official document! Now, you see, old age has arrived; my flirting days are over. What am I going to do?" Here is the advice the lawyer gave her: apply to the People's Court to establish your correct age. And he immediately drew up the requisite document.

... A woman far advanced in years entered the law office; she was also in difficulties about her pension. The Pension Law provides that a mother who has given birth to five or more children and raised them to the age of eight and over is entitled to special privileges on getting an old-age pension. Krylova was in this category. She had birth certificates for four of them but the fifth, a boy's, got lost. He was killed in action. The lawyer thereupon addressed a petition to the People's Court to establish the fact that Krylova had one more son, naming him, and in support of this declaration attached the official notification of his death to the petition and a list of corroborating witnesses to be called.

... Smyslova, a middle-aged woman, told one of the lawyers on duty that all her life she had not worked but kept house and now in her old age she did not know how to get along without a pension. The lawyer questioned her considerately and elicited the fact that formerly she was living as a dependent of her husband,

now dead. Consequently he explained to her that she could claim a pension as a person whose bread-winner had died.

...Gribov had committed a crime for which he was given a term of imprisonment now served. Set free he commenced a life of honest work and showed by conscientious labour and good conduct that he had fully reformed. He was now not only earning a livelihood but was finishing a technical evening school. His former conviction, however, was a heavy weight around his neck. He wanted to have this moral stain removed and become spotless again. What was he to do, he asked the lawyer at the legal consultation office. He was advised to gather testimonials of his present socially minded attitude toward work, of the public activities he was engaged in and of his present commendable conduct.

When he later returned fortified with a number of such characters, the lawyer drew up a petition addressed to the Presidium of the Supreme Soviet of the Republic, with the various reasons assigned, requesting that the record of his conviction be expunged. He was assured that under these circumstances the petition would in all likelihood be granted in due course and would have the effect of a personal amnesty.

Thus thousands upon thousands of citizens cross the thresholds of the legal consultation offices which dot the Land of Soviets. Here they are furnished with answers to the multiplicity of questions that harass them. Here they are listened to with an attentive ear and leave with the conviction that their legitimate demands will be satisfied or that their claims are unfounded.

The volume of business attended to by Soviet lawyers through the consultation offices for state, cooperative and public institutions, enterprises and organ-

izations is very considerable. As has been said above, such legal aid is rendered by concluding long-term contracts between those offices and the particular establishments, or by special arrangement from case to case. Here lawyers' services are mostly required to conduct cases in courts and in state and intradepartmental arbitration chambers.*

Here included is also the work of lawyers acting in criminal cases as representatives of plaintiffs (organizations) suing the accused civilly. The drawing up of a great miscellany of legal documents is another important routine function of lawyers. Lastly, lawyers render active assistance in the strengthening of law observance throughout the work of the enterprise or institution they serve.

How does the activity of a lawyer directed toward strengthening legality in organizations find concrete expression?

First and foremost to be noted here is the viséing of business agreements. The lawyer's visé certifies that all the provisions of the agreement are in strict accordance with norm-fixing enactments. Like care is exercised by lawyers when putting their O.K. on administrative orders relating to the employment and discharge of personnel and the imposition of disciplinary punishments. Their visé here implies conformity of the particular order with labour legislation.

The better the system of legal advice contracted for works, the less cases have to go to arbitration or court and the more organized, swifter and smoother the flow of business becomes.

Some administrators and managers will not always

* State and intradepartmental arbitration chambers essentially exercise the functions of judicial organs. They examine and determine most of the disputes between state and public organizations.

take the sound advice of the lawyer that handles the legal business of the establishment they work in. Then the lawyer simply does not visé the wrongly drawn-up contract or other paper, does not go to court or the arbitration chamber with it if the law is not on his side. In such event the administrator or manager who insists his view is right and legal has to bear the responsibility for the document he drew up and must act as his own representative in court.

Such a case occurred in the legal practice of A. I. Perfilyev, who was counsellor to a building trust. Its manager, Malygin, a good business executive, had however this bad trait, that he was too precipitate in treating personnel and would not stand for even the slightest breach of labour discipline.

One day he handed the lawyer an order for the dismissal of a foreman, Sinitsin, who had severely violated the construction time-table.

Under Soviet law a violation of labour discipline, such as non-fulfilment of targets, is undoubtedly ground for discharge, but only if the violation was systematic and if other, less severe disciplinary measures had preceded the dismissal. But the foreman had never been disciplined before. The lawyer therefore refused to O.K. the order for his dismissal, stating his grounds to the management. The manager had disregarded this and discharged the foreman all the same. After the lapse of some time the manager asked the lawyer to call and on his arrival handed him a court summons. The foreman had started a suit against the trust demanding his reinstatement and payment of his salary for the time of his enforced absence from work. But the lawyer refused to go to court for the manager as the defendant had no legal grounds to stand on.

Malygin had to act as his own counsel for defendant. He returned from court quite out of sorts. The People's

Court had not only ordered that Sinitsin be reinstated and given his back-pay but specified that the back-pay be taken not out of the funds of the trust, but out of Malygin's own salary. Such a decision is handed down very rarely but has been recorded before. Malygin appealed to the City Court, which affirmed the judgment of the People's Court and specially decreed that the superior economic body be informed of Malygin's violation of the labour laws.

Legal aid to collective farms is a large item in the programme of work of the Soviet Bar. To illustrate:

In 1955-56 the members of the Leningrad Regional Collegium gave legal advice in more than 500 cases in the collective farms of the region. The lawyers went to court in over 360 cases when that was necessary to defend the farmers' interests, and drew up about 400 legal instruments. Their work was quite effective. For instance, over 59,000 rubles was collected in 1955 for the benefit of collective farms from various organizations by judicial action taken by two lawyers, B. V. Dukalsky and M. G. Kamenev, in Kirishchi District. Lawyer M. I. Korolyov assisted the Communard Collective Farm in Kapshino District of the same region in a suit against several organizations for unauthorized felling of collective-farm timber, for which the court made them pay heavy damages to the collective farm. In Tikhvin District of that region another lawyer, Z. N. Orlova, obtained judgments totalling 44,000 rubles in suits she conducted for collective farms. In the city of Vyborg, V. P. Nechayev fought out a case on behalf of the Bolshevik Collective Farm when that was sued for an excessive amount by a factory for construction work. The court reduced the amount claimed by the factory to the actual value of the work done.

When describing above the organizational structure and functions of the lawyers' collegium we had pointed

out that according to the Regulation its highest body is the general meeting. Here the presidium gives an account of its transactions and the auditing committee reads its report, while the lawyers criticize their activities and settle the organizational questions raised.

It will therefore be of interest to the reader to acquaint himself, for instance, with the transactions of the general meeting of the Moscow City Bar that took place in January 1957. Speaking in his report on the legal services rendered to private citizens, institutions and enterprises, the President of the Presidium of the Moscow Collegium of Lawyers, I. P. Zlobin, stated that the presidium had drawn general conclusions from the experience of the lawyers' work and had discussed the material at lawyers' meetings held in the legal consultation offices and at presidium sessions. He cited a few instances in which lawyers had not discharged their professional duties right. One of them was a case in which P. V. Sokolov was counsel for the defence. He had allowed the hearing in a People's Court to proceed although two subpoenaed material witnesses had failed to appear. Then on appeal for cassation he had argued that their non-appearance had an adverse effect on his client's interests. After examining the case the presidium had held that Sokolov's conduct was contrary to the principles of the legal profession.

Lawyers criticized the presidium for not paying sufficient attention to the improvement of the housing conditions of some members of the Bar. Many of them have joined house-building cooperative societies erecting dwellings and suburban cottages, but the presidium did little to help them along.

Another member of the Bar, N. G. Zak, claimed that at times the distribution of lawyers among the consultation offices was wrong. The more experienced jurists are concentrated in just a few offices, while in the others

they are extremely scarce. The presidium must see to it that the legal personnel is assigned to law offices with greater discernment.

The general meeting of the lawyers went carefully over the budget of the collegium. The report of the presidium had made it plain that the reduction in administrative and other business expenses had enabled the Moscow lawyers to increase their earnings by 850,000-900,000 rubles a year. The debate yielded various suggestions of how further economies could be effected.

The meeting listened to the report of the Auditing Committee which stated that during the two years the committee had verified the financial transactions of the presidium four times and had twice reported on them to lawyers' conferences. Then the results of the checking were announced and it was proposed that there should be a further cut in deductions from the gross income of the collegium, that the fund for the payment of material assistance to lawyers be increased, and that monetary provision be made for re-equipping a special holiday home.

Let us now make a more detailed examination of the executive body of the collegium, its presidium.

The presidiums of the lawyers' collegiums organize legal consultation offices, direct their activities, work out and apply measures to enhance the professional skill of their members, exercise control over their work, see to it that the right fees are charged and carry out decisions to admit or expel members. They examine disciplinary cases arising out of delinquencies lawyers may be guilty of, and dispose of the funds of the collegium (within the limits of the estimate of expenses approved by the general meeting); in particular, they approve, within the limits of the general estimate, the projected expenses and the staffs of the legal consultation offices.

Only the most authoritative and best qualified jurists are elected to presidiums.

Let us introduce a few members of the Presidium of the Moscow Lawyers' Collegium.

Its President, lawyer I. P. Zlobin, has held various responsible positions in various judicial bodies for some thirty years. He has occupied the seat of Chairman of the Presidium since 1952, having been elected for three successive terms. His understanding of people, his simple and cordial manner, his considerate way of approaching every individual, coupled with his professional talent, have won him the prestige he deserves.

Very popular among his colleagues is the Vice President of the collegium, M. I. Grinyov, whose life has been one of outstanding service to his country. At the beginning of the October Revolution he joined the Communist Party and soon volunteered as a private for the Red Army just formed. The Revolution over he attended the Law Department of the Institute of National Economy and after graduating was made a procurator, i.e., a public prosecutor. In 1930 he was sent to the U.S.S.R. Trade Delegation in Britain to act as a legal consultant. Grinyov then returned to Moscow to work in the Ministry of Foreign Affairs. In 1936 he was sent once more to Britain to serve as second secretary of the Soviet Embassy there. On his return he was put in charge of the Anglo-American Section of the All-Union Society for Cultural Relations with Foreign Countries. During World War II Grinyov sat on a military tribunal. After demobilization he became a member of the Moscow Bar. His wealth of practical experience, excellent theoretical training and fine personal traits built up the great prestige he enjoys among the jurists of the capital.

The Vice President of the Presidium of the Moscow City Lawyers' Collegium, M. B. Spektor, heads the Presidium's department dealing with control over the qual-

ity of legal assistance to the public and to factories and institutions. Spektor has considerable organizing ability, previously manifest when he was head of a large legal consultation office in the capital. His reports to the Presidium and to meetings of lawyers dealing with subjects of all kinds invariably arouse great interest and form the basis for the further improvement of the lawyers' work. He enjoys great prestige among his colleagues, who have twice during the last four years, elected him to the Presidium of the Moscow City Lawyers' Collegium.

Another member of long and high standing in the Soviet Bar was S. Y. Sannikov, now a pensioner. During the Civil War he was wounded in battle. In 1921-38 he held many posts in the judicial apparatus. He was a presidium member and president of one of the collegiums of the R.S.F.S.R. Supreme Court and filled the post of member of the commission on individual amnesties under the All-Russian Central Executive Committee of the R.S.F.S.R. During his membership of the Bar he combined the practice of law with the management of a legal consultation office and was elected President of the Presidium of the Moscow City Lawyers' Collegium. In the trials in which he was counsel for defendants charged with crimes unprecedented for their atrocity—in Riga the case against the German war criminals and in Khabarovsk the case against the Japanese war criminals—he worthily discharged his difficult functions in court. The people of Moscow repeatedly sent him as their deputy to the local Soviets.

Throughout Moscow and even beyond its precincts the name of L. V. Sokolova, lawyer and presidium member of the Moscow City Collegium, is well known. She has gained distinction as an advocate by her ability to ferret out from the welter of facts existing in every case that

which is most vital and cogent in building up the defence of her client. She is always on the offensive, so to say, when she speaks in court. She is bold of action in procedural disputes and disputes over the facts of the case at bar.

In the Presidium of the Moscow Collegium the work is distributed as follows: The President exercises general guidance and has charge of the finances. One of his deputies attends to admissions to the Bar, assigns each lawyer to a definite consultation office and prepares the material for the hearing of disciplinary cases. Another deputy checks up on the quality of the professional work and is engaged in generalizing the experience of the most eminent members of the Bar. The remaining members of the presidium take care of the work carried on with young lawyers and probationers, look after the social work of Bar members, see that the right fees are charged, generalize the work of the meetings in the consultation offices and direct the work of the two departments: criminal and civil.

Of the thirteen presidium members elected by the Moscow Bar only three—the President and his two deputies—receive a salary. The participation in the work of the presidium by the other ten is considered social work.

Much of the presidium's work concerns measures to improve the qualifications of lawyers. Different methods are pursued in different collegiums. The Leningrad City Collegium, for instance, believes the best results are obtained mainly by generalizing and spreading the experience of the best consultation offices and the most qualified lawyers. Thus, in 1956 fifty eminent lawyers addressed the collegium on points of special interest in their legal practice. The Leningraders assist the neighbouring Novgorod Collegium by sending them their lecturers.

A big task which the presidiums of various collegiums have set themselves is that of codification. The codifier A. D. Luzhek, a Moscow jurist with vast experience, is assisted in this work by the most socially minded of the lawyers. Experts in the various branches of the law—copyright, labour, pension, finance, land, criminal, international, private law—are on duty daily in the codification section, and the time they are available is known to every legal consultation office. This section is therefore a spot where information on any legal question can always be obtained, if need be by telephoning right from court. The text of any law, ordinance or other legislative enactment can be obtained from Luzhek on any issue. A lawyer may be in immediate need of the exact text of the decree of the Presidium of the Supreme Soviet of the U.S.S.R. concerning petty larceny. Luzhek is the man to apply to. And he never confines his aid to supplying merely texts. For instance, the decree in question gave rise to several decisions of fundamental importance by the higher courts. They give the lawyer an insight into how the concept "petty larceny" is to be defined. Lawyers are therefore furnished pertinent material that indicates what the actual judicial interpretation of a given term is. He is also informed of the literature on the subject. Should any controversial point have been discussed at a session of the criminal section, the lawyer will be afforded an opportunity to consult the verbatim report of the session.

The codification bureau gets all the legal literature that is published, as well as normative material from the Ministry of Justice and the Supreme Court. The bureau keeps a file of lawyers' speeches on the most interesting and fundamental subjects.

The bureau also keeps the consultation offices informed of all new legal literature in the region and of all new legal enactments.

The sections dealing with the two separate branches of the law—criminal and civil—are greatly instrumental in raising the professional standard of lawyers. Around each section are grouped those who specialize in the particular line of work. Young lawyers and probationers are also enlisted in these studies.

In the Moscow Collegium the civil section exhibits very great activity and its methods of work are highly interesting. For more than twenty-five years it has been under the direction of S. L. Gerson, one of Moscow's most outstanding specialists in civil law.

Many government departments and agencies are very anxious to obtain the official opinion of the section on various bills and normative acts while in the stage of preparation. Thus, the section thoroughly discussed the draft of Fundamental Legislation on Marriage. In 1956-58, when a new R.S.F.S.R. civil code and a code on civil procedure were being drawn up, the members of the section actively participated in the proceedings of the pertinent subcommittees of the committees on legislative proposals of the Supreme Soviet of the U.S.S.R. and that of the R.S.F.S.R.

Ministries and other administrative agencies apply to the civil section for its evaluation of drafts of particular normative acts. The Ministry of the Municipal Economy of the R.S.F.S.R., for instance, submitted to the section for its consideration the draft instructions concerning the renting of living quarters. Again, in connection with the change in the procedure of examining claims to inventions and rationalization proposals, the head of the law department of the State Technical Commission of the U.S.S.R. (now the State Scientific and Technical Committee of the Council of Ministers of the U.S.S.R.) expressed a desire to acquaint the members of the civil section with the multitude of legal problems arising out

of these changes. His purpose was to ascertain the judgment of specialists.

Law schools send in authors' summaries of their theses on civil law and civil procedure, requesting a statement of opinion.

The section assists not only Moscow's legal consultation offices in their practical work but also those in remote districts.

From Gelendzhik, a town in the Soviet South, a group of lawyers mailed a series of legal questions to the section. On some of them no concurrence of opinion was achieved in Moscow. In that case there was attached to the section's reply a copy of the minutes of the meeting at which the Gelendzhik letter had been discussed in order to give the inquirers an idea of the different points of view expressed on the questions put.

We have before us some illustrative examples of legal inquiries addressed to the section by consultation offices and individual lawyers.

S. N. Zaslavsky asks for assistance in determining the correct legal stand to take in the following case: Kozlova, a share-holder in a house-builders' cooperative, died. She had paid in a definite amount. The question arose: who is entitled to succeed to the membership of the cooperative: Kozlova's heiress, her minor daughter Yelena, who continues to live in the room, or her guardian?

The civil section's reply declared: according to the Rules of House-Building Cooperatives only persons who have attained the age of eighteen may be members of it, but this rule cannot be stretched to include a case where cooperative rights are inherited from an intestate. This follows from the fact that according to the Rules the share of a deceased cooperative member becomes the property of his heirs, and if they lived with the intestate they also acquire the right to occupy the premises. As a

matter of fact, the right to the use of the flat passes to the heirs only if they join the cooperative.

The section reached the conclusion that the question of the right of the minor Yelena to become a member of the house-building cooperative should be decided not by the norms in the cooperative rules, but according to the norms of the Civil Code. The age of the heiress is no ground for limiting her capacity to inherit. It limits only her capacity to act, but that is remedied by the institution of guardianship. In the interests of his ward the guardian must therefore apply to the management of the cooperative to admit Yelena as a member, and this application the management is obliged to accept. Of course, until she reaches her majority her rights have to be safeguarded and her duties performed by the guardian.

That is how the civil section works.

The criminal specialists of the Moscow City Collegium of Lawyers also carry on extensive work in their section. They function in close contact with the most eminent jurists, whom they invite to joint discussions of legal problems. Particularly firm connections have been established with the law faculty of the Lomonosov State University in Moscow and the Law Institute of the U.S.S.R. Academy of Sciences.

The criminal section hears and discusses reports and communications on various problems of criminal law and procedure. In 1956 it had up for discussion Professor M. S. Strogovich's book *Material Evidence and the Evaluation of Proof in Soviet Criminal Procedure.* Papers were read by lawyer M. A. Otsep ("The Tasks of Defence Counsel in the Light of the Decisions of the Twentieth Congress of the C.P.S.U."); by lawyer M. B. Spektor ("Methods of Court Investigation"); Professor M. S. Strogovich ("Fundamental Defence Problems in Soviet Criminal Procedure") and others.

This section analyses intricate and highly controver-

sial problems and special points arising in everyday legal practice; here also the court experience of defence counsel in particular categories of cases is generalized.

Moscow criminal lawyers are frequently enlisted in discussions of drafts of important legal enactments.

The work of the section set up to discuss the Draft Fundamental Principles of Criminal Legislation, Procedure and Judicature, published in summer 1958, and also the draft codes of criminal law and procedure of the R.S.F.S.R. should also be mentioned. Leading academic lawyers and representatives of the Legal Commission of the Council of Ministers of the U.S.S.R. took part in these discussions. All constructive proposals, amendments and additions put forward during the discussion were summed up and submitted to the legislative bodies.

Rausov, Yudin, Spektor and other members of the Criminal Law Section played an important part in the discussions of the sub-committee of the Legislative Proposals Commission of the Supreme Soviet of the U.S.S.R. on the Draft Fundamental Principles of Criminal Legislation, Procedure and Judicature. The tribune of the criminal section is also offered to the leading workers of the U.S.S.R. Supreme Court and the Procurator's Office. These meetings serve the purpose of exchanging information and opinions.

At one of the section meetings held in 1957 the Vice President of the U.S.S.R. Supreme Court, L. N. Smirnov, read a paper "The Supreme Court of the U.S.S.R. in the Further Struggle to Consolidate Socialist Legality." It dealt with the tasks confronting the court as a result of the adoption of the new ordinance governing it and pointed out the new features it introduced into the practice of law.

The art of oratory as practised in court is of major importance. A lawyer who, besides being learned in the

law, is also a talented orator, will usually not confine himself to a bare defence of his client but with keen glance will penetrate the forest of facts and ascertain what judgment will best serve the public weal. He will lucidly expose the roots that engender crime, lay bare the social phenomena whose effacement would effectively help to combat it.

Soviet lawyers work strenuously on the perfection of their oratorical accomplishments. To that end they have their speeches taken down in shorthand or mechanically recorded, have them reviewed and then discussed. At a recent Moscow trial of a whole group of accused, a stenographic record was made of the speeches of eleven lawyers, and afterwards, at an enlarged session of the presidium, they were criticized in the presence of more than a hundred lawyers. The best speeches held at the various collegiums are subsequently selected and published. This was done, for instance, in 1956 and 1957 by the Moscow City Collegium. During a discussion of the merits of the speeches composing one of these selections, when forensic eloquence was on the agenda, lawyer N. M. Flyatte commented:

"When a certain antique sculptor was asked once how he hewed such marvellous, inspired works of art out of cold stone he answered that he takes a chunk of it and chisels away all that is unnecessary, leaving only what is essential. That is how speeches in court should be got up. All that is wanted, but nothing extra.... This refers to the content of the speech, its form and the tone in which it is uttered.

"Our speeches at times contain superfluous ideas and words, and there are times when our voices assume a tone far too high-pitched for the occasion. These are all weeds which a real master of elocution must pull up.

"I believe we sometimes are in error in what we do to improve our speeches. After all, in literature and art

a piece of work is assessed not only by its content. Its form is an equally necessary criterion of its artistic value. Unfortunately, some of our lawyers are still too inattentive to the problem of effective speech, of achieving oratorical distinction. Our symposium is also somewhat afflicted with this inadequacy....

"There can be absolutely no doubt that pre-revolutionary speeches in court, if read with critical discernment, still possess educative value in the art of oratory.

"It is, however, my opinion that comrades fall into error if they mechanically compare our collection of speeches with pre-revolutionary ones. They forget that everything has changed since then—the epoch, the people, the outlook, the judges, the cases.

"It is generally said that the style of delivery betrays the man. I cannot fully subscribe to this. The style betrays rather the epoch and quite naturally the style of a lawyer's speech nowadays cannot be a reproduction of the pre-revolutionary style....

"In pre-revolutionary times lawyers addressed themselves to juries among whom could be found representatives of the liberal petty-bourgeoisie and of the intelligentsia, with the sentimentality characteristic of these segments of society. The pleas made at that time by counsel on behalf of their clients were attuned to the ears of that kind of people.

"Our words are meant for people of an entirely different stamp. They are people who believe in facts and right, to whom the state and society are one whole, to whom morality and law are not at variance but inseparably connected.

"The causes pleaded have also largely changed. Many disputes dealing with matters of public economy now fill the court calendar. Before the Revolution that species of lawsuit was almost non-existent in Russia.

"That is why emotional fervour has given place to a

fervour for facts, a fervour for calm deliberation, for careful, logical investigation. With us a splendid defence implies primarily an unbreakable logical chain of proofs that demolish the charges in the indictment when the lawyer presents his conclusions in his final plea to the court.

"We are opposed to the 'spontaneous' eloquence widely practised in pre-revolutionary days. According to my lights our speeches are to be hammered out in the process of preparing to say best what really must be said. Chaikovsky, one of the most inspiring creators of music, said: 'Inspiration is a guest that does not like to visit the lazy!'

"... All the same I assume that our speech—and this is one of its chief merits—should not be devoid of passion. It should be saturated with emotion, be offensive rather than defensive, be rich in figures of speech, yet the figures should not be merely ornamental but intimately connected with the whole pattern of the speech; they should be one of its mainstays.

"Finally, with regard to the emotional aspect, I must say that with us appeals to pity, to that faded style of eloquence, are utterly out of place and must be discontinued."

Lawyer Y. Kh. Grilikhes took exception to Flyatte's remarks.

"To begin with, on the main question, the style of speeches to be delivered in Soviet courts," Grilikhes claimed, "my colleague Flyatte asserts that our style should express a fervour for facts and not emotional fervour. I believe that is an erroneous thesis and consider that in our country a fervour for facts and emotional fervour have an equal right to exist. In cases where the lawyer's principal task is to analyse facts and proofs he must work with the scalpel of logic, he needs mental acuity. But when the circumstances and

facts that incriminate the accused are clear and admitted by him, when unimpeachable proof collected by the prosecution leaves no doubt as to his guilt, where does fervour for facts on the part of the lawyer come in?

"I shall quote some examples from the collection of speeches under discussion.

"Let me take the speech by the late S. K. Kaznacheyev in defence of Prakhov--from beginning to end it adheres to the style of fervidly emphasizing facts. By a subtle analysis of figures, which he intones like music, he shows convincingly that the charge against Prakhov cannot be sustained, and he explodes that charge.

"And now another speech, by lawyer K. D. Chizhov, in defence of one Zapadinsky. In this case all facts set forth in the indictment have been established as true beyond dispute. His guilt was obvious. At the preliminary investigation and in court the accused pursued a policy of self-exposure and went further in his testimony than was possible for the investigating authorities.

"In this case lawyer Chizhov made it his business to show the significance of self-exposures of accused persons in criminal cases, particularly in the given case, and to elucidate the causes that led to Zapadinsky's self-exposure. Fervour for facts was evidently not applicable here. It was therefore quite in the nature of things that the style of the defending advocate's speech, one of the most brilliant addresses reproduced in the collection, was in the main emotional.

"These illustrations indicate that fervour for facts must not be contrasted with emotional fervour.

"In my opinion, the question of style and epoch has likewise been put incorrectly by N. M. Flyatte. One cannot lay down the bare thesis 'our style is epochal' and be satisfied with that. After all, every individual is entitled to a definite place in an epoch. And every striking

individual contributes his mite to the treasure-store of the epoch. This makes it our duty to speak of the specific methods employed by the various orators comprised in the collection we are discussing. No one will dispute that we reflect the world outlook of our epoch, but that is not enough to settle the question of the style of speech to be employed by the lawyers of our time."

The presidiums of the lawyers' collegiums devote much time to work with probationers. Every newly-accepted probationer is attached to a mentor selected from the more experienced lawyers. In big collegiums, where the highly qualified jurists usually specialize, the probationers, in order to obtain all-round experience, first work under the direction and supervision of a criminal lawyer and then of a civil lawyer. They help their patron (as the mentor is commonly called) to prepare cases, attend trials where their patron acts as defence counsel and also go to the consultation offices when their patron receives clients. When in the opinion of his mentor a probationer has received sufficient training, the latter begins to handle minor cases under the guidance of the former.

In a number of collegiums the probation ends with the probationer reading a paper at a theoretical conference on some legal problem. If the probationer's independent conduct of cases and his paper are recognized as satisfactory his admission to the Bar is moved in the presidium. If the presidium is of the opinion that the probationer has not been sufficiently trained the probationary period may be prolonged.

During that whole period the probationer receives a fixed salary paid out of a special fund of the presidium.

Once his probationary period is behind him the young lawyer practises law independently. But he must still be helped along before he becomes a highly qualified

specialist. A variety of measures are taken in the collegium to achieve this purpose.

Thus, for instance, the presidium of the Leningrad Regional Collegium of Lawyers has organized a seminar for raising the standards of the profession. It gives a five-day course on the subject every year. The lawyers attending discontinue their regular work but are paid their average earnings by the presidium. The teaching staff for this course is made up of experienced lawyers and of professors and teachers at Leningrad University. The curriculum is diversified and closely follows the needs of the legal practitioners. The Moscow City Collegium maintains a similar seminar.

Theoretical conferences of probationers and young lawyers are also an established practice. Papers are read by the participants on such questions of law as implication in crime under Soviet criminal law, legal defence of labour rights, Soviet cassation, judicial practice in cases of stealing socialist property, etc.

Lawyers of adequate practical experience also study at seminars. The discussion of papers read there entails intricate questions of law and controversial issues, which makes possible, on the one hand, a more profound study of the problems involved and, on the other, the elaboration of a consensus of opinion—a very important matter in the practice of law.

There is also a sort of collaboration with jurists engaged in scientific work, such as teachers and professors of law faculties. At university department sittings lawyers read papers on interesting questions of law arising in their own practice. The professors and teachers in their turn acquaint the lawyers with the achievements of Soviet jurisprudence.

Exchange of practical experience is widely spread between lawyers' collegiums. It is effected through various mutual information systems, through articles by

lawyers in the general press and in special law publications and in the form of personally acquainting representatives of one collegium with the transactions of another. Thus in 1956 the Moscow City Collegium commissioned its vice president to study in Leningrad the work of the local collegium. This exchange of experiences is undoubtedly conducive to an improvement in the work of the legal profession. In this field the collegiums are assisted by the lawyers' sections in the Republican Ministries of Justice which have at their disposal much material dealing with the activities of lawyers' collegiums in the particular Republic.

The lawyers' collegiums in the Soviet Union maintain contact, personal and by correspondence, with their colleagues abroad. In the course of the last two years Soviet lawyers met delegations of jurists from China, Bulgaria, Rumania, Poland, Britain, U.S.A., India, Greece, Japan, Denmark and Finland, among others.

In speaking of the organizational structure and the principles actuating the Soviet Bar, mention should be made of the disciplinary measures its members are liable to. The kind of disciplinary measures the presidium may take and appeals from them have already been dealt with. There remain for discussion the principal rules governing this practice.

Soviet lawyers, as a rule, discharge their professional duties with credit. Nevertheless, now and then collegium presidiums encounter instances of negligence on the part of defence counsel, as when a lawyer does not have recourse to all avenues open to him to safeguard the interests of his client or when his action reflects on his professional integrity. Any reprehensible demeanour is sure to be sharply condemned by the Bar, collectively and individually.

We have already spoken of the appointment of defence counsel by court. Many years of experience attest the

fact that assigned lawyers handle these cases as carefully and study them as thoroughly as if the client had paid the regular fee. But every once in a while an appointed lawyer is delinquent in his treatment of an assigned case.

We have before us the record of the disciplinary action taken against lawyer M. N. Maslyakov. He had defended a certain Semyonova charged with larceny. After her conviction Maslyakov promised her to appeal the case to the court of cassation, but failed to do so. His client, in the belief that her lawyer would draw up the necessary paper, did nothing herself, as a result of which the sentence which would have been suspended during the appeal, went into effect. When called to account by the presidium counsel claimed he did not apply to a court of cassation because she had no grounds for such an appeal, being an "alcoholic, a person without any definite occupation, and of no value to society." The presidium dissented, holding that his non-action constituted a serious offence for which he must be disciplined. Taking into account, however, that the offender had been in the collegium but a very short time and had not yet acquired sufficient professional experience, the presidium confined itself to a reproof. Simultaneously an experienced lawyer was assigned the task of petitioning the upper court to allow the cassational complaint to be filed although the time had expired and to represent Semyonova in the cassational court.

Not only the collegium presidiums but the courts themselves see to it that lawyers discharge their functions conscientiously and do not exceed the authority the law vests them with.

For instance, there is a law which provides that in all serious crimes, crimes punishable by deprivation of liberty, the appearance of the accused in court is essential. But in cases where the accused has definitely

waived his right to appear personally, or where he is deliberately concealing his whereabouts from the court, he may be tried in his absence. A violation of this rule inevitably entails the annulment of the sentence.

In the case of Stepanov and Romanychev, sentenced for theft by the People's Court of Pushkino District, Moscow Region, the trial took place in the absence of the accused, who were held under arrest in the same locality where the case was being heard. From the record of the sitting it appears that the judge saw fit to hear the case *in absentia* on the sole ground that the defence lawyer, I. I. Gushchin, did not object. The Supreme Court of the U.S.S.R. annulled the sentence, holding that the appearance of the defendants in court was essential in that case inasmuch as a thief was liable to be punished by deprivation of liberty. The lawyer's consent to the trial of the clients in their absence was an act in excess of his legal authority.

When a lawyer draws up a legal document, particularly one involving such great responsibility as an appellate complaint to a court of cassation or to a court in its supervisory capacity, he must make a very thorough study of all the material in the case. This is a hard and fast rule, because no lawyer can form an independent opinion of the cumulative evidence or of whether the qualification of the criminal acts testified to is correct unless he has personally and in detail gone carefully over the whole material presented.

Here is an instance where this rigid rule was violated. The Presidium of the Moscow City Lawyers' Collegium received a letter from the Vice President of the Supreme Court of the U.S.S.R. stating that the Supreme Court had heard in its supervisory capacity the complaint of one Milyutin drawn up by lawyer F. S. Sharikov and had established that certain allegations in the petition were distortions of facts. The ensuing investiga-

tion disclosed that Sharikov had not acquainted himself with the case but had asked another lawyer to do so. The latter had made appropriate excerpts for Sharikov and had told him he saw no grounds for appealing the sentence. Sharikov nevertheless petitioned the Supreme Court for a supervisory review of the case. Personally unacquainted with the facts of the case, the lawyer included statements in his petition which were in contradiction to the record of the evidence. The collegium presidium drew the right conclusion from this test case by holding that the practice of one lawyer acquainting himself with the facts of a case and another lawyer, on the basis of excerpts made by the first, appealing the case to a court of cassation or asking for its review by way of supervision in a competent court and seeing the case through the higher court is impermissible and reprehensible. But as the lawyer admitted his fault the presidium went no further than reprimanding him.

The lawyers' collegiums will invariably react sharply to any violation by a lawyer of any moral or ethical norm of Soviet society. No act in derogation of the calling of a Soviet lawyer is allowed to pass without a proper inquiry. This is a very effective means of maintaining the authority of the Soviet Bar on a very high level.

At the same time the lawyers as a body and the collegium presidiums will always back a colleague who, because of adherence to principle or courage displayed in defence of a client is subjected to unjust attack by either judge or procurator.

If it is correct to say that a lawyer, when discharging his professional duties in court, should invariably be polite and tactful, then it is likewise correct to say that the court and the procurator should be no less so, giving not the slightest ground for complaint to counsel for the defendant.

The practice of the collegium presidiums to examine disciplinary cases encourages lawyers to take a firm stand on what they consider to be the law, to adhere staunchly to what they deem correct in questions of principle with regard to their clients' legal rights.

In exemplification we cite the disciplinary case of N. L. Andreyev and A. G. Chervonny, two Moscow advocates.

The presidium of the Moscow Collegium received once a special finding of the Supreme Court of the R.S.F.S.R. attached to which was a written request to the presidium by the procurator who had prosecuted the case in question—a complicated business affair—when it was heard on cassation in that Supreme Court. The procurator asked for the punishment of two defence lawyers, Andreyev and Chervonny who, he asserted, had been unwarrantedly severe in their criticism of the Procurator's Office that had charge of the investigation of the case.

After studying all the circumstances the presidium established that the Supreme Court in its finding considered the sentence passed by the Moscow City Court erroneous and went to great lengths in criticizing the deficiencies exhibited not only by the court of first instance but also during the preliminary investigation. As a result the City Court sentence was annulled. The presidium pointed out that in such circumstances it was perfectly natural that the defence, namely, the lawyers Andreyev and Chervonny, who considered the sentence erroneous as far as their clients were concerned, took one position while the representative of the prosecution, who supported the sentence, took the opposite position. (It should be stated here that in the end the case against Andreyev's client was dropped for lack of sufficient evidence.) In such a situation, the presidium's decision said, sharp disputes between the parties are natural and

to be expected, and conform to the principle that trials are to be contested by the parties. The presidium held further that the procurator in question had no right to object to criticism levelled against him and the investigator if it was based on material in evidence in the case. It was of the opinion that this testified to an underrating by the procurator of the significance of the defence and its functions. The presidium, therefore, declined to impose disciplinary measures on the two lawyers and decided to inform the Procurator of the R.S.F.S.R. of its opinion.

This trenchant, highly principled formulation of the question orients lawyers towards a determined discharge of their functions as defence counsel.

It should be noted that judicial bodies pay great attention to representations made to them by collegiums about derogatory treatment of lawyers. For instance, L. A. Gromov, President of the Moscow City Court, on receipt of a communication from the presidium that People's Judge Trusova of Timiryazev District had acted tactlessly toward lawyers, took cognizance of the case and the delinquent judge was punished by a disciplinary court.

Some members of the Bar successfully combine their legal practice with scientific, pedagogic or literary activity. Several lawyers have withdrawn from membership of their collegium and are devoting themselves to scientific work without however severing all connection with the Bar.

Let us cite as an instance the case of B. S. Antimonov, Doctor of Law, professor of the Plekhanov Institute of National Economy in Moscow and head of the civil law department of the All-Union Institute of Jurisprudence.

After finishing the Moscow University Faculty of Law in 1923 he entered the Moscow Lawyers' Collegium, where he specialized in civil law cases. No sooner had

he been admitted to the Bar than he began to engage in scientific work, being interrupted in this only by service at the front during World War II. In 1945 the degree of Candidate of Law was conferred upon him for his work *Contributory Negligence in Torts.* He combined scientific work with legal practice in Moscow. The presidium of the collegium appointed him deputy chief of the civil section. The following of his works are of great scientific value: *The Concept and Significance of Causal Connection in Civil Law* and, on civil procedure, *The Lawyer in the Trial of Civil Cases* and *Cassation and Review of Decisions in Civil Cases.* S. L. Gerson was a co-author of the last-named works. Antimonov's *Civil Liability for Damage Caused by High Danger Zones* earned him the title of Doctor of Law in 1950.

Antimonov is an authority on the law of inheritance. In 1946 appeared *Inheritance and the Office of Notary Public*, which he wrote with lawyer S. L. Gerson and docent B. G. Shlifer as co-authors. He elucidated the subject further in his book *Soviet Law of Inheritance* (1955), written together with Professor K. A. Grave. Even when a professor engaged in scientific and literary activity, Antimonov continued to work selflessly in the full sense of the word as a member of the Moscow Bar. He received clients at the legal consultation office as an ordinary lawyer, believing that such daily practice helped him in his scientific work. Although he withdrew subsequently from membership of the Bar, he remains to this day the staunch friend of the practising lawyer. Many still consult him on questions concerning civil and procedural law.

Among the most eminent Soviet legal authorities must be included B. S. Nikiforov, Doctor of Law, chief of the criminal law department of the All-Union Institute of Jurisprudence, the author of a number of scientific works, who had also practised law in the past.

Since the Soviet Bar comprises numerous capable and highly trained jurists, members of it are promoted time and again to high office in the government apparatus. Thus, for instance, the former advocate and President of the Moscow City Lawyers' Collegium V. N. Sukhodrev was advanced to the post of Deputy Minister of Justice of the U.S.S.R., and now, after the abolition of that ministry, he is Vice Chairman of the Juridical Commission under the Council of Ministers of the U.S.S.R. A. S. Saminsky, well known in Leningrad before the Second World War as a legal practitioner, now heads a section in the law department under the Council of Ministers of the U.S.S.R.

The social work engaged in by Soviet lawyers is very extensive and diversified. First mention must be made here of the unstinted legal aid given gratis to the general public outside the consultation office (not counting appointments as defence counsel by court, of which we have already spoken). This additional aid is rendered at special desks in the reception rooms of Executive Committees of local Soviets, in large factories and mills, collective farms and maintenance and repair stations, with which lawyers' collegiums and individual lawyers maintain relations. During the reception hours the lawyers answer legal questions put to them.

When any undertaking of state or social importance is set on foot in the Soviet Union, lawyers always participate.

It is a matter of record that in 1956 a new pension law was passed in the Soviet Union which considerably increased the material security of its beneficiaries. The execution of this law required of the state agencies, particularly the agencies of social security, a vast amount of painstaking work. The difficulty of this job was further increased by the very little time allowed for its

performance. In the calculation of the new and higher pensions, as is always the case in carrying out a complicated and extensive public measure, a multitude of legal questions arose. Here the Soviet Bar showed their mettle. On their initiative special consultation centres were organized for the general public and individual consultations were held at the industrial enterprises and house managements.

The extensive popularization of Soviet laws as a means of inculcating the moral principles of the new, socialist society in the minds of the working people, as well as the consolidation of socialist legality and crime prevention, are an obligation of honour, assigned to the Soviet Bar. To cope with this task numerous lectures are arranged on a variety of appropriate topics, principally criminal, civil, labour, family and collective-farm law, on the structure of the Soviet state, the Soviet electoral system, communist morality, etc. Question-and-answer evenings are held at factories, offices and collective farms where anyone may raise any question of law he likes. Lectures are also read by lawyers at the solicitation of the All-Union Society for the Dissemination of Political and Scientific Knowledge and its branches. In fact, many lawyers belong to that society.

May we be permitted to cite a few figures to convey to the reader some idea of the vastness of the scheme of lectures delivered by Soviet lawyers. In 1956, 62,000 lectures were read in the Russian Federation alone. In 1957-58 Moscow's lawyers held about 7,000 lectures, Leningrad's about 3,000. Fifty-three per cent of Moscow Bar members are regular lecturers.

As was stated above, Soviet courts when sitting consist of a president (judge of a People's Court or of a City, Regional or Supreme Court) and two people's assessors. They are all elective. By far not all people's assessors have a legal education or practical court experi-

ence. Yet since with regard to rights the law places them on a par with the president of the court, they have to take an active part in the examination of cases and the pronouncement of sentences and judgments. Hence newly-elected people's assessors usually attend a series of special lectures where they become acquainted with the fundamental Soviet laws and the method of hearing criminal and civil cases. The judges and procurators conducting these studies are joined in this work by members of the Bar.

As has become evident from the above exposition the Soviet lawyer works under conditions that ensure the free and independent discharge of his professional duty. The law and the organs of Soviet justice guard him against unlawful interference that might prevent him from doing so or infringe upon his rights.

The Soviet Bar can boast many a highly talented lawyer distinguished for his exemplary conception of his civic and judicial duties, of what he owes to the cause of progress and justice.

Quite a few of them started practising law before the Revolution, having won renown for their progressive speeches at political trials.

N. K. Muravyov, now dead, an outstanding senior member of the Soviet Bar, was known far and wide in pre-revolutionary Russia as a fearless defender of political prisoners. He was a powerful orator whose perseverance was hard to match. At the beginning of the century he belonged to a group of political defenders which was under the direction of "The Five," a group representing the élite of the Bar. He was one of "The Five." When a question of professional ethics was mooted, when the most dignified tactics of defence had to be chosen, his was the final say. In the political cases he defended he did not confine himself to questions of law, such as criticizing the preliminary investigation or

analysing the evidence, but whenever necessary he raised political issues, launched direct attacks against the tsarist government. Time and again the presiding judge would order him to keep silent and he often incurred the risk of administrative repression.

"His activity as counsel for the defence in political trials, which exacted much labour and nervous energy, and often entailed danger to boot, was wholly unselfish. More, Nikolai Konstantinovich Muravyov, and also the other members of the group of political defenders, did not stint the money necessary to defray the expenses of travelling all over Russia to defend those accused of political offences. In many cases he helped his clients financially, formed a pool with other comrades to give bail for them," wrote N. N. Polyansky, professor of the Moscow University, a merited scientist and distinguished lawyer, in an appreciation of N. K. Muravyov.

It would be difficult to enumerate all the political trials in which Muravyov defended the accused.

Having done its best to implant race discrimination and national strife the tsarist government staged the provocative Multan case against a group of Udmurts (a small nationality before called Votyaks) who inhabited the village of Stary Multan. The charge of sacrificing human beings to their heathen gods was obviously trumped up. A famous progressive Russian writer, V. G. Korolenko, vehemently attacked the judicial proceedings in the press, while Muravyov espoused the cause of the accused in court.

Muravyov was counsel for the defence when the participants in the well-known 1902 workers' demonstration in Sormovo were tried. The list of lawyers who had manfully raised their voices in defence of Lt. Schmidt and other mutineers on the cruiser *Ochakov* in 1905 included the name of N. K. Muravyov. Again it was he

who defended the Moscow Krasnaya Presnya insurgents in the first Russian revolution of 1905-07. And in many other political cases—an attempt on the life of the Tsar (Lt. Nikitenko et al.), the assassination of the governor of Tver (Sleptsov), the charge made in 1909 against the Moscow Committee of the R.S.D.L.P. that it was engaged in underground revolutionary activity, the charge made in 1915 against the Bolshevik deputies to the State Duma—the intrepid Muravyov will be found to have conducted the defence, contributing to it the full weight of his authority and knowledge.

The great service which his social activity rendered to the people brought him into intimate association with many great people of his day. Lev Tolstoi made him his executor. It was he, Muravyov, who drew up the legal provisions in Tolstoi's will bequeathing all his works as a gift to the people.

After the October Socialist Revolution Muravyov was prominently active in the Moscow City Lawyers' Collegium.

Other participants in Russia's first revolution (1905-1907), A. Y. Kalop, L. F. Dobrynin and M. I. Bogdanov, all awarded Orders of the Soviet Union for their meritorious services and their social and political activity, are still functioning members of the Bar.

Among the lawyers of the capital whose court-work expressed most clearly and brilliantly the new principles and methods of criminal defence, mention must be made first and foremost of S. K. Kaznacheyev. His speeches in court, many of which have been published, can serve as models of Soviet forensic oratory. He combined profound knowledge of the law with great experience in court and broad general culture. A gifted speaker, he made excellent use of the vast store of knowledge at his command.

He has been a member of the Moscow City Collegium since 1922, and since 1933, of its presidium.

In August 1946 the Military Collegium of the Supreme Court of the U.S.S.R. had before it ataman Semyonov, the bitter enemy of Soviet power, who during the Civil War headed the White-Guard regime in the Transbaikal region and subsequently engaged in espionage and sabotage against the U.S.S.R. He was defended by Kaznacheyev.

The speech Kaznacheyev delivered in this case illustrates how a talented advocate can reveal to the court the psychology of his client, who is severely incriminated by a concatenation of proofs, and make this psychology serve to explain the crimes committed and the circumstances in extenuation of his guilt.

Kaznacheyev was not only a brilliant advocate but an indefatigable champion of social advancement.

We shall now pass on to N. V. Kommodov, a splendid representative of the Soviet Bar, distinguished for his ability to make a deep analysis of the most intricate situations and to find a sound legal basis for the defence, no matter how desperate things look. These high attributes of his legal mind he brilliantly combined with forensic eloquence.

He was a prominent progressive lawyer of the prerevolutionary period and one of the first to attain eminence in Soviet times.

During the first period of his career as a lawyer, before the October Revolution, Kommodov was an admirer of Plevako and Andreyevsky, who then enthralled the hearts and minds of the legal fraternity. He employed their artistic method of defence in criminal cases, considering defence to be primarily an art. In tribute to this view N. V. Kommodov made use, in his addresses to the court, of the figures and turns of speech employed by prominent Russian writers and

poets, especially Nekrasov. Further on in life he came to realize that the method of artistry and literature was obviously inadequate to reach the ends of justice. Kommodov sharply veered about from speeches of the type of literary analysis to those of the type of scientific study. The scientific method of criminal defence became the determining element of his make-up as a lawyer. This of course does not imply that he consigned the literary and artistic strain in his methods to oblivion. All these elements must coexist and supplement each other, was Kommodov's considered opinion, but most important in defending a case is a thorough study of it, a serious scientific approach to the evaluation of each piece of evidence. This was the method he employed, for instance, in the Shakhty case,* the Dr. Wulfson murder case, in which Semenchuk and Startsev, two arcticians, were accused of having perpetrated the crime out of revenge while they were all wintering in the Extreme North, and in other cases in which he called upon scientists to give all manner of expert testimony and submitted it as cogent proof.

In his addresses to young lawyers he said time and again that workers in the judicial system, including lawyers, "must be equipped with an up-to-date knowledge of such sciences as psychology, physiology, philosophy, jurisprudence and criminology."

About his profession Kommodov wrote: "It would be pretentious to refer to it as a mission, but to describe it as a penchant is permissible.... I always had a penchant for the practice of the law. What enticed me to en-

* *Shakhty case*: The criminal proceedings held in Moscow in 1928 against a counter-revolutionary band, which had been organized early in the twenties by bourgeois specialists in the Shakhty region of the Donets Basin. Its object was to commit sabotage in the Soviet coal industry.

ter this profession? It seemed to me that even in the commission of the most heinous offence some misfortune in the life of him who perpetrated it had much to do with the crime. To understand, correctly evaluate and be able to demonstrate this in each particular case means to furnish an objective, correct criterium for judgment."

Great sympathy for the man whom the tragedy of life has brought to the criminal's dock, a sincere desire to understand him and help him to the best of his ability under the circumstances—these were the traits that marked N. V. Kommodov.

His style of speaking was simple and lucid, his tone sincere, convincing, thoughtful, his flow of words calm, without florid or trenchant expressions. His addresses betrayed a thorough and direct knowledge of life and people, there was nothing bombastic, abstract or histrionic about them. They always were full of the human element, of the worries of mankind and of the practically useful in the case at bar. Such was Kommodov's manner of delivery.

His contemporaries comprehended and gave due weight to his mental capacity and ideas of justice. T. L. Shchepkina-Kupernik, a well-known authoress, dramatist and translator, and for many years the friend of Kommodov, once gave him as a present a new Russian translation of *King Lear* that she had made. It bore the following inscription: "Dear Nikolai Vasilyevich, I sincerely believe that this whole nasty business would not have happened if you had been the jurisconsult at King Lear's court."

It would take many, many pages to enumerate the cases Kommodov handled in the thirty-six years of his legal practice, thirty of which were under Soviet rule. There exist many tomes of *causes-célèbres* in which he acted as counsel for defence of the chief accused.

In 1944, when N. V. Kommodov celebrated his sixtieth birthday, the Presidium of the Moscow City Collegium of Lawyers sent him the following letter of congratulation:

"Dear Nikolai Vasilyevich,

"Our entire country knows you as an eminent jurist and public figure. You have gained this prestige by your superb and exceedingly useful work in the practice of the law. Your great erudition has entitled you to occupy the highest place among members of the Soviet Bar. Generations of young lawyers will get their training from your outstanding forensic speeches."

For his fruitful activity as a lawyer Kommodov was awarded the Badge of Honour.

One must not fail to mention among the prominent members of the Soviet Bar the name of M. A. Otsep, who died in 1958. A man of great culture, he first studied at Lausanne University in Switzerland and subsequently graduated from the Law Department of Moscow University. Before the Revolution he was a barrister's assistant, in which capacity he acted for the defence in several political trials, including that of the Tolstoyans who refused to render military service because of their religious and moral convictions, also the case of the escape of political prisoners from the Butyrskaya prison, and that of Olszewski, a member of the Polish Social-Democratic Party.

During the early Soviet period too Otsep figured as counsel in several big cases. In 1918 he assumed the defence of the provocateur Malinovsky, an agent of the tsarist secret police, and in 1925 that of the provocateur Okladsky. He acted in the same capacity in the case against the Central Committee of the Right Socialist-Revolutionary Party in 1922, in the Shakhty case in 1928, in which he was retained by the German engineer

Otto and the Russian engineer Rabinovich, in the Industrial Party* case, and many others.

In 1955 the legal profession of Moscow celebrated the eightieth anniversary of one of the oldest Soviet lawyers, I. G. Piness, who had been admitted to the Bar in 1898. He was counsel for the accused in several political trials in tsarist times, among them the workers of the millionaire Ryabushinsky's factory in Vyshny Volochok charged with the murder of its director, Ganshin. In Tver (now Kalinin) he defended the Morozov factory workers who had killed a provocateur for betraying revolutionaries to the tsarist authorities. He has been a member of the Soviet Bar ever since it was organized.

Piness is not only a good lawyer but an experienced organizer. For fifteen years he managed one of Moscow's biggest consultation offices. Much advanced in years he continues to take an active part in the social activities of the Soviet Bar, helps the Moscow Presidium to inspect the quality of work of the legal consultation offices, draws up findings on disciplinary actions against lawyers and sits on the commission supervising work with young lawyers.

The list of outstanding Soviet Bar members includes K. D. Chizhov, a graduate of Moscow University, who was admitted to the Moscow Collegium of Lawyers in 1922. From the very outset he has devoted himself to the practice of defence counsel in criminal cases. He was trained for this speciality in part by his active participation in the work of the legal consultation office for criminal cases attached to the Moscow Gubernia Court. In speeches delivered subsequently he repeatedly pointed

* *Industrial Party*: An underground counter-revolutionary spying and wrecking organization of the upper sections of the Russian bourgeois technical intelligentsia, which aimed at restoring capitalism in Russia. The trial of this party took place in Moscow in 1930.

out that a young criminal lawyer should get his procedural training first in courts of cassation and not courts of first instance.

In numerous criminal trials Chizhov's speeches attracted much public attention at the time and were extensively reported in the Soviet press. He was a past master of intricate psychological defence.

In 1947 Chizhov went to Berlin to act as counsel for the defence of former employees of Camp Saxenhausen who were accused of offences coming under Control Council Law No. 10 (concerning criminal liability for offences against humanity). The case was heard by the Military Tribunal of the Forces of Occupation in Germany.

In the recent past Chizhov took upon himself the defence of engineer Zapadinsky. This was an extremely difficult matter. The charge against him was that as the head of a certain business organization he had committed several acts of abuse of his official powers and as a result of various machinations had misappropriated large sums of money. His guilt was proved completely by the evidence given at the preliminary investigation. Moreover he had made a clean breast of everything and had been helping the prosecution by his self-exposure.

At the beginning of his speech in defence of his client Chizhov gave a splendid analysis of the lack of control that characterized the organizations where Zapadinsky and his accomplices carried on their criminal activities. He showed that this lack of control was one of the causes that facilitated the commission of these crimes. And he immediately went on to explain: "Nobody will so oversimplify my words as to make them mean that a failure to keep proper watch of property is sufficient moral or legal justification of those who with eyes

turned heavenward let their fingers purloin it here on earth."

The lawyer then pointed to the self-exposure of the accused, to his admission of guilt beyond the terms of the indictment, as grounds for mitigating the punishment. "Self-exposure, penitence, are one thing. But it is another thing to admit the facts set forth in the accusation, i.e., not to go beyond the reliable buttressed wall of the absence of proof, which the preliminary investigation can tear down only when it has proof of guilt in its possession." The advocate considered it essential "not to deprive those who sincerely tell not only the truth but the whole truth of every stimulus to improve."

Speaking of his client he said:

"He did not utter a word in an attempt to extenuate his guilt or to put the blame on somebody else. From the great depth to which he had fallen he did not stretch out his hands to you to seek clemency or mercy. He did not drag in, as some did, the Homeland he loves so much; he did not profane its name, so sacred to us, by mentioning it. He did not whimper, did not grime his face with tears....

"The sleepless nights he spent in the house of detention during the preliminary investigation gave him time to see his past flash by, as would a man fallen over a precipice and caught by a gnarly twig.

"He could not help comparing the honour of being an engineer of our epoch with the contemptible existence of a renegade living by thievery, of one who exchanged his pure, inspiring life as a Soviet specialist for a life of ease and luxury, a life of wining and dining in expensive restaurants, with one of living in tawdry lodgings described in an inventory of his domestic belongings as including night-tables 'painted mahogany'

(yes, only painted), with mirrors in 'bronzed' frames, and other trash."

Chizhov's astute and delicate handling of the defence secured clemency for his client.

The lawyer L. A. Vetvinsky has been practising law from the moment he graduated from law school in 1923. For a long time he lived in Kiev where he became a member of the Presidium of the Kiev Regional Collegium of Lawyers. At present he is in the Moscow City Collegium.

A man of great learning and extensive knowledge not only in specialized departments of the law and related sciences—forensic medicine and psychiatry, psychology—L. A. Vetvinsky has introduced into the study of his cases the principles of scientific methodology.

He is expert in criminal defence, a notable orator and an adroit cross-examiner. Staunch, fearless, uncompromising, he fights out every issue in the legitimate interests of his client. He skilfully wields the sharp weapons of irony and sarcasm while always displaying the necessary tact toward his opponents.

Take this case, for example. A sick old man named R. failed to answer a court summons as a witness. At the preliminary investigation he had made depositions unfavourable to the accused. The procurator asked that the depositions be read out loud and to give them more weight added emphatically that "an old and sick man has no reason to tell an untruth." He adduced no additional reasons that might increase the credibility of the depositions in question. In his speech Vetvinsky reacted to this in the following terms:

"When reading out R.'s depositions the Procurator said very touchingly that they were the affirmations of an old man on the verge of death who in this state could hardly be expected to lie.... I only want to say in this connection that the spiritual state of people on

the threshold of death is not yet sufficiently known to us. Great writers have endeavoured to penetrate the spiritual world of man when death was thought imminent, but whether they were right or wrong in what they did every one of us will know only when he is himself about to die. Inasmuch as all of us, I hope, and particularly the Comrade Procurator, are still far from that threshold, I may be allowed at least to consider it not yet established when man is better able to insist on his particular wording of his depositions and not to budge an inch from it—when he is young and full of energy or when he is decrepit and feeble and his decease may be expected at any time...."

Vetvinsky combines his practice of the law with a large amount of social work along the line of training young members of the Bar. He is a member of the Bureau of the criminal law section and participates in the labours of the Legislative Proposals Commission of the U.S.S.R. Supreme Soviet, which recently drafted the Fundamental Principles of Criminal Legislation.

V. A. Samsonov belongs to the intermediate generation of Soviet lawyers. Having obtained shortly before the Great Patriotic War a full higher legal education, he was admitted to the Moscow Bar in 1941. The war tore him away from the work he loved. He entered the army and was assigned work as military court investigator and procurator. After victory was achieved Samsonov participated in the historic Nuremberg trial as secretary of the Soviet section of the International Tribunal.

Demobilized he returned to the practice of law. His outstanding ability, the result of his experience as criminal investigator and state procurator, soon made him one of the highest-ranking Moscow advocates.

Samsonov must be classed among those who are developing the traditions created by the most eminent of Soviet lawyers, such as Kommodov and Kaznacheyev.

He is very humane and possessed of great sagacity. He is an irreconcilable foe of the slightest infraction of socialist legality and therein lies his contribution to the triumph of the principles of socialist justice.

The distinguishing features of Samsonov's work are simplicity of style and tenacity of purpose.

Once he has chosen a line of defence he sticks to it, tactfully but insistently. He makes a thorough study of everything pertaining to the case in hand (which frequently comprises not only the materials of the investigation but special sciences and production processes). This enables him to find his bearings in the most complicated problems and to present his conclusions to the court in simple yet incontrovertible formulations.

Samsonov speaks in court without the slightest constraint. At times it seems he is just having a heart-to-heart talk with the court. But this lack of constraint with which he delivers his speeches conceals a vigorous logic that rests on detailed analysis of all evidence that the investigation and the court procured.

But he never becomes a slave of these materials, never wallows in the details of his case. He carefully picks the gist of that which serves him as the basis of his line of defence, ruthlessly casting aside all secondary details, if they run counter to the general line of his defence. Thus he secures a maximum of demonstrative effect and lucidity of speech. Samsonov's most prominent earmark as a lawyer is his ability to draw general conclusions from his case, to connect the case at bar with important legal and social problems.

D. I. Kaminskaya is of the same generation of Soviet lawyers as V. A. Samsonov. She was admitted to the Bar on the eve of the Great Patriotic War, specializing, like Samsonov, in criminal cases—the branch of law which, more than any other, demands that its prac-

titioners possess, in addition to an excellent legal training, in addition to the gift often called a legal mind, and an appropriate temperament, skill in the handling of evidential material, skill in utilizing the fruits of this work at the court hearing and, finally, skill in generalizing the sum-total of the proofs obtained in the speech in defence of the accused. Working in close contact with the most eminent members of the older generation of Soviet lawyers and creatively adopting the best features of their style, Kaminskaya elaborated a manner of defence all her own.

Her most characteristic trait is a deep, organic understanding of the humanitarian role played by counsel for the defence. Besides, she discerns in the just decision of the destiny of each person standing at the bar of the court the promotion of justice in general. Her penetrating legal eye sees criminal offences for what they really are. She has a keen understanding of the impulses and the circumstances that impel men to become criminals.

She is a well-known forensic orator capable of combining deep-felt emotionalism that stirs in her hearers solicitude for the fate of the defendant with the faculty of sober, logical analysis, a wealthy yet simple vocabulary, superior diction and a pleasantly modulated voice. Kaminskaya knows how to bring home to the court the correctness of her line of defence and even the finest nuances of her psychological analysis to which the criminal lawyer must so often have recourse.

Kaminskaya has a bent for cases presenting complicated psychological problems. This explains her frequent appearance in cases involving juvenile delinquents, where perhaps the most difficult thing is to ascertain the real impelling causes and motives of the offence.

Take the following case:

Korintsev, a student at a Moscow institute, stole several things from the satchel of a fellow-student and left the city. Suspicion fell on Korintsev. He was located and the missing things were found in his luggage.

At first glance the matter seemed to be as easy as rolling down a hill. The guilt of the accused was proved by his own confession and the finding of the stolen articles in his possession.

The only point not clarified was the motive for the theft. Korintsev was an intelligent young man with extensive interests. He had a free command of two foreign languages. Even while in jail, to him an unusual and distressing situation, he eagerly conversed with his advocate on subjects like literature, painting and music. When sufficiently close contact had been established between Kaminskaya and her client to give rise to mutual confidence, he was asked the one question that nonplussed his legal representative: what made him do it?

The answer was most unexpected.

"My motive," he said, "was something which will seem to you, as it seemed to the investigator, an unadulterated lie and a clumsy attempt at defence."

And the youth related that he had long been thinking of writing the story of a man who had committed a crime, landed in prison, and was for a long time torn out of his customary environment. He had worked hard and stubbornly on this subject but became convinced that he would not be able to write anything of the sort until he had put himself in the position of such a person. That was the sole motive behind his crime.

His lawyer knew how Korintsev lived at home, knew that he did not have to cope with any material difficulties even when he stayed at the hostel of the institute. But it was not this that compelled her to believe Korin-

tsev's story. It was rather the impression he himself made, an impression that made it absolutely impossible to think of him as a petty thief. All that remained for her to do was find proof that would entitle her to handle this case in court the way she thought it should be.

For that purpose the lawyer went to Korintsev's institute where she talked with his instructors and dormitory mates, and read poems and stories written by him for the institute's wall newspaper. The general effect of her trip was that it not only strengthened her belief in Korintsev's veracity but aroused the social organizations of the institute to a realization of their responsibility for what happened and for the lad's fate in the future.

Lawyer Kaminskaya's immense and delicately performed work on this case assisted the court in finding a correct decision of the question of Korintsev's future. He was given a suspended sentence and thus was able to return to his studies at the institute.

In conclusion, we would like to introduce our readers to another well-known Soviet lawyer, A. I. Yudin, whom many lawyers abroad will no doubt already know from personal contact during visits to the Soviet Union and as the author of the article on Soviet lawyers published in the magazine *Soviet Union* (1958, No. 7).

During his 41 years of work as a lawyer, Yudin has won a well-established and deserved reputation as a talented defence lawyer in criminal cases. His defence of the accused is invariably principled and bold. He makes careful preparations for his appearances in court, studying the material and seeking out new evidence.

His arguments and conclusions are always based on law, the evidence and the postulates of legal, psychiatric and technical science and forensic medicine.

Conducting his case skilfully, he draws out everything that speaks in favour of the accused.

He has a sharp "lawyer's intuition" which enables him to grasp elusive details which subsequently prove decisive in establishing the true facts.

Thus, for example, defending a person accused of murder, Yudin called attention to the discovery at the scene of the crime, as described in the report, of the stub of an expensive cigarette. By linking this detail with the way of life of one of the witnesses and his known liking for this sort of cigarette and his relations with the victim, Yudin secured the re-investigation of the case, in the course of which the real murderer was found and his client acquitted.

Yudin's entire trial work is imbued with high moral principles. The fight for legality is one of the main ideas underlying his speeches.

He is an excellent orator, and his speeches are delivered in a simple, clear and good literary form. They are well-planned and always strictly follow the line on which his defence is based. They combine a compelling analysis of the evidence with deep feeling and humanity.

The images and comparisons which enrich his speeches are particularly apt, sometimes by their unexpectedness still further underlining the thought which they are intended to spotlight.

Yudin combines his legal work with a great deal of activity in public life and teaching.

He is a member of the Presidium of the Moscow City Lawyers' Collegium and the chairman of its Criminal Law Section. As a member of a sub-committee of the Legislative Proposals Commission of the Supreme Soviet of the U.S.S.R. he plays an important part in the discussion of the drafts of important new laws. He also lectures on defence in criminal cases at lawyers' advanced courses and is in charge of the course on the

Soviet Bar at Moscow University. He is also a member of the U.S.S.R.-Great Britain Friendship Society.

We could fill many more pages describing the activities of the most prominent members of the Soviet Bar. But for the time being we shall confine ourselves to those already mentioned. Below, in the appropriate chapters of this book, we shall speak of still other Soviet lawyers and shall recount interesting cases, both criminal and civil, in which they acted as counsel.

Chapter Two

THE LAWYER IN CRIMINAL PROCEDURE

The administration of justice in criminal cases is a sphere of state activity in which it is of vital importance that the safeguarding of the interests of the state and society must be correctly combined with unswerving observance of all the rights and guarantees provided by procedural law to every accused.

In the Soviet Union such a combination is ensured by the constitutional guarantee of the right to defence enjoyed by every person criminally prosecuted.

The Fundamental Principles of Criminal Procedure give the accused extensive rights. During the preliminary investigation the accused has the right to know of what he is accused and to give explanations regarding the charge. He has the right to submit his own evidence and to make requests regarding the summoning of witnesses, the search for new proofs and the appointment of experts, and to submit questions to them. He can lodge complaints against the actions and decisions of the investigator and procurator and, on the conclusion of the preliminary investigation, has the right to familiarize himself with all the materials in the case.

From this point he has the right to the services of a defence lawyer. The law lays down that the lawyer is admitted into the case from the moment the accused is informed of the conclusion of the preliminary investigation and receives the materials in the case. The law also lays down that in cases involving minors (those under 18) and also persons who because of their physical or mental deficiencies cannot themselves exercise their right to defence, the lawyer is admitted from the moment the charge is made. The all-Union law mentioned lays down the basic rights of the defence lawyer from the moment he enters the case. He has the right to have consultations with the accused, to familiarize himself with all the materials in the case and to extract all the necessary information, to submit evidence, make requests, participate in court proceedings, make challenges and to lodge complaints against the actions and decisions of the investigator, the procurator and the court. In addition, with the permission of the investigator, he can attend the interrogation of the accused and other stages in the investigation carried at the request of the accused or his lawyer.

If the accused has no means for retaining a lawyer, he may ask the court to appoint one for him and the court will be obliged to do so. Moreover, as has already been stated, the court must appoint counsel for the defence, even if not requested by the accused, in case a procurator takes part in the proceedings or if the accused is a minor or a person who because of natural defects is unable to follow the entire court proceedings fully.

The wide scope given to the accused for the realization of his right to defence has been extended still further in the spirit of Soviet legislation by the judicial practice established by the Supreme Court of the U.S.S.R.

Thus, in accordance with this practice, when the interests of co-defendants conflict, each one must be given a lawyer of his own, as otherwise the defence of one accused may actually turn into an accusation against another accused. A violation of this rule will necessarily result in annulment of the sentence by a higher court on that ground.

There have been cases of the accused declaring in court that the lawyer he has been assigned does not satisfy him. The U.S.S.R. Supreme Court has held that if under the circumstances the court concurs with the view of the accused that the lawyer in question cannot fully protect his interests, the court must not only relieve the lawyer of further participation in the case but provide another one.

The liberally interpreted right to defence is one of the signal manifestations of the principle of democracy in the work of Soviet courts, since it ensures to every person accused of crime a real opportunity of defending himself against the charge made.

This is implemented on the basis of the profoundly democratic principles of Soviet criminal procedure, in accordance with which the parties have equal rights. In the hands of a good lawyer the extensive rights afforded by the law are a potent means of defence.

What are the tasks assigned to defence counsel in the U.S.S.R.? What part does he play in criminal procedure?

The eminent Soviet savant, Professor M. S. Strogovich, a corresponding member of the Academy of Sciences of the U.S.S.R., who has devoted several works to the problems of Soviet criminal procedure, wrote in an article entitled "The Status and Functions of Counsel for the Defence at the Trial":

"His status in court is rather complicated.

"It is often said that counsel for the defence is an assistant to the court. He helps the court to make a cor-

rect decision. This is true as far as that goes. But this is no answer to the question of what is the defence lawyer's status at the trial. He helps the court investigate those circumstances of the case that favour his client; he aids the court to avoid mistakes that would harm him. But of course he cannot be instrumental in exposing the accused, in establishing facts that would incriminate him. Should a lawyer pursue such a course he would turn into an assistant to the prosecution, but this is precluded by the very nature of the defence and its tasks. Hence defending counsel may be called an assistant to the court, but that does not define his status at the trial. There is no such personage at criminal trials as court's assistant.

"The assertion that the lawyer for the defence is an assistant to the court merely describes the general tasks of the Soviet lawyer as a figure in court, as a member of a special public organization, the Bar, which performs functions of state importance; it expresses the general trend of the advocate's activity, of his conduct in court—it is his style of work."

And further on:

"The status of the lawyer for the defence in criminal procedure is defined as follows: *defence counsel is the representative of the accused.* This means, in the first place, that counsel acts in court on behalf of the accused, protects his legitimate interests, helps him to exercise his rights; and, in the second place, that counsel acts in court as the attorney in fact of the accused (if he was chosen by the latter) or with the consent of the accused (if he was appointed by the court).

"It is the task of the lawyer as the representative of the accused to defend the latter against the charges preferred. Defence counsel is there to defend the accused and that is his function, his duty, at the trial. 'The defence counsel defends' is to all appearances sheer tau-

tology—a commonplace, if you will. But that maxim is the crux of the matter and must be straightforwardly established, since crucial practical consequences follow from it. Counsel for the defence participates in the trial only to safeguard the interests of the accused, presents only such arguments as benefit the accused, submits only such evidence as exonerates him or mitigates his guilt. The lawyer has no right to do anything that may deteriorate the situation in disfavour of the defendant or may aggravate his responsibility."

Nevertheless Soviet lawyers are prone to share the opinion expressed by A. F. Koni, a celebrated progressive judicial authority of pre-revolutionary Russia, that a lawyer "is not the servant of his client, not an accomplice in his endeavour to escape the punishment he deserves at the hands of the organs of justice. He is the friend and counsellor of a man whom he sincerely believes not guilty at all, or not at all as charged nor of what he is charged with."

Coming back to the question of what are the tasks confronting the Soviet defence lawyer in criminal cases it may be said that his main function is to safeguard the legitimate interests of the accused by the use of lawful methods.

From this it follows that the Soviet advocate does not represent all the interests of the accused but only his legitimate interests. Hence the defence lawyer has a dual status at the trial: first, he is the representative of the accused, one of the parties to the case, and, secondly, he himself is an independent party, the defence. Below we shall speak of the limits of the lawyer's independence. At this point we shall emphasize only this one very important proposition, incontrovertible for the Soviet defence: the lawyer can never take any action in court which to any extent whatever would tend to convict his client or aggravate his guilt, no matter how

plausible his pretext, such as "to safeguard the interests of the state" or "to establish the truth."

Professor N. N. Polyansky gives this summary:

"The four principles which determine the conduct of the defending lawyer in court may, in our opinion, be worded as follows:

"Engage only in the defence of the accused and by no means in the exposure of his guilt; deal fairly; maintain professional secrecy; be independent of your client."

In practice the conduct of Soviet lawyers is in full accord with these propositions.

The Soviet administration of justice firmly adheres to the principle that the courts and the Procurator's Office possess adequate means to obtain the conviction of criminals while lawyers are authorized by the state and society to engage in the work of defence and nothing else. It is therefore the business of counsel for the defence in every criminal case, depending on the collected evidence in its totality, to endeavour either to refute the charge altogether or to reduce its extent or to change the juridical qualification of the actions of the accused in his favour, and to bring to the attention of the court all extenuating circumstances.

Soviet jurists are of the opinion that bold, resolute defence can work no harm to the administration of justice and weaken the struggle against crime. As a matter of fact, a well-grounded accusation is capable of withstanding the assaults of the most talented defence. And if the lawyer helps to refute an unfounded charge socialist justice only stands to gain by that.

"It is the direct duty of the Soviet defence counsel to do his best to clear his client of all guilt if he is sure of his innocence, to try to mitigate the punishment if there are lawful grounds to do so, and likewise to have

an erroneous qualification of his client's crime corrected," writes Professor I. T. Golyakov in his work, *The Significance of Counsel for Defence in Soviet Criminal Procedure.*

What is the common ground on which all the participants in the case base their joint quest for the truth, a quest undertaken from opposite positions and points of view? That ground is socialist legality, whose mission it is to safeguard the Soviet social and state system, to protect the political, labour, housing and other personal and property rights of Soviet citizens. Socialist legality implies the absolute and precise observance and execution of Soviet law by all state agencies, institutions, enterprises and public organizations, by all official and private persons. That is the bond that unites the participants in every criminal trial.

Hence, whenever a particular question of procedure is regulated by law everything is clear and simple; there is no room for discussion, no *embarras de choix* making it difficult for the advocate to pick his way among possible procedures. But the trouble is that the law defines only the basic tasks and forms of activity of counsel for the defence. It does not and cannot resolve all the multiple problems which the lawyer encounters while discharging his complicated social function. Included here are problems of the choice of ways and means of defence, as well as problems concerning the proper form of relations with his client, the court and his opponent at the trial—the procurator; also questions of tact, which should suggest to the lawyer what problems may be touched upon in court and how, without hurting the ethical feelings of society, and a good many other things that cannot find lodgment in the Procrustean bed of a set of rules written beforehand—a "lawyers' code of ethics."

Now we have arrived at the problem of lawyers' ethics about which so much has been written and so contradictorily.

We claim that the concept "lawyers' ethics" cannot be considered correct as it would imply the existence of special professional norms of ethics as distinct from the ethics and morality of Soviet society as a whole. Socialist ethics, however, are uniform and their norms are binding on all members of society.

If the term lawyers' ethics is to be used at all, then only in the very limited sense of applying the general norms of socialist ethics to the specific conditions of the activities of a lawyer.

As we are leaving for a while the sphere of law and are entering the related sphere of ethics, it seems to us to be expedient to dwell in the first place on the question of what should be the moral physiognomy of the lawyer to capacitate him for the successful and correct resolution of the numerous ethical problems he encounters at every step.

A lawyer is a man active in public life who has dedicated himself to the administration of justice. It cannot be disputed that anyone who takes part in the shaping of human destiny and enunciates from the tribune of a court his evaluation of the acts and passions of people must be endowed with certain moral qualities. Among these are ingrained integrity and adherence to principle, personal moral purity. Only these attributes can engender in a forensic orator the conviction that he is defending a just and righteous cause, a conviction which, when transmitted to judge and audience, yields beneficent results. Only these qualities can give the lawyer the moral courage, when he is sure of the innocence of his client, fearlessly to analyse the material gathered by the prosecution and tear it to pieces—to refute it despite its seeming convincingness, to maintain

his stand to the end, submitting only to the law and the dictates of his own conscience.

It goes without saying that good political training and eminent professional scholarship are indispensable in one who wants to bear with honour the title of Soviet counsel for the defence.

To be able to cope with the serious social tasks facing him a lawyer must possess not only moral qualities, not only extensive political and legal knowledge but a high degree of general culture. Only that can help a lawyer swiftly to find his bearings in any special field of knowledge so that he can cast doubt on any expert testimony and subject it to the bombardment of his reasoned criticism.

There was the well-known view that a defending counsel should not be restricted by any limitations whatever. This idea was voiced most straightforwardly by a famous English orator and statesman of the nineteenth century, Lord Brougham, in a speech in defence of Queen Caroline, wife of King George IV. In his speech on behalf of the accused he said that many people had to be reminded that a sacred bond linked the lawyer to his client and in discharge of his duty he must have only his client in mind; that there could be no doubt of his supreme obligation to resort to every expedient device to protect his client's interests undaunted by possible consequences to anybody else (including the person that has already suffered) and even to himself. According to his lordship the advocate must not deviate from his course on account of the trepidation, suffering, torture and even death he may cause others to endure. He must even sever his duty to his country from his duty as a lawyer; he must go on regardless of the consequences of his acts if to his misfortune fate places the interests

of his client in contradiction to the welfare of his country.

A like-minded pre-revolutionary Russian professor who specialized in trial procedure, L. Y. Vladimirov, gave the legal profession the following advice:

"Remember always that a court battle is not an academic discussion. You will find it expedient to be one-sided, prejudiced in favour of your client. At all times be unswervingly unjust to your opponent. Tear his speeches to pieces and cast these pieces sneeringly to the wind. Your opponent must be utterly destroyed, nothing must be left of him!... If the considerations that actuated the accuser need ridiculing, ridicule them! Show no mercy!... Cavil at every word, every slip of the pen, every mistaken expression. After all, this is no intellectual controversy, but a wrangle over phrases and arguments, a vulgar brawl, as is the life of people in society."

This sort of lawyers' ethics is, of course, unacceptable to Soviet lawyers. The Soviet Bar categorically rejects such advice. The Soviet court is one of the places where public opinion is formed, where people are educated in the spirit of respect for the law and the norms of socialist morality. These tasks demand a high level of culture on the part of the administrators of justice, mutual respect by the parties to the trial, fairness in regard to evidence, tact and moderation in debate.

What, then, are the ethical problems most often met with in the work of the Soviet lawyer and how do they find their practical solution?

As everyone knows, the relation between counsel and client begins when the former agrees to represent the latter in court. Here the following question may arise: since the lawyer must be scrupulous in his ways and means of conducting the defence, does it not follow that he must be equally scrupulous about the cases he

takes on? Before he agrees to be retained should a lawyer not inquire into what basis for a defence there is, if any, and whether the type of defence there is suits his views and convictions?

Are such reflections permissible? Certainly not.

To start with, neither law nor ethics warrant the defence counsel in setting himself up as a judge at least morally entitled to pronounce a preliminary judgment to serve him as the basis for deciding whether he should accept a case or not. Everybody experienced in court-work knows of cases in which it seemed, to go by the evidence elicited by the preliminary investigation, that the prosecution would win hands down, yet at the trial the charge collapsed like a house of cards. Reversely there are cases which, flimsily patched together in the preliminaries, develop unexpected strength in the hands of an able procurator when they get before the court in the contest described above, and the guilt of the accused is established beyond all doubt.

Of course there are easy cases, for example, when little evidence of guilt has been produced and the case for the prosecution is very shaky. But what about an opposite case, where the defendant's guilt is well established and the offence committed is very grave —is the accused to be left without benefit of counsel? This clearly is not only bad ethics but directly contravenes the Constitution of the U.S.S.R., which guarantees the right of defence to any accused, irrespective of the severity of the crime charged and the cogency of the proof against him.

The procurator, on concluding that the evidence does not justify the charge, must refuse to prosecute and state his reasons for so doing to the court. Can an analogy be drawn here? Can a lawyer who has become firmly convinced of the guilt of his client and is unable to find extenuating circumstances refuse to go

on with the case? There is only one answer to this question: No, he cannot.

Indeed, no one will dispute that it is unlawful and morally impermissible to accuse an innocent person. But a guilty person can and must be defended, and the law makes this nothing short of obligatory so long as the means employed by the defence come within the bounds of what is permissible by law and ethics.

In actual practice Soviet lawyers follow the maxim that where the defence is most difficult it is most needed by both the accused and society. No matter how hopeless a case seems, material for the defence can always be found.

The fact of the matter is that defence possibilities are very numerous even if the accused has been fully proved guilty and has admitted his guilt.

For instance, the accused may have killed someone. He admits the commission of the crime and his admission is corroborated by other evidence. Under such circumstances the most important factor decisive of the fate of the accused is the qualification of the crime he committed: was it deliberate murder or was it manslaughter arising from negligence? If deliberate, was it committed under extenuating circumstances or without such; was the homicide the result of premeditation or the consequence of sudden powerful spiritual emotion caused by an assault or insult on the part of the victim? The correct answer to these questions determines the punishment, if any, to be inflicted. In one case, murder, it may be deprivation of freedom for a long term or even death at the hands of the executioner. In another case, manslaughter, it may be only three years' imprisonment. It is the business of the lawyer to elucidate the category of homicide committed and obtain the mildest lawful punishment for his client.

Let us consider a case when the crime charged

has been fully proved in the preliminary investigation and the accused admits his guilt, then his lawyer may consider it hopeless to dispute these facts. But in so doing he in accordance with the law asserts that the action of his client, as a result of the change in the situation, is no longer socially dangerous.

Finally, the lawyer, basing himself on the law, can request the exemption from punishment of a person who has committed an offence if it is recognized that his subsequent exemplary behaviour and honest attitude to work have made him no longer socially dangerous by the time the case comes before the court. Under such circumstances the court is authorized by law to pronounce a verdict of guilty but abstain from inflicting any punishment. Here a wide field of activity opens up to an astute defending counsel who is barred by the facts of the case from disputing his client's guilt but seeks to alleviate his position somehow.

If the above possibilities of moderating or avoiding the sentence are not applicable, there are still other very humane provisions in Soviet criminal law that counsel for the defence may have recourse to.

Soviet law takes cognizance of extenuating circumstances which the courts are obliged to consider when determining the measure of punishment to be inflicted. The aversion by the guilty person of the harmful consequences of his actions or the voluntary restitution of the damage caused or harm done, the commission of an offence as a result of harsh personal or family circumstances, under the influence of threats or compulsion, or because of material or other dependence, or under the influence of great mental distress caused by the immoderate actions of the victim are held to be extenuating circumstances. Defence against socially dangerous infringements, although exceeding the limits of reasonable defence, is also considered an exten-

uating circumstance. Liability is also less when the offence is committed by a minor or a pregnant woman, and when the offender sincerely repents and comes forward of his own accord. These extenuating circumstances are laid down in the Fundamental Principles of Criminal Legislation. It is also pointed out that the list is not exhaustive, and that Union Republics may in their legislation provide for others.

Life is many-sided, and the Fundamental Principles therefore also indicate that in determining punishment the court may also take into account extenuating circumstances not indicated in the law.

An accused who is not well versed in matters of law will at times find it difficult to discover grounds for mitigation in his case. Here his lawyer comes to his assistance, for it is his sacred duty to utilize every opportunity afforded him by law to ease the lot of his client.

But even this is not all defence counsel can do in a case where guilt has been proved beyond all doubt. When the circumstances are exceptional, Soviet criminal law envisages the fixation of punishment at a lower degree than the lowest provided by the pertinent paragraph of the Criminal Code or the assignment of other, lighter punishment, such as correctional labour instead of deprivation of freedom.

If in determining punishment in the form of detention or correctional labour the court, taking into account the circumstances of the case and the character of the accused, feels that it is not expedient that he should serve the sentence, it can decide on a suspended sentence. In so doing, its reasons must be clearly stated in the sentence. The sentence (the punitive section) then does not come into operation if during the probationary period laid down by the court, the person concerned does not commit a similar or no less serious offence.

Thus Soviet criminal legislation makes ample provision for the defence of the accused even where his guilt has been fully demonstrated.

. . . A few years ago a young woman named Margarita Tikhomirova was murdered in a house on the outskirts of Moscow. The investigation revealed that the crime was perpetrated by her husband's parents, who had invited a certain Rybakova, no family connection, to help them do the job. It transpired that the young couple loved each other and led a happy life. But Margarita was bitterly hated by her mother-in-law Valentina, who believed her son Georgy, a talented artist, was thoroughly unhappy and that Margarita was to blame, was marring his future. The father-in-law, Nikolai, became an accomplice in the murder under the influence of his wife. The third participant, Rybakova, undertook to help Valentina, tempted by promises of reward.

The essential facts were established with great exactness. All three culprits admitted their guilt. All three had lawyers, each one of whom tried his best to find an acceptable explanation for the conduct of his client, to discover humane motives and obtain clemency from the court.

Of great interest was the position assumed by D. L. Ostrovsky, who defended the father-in-law. Without disputing the facts of the case or the juridical qualification of the action of the accused, the counsellor concentrated on delineating Nikolai's personality, depicting him as weak-willed, spineless, crushed by the overpowering dominance of his spouse. He analysed the entire course of his client's life in his endeavour to show what had brought him to this crime.

His skilfully conducted and detailed examination of the numerous witnesses and the stories related by Valentina and Georgy, as well as a batch of letters and other documents synthesized and put in evidence by Os-

trovsky enabled him to draw the frightful picture of the gradual demolition of a person's mind, its freedom, its independence, the piecemeal and in the end complete subjection of Nikolai to the indomitable will of his wife.

When he put the rhetorical question how that quiet, modest, unobtrusive man could bring himself to commit such a crime, the lawyer himself replied:

"Only cowardice, only fear could arouse in Nikolai the energy with which he acted on that fateful morning. Under ordinary conditions he is an absolutely depersonalized being. Only fear could impel him to act as he did.... Twenty-nine years of constant suppression of his personality, of terror and lack of will-power have done their worst...."

With this as his fundamental line of defence, the lawyer, pointing at Nikolai Tikhomirov, said in conclusion:

"There he sits before you, a pitiful, will-less, wretched man, in whom decades of humiliation and abuse have obliterated all human dignity, have snuffed out all manhood, who has been deprived of family, honour, and what is dearest to man, his freedom. Terrible to contemplate is Nikolai's statement somewhere in his testimony: 'Only now, in prison, I feel free from the influence of my wife.' But one cannot help believing him.

"What a prey on his mind that baneful influence must have been if he felt freer in gaol than at home!"

The Supreme Court of the Republic agreed with the arguments advanced by the lawyer and mitigated the sentence originally pronounced. The death penalty was commuted to long-term imprisonment.

This example illustrates that the criminal case does not exist in which mitigating circumstances cannot be found. Hence it is impermissible, both from the legal and the moral points of view, to refuse to act as counsel for the defence on the ground that the case is hopeless.

This finds its direct reflection in the Fundamental Principles of Criminal Procedure of the U.S.S.R. and the Union Republics. "The defence lawyer must make use of all the resources and means of defence laid down by the law in order to clarify circumstances acquitting the accused or alleviating his guilt, and give the accused the necessary legal assistance.... The advocate does not have the right to retire from the defence of the accused, once having undertaken it."

In this connection there arises still another question, and a very essential one at that: should a lawyer be firmly convinced of the guilt or innocence of his client, or is such a conviction unnecessary and should he doubt that guilt has been shown?

This is, of course, no easy problem. It cannot be said that all the many thousands of Soviet lawyers would give the same answer.

Some take the view that the defence lawyer need not have any definite opinion regarding the guilt or innocence of his client.

N. V. Kommodov, the eminent Soviet lawyer we have already mentioned, expressed the same idea in the speech he delivered as defence counsel in a case that created a great furore at the time, namely the trial of Semenchuk and Startsev, accused of killing Dr. Wulfson.

"I counter the case of the prosecution with an array of facts that raise grave doubts, doubts which have not been dispelled in my mind even after I heard the speeches in accusation of my clients. The doubts I raise to counter the charges against them should act as a warning to prevent a miscarriage of justice."

The similar view was voiced by the prominent pre-revolutionary Russian lawyer F. N. Plevako in defence of one Alexandra Maximenko, charged with hav-

ing poisoned her husband. The defence lawyer built up his speech to the jury on a deep analysis of the facts that tended to disprove or at least cast doubt on his client's guilt and he finished it with a reminder to the jurymen that if even a scintilla of doubt existed in their minds as to her guilt and this doubt could not be removed by any reasonable construction of the facts, the law did not permit them to bring in a verdict of guilty.

His personal opinion of the case Plevako expressed in the following words: "If you ask me directly whether I believe her innocent or not, I shall not say, 'Yes, I am convinced.' I do not want to lie. But neither am I convinced of her guilt."

In its verdict the jury found that death had resulted from poisoning but said "Not Guilty" when asked whether the accused had administered the poison. She was consequently discharged.

Yudin supports another point of view, which does not accord with that of either Kommodov or Plevako. Yudin's argument seems to us to be more convincing and more in keeping with the spirit of Soviet legal defence. It amounts to the following:

A firm opinion regarding the guilt or innocence of a client, or—more accurately—regarding the proving or otherwise of the charge, must be reached not on the basis of impressions, feelings, guesses or suppositions, but as a result of an analysis of the evidence and all the circumstances of the case in their entirety.

Having studied the materials in the case and the character of his client, the lawyer must then ask himself: does he consider the charge wholly or partially proved or completely unproved?

It is difficult to see how a lawyer could take part in the proceedings or take the floor at the end of the investigation to deliver his speech for the defence with-

out having a point of view regarding the charge against his client.

Doubts are not a line of defence, but imply that the lawyer is firmly convinced of the inadequacy of the evidence, which does not form a closed circle of facts and logic to convict his client, as a result of which he will ask for his complete or partial acquittal.

From this point of view Kommodov's remarks in the introductory part of his speech in defence of Semenchuk to the effect that he could counter the charge only by "grave doubts" certainly weakened his argument, since they amount to an admission of the weakness of the lawyer's case and to his lack of confidence in it.

Such an emphasis was all the more superfluous because in the ultimate analysis Kommodov set out his argument based on doubts—which, if reasonable, are always interpreted in favour of the defence—with firmness, considering that it should be "a warning to prevent a miscarriage of justice." He asked the court to acquit Semenchuk on the grounds that his participation in the murder of Dr. Wulfson was not proved.

Similar objections can be made against the argument used by Plevako in his defence of Maximenko.

That is why the very posing of the question, "should a lawyer be firmly convinced of the guilt or innocence of his client, or is such a conviction unnecessary, and should he doubt that guilt has been proved?" should be considered as incorrect, affording new grounds for accusing lawyers of defending in court "without firm or even any convictions."

Our colleagues in the West are still discussing the problem, as old as the Bar itself, of the "right to tell a lie." Has the defence lawyer the right to tell the court an untruth if that is in the interest of the accused and if telling the truth will hurt his case, will aggravate his guilt?

To the members of the Soviet Bar the answer is unequivocal: There is no lawyer's "right to lie"; nothing can justify the telling of a deliberate untruth to the court, no matter what his grounds. Veracity and conscientiousness are indispensable attributes of the Soviet lawyer. If the accused chooses to lie, that's his business; the law abstains from punishing him for it. But here too it is up to the lawyer to inform his client that if he does so he will be the one harmed most.

The question of the suppression of facts is externally somewhat more complicated. What if a lie does not assume the form of an assertion of a deliberate falsehood but the passive form of failure to communicate to the court facts which are not contained in the record of the case but became known to the lawyer during the exercise of his professional duties? But complications present themselves only when the matter is artificially transferred to the sphere of ethics. It really does not belong to that sphere but to the sphere of law.

In the Soviet Union, as elsewhere, it is forbidden by law to question a lawyer about any facts in the case that became known to him through his client in the performance of his professional duties. This provision emanates from the spirit of Soviet law, which not only proclaims the accused's right to legal defence but ensures that right by real guarantees. One of these guarantees is the ban on questioning the defendant's lawyer as a witness. The accused thus knows for certain that any communication he makes to his counsel and any trust he places in him may not be betrayed to the court and deteriorate his case.

The privileged character of communications between client and counsel is necessary not only for the successful conduct of the defence in any particular case but for the efficient practice of law in general.

Viewed legally, there is no point to all this talk about whether a lawyer should inform the court of privately confessed guilt. It is quite inconceivable that at a criminal trial a lawyer and his client should be confronted with each other to secure a conviction of the accused. This is further reinforced by the law forbidding the cross-examination of lawyers as witnesses. Do not such fictitious problems arise in general from an excessive evaluation of the confessions of the accused, as if they were proof of the "first order"? Soviet law relegates confessions of the accused to the modest category of ordinary proof.

But here another problem crops up, a really serious but purely ethical one. What if an accused, against whom insufficient indisputable evidence has been collected and who categorically denies his guilt, should privately confess to his counsel that it was he who committed the crime in question and the lawyer, *qua* man, should believe him? Can the advocate be required to do violence to his conscience and to fight for an acquittal, as the accused demands he should do? Naturally not. Here there is but one way out—to convince the client that he can act only in terms of extenuating his client's guilt. If the client does not agree, he can decline further aid from the lawyer in question.

In a story called *The Murderer* Maxim Gorky goes into the details of such a case.

"I chanced to be present at a conversation between a lawyer and one of his clients, a fellow who killed his sister with a hammer blow over the head after making her drunk. He, a poultry dealer, was telling how it all happened, and the following dialogue ensued:

"'It all came about, I don't recall just how, because, you see, she always made me feel gloomy.'

"When asked why he took a hammer along he fell silent for a while, then said, inquiringly:

" 'If I were to admit bringing a hammer, that would show premeditation, wouldn't it?'

"The lawyer was a well-bred man and of gentle disposition, but the insinuation of the poultryman infuriated him. He shouted in rage at the murderer and trenchantly said in conclusion:

" 'Don't you dare to consider your lawyer an accomplice in your crime!'

"His client rose and ejaculated with unconcealed resentment:

" 'Then I'll get another, one who'll put his heart and soul into the case!'

"And his case was taken over by another lawyer, one who 'had a heart.' "

Similar opinions are voiced by distinguished Soviet procedural specialists. Thus, for instance, Professor N. N. Polyansky stated in his *Truth and Falsehood in Criminal Procedure:* "A lawyer should not undertake to defend a case in which his client insists that his counsel should distort the facts of the case."

The question of how to prevent or eliminate collisions between the positions taken by the accused and his lawyer is a difficult one and at times very troublesome in practice.

What is to be done if the accused categorically denies he is guilty, but his lawyer, who had made a careful study of the whole case, arrives at the opposite conclusion: that his guilt is obvious?

Prisons afford ample opportunity for working out a common line of defence by counsel and client. For one thing a lawyer may converse and deliberate with his client in all privacy in a separate room, may visit him repeatedly and without time limit, may acquaint him with material copied from the record of his case. Here the defence lawyer may calmly analyse his client's explanations and compare them with the rest of the

evidence. Here the lawyer's authority comes into play and the confidence his client has in his legal knowledge and experience. These may convince the client that only the line of defence chosen by his lawyer will bear fruit.

What, however, can be done if in spite of all this a yawning gap remains between the position taken by the lawyer and that of the client, a gap that cannot be bridged without pangs of conscience?

On the one hand it cannot be denied that, as has been said above, the law grants the lawyer, as a party to the trial, the right to take an independent stand and pursue his own line of defence of his client.

On the other hand, has a lawyer the right to consider the accused guilty in the plea to the court, if the accused categorically denies his guilt? Where would this lead in practice?

If counsel acknowledges his client's guilt, can he do so without explaining his client's motives and the proof adduced? Without motivation and unsupported by an analysis of the evidence the lawyer's opinion is of no use to the court and will not be understood by the public. If the lawyer not only considers the charge proved but even tries to substantiate it, his action will be analogous to that of the public prosecutor and will have an adverse psychological effect on the court and the audience precisely because it emanates from the person authorized to conduct the defence. One cannot help agreeing that such a solution of the problem runs counter to the law, as it actually denotes not only a deprivation of the defendant of the right to defence counsel but also a deterioration of the accused's position in comparison with what it would have been if he had conducted his own defence.

But what course is to be adopted if the counsel-client clash crystallizes only at the end of the trial? It is

then, of course, too late for the lawyer to withdraw and the law makes no provision for such a withdrawal.

A compromise must then be concluded. In his address to the court the lawyer must set forth his client's point of view accurately and conscientiously, giving all the arguments advanced by the client tending to disprove the charge; and it must be made clear to the court that he is not expounding his own position but that of his client. This speech must end in the following alternative proposal, namely, that if the court should nonetheless arrive *in camera* at a verdict of guilty it ought to consider all the extenuating circumstances, which the lawyer was bound to present to the court in his speech.

It should, however, be noted that the possibility of such an alternative postulation of the question as a form of defence is not generally recognized by the Soviet Bar and certainly cannot be considered as a recipe. Both the theory and practice of this form of defence have their supporters and opponents among Soviet lawyers. Its weak spot is undoubtedly that it can in many cases be considered as a sign of the defence's lack of principle. On the other hand, the categoric rejection of such a form of defence can in certain circumstances deprive the accused of the minimum argument with which to counter the charge.

The history of the Bar, however, contains cases when lawyers have considered it useful for the defence to recognize the fact that the offence was committed by the accused, despite his denial, but in his interests.

This practice can be exemplified by a case cited in Professor M. L. Schifmann's article entitled "Certain Questions Concerning the Speeches of Defending Counsel." To quote:

In the town of Podolsk a woman named Arkhangelskaya was tried on the charge of the attempted murder

of her father and of forging a will in which he purported to bequeath her his property. On being called to account in court she did not admit the charge, explaining that she did not shoot at her father and that the revolver and forged documents found in her suitcase had been planted there by someone.

N. V. Kommodov and M. A. Otsep, who defended her, found it impossible to follow the course pursued by their client. Despite her denial they conceded that Arkhangelskaya did shoot at her father and did forge a will purporting to have been executed by him, but at the same time produced cogent evidence that she committed these acts while in a state of momentary mental derangement.

"If the prosecution were right in its contention that Maria Arkhangelskaya, her father's favourite daughter, contemning his caresses and attentive devotion to her and deaf to her natural feelings of filial affection, sacrilegiously raised her hand against him to bring about his premature death so that she might possess herself of his money and did all this while perfectly sound in mind—if all this were true, then I could understand the overwhelming indignation against the accused that seized us as judges, plain citizens and fathers of families. . . ."

That is how N. V. Kommodov put the question as one of principle at the very beginning of his speech for the defence.

"But before you adopt this point of view," counsel continued, "you cannot disregard, cannot shut your eyes to this one issue, the overriding issue in this case: upon whom are you sitting in judgment? Are you trying a morally depraved monster who had eviscerated even those human instincts that nature has implanted in her soul; or are you trying a creature whose psycho-

logical faculties are obviously in a state of disintegration? Expressed more simply: are you trying a healthy or a sick person? The case presents no other issue, as the commission of the crime by the accused is not questioned by either side. No matter how much Maria Arkhangelskaya may assure us that it was not she who shot at her own father and no matter how ardently and eloquently her decrepit parent—who to this minute rejects the very idea that his beloved Maria could have been the guilty party—may speak here, we of counsel for the defence do not dispute the fact that it was the accused who fired the shot. We are fully aware of the great responsibility we assume, when contrary to the accused's assertion we admit the commission of the crime by her as proved and thereby eliminate the possibility of securing an acquittal on the ground of insufficient evidence, but we face this situation boldly, since according to our lights our task is not to deny her obvious guilt but to demonstrate her mental deficiency."

Counsel for the defence, after scrutinizing the conduct of the accused during the period preceding the shooting, analysed the testimony of the experts and the obviously defective will she had drawn up from which she could not derive any benefit. Kommodov then pointed out that she had acquired an inferior weapon which could not ensure success in her criminal undertaking, and finally scored the point that she picked a frequented spot for the perpetration of the offence, where she was bound to be noticed. Then he addressed this plea to the judges:

"Fathom deeply this crime committed under such circumstances, search not as people possessed of legal or psychiatrical knowledge, but tell me as people of great experience in life: have you perceived many tokens of a sound mind and of sound logic in Arkhangelskaya's actions? She chooses as the site of a griev-

ous offence not a sleepy forest or the cover of dark night but a summer's morn, and commits it during working hours, in full sight of many casual witnesses. She has no intention of surrendering to the judicial authorities immediately after its perpetration, but on the contrary intends to enjoy the fruits of her offence by escaping all prosecution and even suspicion.

"Why, I ask, did she commit the crime at a time and under circumstances which preclude suspicion falling on anybody else but her? They say that criminals frequently lack logic. That may be so. But that must be taken in the sense that out of a great number of perfectly normal acts one may exhibit a logical defect. But when all acts of a criminal, from beginning to end, are streaked with that defect, then I believe a doubt arises in the mind of even the most unprejudiced as to whether that individual is mentally normal...."

The judges concurred with counsel for the defence that the accused committed the crime charged, but acted in a state of momentary mental derangement, and therefore was acquitted and discharged.

This line of defence imposes great responsibility on the defending lawyer, as it involves convicting one's client without any assurance that he or she will be declared legally irresponsible. But in cases similar to the one set forth, that is the only correct, honest, and in the long run effective course to follow.

When a whole group is tried jointly it not infrequently happens that when the debate in court becomes seething it is impossible to defend a particular accused from all quarters without voicing accusations against another accused. Such a situation arises when a false charge made against one of the accused is built up largely on incriminatory statements made by other defendants or when the lowering of the degree of re-

sponsibility of one of several joint defendants involves an aggravation of the charges against other members of the group.

Soviet law provides for such a contingency by prohibiting lawyers from defending more than one of a group of accused unless there is no conflict of interests in the above sense between them. But Soviet courts have in practice gone further than the law in this matter. Where there is such a collision of interests and only one of the accused has engaged a lawyer the Supreme Court of the U.S.S.R. makes it the duty of the court to provide counsel for the other defendants. That is a very sound point of view, for a lawyer engaged by one of the accused may be compelled to take procedural steps and resort to arguments that tend to incriminate the others. To make the right to defence a reality in such circumstances each one of the defendants should have his own lawyer.

Here the lawyers in the case must exhibit great tact and a due sense of proportion by reducing their accusatory actions to the barest minimum necessary.

In the Fundamental Principles of Criminal Procedure there are a number of important clauses dealing with the principles upon which the work of the defence lawyer is based. The Fundamental Principles point out that the judge, given sufficient grounds for a hearing of the case, *without pre-determining the question of guilt,* decides to hand the accused over to the court. It is also pointed out that *no one can be found guilty of an offence* and subjected to punishment otherwise than *by a sentence of the court.* The court and the investigating bodies must take all the measures provided for under the law for the complete, thorough and objective investigation of the circumstances of the case, bringing to light all the facts, both for and against, both aggravating and extenuating, in regard to those liable.

The law also lays down that sentence cannot be based on supposition. It can be passed only on condition that the guilt of the accused has been proved during the hearing. The final ruling on guilt or innocence and the removal of possible doubts on that score is contained only in the sentence of the court which becomes legally effective.

The clause of the Fundamental Principles laying down that: "The court, procurator, investigator and person conducting the inquiry have no right to place the onus of proof upon the accused" is of very great importance. The onus of proof rests upon the investigating bodies and the court. The onus of proving his innocence must not be placed upon the accused.

From the clause stating that sentence cannot be based on supposition it follows that every doubt is interpreted in favour of the accused. In such cases the efforts of the defence should be directed toward securing the complete exclusion of all dubious evidence, so that the decision of the court should contain nothing that is uncertain or doubtful, but only facts which are absolutely sound.

We have considered some of the most important legal and procedural clauses and ethical standards which constitute the basis for the work of the Soviet Bar.

Now we should consider how Soviet defence lawyers fulfil their responsibilities at the preparatory stages, during the hearing, during appeal and supervisory hearing and finally when the case is re-opened as a result of new circumstances coming to light.

Here in addition to the general propositions governing the lawyer's work at these stages of criminal procedure, considerable space will be devoted to illustrations taken from actual legal practice. It is, however, essential to inform the reader that the examples cited are in the main such where the work of the lawyer was

beneficial to the client. This is done to demonstrate what an efficient, conscientious counsel for the defence can do when there are substantial gaps and unclear spots in the inculpatory material of the prosecution.

The preparatory period for the trial has its importance. The defence should use this time to make a thorough study of all the material of the case and to acquire all the special knowledge that may be necessary for a scrupulous analysis of expert testimony and other evidence. This is all the more necessary because according to Soviet law expert testimony is not binding on the court and may for reasons stated be rejected in the judgment. The lawyer for the defence should therefore not blindly defer to the authority of experts but if necessary should be able to subject their findings to just criticism. While preparing for the trial the advocate must also select and peruse the legal literature that equips him with the knowledge requisite to handle the case at bar. The defence lawyer has the right to make all the excerpts he needs from the record and may even procure a complete copy of all evidentiary materials from the court stenographer.

Very effective in these pre-trial preparations are meetings and talks between counsel and client.

It is the practice of Soviet courts to allow considerable time to both parties for the pre-trial preparation of the case, particularly when the case is complicated. The lawyer is expected to utilize this period to work out the strategy and tactics of the defence. This is the time when it must be decided whether there will be a fight for an acquittal, or for a more favourable juridical qualification of the crime, or for a diminution of the imputed extent of the defendant's criminal activity, or finally for a recognition of extenuating circumstances. At this stage plans are laid for the examination of the accused, experts and other witnesses, and decisions are

taken to move the court to call additional witnesses, including experts, and demand supplemental proof. The lawyer may ask the court to act on such motions during the pre-trial preparations, which the law permits, or he may submit these motions to the court at the beginning of the trial. According to Soviet law a refusal to grant such requests does not bar the defence from renewing them at a subsequent stage, in fact, at any time during the trial.

It goes without saying that the defence's strategy and tactics elaborated before the trial may during the contest in court undergo substantial and at times even fundamental changes. But this does not make it less important for the lawyer to prepare his case beforehand.

However important the preparatory work of the lawyer may be, its role is subordinate; its purpose is to place in the hands of the defence a reliable weapon for the battle to follow in court. It is the period assigned for the mobilization of forces and financial means.

The hearing of the case in court is the main stage of a criminal trial.

At the court hearing all the evidence gathered during the preliminary investigation, as well as all additional evidence submitted by either side directly during the trial, is verified and appraised. This verification is made on the basis of the truly democratic principles that govern Soviet criminal procedure: public, open, oral, direct, uninterrupted and contested proceedings based on active and equal participation of the parties to the trial.

That criminal trials must be *public* implies that the investigation, hearing and decision of criminal cases are functions of state bodies (of the preliminary investigation, the Procurator's Office and the courts) performed

in the public interest and by virtue of their official duties independently of the will and judgment of private individuals and organizations whose interests have been directly affected by the crime. Excepted from the operation of this principle are so-called private prosecutions, such as cases of slander and libel, which are instituted only upon the filing of a complaint by the party aggrieved and may be discontinued during any stage of the court hearing upon the reconciliation of the parties concerned.

That criminal trials must be *open* implies that the hearing in court must be open, that is, must take place in the presence of outsiders. The implementation of this principle ensures the educative influence of court hearings on large sections of the population, as well as the public control over the work of the court.

That they must be *oral* implies that at the hearing all the testimony and explanations of its participants must be oral, and that all the circumstances of the case, all the proofs assembled in the case, must be discussed orally.

That they must be *direct* implies that at the hearing the information concerning the facts ascertained by the preliminary investigation is received by the court directly from the original sources of this information (the testimony of witnesses—by interrogating them right in court; real evidence—by examination at the hearing).

That they must be *uninterrupted* implies that there should be no lengthy interruption of the proceedings and that during the hearing and decision of one case no other case should be heard or decided by the same court. Moreover, there must be no change in the composition of the court from the beginning to the end of the trial. Any change in the court's composition necessitates a rehearing of the case *de novo*.

Conducting trials in the native language of the majority of the population of the particular locality makes the trial understandable for them.

This stage of the criminal proceedings ends with the court's evaluation of all the evidence in the case, as expressed in the judgment pronounced in the name of the state. When it becomes effective all pertinent bodies and all private citizens concerned are obliged to carry it into execution.

The enumerated principles and methods applied in trials guarantee just, lawful verdicts, sentences and judgments which safeguard the interests of the state and of each citizen alike.

The proper composition of the court is an important guarantee that its judgment will be objective. The law therefore permits members of a court to be challenged for cause. For instance, if a judge or people's assessor is a relative of one of the parties concerned, or if either or some near relative of theirs is materially interested in the verdict, or if either has been examined as a witness or expert in the case in question, he is subject to objection. In addition to these grounds for challenge a judge or people's assessor may be removed if there are any concrete facts that cast doubt on his impartiality.

Lawyers, of course, actively participate in the discussion of such questions as to whether a case should be heard in the absence of experts or other witnesses that had been summoned, or whether additional evidence should be demanded, additional experts or other witnesses called, and the order in which the accused and witnesses should be called to the stand.

The defence may present a variety of petitions to the court during the trial. For instance, if there are serious gaps in the material collected and they cannot be filled in in the course of the trial (the gaps may include com-

plicated expert testimony consuming much time, the taking of new testimony necessitating special investigation, the summoning and questioning of important new witnesses whose residences have to be ascertained, etc.), the defence may ask that the case be sent back for additional investigation.

Such requests may be made by the lawyer at any stage of the trial. Practice has shown that it is best to supplement an oral petition by one in writing and carefully formulated. This will be of great assistance to the court in reaching a decision and will provide the defence with valuable material on appeal for cassation if the petition is refused without sufficient cause.

The accused and his lawyer are entitled, under Soviet law, to have the staff of experts enlarged by at least one in whom the accused personally has confidence. Such a request must be granted if the person named by the lawyer possesses the necessary qualifications and if calling him does not involve any lengthy delay.

Questions may be submitted to experts orally or in writing. Written questions are preferable, particularly when the case is complicated. Their formulation is discussed by the parties and is then subject to the court's approval. The experts must give written replies to the questions put to them by the court and the two parties, after which they may all cross-examine them. This method ensures a correct understanding of their findings and affords an opportunity to test the scientific accuracy and soundness of the experts' findings.

Counsel for the defence often stages in court an approximate reproduction of the original scene to test the credibility of witnesses and the validity of experts' findings. Here is where originality, ingenuity and learning stand him in good stead.

A correctly and comprehensively conducted trial is the only basis on which counsel for the defence can deliver a well-founded speech on behalf of his client. The debates in court will always be nothing but a more or less effective display of fireworks if they do not rest on a vast amount of painstaking checking up on evidence, a job which the lawyers attend to in the course of the court hearing. The Soviet defence lawyer therefore exhibits great activity during the examination of experts and other witnesses, on examining real evidence, when viewing the scene of the crime, that is, generally speaking, when verifying the proofs in their entirety. The lawyer does all this, of course, only on the basis of the position set out in the law—through the clarification of circumstances acquitting the accused or extenuating his guilt.

When the debate between counsel for the defence and for the prosecution is finished (to be considered below) and before the court retires to deliberate the parties may, according to Soviet law, present to the court in writing a summation and evaluation of the events and of the actions of the defendants that constitute the case at bar. These are, of course, not binding on the court. This very important provision of the law makes it possible for the defence lawyer, after the court has heard his oral argumentation, to convey to the court in writing all the points it contains, so that they may be discussed from every angle *in camera* before the verdict is announced. Soviet lawyers make extensive use of this right, especially when the case is highly involved and there are numerous accused and lawyers, when the speeches of counsel and the concluding speeches of the accused sometimes last several days.

Let us now give a few illustrations of the work lawyers perform during the hearing in court, the trial.

. . . Ponomarenko was an experienced surgeon, having performed numerous serious operations in front-line hospitals during the Second World War. This service accustomed him to take quick and firm decisions without excessive preliminary thinking.

After the war he became a surgeon in Kolpino, an industrial suburb of Leningrad. One night while he was on duty they brought in a young worker from the Izhory plant. He was a night-shift electrician who had met with an accident. He was fixing the wiring at some hanging stairs, while below, near a vat containing metal heated to 1000° C., another worker was doing something else and had just removed the safety net intended to protect the young electrician when the latter came tumbling down the stairs and with his right leg stepped into the incandescent metal up to the middle of his thigh. He was at once taken to the hospital in a very serious condition. Ponomarenko had to decide immediately what to do. The injured leg was covered with burns of various degrees. But the burns were not the only injury sustained. Matters were made worse by the circumstance that a considerable part of the patient's body had been subjected to the action of very high temperatures. Only a very healthy body could stand such a strain. But even youth and strength are not all-powerful, and the patient was in a condition bordering on shock. The resoluteness which characterized Ponomarenko at the front showed itself now too. Without consulting with his colleagues he decided to amputate at once. The patient soon got better.

But the head doctor of the hospital and some of the other medical men were of the opinion that there had been no vital necessity to operate. The material was submitted to the procurator, and criminal proceedings were instituted against Ponomarenko for having decided, all by himself, on surgical action in the case as a result

of which the patient was unwarrantedly crippled. The findings of the forensic medical experts were not clear.

In order to ascertain whether the surgeon's decision to operate was correct from the medical point of view or whether the method of conservative healing and preserving the leg of the young electrician should have been pursued, the lawyer I. M. Otlyagova, with the assistance of her client, made a study of the extensive special literature on burns. Theory upheld Ponomarenko. With burns of such severity and so situated and the patient's near-shock condition, delay in operating might have caused death; and even if his organism did get the upper hand in the struggle, the healing method would not have yielded lasting beneficial results and surgical interference would have had to be resorted to all the same.

On petition of counsel for the defence the court added three new specialists to the staff of experts in the case—all prominent Leningrad surgeons. They completely endorsed the stand of the defence, which resulted in an acquittal.

... Lidia Vakovich, a shot-putter, was practising at a Spartak Stadium. A shot chanced to hit the head of another athlete near by, Kondratova. Lidia was charged with violating the safety rules when engaged in athletic training, resulting in bodily injury.

The lawyer, M. B. Novikov, who undertook her defence, carefully went through all the instructions as regards training on athletic fields and thoroughly studied the testimony of the sports experts. He arrived at the conclusion that his client was innocent.

It was established at the trial by skilful questioning of witnesses and experts that Lidia had been assigned training ground by trainer Fostin which did not answer the safety rules. It was learned that the ground in ques-

tion had been condemned before as unsuitable but that the trainer had nevertheless allowed it to be used for shot-putting. He furthermore permitted practice in his absence, which was contrary to instructions. It was also ascertained that when putting a shot one must make a turn of 180°, on doing which one is bound to lose sight of the shot. Under all these circumstances and in view of the suddenness with which Kondratova appeared on the training ground, Lidia could not foresee and hence prevent the accident.

The court recognized that the position of the defence was correct and cleared the girl of the charge.

...In the spring of 1955 the driver Kadkevich was running a lorry through one of the districts of Leningrad Region when a certain Petrov suddenly jumped on the running board. As the car made a sharp turn Petrov was thrown off and fell under the right rear wheel. He sustained severe injuries and soon died of them. The accusation against the driver was supported by the technical experts who claimed that he could not but have seen Petrov on the running board. According to the traffic rules he should have stopped and told Petrov to get off. It was further held against him that he was intoxicated when he drove that day. A district hospital nurse stated that he "smelled of vodka."

As the accused strenuously denied that it was possible for him to have seen anyone jumping on the running board, his lawyer, L. Y. Deich, decided to check up on this himself. After experimenting with a lorry of the same model as his client's he convinced himself that his client had told the truth. He then petitioned the court to order an experiment to be performed that would settle this point. The experiment showed that the technical experts were wrong and that the accused's claim was right.

The charge of driving while intoxicated was also wiped out. According to the U.S.S.R. traffic ordinance the inspection of transport personnel to ascertain intoxication must be made by a physician and not by lower medical personnel. Moreover, the person investigated must be subjected to a series of definite tests and biological analyses which make it possible to find out his psycho-physical condition. It is strictly forbidden to base the findings on external impressions alone, as for instance the smell of alcohol. The defence therefore considered that the certificate issued by the nurse was wholly invalid and that the claim of the accused—that he was entirely sober and that the smell of alcohol came from a drink he had the night previous—stood unrefuted.

The court joined the defence in its line of reasoning. An acquittal followed.

The speeches by counsel for both sides sum up the trial hearing and are its culminating point. Both prosecution and defence give a social evaluation of what happened, analyse all the evidence submitted, assign to the facts their legal qualification, state their opinion with regard to the causes that gave rise to the crime, analyse the personality of the accused, suggest what would be a just measure of punishment. All material that counsel for the defence could get hold of during the preparation of the case in favour of the accused, all that stood the test of the legal battle in court—all that is then systematized, worked up and utilized by the lawyer in his final plea as the last chance to convince the court that the stand he has taken is correct.

The importance which the Soviet legislator attaches to the debate of counsel is particularly evident from the fact that an accused who has no lawyer is given the right to speak in his own defence in addition to the right to his last say.

The starting point of the speech delivered by the lawyer is the formulation of the charge brought against his client in court. Counsel's function is confined to disproving that formulation or changing it in favour of the defence, as this formulation cannot be extended in scope or aggravated in the sentence. Such an alteration of the formulation would inevitably result in the case being sent back for further investigation.

According to the Soviet Procedural Law the speeches cannot be limited in length. The presiding judge can stop the speaker only if he goes beyond the evidence admitted at the trial. This means that the lawyer has no right to introduce and analyse new evidence. This provision embodies a profound legal idea. The principle that trial proceedings must be oral and direct requires that the parties should discuss and the court base its verdict solely on the evidence produced in court. Should a need to introduce new evidence arise during the debate, the defence may request the court to order the trial to be reopened. When the new evidence has been examined the debate is resumed.

In addition to the speeches of the procurator and the defence counsel there may be an exchange of rejoinders. Their purpose is to voice the objections each party has to the arguments advanced by its opponent in his speech. Each can resort to this right only once, but the defence is always allowed to speak last. In practice the right of rejoinder is used by the parties to clarify substantial differences in the assessment of evidence that may decide the issue and also to take exception to any distortion of facts and incorrect legal characterizations of actions of the accused. Whereas a lawyer has no right to waive his speech for the defence, it lies within his discretion whether to make a rejoinder or not.

While speaking of the debate between counsel we must make some mention of forensic oratory. Here as in other fields of art Soviet public opinion favours granting full scope to the different styles of delivery, wants every orator to be allowed to make the best use of his oratorical talents in addressing the court.

In the lawyer's speech there is room for fervent accusation, dry analysis, sarcasm and irony, all of which find wide application in Soviet courts.

But as in any other form of art so here form has no self-sufficient import. Its function is merely to convey to the hearer without distortion the thought of the orator, to convey that thought in terms the audience will understand. Soviet forensic orators strive, with regard to form, to present their case with crystal clarity, without unnecessary complications, without flourishes and pretentious rhetoric.

The opinion is widespread that deep thoughts cannot be expressed in simple form. Yet one cannot but agree with the admirable words of the Russian writer and philosopher A. I. Herzen: "There is no thought that cannot be uttered simply and clearly, especially in its dialectical development." It is this simplicity of form—a form which vanishes, as it were, becomes imperceptible, and the court is gripped solely by the force of the speaker's thought, the force of his logic and his conviction that he is in the right—that Soviet forensic orators always strive for.

The Soviet Bar has produced not a few paragons of forensic eloquence, such as the late N. V. Kommodov, I. D. Braude, S. K. Kaznacheyev, M. A. Otsep and, among contemporary lawyers, A. I. Yudin, L. V. Vetvinsky, B. A. Samsonov, G. P. Yarzhenets and numerous others.

Soviet lawyers make a systematic study of the art of oratory. They carefully study the best speeches of pre-

revolutionary Russian masters and also best pieces of forensic eloquence in the West.

We shall now introduce the reader to some samples of the art of oratory as practised by Soviet advocates.

...The young pianist Nadezhda Sulchinskaya was charged with the murder in 1947 of her husband Dubin, an administrative official in the field of art, by hitting him over the head with a flat iron out of jealousy. The trial took place in Leningrad in 1948-49. Y. S. Kiselyov was her lawyer. He delivered a brilliant speech in defence of his client in which he convincingly showed that jealousy was far from having been the cause of the murder. Painting to the court a detailed picture of Nadezhda's unhappy personal life he deeply analysed her relations with her husband and drew the conclusion that the murder was the result of the continual harrowing insults, indignities and humiliations of the utmost refinement to which Dubin subjected the accused.

Kiselyov opened his speech as follows:

"Comrade Judges, the evidence includes a photograph of Dubin, the man who was killed. One cannot look at it without shuddering. The iron shattered his nose and forehead. There is no face left. In its place—bloody pulp. And through this bloody pulp the brain is visible, as the medical experts' certificate says. This is the deed of Nadezhda Sulchinskaya, a young, frail-looking woman of moderate height, a musician 'of delicate taste and great skill in execution,' as her testimonial reads."

And then the lawyer puts the question:

"What guided Sulchinskaya's hand when she frenziedly smashed with an electric iron the skull of the man she had already killed? It is useless to ask her, she will not say why, not because she does not want to, not because she is hiding something or keeping a secret. She will not say because she cannot, because

she is unable to say. Nadezhda gave us an explanation. Just recall how several times she interrupted her story, exclaiming: 'My God, how untrue it all is!' She felt that her words were ineffective and pitiful and that they did not convey the truth she sensed but could not express. And remember too how when she finished her testimony and was ready to resume her seat, she herself was surprised at the little she had said. 'How meagre all I told is,' were her words.

"And now I trust, Comrade Judges, you will permit me to make it my task not only to reveal to you the true motives behind Nadezhda's crime but to explain to that very unhappy woman what happened that evening in Third Soviet Street, why the electric iron that had been lying all the time peacefully on the table suddenly became the instrument of a foul deed...."

Then the lawyer narrated the story of his client's life: her unfortunate first marriage to a middle-aged man, cold and imperturbable, the father of her elder son. He wound up his description of this period of her life with the words:

"She suffered in silence, uncomplainingly—no, that's not the word; she meekly froze up alongside Kragin [her first husband—*the authors*].

"Then came the war and evacuation to the East, where she encountered Dubin. Followed an unconquerable feeling of love for him and a display of her high standard of morality.

"Though she was losing the ability to resist Dubin's importunate caresses, she could not share her emotions with two men. So during the difficult days of the blockade she made her way to Leningrad to obtain Kragin's consent to a divorce. He offered no objection.

"A free woman and happy in the thought that now she can bestow undivided love, she returned to Dubin, who liked to say of himself that he was anything but a

family-man and always had his moods. He asked all his close acquaintances not to tell Sulchinskaya that he was a married man whose wife was living in Leningrad.

"They became intimate and in due time she imparted to him her happy secret that she would soon be a mother. This was the time when he struck her the first hard blow. 'You did not get pregnant from me,' he snapped. 'No woman ever did....' She said nothing in reply. What could she say in answer to such an insult, which was more than any woman could tolerate, more than her honour could bear. But she loved that man. She remembered how gentle, how affectionate, how solicitous he had been. It was not easy for her to condemn him. She tried to justify him in her own eyes and clear him of all blame. She went to him and said, 'What a terrible thing it would be to have a child, knowing that you will have your doubts. In that case I do not want the child. I'll make an abortion!'

"But the town is small, ever so small, and an abortion will soon leak out.* So Dubin threw down that proposal.

"With the passage of time the child needed increased attention, as did her elder son.

"And then," said the lawyer, "Dubin, who only administered art, who knew all the seamy sides of Bohemian life but had imbibed nothing of genuine creative art, of sublime artistic labour, who mastered the technical terminology of the art critic and assumed that this can replace creative work—that Dubin felt himself out of place in a home where diapers were hung and a baby was heard bawling at times. So he began to disappear from home for weeks at a stretch.

"Naturally—the defence said this openly—during that

* At that time abortions were illegal unless medically required.

period jealousy did play a certain part in the relations between the couple, but it was soon extinguished, receded into the background, in the face of deeper, more powerful emotions.

"This occurred because Dubin confronted Sulchinskaya with a new harsh demand. He declared that her elder son Yura, then six years old, annoyed him and told her to take him somewhere out of his way. Sulchinskaya, humiliated, crushed in spirit, bereft of all will-power, satisfied also this demand of her husband. The boy was turned over to the care of acquaintances.

"In a letter which Dubin wrote to one of his friends, he speaks with masculine self-satisfaction about the inner state of his wife who once told him, 'I love you so much that I have not the strength to leave you. But if you yourself leave I shall have enough feminine dignity and pride not to run after you. Be strong; after all, you are a man! *You* leave!'

"There were days," the lawyer continued, "when Dubin's little boy was sick and a medical nurse came to give him injections. She was questioned and told of a scene which the accused recalled very reluctantly.

"The two began to quarrel and Dubin told Sulchinskaya for the first time: 'Nurse Seryozha until he's a year old. During that period he needs his mother's milk. After that I'll take him away from you and chase you out of here.'

"And again days of anxious waiting passed, of waiting for Dubin who often left the house, days of chance reconciliation amidst imprecations, days when every taunt of his was a stab in the accused woman's heart."

At this point the advocate passed on to a description

of the events that immediately preceded the crime and told how it was committed.

"On December 25 Sulchinskaya and Dubin were the guests of the Nechayevs. He was lively, attentive and courteous to his wife. Just think how much poison and malice was actually mingled with this sham tenderness! He, a man of moods, gently pats her shoulder, perhaps even strokes her head, without giving these almost mechanical movements of his fingers a second thought. It never occurred to him how eagerly the woman who loved him responded to the caresses that meant nothing to him. If Sulchinskaya would have realized the enormous, really extravagant price her heart was paying for these perfunctory gestures, perhaps what happened the next day would not have occurred, the next day when the domestic sky was again cloudless and everything was O. K.

"Dubin's good mood continued and thawed up a bit Sulchinskaya's heart. They returned home. Dubin wore his bath-robe. It all made him feel comfortable, calm, fine and dandy. Nothing disturbed his balance of mind. He was polite, poured wine not only for himself but also for his wife, perhaps even filled her glass first.

"Then came the terrible climax. Dubin, good-natured, tender as only he can be, tranquil, imperturbed, told his wife in a tone of voice in which one selects a tie or speaks of darning socks, 'I thought it over . . .' and his wife sat there beside him and perhaps was still smiling at him—everything was so lovely—'I thought it over. You nurse the baby only eight months, not a whole year, and then leave him to me. But you yourself get out, together with your brat Yurka!'

"It would have been understandable if it had been spoken in a fit of rage, if it had been the outcry of an anguished heart. But this was uttered with perfect calm,

while lounging in an armchair with a glass of wine in his hand....

"She was beside herself from the shock, from the instantaneous revelation of his icy cynicism that neither experienced nor understood love or the warmth of a human heart. Stunned by his insulting words and feeling that she had been bereft of all she held dear in life, Sulchinskaya, out of her mind, seized an electric iron and struck Dubin with it over the head. Then she hit him and hit him until she fell unconscious.

"The question was asked here why such a great number of blows were inflicted. If there had been but one blow I might have believed she was in her right mind, that she knew what she did, but as there were many, unbelievably many blows, we can say with perfect safety that she was out of her wits. It was her mental pain, her rage, her excruciating torment that raised and lowered the hand that held the iron."

Kiselyov then made his legal analysis of the offence committed by the defendant. He attached great weight to the circumstances of the case and to the testimony of the forensic psychiatrists, and arrived at the conclusion that in the case at bar there was no murder from base motives but homicide committed under the influence of strong mental excitement induced by the systematic grave insults on the part of the murdered man. He ended his powerful, lucid speech as follows:

"She does not know very well what is in store for her, what her sentence will be. I am afraid that does not cause her much concern. And speaking in good conscience and truth, what can the court's sentence add to the grief that has overwhelmed Nadezhda? It always clings to her; she cannot shake it off. No power on earth can relieve her of this grief. Who can tear her from herself, what can be more bitter to her than to remain alone with herself.... A mild sentence will not lighten her fate

but it will show her that you realized how hard her lot was before and how unbearable it is now."

The court agreed with the lawyer's arguments, rejected the prosecution's appraisal of the crime and sentenced Sulchinskaya to only three years' deprivation of liberty.

... Puny, underdeveloped Abdullah Lukhamedeyev, a high-voltage electrician eighteen years of age, was haled into court on the charge of beating his father, a husky, tall-grown loader. The indictment charged that the accused committed the offence while under the influence of liquor. When a militiaman tried to stop Abdullah, the latter offered resistance and knocked the officer of the law off his feet. The facts were as clear as day. It seemed the guilt of the accused was beyond question and that all his lawyer had to do was to say a few words in mitigation of sentence.

But the defence counsel, V. G. Victorovich, a man of much experience and insight, thought otherwise. He frequently visited his client in gaol and interested himself in what really lay behind the assault. He delved into all the details of the life which the Lukhamedeyev family led and brought to light many a fact of importance and value to the defence.

It transpired that the father had served much time in various places of confinement for a severe crime he had committed. The amnesty of 1953 restored to him name, liberty and all civil rights. When his father went to prison Abdullah was eleven years of age. His mother had also a second child on her hands. She had not been trained for any skilled job and so had to work as a charwoman or a watchman, took in washing and in fact shirked no work, having only one purpose in life: to put her children on their feet, give them an education, give them a chance to advance. Thus the years went by. Abdullah made out well at school. He dearly loved his

mother, who tenderly cared for him. He developed an early interest for technical things, which made him join the airplane designers' circle at the district House of Young Pioneers. He mastered the fundamentals of this delicate and complicated craft and received a diploma as district instructor of Young Pioneers in aircraft designing. At the same time he continued his regular studies. Soon he became an electrician and began to help out his mother financially.

Then came the summer of 1953, and the father's return home. Abdullah had grown into a young man with a definite trade and wide interests. The daughter also was getting along well at school. One would think that the father's heart would be filled with gratitude toward his wife, whose arduous labour and unceasing care had held the family together and brought up the children. But it all turned out differently. His term in gaol left no trace in the elder Lukhamedeyev's mind. It taught him nothing. Rude, cruel, tyrannical and perpetually drunk, he, instead of acting as the head of the family, did all in his power to ruin it, to make life within it impossible. He was again beating his wife. Once more the Lukhamedeyev flat became the scene of long-forgotten rows and the father's foul abuse.

Abdullah, who had a tender heart and was very fond of his mother, lost his peace of mind. It was no longer possible to study at home, to devote himself to the things he liked. He, of course, could leave his father's house and begin life by himself, but he was deterred by the thought of leaving his mother to the tender mercies of his father. Out of grief he began to drink, but rarely. Once he returned home in that state and witnessed his father brutally beating his mother. Suddenly his fury, his outraged feelings, the pain it caused him, all merged in one stream in Abdullah's soul and, feeble and slight as he was alongside his tallish parent, he flung himself

upon him, knocked him down and gave him a good drubbing.

To present to the court a complete picture of the Lukhamedeyev family drama counsel for the defence asked that five additional witnesses be called. He started his speech with the just reproach to the investigating authorities that their analysis of the case had been superficial.

"Just look and see how extremely simple everything appears in the act of indictment. Abdullah Lukhamedeyev, eighteen years of age, in a state of intoxication, in the yard of his house, in the presence of a great number of people, without any reason, was beating his father, and when a militiaman tried to pull him away, he threw him down. How simple and yet how doomful it all looks for the lad. To raise one's hand against one's father—what could be more detestable!

"As you sit there and turn over page after page of the record of this case, read and reread them, it may well occur to you that perhaps there is behind it all some intricate, undeciphered web of human relations.

"Unfortunately, all this did not receive due attention during the investigation. But what an important contribution would have been made to the case if the investigator had attempted to take a deeper interest in the life of the people concerned. But he did not. The investigator saw nothing in this case but ordinary rowdyism, he did not feel that the background of this case was a complicated mess—long and painful experiences that reached the point of explosion in this savage scene."

Then the advocate in bold strokes drew a picture of the destructive effect of the father's return.

"The small room where Abdullah ever since childhood was wont to busy himself with his models, pore over

technical reference books, was now in the undivided possession of a foul-mouthed drunkard. Time and again, with sinking heart, Abdullah saw the heavy hand of the loader strike his mother and he took her part. His little sister used to run away to neighbours. There, with these compassionate people, she would do her lessons and stay over for the night. Thus it went on from day to day.

"And only such a short time before the lad's life had been bright, pure and replete. One of the best electricians at his place of work, he was always eager to do a good job. That was his world, the world of technics. As soon as work was over he rushed to the workshop or the aerodrome. He was lured to this green field, to the planes, the models, by an irresistible force. Here among his likes, inquisitive youths anxious to learn, he experienced that joy, that sublime satisfaction which man receives from labour he feels called to do, creative labour, in which strict calculation is combined with daring boyhood dreams."

Thus the lawyer showed step by step the growing family conflict until he brought his listeners to the sad ending of the tale.

"On May 12, when Abdullah was returning from work, he felt depressed and decided to have a drink. His spirits rose but not for long. When he was almost home, alarm, fear for his mother, a foreboding of evil again crept into his heart. When he reached the yard, he ran up the stairs two steps at a time. He had heard his father's bawling voice, blows and a shriek from his mother. He dashed into the room and saw his mother standing near her brutal husband, her arms covering her head and blood trickling down her face. Everything swam before the lad's eyes. He leaped at his father, gripped him and dragged him out into the yard, where he beat him up. He may have assaulted also somebody

else. His memory on that point is poor. He was all in a fog.

"Witnesses testified to every detail of what occurred. The frail-looking lad chucked the burly loader outside, got on top of him and beat him good and proper. Then he flung off the militiaman who tried to pry him loose.

"Where did this young man, still a mere boy by looks, get such inordinate strength? It was strength born of desperation, wrath, immeasurable suffering for his mother. His insensate outburst was a struggle with the terrible, sinister element that entered their lives, defiled, mutilated it and made his mother, to whom he owed everything and who was nearest and dearest to him, knuckle under and age a score of years.

"This is the true and unembellished picture of this case. These are the features it assumes from the testimony of the witnesses, and there is not a person in this court-room who will doubt its verity."

In conclusion the learned counsellor added:

"There now remains but one thing more, to punish the accused, but in doing this the very leniency of the court should stress its understanding and correct assessment of the exceptional circumstances of the case.

"Lastly. It is very much to be hoped that this whole thing has left its mark on the elder Lukhamedeyev. Hard liquor could not have seared in him all that is fine and human. He will look back upon his life and realize how he tortured his family, how he himself has gone to the dogs, and it may well be a new life will start for the Lukhamedeyev family. I believe that this will come about, and when it does, it will be greatly to the merit of the administration of justice, of yourselves, Comrade Judges."

The court agreed with the defence. Lukhamedeyev junior was sentenced to a short term of correctional

labour to be served at his place of work, which means in practice a deduction from his wage of a definite sum (under Soviet law the amount deducted in such cases may not exceed 25 per cent of the wage).

As for Lukhamedeyev senior, one may rest assured that if he does not draw the right conclusions from the trial, he will find the reverse will happen. He will be the one in the dock and will be made to feel the heavy hand of Soviet law that severely punishes all those who flout the norms of socialist morality.

...In the summer of 1948 an event occurred in Kiev which aroused great indignation among the medical personnel of that city. No wonder, for a young woman doctor, who had only just started on her life's career, was accused of a heinous, fiendish crime.

Here is what happened.

Between nine and ten one morning the new-born child of Dr. Malinova of the Kiev Institute of Clinical Medicine was seared by some caustic liquid in a children's ward of the Pathological Department for Expectant Mothers in that same institute. The severe burns in the baby's face caused the complete loss of sight of the right eye and irremediable disfigurement.

A charge was preferred against Dr. Novinskaya, who had delivered Dr. Malinova, an old university friend of hers. The indictment gave revenge as her motive for the commission of this horrible crime, revenge for the indifference shown her lately by Malinova's family. Dr. Novinskaya categorically denied all guilt in the matter and the existence of any enmity between the two families.

The case was heard in the Kiev Regional Court. Dr. Novinskaya was found guilty and sentenced to deprivation of liberty for a long term. But the Supreme Court of the Ukrainian Republic to which she appealed for cassation reversed the judgment and ordered a new

preliminary investigation at which the case was discontinued for lack of sufficient evidence.

The arguments advanced by the lawyer M. P. Gorodissky in his plea to the court were made the basis of the Supreme Court's decree. In that speech counsel for the defence had at the very outset raised the issue of what had actually taken place.

"How could it happen," he reasoned, "that in a children's ward of a model obstetrical hospital a new-born baby was seared by a caustic liquid, causing severe burns that partially destroyed its sight and disfigured its face irremediably?

"Which alternative is true? Was it a case of criminal negligence on the part of the lower medical personnel carefully concealed by the guilty party for fear of the grave punishment entailed; or was it the deliberate disfigurement of a child from base motives—a crime of monstrous cruelty?"

Convinced that he was right in believing his client not guilty, the lawyer himself unhesitatingly laid bare before his listeners the terrible import of the circumstances incriminating her.

"A Soviet physician, who elected obstetrics as her specialty, i.e., that field of medicine that serves the noble purpose of rendering medical assistance in childbirth, of ensuring the birth of healthy children, is accused of committing a crime aimed at the physical destruction or mutilation of a child brought into the world with the aid of this very same physician only two days earlier.

"A Soviet woman, herself a young mother, stands accused of deliberately disfiguring the new-born baby of her friend!

"A terrible accusation, Comrade Judges. Its moral aspect weighs immeasurably heavier upon my client than the lawful punishment she is threatened with. Un-

impeachable evidence is required to prove such a charge. It must leave not a shadow of doubt as to her guilt."

Then counsel for the defence, M. P. Gorodissky, drew a convincing and detailed picture of the long amicable relations between the two physicians and after analysing them concluded that there had been no enmity between them, thus depriving the prosecution of its mainstay, the motive of the crime. The defence stressed the fact that the court too considered the motivation dubious, because in spite of the fact that Dr. Novinskaya never claimed that she ever suffered from any mental disorder, the court on its own motion had her examined by forensic psychiatric experts, being of the opinion that if it was not enmity some mental disorder might have impelled her to commit this heinous offence. The experts declared her perfectly sound in mind.

Carefully analysing the testimony of the witnesses, the lawyer explained how her official duties obliged Dr. Novinskaya to visit twice the ward in which the disfigured child was subsequently found. These visits, he demonstrated, were not reconnaissances of the scene of the crime nor preparations for its commission, as the indictment asserted.

He then moved on to the last piece of evidence against his client, the testimony of the nurse Beryozova, who stated that when she returned to the children's ward, which had been left without anyone in charge, she met Dr. Novinskaya, who was coming out of the ward, and right after that she heard the child crying and discovered traces of burns on its face. She stuck to her story that she herself did nothing to the baby, but immediately called the head medical nurse and the physicians who had gathered for a meeting in the doctors' room next to the children's ward.

Defence counsel went into every detail of the testimony. He ripped apart Beryozova's tissue of lies by

showing that she had reported the unfortunate case to her superiors only after the lapse of some 15-20 minutes. This circumstance was taken as the keystone around which the defence built up its case, viz., that the crime was not the consequence of Dr. Novinskaya's malice aforethought but of the gross carelessness of the nurse on duty, Beryozova.

This is what the lawyer had to say on this score:

"There is of course no reason for accusing Beryozova of having seared the child purposely. The burns are most likely the result of a mistake which the nurse must have made and which she is carefully hiding.

"We ascertained at the trial that Lavrinenko, the husband of the medical nurse in charge of the children's ward, is a chauffeur, and that chauffeurs often need some acid to charge their storage batteries. Isn't it possible that the nurse Lavrinenko through friends of hers got some hydrochloric acid from the institute's pharmacy for her husband and left the bottle in the chest where the boric acid bottle for washing the children's eyes was usually kept? She was finishing her shift and getting ready to leave.

"It is a known fact that on that morning they had not yet brought the baby to Dr. Malinova for feeding. Beryozova was the nurse who delivered the children to their mothers for that purpose. When she took Malinova's child to bring it to its mother Beryozova may have noticed that its eyes were badly washed. Now its mother was not just any woman but a physician of the same institution. Is it not just possible that she wanted to show her some special attention by washing the baby's eyes and that she grasped the wrong bottle in her hurry, the one containing hydrochloric instead of boric acid?

"Let us recall the recorded photograph of this baby's face after the searing. It clearly shows that the centre of the burn is located over the bridge of the nose from

where the corrosive liquid spread to the eyes, closing one for ever and leaving a scar on the eyelid of the other. Let us further go back to the testimony of Professor Pkhakadze, who was the first surgeon to examine the child after the burn. He confirmed the idea that, judging by the character of the burn, one might conclude that it had not been caused by acid being splashed on the face but by drying it with cotton dipped in acid.

"Dr. Godunova, a physician who had worked for decades in obstetrical wards, testified that nurses usually wash the eyes of new-born children not in the manner prescribed—from the periphery to the bridge—but squeeze out the cotton over the bridge and then go over the eyes of the child from the centre to the periphery.

"Is this not precisely what happened in the case at bar? For the fifteen minutes that I spoke of were more than enough to hide every trace of the mistake committed and to get rid of the cotton and the bottle.

"Is it not more likely and believable that events took this course than that a monstrous crime was committed, a version that would incriminate Dr. Novinskaya?"

When he had finished his description of the course of events as the defence saw it, the lawyer passed on to a criticism of the work of the investigating authorities. He claimed that as a result of their mistakes it had become impossible to detect the real culprits.

"Unfortunately the preliminary investigation of this case shows gaps that it is now too late to fill in. These gaps are there because the investigating authorities violated the supreme commandment not to confine themselves to the one version that has taken their fancy, not to make any hasty decision, not to lose sight of any other version that fits the circumstances of the case.

"The investigator, who arrived upon the scene an hour after the occurrence, did not even make an inspec-

tion of the locale. The medicaments and dishes in the children's ward were not put in judicial custody; the hands and gowns of the service personnel—Lavrinenko and Beryozova—were not examined personally, yet they might have shown traces of acid. There is no document showing that these gowns were impounded. We have no knowledge of who placed in the court's custody the cotton and tampon allegedly found in the children's ward and attached to the record as real evidence, and when they were so attached."

The speech ended with an appeal to find Dr. Novinskaya not guilty.

...Yuri Bagrov attended the sixth form of a Moscow school. As he was bad in his studies, the Young Pioneers' Detachment Council of his form authorized its Chairman, Rostislav Zorin, to talk the matter over with Bagrov's father. On hearing of this Yuri got four of his playmates to bunch together and use any means to prevent this mission from being carried out. While Rostislav was on his way to see the elder Bagrov the youngsters, who had waylaid him, beat him up.

Yuri and his accomplices were brought to book. He was defended by one of Moscow's leading advocates, V. L. Rossels.

The newspaper *Pravda* devoted a big article to this trial in which it said, "Counsel for the defence discharged their task well. Their speeches were not confined to the legal aspect of the case. The main issues, they considered, were the social and pedagogic questions involved in the trial."

Here is what the journal *Family and School* wrote about Rossels' speech: "The case presents a problem of extreme importance, that of uncared-for children, uncared-for not in the sense that there are no grown-ups to look after their safety or health, but spiritually uncared-for, when there is a father and mother but the

child is left morally alone. The speech of the defending lawyer squarely raised this very question, and it brings us to the central problem of family pedagogics."

We shall give some excerpts from that speech:

"Comrade Judges, there are a few general problems without a correct solution of which it is impossible to determine either the significance of what the accused have committed or the extent to which each of them is guilty. I assume that it is the social task of the defence, after focussing attention on the questions arisen in this case and all their implications, to reveal their social import and furnish an adequate reply."

In an analysis of the emotions that swayed Rostislav Zorin, "the head of the Young Pioneers' Detachment of the sixth form, an honour student, a model of discipline and an excellent companion," counsel for the defence said:

"Before this fourteen-year-old boy set out to see Bagrov's father, he experienced some hesitancy, was afraid it might be a wrong step or that his school-mate Yuri might misunderstand him, or that he might get the reputation, undeservedly, of being a tattle-tale. He therefore went for advice to the headmaster and asked whether it was the proper thing, whether it was tactful, for a pupil to go and speak to the parents of a school-mate about such things. He received the uncautious reply to go, a piece of advice which the pedagogue who gave it now undoubtedly regrets. Rostislav had a feeling that he was about to do something wrong and became apprehensive. . . ."

In describing the encounter between the two groups of children—Rostislav and some others of the Young Pioneers' Detachment Council on the one side, and on the other Yuri and his friends, all of about the same age and school-mates, and all bent on "teaching the tattle-tale a lesson"—defending counsel stated:

"These children considered the exalted feeling of friendship and comradeship by which Rostislav was imbued as characteristics of a tattle-tale, and their own cowardly assault from ambush on their school-mates they deemed the fulfilment of a duty of friendship they owed to Yuri.

"What a sorry mess, what a confusion of moral conceptions! What a substitution of base and evil motives for high and good ones in this small world of children!

"Great is the power of noble ideas in our society! One of them is friendship, comradeship.

"Comradeship is a concept that attained maturity and gained strength in the progress of our socialist revolution. It is an idea which inspires our people to new exploits, penetrates all the pores of our social organism and renders the concatenation of its parts still more indestructible.

"Comrade Judges, does not this appellation, addressed to you, symbolize the mutual relations existing in our society?

"And here we have the basic idea of our life crudely distorted."

Then the lawyer took up the cases of assault and battery *seriatim*.

"Who are these children, who did not understand the real sense of comradeship nor of comrade?" he asked. "Are they homeless, unsheltered children who, lacking the gentle admonition of a mother, the stern reproof of the pedagogue, the good counsel of comrades, follow the path of crime, obeying their instincts—often the only adviser in their sad, solitary childhood—which at times may be wicked and land them in court?

"No. These children, brought to justice before the red-draped judges' table for the first time in their lives, are more fortunate than that. They have grown

up in the cherished comfort of working families that love them, at the head of which often are intellectuals, exponents of Soviet culture.

"No, these are not children without a roof over their heads. They are carefully attended to by their school; their teachers describe them as good pupils, excellently disciplined, and this testimonial is borne out by the marks they get.

"Yet they stand here before us, hanging their heads and conscious of the fact that they did something bad. Who in our society, which considers courage the greatest virtue and cowardice a vice, instilled these false views into their minds?"

In answering this question the lawyer first of all analysed the kind of education they received at school.

"In our country the teaching profession plays a great and honourable role," he continued. "Soviet pedagogues, forming an advanced detachment of the Soviet intelligentsia, are assigned the mission of raising the cultural standard of the rising generation, of fortifying in the minds of the youth the lofty principles of communism and socialist morality, of imparting to them the most desirable qualities of man—high-mindedness and determination, honesty of purpose and fidelity to duty, fearlessness and perseverance, assiduity and wholehearted devotion to the socialist motherland, to the people, to the Communist Party.

"Society has the right to demand of our pedagogues not only personal moral qualities but the thorough knowledge necessary to accomplish the social task they are confronted with.

"Was this so in the school in question? Its principal is a man whose personal morality we do not question in the least; but his pedagogical methods, his ways of bringing up children, arouse alarm.

"Two of his pupils, Bolotov and Karev, openly approved the beating Rostislav Zorin got and when he learned about this he knew no better than to expel the pair.

"To be reinstated very little was asked of them. They were to hand in written statements saying that they realize that the opinion they expressed was wrong, and that they were sorry they had said it.

"And what could one expect? Practically the next day they submitted such statements and were promptly readmitted.

"That was putting a premium on hypocrisy.

"The pupils were virtually given a highly reprehensible object-lesson: one's real convictions should be hidden from one's official superiors and one should say what one may not believe so long as it pleases one's superiors. Then one's life will be pleasant and sweet.

"That is how youngsters may be habituated to such despicable qualities as obsequiousness, hypocrisy and deception.

"These are the results of employing harmful, drastic administrative measures in that school instead of applying the difficult but effective pedagogic method of explaining things."

The lawyer stated further that in that school the pupils were sharply divided into 1. "excellent" and "good" ones and 2. "bad" ones, i.e., those who do not get "excellent" or "good."

"The class organizer was an honour pupil—all his marks were 'excellent'; the Young Pioneers' Detachment Council members were all such honour pupils, and so were the editors and correspondents of the wall newspaper, who were zealously shielding their publication against the penetration of 'outsiders.'

"When Yuri, who was not an honour pupil, once got up the wall newspaper, the editors did not accept it, declaring that he had no right to butt in.

" 'Outsiders are not admitted!'

"Yuri's labour effort was made in vain, and it may well be that it was that day which gave birth to his grudge against his school-mates; that that was the day on which the poison of an undeserved slight began to rankle and stir up in his bosom, not yet tempered in gales, a feeling of animosity against those who had offended him.

"The gulf between the two groups of children grew wider and deeper. The teachers could not but see this, yet they overlooked it, as they did not grasp the significance of all that in the impending conflict and took no measures to relieve the tension in the class.

"In accordance with the ordinance of the People's Commissariat of Public Education of the Russian Federation concerning organizations of school children, a Young Pioneers' Detachment Council was formed in the class, but its activity passed beyond the scope allowed it by the ordinance.

"The council of its own volition, but with the approval and encouragement of the principal, summoned for reproof not only those of their class-mates who failed in their studies or had done something wrong but also their parents. They not only called the parents to school but visited them at their homes, controlled the lessons and the conduct of their school-mates, 'instructed' them, etc.

"These teachers turned their functions over to the Young Pioneers' Detachment Council. The council ceased being an agency for the exertion of comradely influence and became a sort of pedagogical council. In the eyes of the pupils the Young Pioneers' Detachment Council stopped being one of 'their own' bodies, a

friendly organization of comrades. It became an organ 'alien' to them in its nature, an organization under the thumb of the school administration.

"And the pedagogues of that school failed to note how unnatural the situation created was."

Then counsel for the defence bared to the court Yuri's psychology. Yuri figured out that his comrades had turned into some kind of chiefs, their interference in his affairs, which had been dictated by friendly sympathy, into tattle-taling, and that there was nobody at home to ask for advice, for neither parent, busy with their "grown-up" affairs, paid proper attention to their son.

The lawyer called the court's attention to the fact that the parents' lack of time, due to their being overwhelmed with work at their jobs and with all kinds of private affairs, was no excuse for neglecting the upbringing of the younger generation, as this was their duty to society and the state, which obligates them not only to maintain minor children but to attend to their upbringing and training for a socially useful life.

"The son begins to realize," the lawyer continued, "that it is hard to get an answer out of his father to any question that agitates his mind and he gets disaccustomed to consulting him. He is advised by a comrade whose parents are very likely also 'busy.' Relations between father and son cool off, they become estranged and the natural moral bond between them comes apart. Their ways diverge. But as soon as the father learns something that stuns him about his son he looks his offspring in the face and exclaims: 'Can that be my son? How could it only have happened?'

"One must delve into the things that children are interested in," the advocate continued, "must persistently look day by day after their developing wants, their reading, their amusements. One must help them

to resolve their moral conflicts, must find a common language with them and become their elder friend with whom they can share their juvenile experiences."

The court gave Yuri Bagrov and his accomplices in the beating suspended sentences and, going further than this, by a special finding called the attention of the local education authorities to the erroneous pedagogic methods of child education applied by the principal and the headmaster of this school. It furthermore informed the public organizations of the offices and factories where the parents of the convicted children worked, of the bad upbringing they gave their children and of their leaving them without proper supervision.

In the Soviet Union persons convicted of crimes enjoy extensive rights of appeal.

The law provides that judgments may be appealed for cassation by the defendant or protested by the procurator. The only exception is cases heard by the Supreme Court of the U.S.S.R. or the Supreme Courts of Union Republics sitting as courts of original jurisdiction, whose sentences are final and usually cannot be appealed. Judgments of Supreme Courts can be contested only in the exercise of the right of supervision, which is an exceptional judicial procedure that will be discussed below.

The right to appeal for cassation in Soviet criminal procedure is very extensive. Cassation possesses the peculiarity of organically combining purely cassational with appellative and revisional elements.

The revisional element in the review of decisions is expressed in the fact that the court is not bound by the arguments of the appeal or protest. It checks the case in relation to all those sentenced, including those who

did not appeal and in relation to whom a protest is not lodged.

The cassational element is expressed in the superior court's duty to verify whether all procedural and material provisions of the law have been observed and unswervingly to annul all sentences where there has been a substantial violation which may have impaired the ascertainment of the truth or infringed upon the guaranteed rights of the parties.

The appellative elements may be summarized as the higher court's right and duty to assess the sentence pronounced with regard to its essence on the basis of the material collected in the case without a new summoning and questioning of the accused, the witnesses and the experts. At the same time the parties may submit additional material.

The scope of this assessment of the substance of the sentence is very extensive.

The court of cassation must verify whether the lower court had before it sufficient data for the pronouncement of judgment or sentence and whether the judgment or sentence is warranted by the evidence.

In accordance with its findings on this point the court of the second instance may take the following decisions. It may leave the sentence in force, mitigate the punishment, not only shortening its term but also changing its form, as for instance substituting public censure or a fine for deprivation of liberty. It may alter the legal qualification of the offence but only in a manner leading to the application of the law regarding a less serious offence. It may, finally, annul the sentence and nol pros the case if the conviction was unfounded or for other reasons deemed adequate in law, or it may delete from the sentence certain parts of the accusation on the ground that they do not follow from the evidence presented.

At the same time, in accordance with the Fundamental Principles of Criminal Procedure, the court in hearing an appeal does not have the right to increase the punishment or to apply the law regarding a more serious offence.

Finally, in hearing an appeal, the court can quash the sentence and send the case for further investigation or for a new hearing.

In these circumstances the court of first instance, on hearing a case after the quashing of the original sentence, has the right to increase the sentence or apply the law regarding a more serious offence only in two circumstances: firstly, when the original sentence was quashed following the protest of the procurator or the appeal of the plaintiff against the leniency of the sentence or because of the need to apply the law regarding a more serious offence; secondly, when as a result of further investigation after the quashing of the sentence facts indicating that the accused has committed a more serious offence are brought to light.

An acquittal can be quashed after appeal only following a protest by the procurator, the plaintiff or the person acquitted (because of the motives and grounds for the acquittal).

In line with these extensive rights of appeal, the Fundamental Principles of Criminal Procedure lay down the corresponding grounds for quashing or amending sentences on appeal. These include one-sided or incomplete preliminary investigation or hearing, discrepancies between the conclusions set out in the sentence and the actual state of affairs, the incorrect application of the law or unsuitability of the punishment imposed by the court to the seriousness of the crime or the character of the accused.

The question of the participation of the accused in the hearings of the court of cassation is decided by the

latter. His presence is always permitted to submit his explanations.

The defence lawyer can participate in the hearings of the court of cassation.

These plenary powers of cassation mean not only ample rights and opportunities for the defence counsel but also serious obligations.

The cassational complaint should set forth the grounds relied on and should be carefully thought out. Sometimes, as clearly appears from what has been stated above, it should contain a criticism of the work of the lower court with regard to its observance of the law and a collection and analysis of the evidence. Sometimes the complaint takes exception to only certain episodes of the accusation or to the legal qualification of the facts, or only to the severity of the punishment. Cases may occur in which the lawyer believes that the circumstances have not been ascertained with sufficient clarity, that the real culprit has not been found, that the causes of the crime have not been established. The complaint should in that event contain a substantiated request to annul the sentence and also to order a new preliminary investigation. The decree suggested to the court in the complaint may therefore also vary greatly in content. It may be a request to annul the sentence and nol pros the case for failure to prove the commission of a crime or for lack of sufficient evidence, to eliminate certain counts in the indictment, to requalify the offence charged, to mitigate the punishment or to rescind the sentence and order a new trial.

No little difficulty may be occasioned by the collection of additional material which the lawyer may consider necessary to present to the court of cassation.

In the cassational stage collisions may arise between the position taken by the lawyer and that of his client.

What is to be done if the lawyer considers the sentence correct but the client disputes this? Various courses may be taken. One thing is beyond dispute: a request for greater leniency, if the client insists upon it, must always be embodied by the lawyer in the cassational complaint.

The situation is more difficult if the client denies his guilt or thinks that the court abridged his procedural rights or gave an incorrect legal qualification of his acts whereas the defending advocate is convinced that all these points have been duly considered by the court in its judgment. Quite naturally the lawyer must not in such a case exercise his right of being an independent party to the proceedings and cannot write a cassational complaint in his own name, as the law formally allows him to do. He must not and cannot do so because a complaint drawn up in the name of the lawyer sets forth only the points of view he agrees with. Yet under these conditions the lawyer must not refuse his client's request to help him draw up a cassational complaint that will set forth his, the client's, standpoint. It goes without saying that that complaint is presented in the name of the convicted and expresses only his views.

We shall now illustrate with a few examples the Soviet lawyer's work on an appeal for the cassation of a judgment.

...On the eve of the Great Patriotic War an accident so wrapped in mystery occurred in the commercial port of Leningrad that it gave rise to a lot of guesswork. On a clear and sunny but windy day a big ocean vessel, the *Vtoraya Pyatiletka*, which had just been launched by a Dutch shipyard, entered its waters. The ship was in command of Captain Nikonov, an experienced ocean sailor, who had brought the ship from

Holland. The ship went without a cargo, "in ballast," as seamen say.

Near the lighthouse the ship took on a pilot. After a talk with the captain he advised that as the vessel was sailing without a cargo and was therefore sitting the water high and as there was considerable wind, the speed should not be under nine knots. Then she would be more responsive to the action of the rudder. The captain considered this a bit of sound advice and at that speed the boat entered the rather narrow sea canal which leads from the gulf to the moorings of the port. Just at that time a turbo-electrical boat—also a huge ocean-going vessel—was passing through the canal on its way from Leningrad to the sea. The ships were approaching each other on parallel lines. Suddenly, when only a short distance apart, the *Vtoraya Pyatiletka* stopped responding to the rudder, and, in the jargon of the sailors, yawed sharply to the left. One of the ships seemed sure to be rammed. But owing to the experience of both skippers they manoeuvred their craft out of that peril. While neither boat was rammed their sides collided, causing damage to the planking and inside equipment. Both ships had to be sent to the drydock for costly repairs. The loss amounted to hundreds of thousands of rubles and the vessels lay tied up for a considerable length of time.

An investigation was made. It established that according to the rules for navigating in the waters of the Leningrad port the velocity of vessels must not exceed seven knots in the canal. The technical experts found that the main cause of the accident was the excessive speed (nine knots) of Captain Nikonov's boat in the canal. They stated that this made the body of the ship squeeze out water with great force, and that when this water struck the canal wall a hydraulic column was formed between this wall and the vessel's side. They

claimed that this column flung the ship back into the middle of the canal. Thus a causal connection was shown to have existed between the excessive speed and the accident that occurred. As for the pilot's suggestion—to proceed at nine knots—it must be borne in mind that a pilot, according to marine law, is only an adviser; it is the captain who decides and is responsible for the consequences. These were the objective conditions on the basis of which Nikonov was prosecuted.

A highly qualified specialist, well acquainted with the rules of navigation, who had been in almost all the ports of the world, Captain Nikonov was of the opinion that in this particular case he would be able to defend himself successfully. But he was disappointed in his hopes. The Baltic Basin Admiralty Court sentenced him to deprivation of liberty. Stunned by this sentence but still considering himself innocent he related the facts of his case and stated his position to one of the authors of this book, the lawyer Y. B. Zaitsev.

The stand taken by Nikonov, fully shared and supported by his lawyer, came down to the following. There was no theoretical foundation for the finding of the experts that the hydraulic column was the result of an inconsiderable excess of speed. The cause of the accident must be sought elsewhere. As was well known to Nikonov three other captains had at various times also suddenly lost control of their ships at the same spot. This gave rise to the supposition that there must be a shoal at the site where the *Vtoraya Pyatiletka* had ceased to obey the rudder and that the water was not of the guaranteed depth.

The special literature on the subject which the client collected and his lawyer carefully studied corroborated the hollowness of the hydraulic column theory under the conditions of the case in question. The Port Author-

ity upon the request of the legal consultation office furnished copies of the reports which had been made by the captains who had lost control of their ships at the same location without visible cause. The reports had suggested shoals, below-standard depth of water, but the Port Authority did nothing about it, made no hydrographic measurements of the canal bottom.

These weighty circumstances, which the lower court failed to take cognizance of, gave the events an entirely different complexion. They were made use of in the cassational complaint, to which the reports were attached as exhibits.

The complaint, which contained references to pertinent special literature, upset the hydraulic column theory propounded by the experts and demonstrated that the accident happened as the result of the ship's prow hitting a shoal, so that she stopped responding to the rudder, and not as the result of the higher speed at which the ship of the accused passed through the canal.

The appellant petitioned in substance that the judgment be annulled and the case sent back for further investigation, during which hydrographic measurements should be made of the canal bottom at the site of the accident and that it should be established whether the guaranteed depth was maintained there. At the same time the defence requested the Supreme Court of the U.S.S.R., to which the case was taken, to verify, through a new competent commission of technical experts, whether the hydraulic column theory was sound.

The Supreme Court fully concurred in the opinion of the defence. It nullified the judgment and sent the case back for further investigation. In that stage the new experts rejected the hydraulic column theory, the water at the place of the accident was found to be insufficiently deep and a shoal was discovered there. Thus they completely confirmed the supposition ad-

vanced as to the cause of the loss of control of the *Vtoraya Pyatiletka*, which brought about the accident. The case against Nikonov was dropped and criminal proceedings were instituted against the port officials who did not take the necessary measures in due time.

...Engineer Fokin, in the employ of a Moscow research institute, had been attending to some business in Leningrad together with a young fellow-employee named Sukhov. When the job was finished they prepared to return to Moscow in Fokin's car. They planned to leave very early the next day in order to be back by noon. At about three in the morning the two friends checked out of Hotel Europe and took their seats in the car, Fokin at the wheel and Sukhov at his side. When they came out of the Nevsky Prospect the vehicle turned into the wide and straight Ligovskaya Street.

The street was well lit. Fokin drove at a moderate speed—thirty kilometres an hour—in the direction of the Moscow Highway.

Without changing direction or speed, at the crossing where the highway is intersected by a passage leading to the Circuit Canal, the car suddenly found itself ditched in the canal. The resistance of the water considerably cushioned the shock, and the car almost smoothly sank to the bottom. When he came to after this unexpected experience, Fokin, a good swimmer, managed to scramble out of the car through the broken pane of one of the side windows and to reach the surface. But his young companion, who, according to Fokin, was asleep when the car tumbled, could not get his bearings on waking up. At any rate he remained inside. Fokin dived several times in a frantic effort to extricate his friend, and as the water was low at that spot he might have succeeded but for the fact that he could not open the door, which had jammed. Overwhelmed by the disaster and losing strength he made his way to the shore

and rushed into a fire-house near by. It took several minutes for the fireman on duty to understand from his incoherent tale what the matter was. Then he called several other firemen and the group rushed to the scene of the accident, but too late to save Sukhov's life. The post-mortem showed no bodily injuries. He died of asphyxiation.

An investigation was set on foot. The expert testimony, procured through the Traffic Regulation Department, charged Fokin with criminal negligence, namely, driving his car at night at a speed not safe for traffic, in consequence of which he did not notice the passage to the canal. An indictment was found against him. At this stage of the proceedings he went to the lawyer Y. B. Zaitsev to ask for legal aid.

Repeated visits to the scene of the disaster and the study of special literature on the subject put the lawyer on the right track. They enabled him to get a correct picture of what happened and choose the proper position to assume.

It came to light that at the crossing of Ligovskaya Street and the Circuit Canal a sudden and serious danger awaited drivers. The street, whose width was 14 metres at that spot, directly led to the narrow Novo-Kamenny Bridge, only four metres wide. As a result three-fourths of the width of the roadway was intersected at right angles by the canal, which at the time of the accident was not fenced off. The embankment of the canal had no sidewalk there. The five-metre excess of roadway on each side of the street came to an abrupt stop and dropped almost perpendicularly to the canal. It must be added that the surface of the road was six-eight metres above water-level. There was no light at the time to warn drivers of the danger.

A perusal of special literature on traffic regulations revealed that approaches to permanent bridges must be

built in a way to ensure traffic safety without restriction of speed. For that purpose bridges should be provided with some kind of fencing to protect traffic. Moreover, traffic rules require that the fencing be clearly visible at night. Lastly, on approaching the crossing the international signal "Danger Ahead" should have been prominently displayed and lit up at nighttime.

With all this as its starting point the defence arrived at the conclusion that the crossing was improperly constructed and lighted, and that this was the sole cause of the accident. Hence no official of the Street Traffic Regulation Department could function as an expert in this case because it was exactly that department which was responsible for the proper lighting of streets to prevent road accidents.

The defence furthermore considered as unsubstantiated the charge that Fokin drove at a speed that made traffic unsafe. It was established that at the time of the accident visibility was 100 metres. At Fokin's speed the brakes could stop the car in less than 24 metres, i.e., less than one-fourth of the visible distance. This amply ensured safe traffic with regard to objects lying on the surface of the road.

To fortify its position the defence, by way of pretrial preparation, petitioned the court to summon competent experts not connected with the Traffic Department, so that their findings would be completely unbiassed. The court, however, refused this request. Counsel for the defence then asked the Central Automobile and Motorcycle Association in Moscow, to which most sports automobilists and motorcyclists of the Soviet Union belong, to investigate the causes of the accident. A commission of three specialists was formed. It investigated all the circumstances of the case and its

findings fully upheld the defence. The findings, as well as the calculations and photographs of the scene of the accident, were sent to the court and attached to the record. The lawyer likewise filed affidavits which averred that at that very crossing two other automobiles had come to grief on the passage to the canal. Finally, the defence put in evidence a statement attesting to the fact that it was only after the accident to Fokin's car that the canal passage was fenced and the whole place made safe for street traffic.

On the basis of these facts the lawyer again petitioned the court to appoint new, unbiassed experts but was again turned down. The court accepted the findings of the expert in the employ of the Traffic Department, adjudged Fokin guilty and sentenced him to deprivation of liberty.

The findings of the commission of specialists, made part of the record of the case, while not having the evidentiary value of the findings of forensic experts, were nevertheless under the law of serious probative force. They served as the mainstay of the defence's cassational complaint. The Cassational Collegium of the Leningrad City Court agreed with the arguments of defending counsel, recognized the inability of Traffic Department employees to sit as experts in this case, annulled the judgment and ordered a new trial with new and impartial experts.

However, the amnesty of March 27, 1953, according to the terms of which cases of this category were to be discontinued irrespective of the procedural stage they were in, terminated this criminal action.

...Olga Kartashova was charged with the deliberate murder of her husband Nikolai.

At first glance the case looked hopeless. The tragic end did not come wholly unexpected to the testifying neighbours who knew the externals of the life led by

the Kartashov family. They all noticed of late that strange, ominous changes had taken place in the relations between the husband and wife. While formerly Nikolai had always been of a cheerful disposition he suddenly became sad and gloomy. Olga, who had been an affable, sociable young woman, became taciturn, pensive, absent-minded. No one ever saw this married couple together any more, and they had been so inseparable. Some were of the opinion that they no longer even talked to each other. On the other hand muffled sounds of violent quarrels, of a woman's weeping and of vicious shouting came to the ears of the neighbours with increasing frequency.

But on the morning in question everything was quiet. Suddenly there was the report of a shot and the thud of a fallen body.... Neighbours rushed into the room and saw Kartashov, a handsome man of enormous growth and athletic build, lying prostrate on a carpet in a pool of blood. There was a revolver near him, also on the floor. His wife was on her knees, bent over the corpse. She raised her head to face the persons entering the room and distinctly uttered several times the words:

"It was I who killed him."

There was no one else in the room except a two-year-old child.

Kartashov, who was placed in a hospital in an unconscious condition, came to for a short time, muttered a few incoherent words and died the same day without having been interrogated....

At her very first interrogation his wife Olga repudiated her statement that she had killed her husband. She testified that she did not remember what she had done and said the first few minutes after the unfortunate event. She declared that she had not killed her husband but that on the contrary had tried to prevent him

from committing suicide by grasping his hand, that he, however, was much stronger than she and pulled the trigger.... She related that of late a great change in mood had come over her husband. His usual self-satisfied air, his gay and rather boastful self-assurance had been superseded by a sullen, depressed, embittered state of mind. He told her people were making things very unpleasant for him, that he had many enemies, was not being understood, not appreciated, that people were jealous of him and baited him. As always, he did not confide any details to her and she did not take it all seriously. During the short time they had lived together she had already become convinced that her husband liked to exaggerate, show off, flatter himself, brag, throw dust in people's eyes. She told him this straight to his face, calling him a poseur, an actor, a braggart. This used to bring on violent scenes.

The last few days he suddenly started to talk suicide, threatening to "settle accounts with his enemies" before. But in this too she at first saw only a new affectation, thought he was only posing. She did not imagine he had any serious reasons to end his life.... When he came home in the evening before the tragedy he pulled a revolver out of his pocket and proposed to shoot her first and then himself. She in reply merely pointed to their sleeping child. But on the morning of the following day he renewed this kind of talk and, standing on the carpet beside her bed, he pointed the weapon at his breast. She now became really frightened, jumped up and seized his arm, but his strength exceeded hers and he shot....

The crime investigators gave no credence to her story. They considered this testimony a belated repudiation, after reflection, of her original unintentional confession made in the presence of numerous witnesses,

particularly since that confession had been corroborated by the circumstances.

The examination of the body and clothes of the deceased showed that the bullet had entered the left side of the chest in the region of the heart and had left to the right of the spine in the region of the right shoulder-blade. Both apertures were on the same level. The experts found that the shot was fired point-blank, and in view of the location of the apertures and the direction of the wound canal it could not have been fired by the deceased himself.

The chain of circumstantial evidence against Olga Kartashova was complete. The only thing not clarified was the motive of the crime. But the preliminary investigation filled in this gap. It found out that Olga's first husband, who it was believed had perished in the war, turned out to be alive, had recently returned and had met Olga several times.

The investigation considered its job done. The accused, in its opinion, killed her second husband because he was an impediment to the resumption of her first marriage. That was the charge preferred against her in court.

The wife did not deny her meetings with her first husband. Yes, he had made a search for her and they saw each other. He really did ask her to resume her former relations with him. But she had already started out on a new life and there was the child she had by her second husband. She determinedly rejected all his importunities and for that reason he soon left the town.

The investigating authorities did not believe this story either, especially because it was no longer possible to verify Kartashova's testimony; for soon after his departure her first husband fell ill and already dur-

ing the investigation news of his death had been received.

This was the point at which the first long talk in prison between the defence counsel L. A. Vetvinsky and his client started. She was dead against a renewal of their marital relations. They were over for good. There was no resuming them. She rejected that idea at once. How could this be substantiated?... No, nobody knew about their meetings, nobody heard their conversations. She did not confide this affair to anyone. On the contrary, she tried to hide the return of her first husband from everyone. She did not want any publicity, idle gossip, complications. Was there really not a scrap of evidence left of these talks? No letters, notes? And then Olga recalled that there had been a letter from him about the time he left. She had not replied to it and therefore had forgotten all about it. Where was it? It had borne the address of her mother and it was at her mother's that she read it. Perhaps it was still there, somewhere in the chest of drawers or in a casket for needlework?

The letter was found. No doubt remained now as to the frame of mind in which its author departed from his former wife.

The motive for murder, which the investigation had so painstakingly dug up, ceased to exist. In its place a motive for suicide came into the limelight and was thoroughly investigated.

Really, why had Kartashov's frame of mind changed so sharply of late? What had happened to him? Could not something be found out about that at his place of work? His wife never learned any details about the job he held, and one could not get anything sensible out of her on the subject. The investigator, who was captivated by his "irrefutable" theory that Olga had delib-

erately murdered her second husband, paid no attention to this aspect of the case.

Unpleasant incidents at his place of work were spoken of not only by her at the preliminary investigation. There was also the testimony of the hospital attendant, the only person at the bedside of Kartashov during the few moments that he suddenly regained consciousness before dying and tried to say something. The record stated drily: "He mumbled a few incoherent words, then he again lost consciousness and died soon after."

What were these words? Let the witness try hard to remember. It does not matter if they are unconnected. The witness strained her memory, then said irresolutely: "There were but a few words. It sounded like 'myself to blame... did it myself ... much unpleasantness....'"

Again unpleasantness! What actually had occurred at Kartashov's place of work? To find out the lawyer asked that some of Kartashov's co-workers be summoned for examination. After the questioning it became necessary to demand official information and documents.

Gradually a very disagreeable side of the life of the deceased unfolded itself. It transpired that a precipitous change for the worse had set in in the career of this hitherto so prosperous man. He was hit by a whole string of mishaps. He was proved guilty of abuse of his official authority, of imposture, of having claimed honorary titles and credit for meritorious acts he never performed. On the day before he died he was removed from his position.

Thus motives for suicide were gradually brought to light.

However, the experts said that the shot could not have been fired by him! Could it have been fired by her?

Everyone could see she was an attractive, well-built woman of moderate height. And he? They say he was very tall and of athletic physique. Hence experts must be called to compare his and her height, the aperture of entry and of exit of the bullet, the direction of the bullet's path. Unfortunately neither the record of the examination of the corpse nor the original expert testimony gave the height of the deceased. What now? Would the body have to be exhumed? The court of course would not oppose that.

Then it occurred to the defence to ascertain whether he had latterly been at a sanatorium, for the medical data furnished with each pass to a sanatorium always contain the patient's anthropometric measurements, including the exact height. As was learned, he and his wife had been together that very year at Kislovodsk.

Thus the court was furnished direct proof of his height. The defence now demanded that the widow's height be measured. This done the experts admitted that standing on the floor Olga could not by any manner of means have shot her husband in the breast at the level of the heart, producing a horizontal wound path. The path would have had to be inclined upward.

The prosecution's supposition that the murder might have been perpetrated while Kartashov was sitting and the accused approached him from the side was easily refuted by the position of the body after its fall and the likewise horizontal direction of the wound path. In that case the bullet would also have traced an inclined path, but here downwards.

So who did fire the shot? The experts claimed that it was not the deceased, because the aperture of entry was on the left side, almost in the armpit, and the deceased was not left-handed. Even if he was not left-handed, what if he held the pistol in the left hand all

the same? And the experts agreed that he could have fired that shot himself with the left hand.

Thus these seeming proofs of guilt were turned into cogent proofs of the opposite. The accused had no reason to commit murder whereas the deceased had a reason to commit suicide. It was impossible for the accused to have fired that shot but Kartashov could have, with his left hand.

If that was the case why did Olga assert so persistently over the body of her husband that she had done the killing?

"Precisely because she did not kill him," replied the lawyer in his speech for the defence. "She put the whole blame upon herself and with these words meant to punish herself for her lack of consideration for him, for not having believed his complaints and threats, for not having comforted him in his troubles, for not having taken away and hidden the weapon."

On the whole the court upheld the arguments of the defence. It found that, as the defence claimed, Olga Kartashova had no intent to kill her husband but that contrariwise his intention of ending his life by committing suicide became constantly more firm. At the same time the court found that when the tragic ending came, Kartashov's intention had not yet fully matured. By pointing the pistol with his left hand at his breast he only meant to frighten his wife, arouse her sympathy. But she took his intention seriously and grasped his hand to prevent the suicide. It was this grasping of his hand that caused the accidental shot. In other words the court found her guilty of homicide (manslaughter) caused by negligence and therefore sentenced her to one year's correctional labour.

Being of the opinion that there was no *corpus delicti* in Kartashova's actions, the lawyer filed a cassational

complaint, in support of which he stated at the appellate hearing:

"... Absence of a *corpus delicti* in Kartashova's actions is established with perfect obviousness by all the circumstances of the case which the court itself recognized in its verdict. The court held that Nikolai Kartashov, who had as yet no final intention to shoot himself but who wanted to scare his wife—held the pistol in his left hand, pointing it at his breast; that his wife, the accused Olga Kartashova, took her husband's threat seriously and thought he really wanted to commit suicide. Wanting to prevent her husband from killing himself, she rushed toward him and grabbed his hand, after which there was the report of the shot which caused his death.

"The court thus held that the accused seized her husband's hand, first, because she really thought he wanted to shoot himself and, secondly, because she wanted to prevent this. It was this action of hers that the court regarded as 'criminal negligence,' for which she was sentenced. The legal erroneousness and inadmissibility in principle of posing the question in this way are perfectly clear. What we get is this: that a move made in response to a desire to save someone from death is held to be criminal, that the natural urge of a wife to forestall the suicide of her husband is punished as a crime. From this it would follow that people who see death threatening anyone should not interfere, for if their attempt to prevent death is unsuccessful they are themselves liable to criminal prosecution. Should Olga really not have interfered, but sat there immobile until the shot rang out? Can the fact that she rushed to her husband and grasped his hand be really construed as a socially dangerous action that amounts to a *corpus delicti*?

"If that were so one would have to consider it socially dangerous (a crime!), for instance, for someone to

throw himself into the water to save a drowning man, if by a clumsy movement he pushes or hits him and thereby hastens his death. Here too one might reason that perhaps the drowning man would have managed to save himself had not the ill-starred attempt to succour him led to his death. However, an attempt to save human life ought not under any circumstances be considered criminal negligence, because the saver cannot and is not supposed to foresee that his intervention may cause death.

"The court considered that Kartashova was negligent in that she did not foresee what she should have foreseen, namely, that her intervention would cause a shot to go off. Yet what she could and should have foreseen was the very opposite of this.

"She believed—as the court itself admitted—that her husband would really shoot himself. And therefore she not only could not and need not have foreseen that the shot would be the result of her intervention, but on the contrary she could and must have believed that by her intervention she might perhaps prevent her husband's death, which would otherwise be inevitable.

"Consequently, the result of her action was wholly unforeseeable and therefore there not only was no criminal intent—which the court itself admits—but also no criminal negligence. The shot and the ensuing death, under circumstances which the court itself established, were the result of an accident, for which no one can be held responsible, or of Kartashov's real and persistent desire to put an end to his life which he succeeded in doing despite his wife's efforts to prevent this...."

The complaint of the defence was upheld, the judgment annulled, and the case not prossed.

As a general rule criminal cases are heard in the Soviet Union by courts at only two levels: first, by a court

of original jurisdiction, which examines the case in full, and second, by a court of cassational jurisdiction. Soviet law also provides for the review of judgments, findings and decisions of court by way of supervision. But this is exceptional in its nature.

The review of cases by way of supervision is a function exercised by the Supreme Court of the U.S.S.R. (in a special group of questions discussed above), the Supreme Courts of the Union Republics and the presidiums of the Regional, Territorial and City Courts, as well as of the courts of Autonomous Regions and National Areas. The review of decisions by this method occurs only in response to protests from the persons authorized by the law: the Chairman of the Supreme Court of the U.S.S.R., the chairmen of the Supreme Courts of the Union Republics, the chairmen of Territorial, Regional and City Courts, and of the courts of Autonomous Regions and National Areas, and also their deputies, the Procurator General of the U.S.S.R. and the procurators of the Union Republics, territories, regions, Autonomous Regions and National Areas and also their deputies.

The appeal of the accused, his counsel for the defence or the plaintiff can constitute the grounds for such a protest.

The supervisor's review of sentences and decisions of the court which have become legally operative on the basis of the Fundamental Principles of Criminal Procedure takes place on the same grounds as the appeal already mentioned.

As a result of the supervisory hearing, the court can reject the protest, quash the sentence and all subsequent decisions and terminate the case or return it for further investigation or re-hearing, quash the decision of the hearing on appeal and also subsequent decisions (if any) and hand the case on for a re-hearing of the

appeal, quash the decision taken at the supervisory hearing and leave in force, with or without change, the sentence of the court and the decision of the hearing on appeal, and make changes in the sentence or decision of the court.

We see, therefore, that the supervisory instance has wide powers and opportunities to eliminate cases of violations of socialist legality and to protect the rights of citizens guaranteed by the law. From this point of view it is necessary to note that according to the Fundamental Principles of Criminal Procedure the court at a supervisory hearing may alleviate the punishment or apply the law regarding a less serious offence, but has no right to increase the punishment or apply the law regarding a more serious offence. At the same time the quashing at this stage of a sentence or decision on the grounds of the leniency of the punishment or the need to apply the law regarding a more serious offence and also of an acquittal or a decision to discontinue a case is permissible only within a year of it becoming legally effective.

The court when conducting a supervisory hearing can when necessary summon the accused.

As is clear from all this, the limits for the review of sentences through appeal and supervisory hearing are in the main analogical. Therefore all that has been said about the drawing up by the defence of appeals also applies to appeals for supervisory hearings. But in so far as supervisory hearings take place only following protests, the appeal must take the form of demanding the case from the appropriate court and of a protest based on the appeal submitted.

In accordance with the law, the Procurator General of the U.S.S.R., the Chairman of the Supreme Court of the U.S.S.R., their deputies, the Chief Military Procurator and the Chairman of the Military Collegium

of the Supreme Court of the U.S.S.R. have in accordance with their powers the right to suspend the sentences and decisions of any court of the U.S.S.R. and the Union and Autonomous Republics which forms the subject of a supervisory appeal. The same right with regard to sentences and decisions of courts of a Union Republic and Autonomous Republics forming part of it is exercised by the Procurator and the Chairman of the Supreme Court of the Union Republic. Therefore, where necessary the lawyer may in his appeal ask for the suspension of the sentence relating, for example, to detention or confiscation of property.

The lawyer has the right personally to hand the complaint that he has drawn up to the procurator or the chairman of the appropriate court, setting out the substance of the case and showing the need for a revision of the sentence or decision.

Let us cite an instance of the work of the defence at this stage of the criminal procedure.

A Leningrad People's Court was hearing the case of a certain Serov, charged with rape. He was defended by I. Goldstein.

The main testimony was given by the alleged victim of the crime, Kuptsova. It contained some substantial contradictions, which made many incidents appear highly improbable. On analysing this testimony one was driven to the conclusion that Kuptsova voluntarily and wantonly entered into intimate relations with Serov and that afterwards, under circumstances not established in the case, she submitted a complaint that she was raped in a cemetery.

The alleged victim asserted that she did not notice how she had come to be in the cemetery to which the accused had brought her, without her consent, as she claimed. She did not see that she was walking among graves and realized where she was only when the ac-

cused began to use physical force. Incidentally, Kuptsova denied that before she and Serov entered the cemetery grounds they had passed through a small wicket situated alongside a big gate that was closed. She explained that she had entered "by a wide street." Lastly, she testified that she was in the cemetery because Serov had brought her there on the false pretext that he would take her home by a short cut.

In order to get a better idea of the scene of the above events the lawyer visited the cemetery and inspected all the spots described in the record by the investigating authorities. The inspection convinced the defence that the depositions of the complainant were a distortion of the actual circumstances of the case. They were of great help in interrogating the complainant and the witnesses at the trial.

Despite all the efforts of the defence the court believed Kuptsova's testimony that it was hard for her to orient herself in that locality, that she agreed to Serov's deceitful proposal and went with him to the cemetery in the belief that he was taking her home and then was raped by him. The People's Court sentenced Serov to a long term of deprivation of liberty.

In the cassational complaint many photographs were exhibited of the localities concerned. They proved the falsity of Kuptsova's testimony. The cemetery gate and the small wicket beside it, the main road along which, according to Kuptsova, they went, the fourth road they took, and lastly the place where she claimed she was raped were all recorded dispassionately by a camera. The cemetery management certified that the photographs corresponded to the originals. These photos were direct evidence that it is impossible to go along the main road and the fourth road in the cemetery without noticing the graves, crosses and monuments. Consequently one could not possibly fail to understand where one

was. The photos furthermore disproved her assertion that she walked into the cemetery along a wide street, since what was there was a closed iron gate and beside it a narrow wicket. The cemetery management, on request by the lawyer, certified that the gate was always closed as interment had ceased long ago.

Lastly, a plan of the locality, made on petition of the defence, showed that there was no way through the cemetery of getting to the house where Kuptsova lived.

The lawyer claimed in the cassational complaint that Kuptsova, who had been living in the neighbourhood for over five years, could not but know this and that therefore her testimony that she had agreed to go home with Serov through the cemetery by a shorter road was not true.

The City Court recognized all these arguments of the defence as correct, annulled the judgment and ordered a new trial with a new preliminary investigation. At the new trial Serov was again found guilty. The second cassational complaint of the lawyer was disallowed and the sentence went into effect.

The defence, however, did not desist in its efforts and demanded a review of the case by way of supervision. The first such petition was addressed to the Presidium of the Leningrad City Court, but it was refused. The Supreme Court of the Russian Soviet Federative Socialist Republic, however, when applied to, took a different view of the matter. The protest of the President of the Supreme Court was satisfied. The judgment and finding of the City Court were annulled, the case was nol prossed for lack of sufficient evidence, and Serov was discharged.

The reopening of a case on discovery of new evidence is a specific instance of review by way of supervision and the same special procedural features obtain. The

only difference is the following: In the usual review by way of supervision the court verifies whether the judgment is legal and supported by the evidence on record in the case. When a case is reopened on account of newly-discovered evidence, the grounds for the review are facts that were unknown to the lower and higher court. False testimony on which a judgment is based and abuse of judicial power by the judges who took part in the hearing of the case are considered by law as constituting such facts.

At the same time the Fundamental Principles of Criminal Procedure lay down that under such procedure the review of an acquittal is permissible only within the period laid down by the law and not later than one year after the coming to light of new facts.

Such are the main principles governing Soviet criminal procedure, its various stages and the ways and means employed by counsel for the defence to secure justice for their clients.

Chapter Three

THE LAWYER IN CIVIL PROCEDURE

Among the cases heard in the People's Courts, civil suits prevail. Here the lawyer is called upon to defend the interests of individuals if their rights guaranteed by law had been violated, such as their right to personal property and inheritance, rights incident to marital and family relations, and rights under labour, housing and copyright laws. The civil lawyer's practice includes also suits for damages, particularly for the loss of capacity to work, and other cases arising out of the multifarious legal relations between citizens.

The preceding chapter treated of defence problems in criminal procedure. In the present chapter, devoted to the work of Soviet lawyers in the realm of civil procedure, we shall not dwell at length upon the norms and rules which govern both criminal and civil practice.

Characteristic of them are the following important principles: justice is administered only by a court, a court which is collegial, in which elective independent people's assessors and judges subject only to the law take part. Trials must be open and conducted in the lan-

guage spoken by the majority of the population of the locality concerned. Citizens are guaranteed the right to speak in court in their native tongue. In civil trials, like in criminal ones, the proceedings must be contested, oral, direct and uninterrupted, both parties having equal rights.

Nevertheless there are numerous features which radically distinguish the work of the lawyer in civil from that in criminal cases. These features become apparent in many practices that mark Soviet civil procedure and naturally leave their imprint on the forms and methods of participation in them by the lawyers.

Thus, civil cases are governed by the principle of *disposability*, as summarized on p. 214.

In criminal cases proceedings in the Soviet Union are instituted, as a rule, on the initiative of some state organ. Civil suits, on the other hand, are usually brought by the private party interested filing a Statement. This is expressed in the Latin sayings "*Nemo invitus agere cogitur*" ("no one can be compelled to sue against his will") and "*Nemo judex sine actore*" ("there can be no judge without a plaintiff").

However, in Soviet civil procedure definite exceptions to the above proposition are made. They are necessitated by the specific features of the socialist state, the nature of socialist society and the harmonious combination of the interests of the individual and of society. For instance, the right to institute any civil suit in court may also be exercised by the agencies of the Procurator's Office. The law states directly that the Procurator's Office, among other public bodies, is authorized to start proceedings. It may intervene in any civil case already begun, at any stage of the proceedings, if this is required to protect the interests of the state and of individual persons.

In view of the particular importance of safeguarding the interests of children the law provides that suits for alimony to maintain children may be brought in court by parents, guardians, upon information given by the Civil Status Registry, by the procurator, by the Safeguarding Motherhood and Childhood agencies, guardianship authorities, trade unions and also upon the initiative of the court itself. Any person or institution may start proceedings for the annulment of an adoption if the interests of the child in question demand this.

If a trade union ascertains that the labour rights of one of its members have been violated it may file suit for this violation in its own right.

A court may declare any bargain invalid if it was concluded under the influence of extreme need on obviously onerous, inequitable terms. Suit to rescind such a bargain may be brought not only by the injured party but also by the state bodies or social organizations concerned.

The parties to a civil action usually fix themselves the amounts they claim from their opponents. *Ultra non cognoscitur* (nothing beyond that is taken cognizance of). And the court, as a rule, should not go beyond what the parties ask (*ne ultra petita partium*). The parties, however, or their representatives may for some reason or other ask for a smaller sum than they are entitled to by law. In such cases the court may adjudge to the plaintiff a bigger sum if this is warranted by the information obtained.

A legal action may be terminated by a peaceful settlement. The plaintiff may waive any of his demands after suit was brought, just as the defendant may admit any or all of them, but Soviet law makes it the duty of the court to verify whether the desires of the parties do not run counter to the law, do not lead to a circumvention of the law or to an impairment of the interests

of the state, or of one of the parties, or of third persons, and whether deception, duress or misapprehension plays any part in these deals.

One of the essential differences between the position of the Soviet lawyer in civil procedure and his position in criminal procedure is the way in which the principle that cases must be contested is applied.

We already discussed above the substance of this principle in criminal cases. There (except in private prosecutions) the evidence is obtained and presented to the court by the agencies conducting the investigation. On proceeding to hear a criminal case the court already has at its disposal collected material crowned by the indictment. When pronouncing sentence it has no right to go beyond the accusation presented by the investigating authorities. The lawyer enters into the case when it has already assumed definite shape, namely, when the indictment has been found. When he comes to the trial in a criminal matter he is already acquainted with the materials, knows the extent of the accusation preferred against his client and is aware of the concrete evidence the procurator will use. The lawyer who has carefully prepared his case ought to meet with nothing quite unexpected.

But in civil cases the proofs for and against the issues involved are presented in the main by the contending parties themselves. The law requires that each side prove the facts on which it relies as the basis of its demands and refutations. Here the lawyer comes to the trial with no assurance that no new material will be put in evidence in addition to the old material, as new evidence may be offered by either party at any stage of the trial. The situation is complicated still more by the plaintiff's right to change during the trial the amount sued for and may formulate anew the legal basis on which he stands. Furthermore, while a civil suit is being

heard new parties with independent claims may be allowed to join in the proceedings and counterclaims may be made even on the very day of the court sitting.

It goes without saying that these specific features of civil procedure may often bring about most unexpected situations. To handle these successfully requires not only superior know-how and conversance with the norms of material and procedural law, but swift orientation and proper use of one's knowledge.

Thus the law offers the parties to a civil suit extensive opportunities to prove facts. It calls upon the parties to exercise independent initiative in this respect. In striving to establish the exact truth, Soviet law makes it the duty of the court to exert every effort to ascertain the real rights and relations between the parties. This means that the court not only has the right but is duty-bound to display initiative itself in obtaining evidence. If the evidence submitted by the parties is insufficient the court may order them to present additional evidence.

It not infrequently happens that a plaintiff who is endeavouring to obtain satisfaction of his just demands finds it impossible to furnish exhaustive proof of his contentions to the court. This does not at all mean that the suit will be rejected. In such a case the court will of its own accord take the necessary measures to arrive at the truth.

A contested trial, at which the evidence is in the main supplied to the court by the contending sides themselves, places great responsibility upon the advocates.

Let us quote the example cited in *The Lawyer in Soviet Civil Procedure,* a book written by B. S. Antimonov and S. L. Gerson.*

* This book, very instructive for young lawyers, was highly appraised in Soviet legal circles. By permission of the authors we shall reproduce some of the examples it gives.

"M., insane, was received by a psychiatric hospital in a state of serious depression and assigned to the care of Dr. U. Relatives warned the physician that the patient had repeatedly attempted suicide in fits of psychopathic melancholy and therefore required special supervision. Soon afterwards the patient hanged himself in the hospital. Criminal proceedings were instituted against Dr. U. under Article 111 of the Criminal Code [for criminal negligence, malfeasance and omissions—*the authors*] which the investigating authorities nol prossed in accordance with Paragraph *a* of Article 204 and Paragraph 5, Article 4 of the Criminal Procedure Code [U.'s actions did not constitute a crime—*the authors*].

"Thereafter the wife of the deceased brought suit on her own behalf and on behalf of her minor daughter against Dr. U. for damages caused by the family provider's death, claimed to have been the fault of the defendant. On petition of the plaintiff's lawyer a commission of medical experts was appointed. It included prominent psychiatrists and morbid anatomists. The experts handed in their findings at the beginning of the hearing. They were unfavourable to the defendant. The forensic experts declared that U. did not take all measures a psychiatrist was obliged to take with regard to a patient like M. The defendant's lawyer had not confined himself to studying the materials of the civil case. He also dug into the materials of the criminal case, which contained the case history and the minutes of the post-mortem examination of M.'s body. At the sitting of the court this lawyer, who was sufficiently versed in psychiatry and forensic medicine, put only one question to the experts: is it possible to judge by these psychiatrical and morbid-anatomic data (i.e., by the case history and the post-mortem minutes) how probable it was that M. would recover and return to work? The experts an-

swered unanimously that the patient was in the last stage of an incurable disease (artheriosclerotic psychosis), that the disease had incapacitated him from work, that in that state he might continue to live another two or three months after which complete disintegration and death were inevitable. It was their unanimous opinion that restoration, even partial, of capacity to work was out of the question.

"The plaintiff was nonsuited. The court pointed out in its decision that the physician was guilty of a number of derelictions, which made the patient's suicide possible; but his death did not cause the plaintiff any damage, for M. had long ceased to be the family's breadwinner and could never again have become such even if the suicide had been prevented."

The quoted example shows how in a difficult situation, when facing unexpected and extremely unfavourable findings of experts, counsel was able to occupy a correct legal position. This was possible because of his creative approach to the study of the materials. He did not confine himself to the civil aspect of the case but dug deeply into the criminal proceedings.

Let us take one more illustration from the same book. It shows what results can be achieved by a lawyer thoroughly versed in the norms of material law and able to make full use of them.

...The inheritance left upon the death of the intestate scientific worker K. comprised a considerable sum in author's fees, due to the deceased by a certain institute. The heirs were: 1) the elder son of the deceased, 2) four minor grandchildren (the children of the second son, who died before the intestate) and 3) the aged mother. The functioning notary entrusted the safeguarding of the decedent estate and its administration to the elder son. Two years elapsed since the administration began, but the institute kept putting off the pay-

ment of the fees. The mother of the intestate and the guardians of his grandchildren then sued the institute for the money. A certain T., a scientific worker at the institute, who had formerly worked under the direction of the deceased author, appeared at the trial and declared in his Statement that he was suing independently. He averred that he had assisted K. in his work (had systematized the material, had made the necessary calculations, drawn up tables, etc.). He claimed he had done more than half of the work which the manuscript required, and that K. had promised him half of the author's fees. In support of his suit he submitted in evidence the rough drafts of K.'s works and called some witnesses.

When asked by counsel for the plaintiffs whether he had claimed the amount in question from anyone, T. replied that before the six-month period within which claims could be filed had expired, he had made a written demand upon the trustee of the decedent's estate, K.'s elder son, and produced the document attesting to the receipt of the Statement.

It was quite obvious that T., who intervened in the suit, had entered into a nefarious agreement with K.'s elder son. The court asked the lawyer retained by the plaintiffs whether he needed a postponement of the case to prepare his answer to T.'s newly-filed claim, but counsel replied in the negative. Going into the substance of his suit (against the institute) the lawyer stated in explanation of it:

"As for the independent suits of third persons, I do not think I need take any exception to them in substance although they are constructed artificially and their obvious aim is to get possession of the author's fees. I shall merely point out that according to the dictum of the Presidium of the Supreme Court of the Russian Federation of July 2, 1928, a creditor's claim

agaist a decedent's estate is considered presented in time [i.e., within six months from the beginning of the administration of the estate—*the authors*] if it is filed with a notary, a financial agency or court. But if it is presented by the creditor to one of the heirs, though he is in full accord with the creditor, it does not stop the allowed time from running."

The third person's claim was disallowed.

The instances cited show what unpleasant surprises may arise for litigants on account of the procedure that must be followed in presenting proofs in civil cases and how well prepared a lawyer must be for such surprises.

With regard to witnesses too, civil procedure has its definite, specific rules. Whereas in a criminal trial witnesses cannot be objected to, witnesses in civil cases may be barred for reasons set forth in the law. "In the event that one party to a suit declares that a witness is interested in its outcome or if special relations exist between a witness and a party, the court may refuse to allow the witness to testify."

But a high-rate lawyer will never abuse his right to object to a witness. Practice has shown that at times even when there is ample ground for an objection it is preferable to let him be interrogated, as this may deprive the other side of an important ground for cassation. The calling of such a witness is sometimes even very useful to establish the truth. Desirous of being of maximum service to the side that called him because of the special relations between them, such a witness's testimony will often run counter to other facts firmly established in the case. In the end the court comes to see clearly the kind of truth this witness is peddling, so that the opponent and his shady methods are soon frowned down upon by the court.

The hearing of the case in the lower court, the court of first instance, takes place in four stages: the preparatory stage, the court investigation, the debate of the parties and the handing down of the decision.

In the preparatory stage a number of essential questions are settled, particularly objections to members of the court, the secretary and the procurator. These persons, as well as witnesses, may be objected to on account of interest in the outcome of the case or special relations to the opposite party. The law does not specify what "special relations" are, leaving it to the court to decide that point in each particular case. It has become the practice to consider well founded any objection to a judge or people's assessor due to near relationship, by blood or marriage, to the opposing side, which objection may raise doubt as to his impartiality. An objection lies to the prosecutor if he handled the case before and subsequently the judgment was annulled. Judges whose decisions were annulled may not participate in a second hearing of the case.

Another question decided during the preparatory stage is whether the case can be heard in the absence of either party to it and of other participants. If either side has failed to appear and there is no proof that a summons has been properly served the court must postpone the hearing. But if there is evidence of such service, failure to appear will not prevent the hearing, if the court deems this proper. If the parties fail to make an appearance a second time, without proper cause, the case will be nonsuited. In such cases the plaintiff has the right to file the same suit once more unless it is barred by the statute of limitations.

If the suit concerns the payment of alimony to children, or to incapacitated parents or to a wife or husband, the court may decide to have the defendant brought before it by the militia. If witnesses or experts fail to ap-

pear the trial is not postponed, provided the case can be heard without them.

It is during the preparatory stage that the various petitions of the parties are examined by the court, such as requests to summon additional witnesses, to appoint experts, or to demand additional evidence.

The court investigation, or the hearing proper, begins with explanatory statements by both sides. After questioning the plaintiff and the defendant the court fixes the order in which all other evidence is to be examined, which depends upon the nature and complexity of the case. The testimony of witnesses who were questioned before but did not appear in court is read out. The experts must set forth in writing their findings on the points submitted to them, after which the court and the parties have the right to examine them orally. In civil as well as in criminal cases the practice exists of the court viewing the scene of the events with which the suit is concerned, whenever such a visit may clarify the issue.

The court then hears the arguments of the parties, in which they summarize the points they brought out in the hearing, set forth their conclusions from their analysis of the evidence produced and submit their views on the application of the law and its interpretation. The plaintiff usually speaks first, then the defendant, after which the plaintiff may be allowed a rejoinder. In that event the defendant may also rejoin by virtue of the equality of rights of both sides.

As for ethical problems that arise in civil practice, they differ substantially in one respect from the way they are put in criminal cases.

We pointed out above that in such cases a lawyer cannot refuse to assume the defence of an accused on the plea that the evidence against him is too overwhelming. There are no hopeless criminal cases, for even the worst

offenders benefit by what the lawyer can and must say in their defence. But in civil practice there is such a thing as a hopeless case. If the lawyer clearly sees that the law is not on the side of his client and it is useless to fight, he should make this clear to his client and may refuse to accept the case.

Appeals for cassation in civil cases have much in common with such appeals in criminal cases, which we have already discussed. The court of cassation does not reinvestigate the facts of the case. It does not re-examine and redecide the substance of the dispute between the parties but only verifies the legal adequacy and substantiation of the lower court's decision. The cassational tribunal is not tied down to the limits of the suit, nor to the reasons assigned in the complaint or protest. Its sole duty is to verify the legality and substantiation of the decision as a whole, both with regard to the materials in the record of the case and to supplementary materials submitted by the parties during the appeal for cassation. The superior court is vested with very extensive powers. It may affirm the decision of the lower court or annul it entirely or partly and order a new trial. A court of cassation which annuls a decision of a lower court may nonsuit the case when no action lies in favour of the plaintiff.

Below we shall examine the specific differences between cassation in civil and in criminal cases.

An infraction of procedural law in a criminal trial will inevitably entail a nullification of the judgment, even if it concerns merely a matter of failure to observe the time limit within which the indictment must be handed to the accused. But in a civil case a procedural violation involves the nullification of the lower court's judgment only if the violation was a material mistake, if it substantially affected the correctness of the court's decision. Otherwise the cassational court confines itself

to reproving the lower court for its violation of the norms of procedure.

In criminal trials the cassational complaint is based on the principle that cases must be contested and on the right of the accused to legal defence. In civil trials the complaining party itself institutes the action, and after the judgment each side must decide itself whether to accept it or appeal it. In other words, here the above-mentioned principle of disposability applies, the principle that not only have the parties to a civil suit the right to dispose of it, i.e., settle or terminate it in any way they like, but the prosecutor, the court and other public agencies are entitled to intervene if the public interest so requires.

While in a criminal case, the court of cassation does not have the right to impose a new sentence, in a civil case the court of cassational jurisdiction may, according to the R.S.F.S.R. Civil Procedural Code, pass new decisions in labour cases without referring them first to another court of first instance for a retrial. Ukrainian law permits cassational courts to issue new decisions in any civil action.

As in criminal, so in civil cases there is the institutions of supervision. The procedure on reviews of civil cases by way of supervision, the protesting of them, is analogous to that of criminal cases. Hence we shall not repeat ourselves but shall merely say that a protest may be filed, and hence the annulment of a decision by way of supervision may be asked for, only if there has been a substantial violation of the law. This characterizes supervision as an institution to be confined to exceptional cases.

The rights of the supervisory tribunal are somewhat more extensive than those of a court of cassation. For instance, a court, acting by way of supervision, may annul all prior decisions and issue a new one if all the

facts of the case are established and there is no necessity to collect and verify this evidence once more. A supervising court may also leave one of the lower-court decisions in full force and effect, and nullify all the others.

According to Soviet law, judgments by courts may, in fact must, be re-examined when new evidence is found showing that at the time judgment was entered certain material facts were not known and could not have been known to the parties to the suit or to the court. After the rescission of the decision because of the newly-discovered evidence the case is retried by the old lower court like any other case.

Below we shall acquaint the reader with the work of the lawyer at the various stages of civil suits.

Cases involving personal property rights are of frequent occurrence in a Soviet lawyer's practice.

Personal property in a socialist state serves the purpose of satisfying the material and cultural wants of the citizenry. The use of personal property for other purposes is impermissible. In a socialist state it cannot be turned into an instrument of exploitation.

In the U.S.S.R. the protection of the personal property of citizens is proclaimed a constitutional principle.

In safeguarding the right to personal property Soviet legislation offers citizens the right freely to dispose of and enjoy the various items constituting such property. The law sets up only two limitations: if the use made of personal property is of such a nature as to run counter to the interests of socialist society or if the owner of personal property uses his right to the detriment of others.

Thus Soviet law allows citizens to build or acquire dwelling houses of one or two floors in cities or rural localities. Such builders, when united in home-building cooperatives, may also put up multi-storey houses. In fact this is greatly welcomed by the local Soviets of

Working People's Deputies, which offer extensive help to home-builders and set aside lots for them. The only stipulation is that the housing be devoted to the personal needs of the cooperative members and be not exploited by letting space to outsiders. That is why the law provides in most of the Union Republics that a family (husband and wife and their minor children) should not have in their possession more than one house. In actual practice, however, courts do not apply this limitation when a family comes into possession of a second house by inheritance or marriage.

The principal source of personal property is work performed by citizens in some state or public organization. A contract for the performance of work or membership of a producers' cooperative furnishes the legal basis for the receipt of income. This category of sources of personal property includes the remunerations received by authors, producers and actors for literary, theatrical, cinema, etc., work and also remunerations for inventions, rationalization proposals and technical improvements.

A right to personal property may arise out of transactions of purchase and sale, barter, gifts, work under contract, loans and inheritances, all of which will be discussed later.

To what objects may the right to personal property extend?

Monetary savings, dwelling houses, subsidiary holdings, all kinds of articles of domestic economy and of personal use, including luxury articles.

Soviet law knows two kinds of ownership by two or more persons—joint ownership and ownership in common. Joint ownership arises, for instance, out of the relation of husband and wife for the duration of their joint lives. Accordingly, property acquired before the marriage or inherited or received as a gift or deposits in savings banks in the name of either the husband or the wife

are considered the personal property of one spouse only; and so are articles of personal use or of use in their respective trades or professions.

Common ownership, property owned or shared in common, may come into existence on various legal bases, for instance, as a result of a purchase of things by several persons. Before the division of a decedent's estate the heirs are co-owners of the property it consists of.

Common property may also arise out of the common activity of several persons. Each co-owner of common property may dispose of his share as he pleases. If the common property cannot be apportioned in kind, a withdrawing co-owner receives a monetary compensation. Co-owners may, in addition to demanding a partition, sell their share of the common property. In such event the remaining co-owners have a priority right to buy his share. The use and disposition of common property must be by the general consent of all share-owners, and if there is disagreement among them, then by the consent of the majority of them.

The right to own personal property is guaranteed by the norms of civil, administrative and criminal law.

The civil law provides such owner with the following means of protection: an action for the recovery of property in the unlawful possession of another (replevin); an action for the removal of obstacles preventing the owner from making use of his rights; an action for compensation due to loss of or damage to property; an action arising from unwarranted enrichment brought by an owner against a person who received his property on an inadequate legal basis. (Such an action lies when replevin is impossible because the things to be replevied have already been used up.)

The criminal law severely punishes any violation of the personal property rights of citizens, be it through

theft, robbery, extortion, swindling, embezzlement, receiving stolen or otherwise illegally acquired goods or the deliberate destruction or damaging of personal property.

Punishable infringements upon the proprietary rights of authors of literary works, of musical or other works of art, or upon the proprietary rights of inventors (plagiarism, counterfeiting) form a special group of such violations.

With the growth of the material welfare of the Soviet people the right to personal property becomes an increasingly important factor in their life, and the courts must therefore never relax their vigilance to safeguard this kind of property.

Let us adduce some examples of how the legal profession helps in litigation over personal property rights.

... In 1946 Vernikov, by a contract not certified by a notary, purchased a house for 25,000 rubles from the minor Pavlov, who acted through Rayevsky, his legal representative and guardian. Written permission to sell the house was given by the local guardianship office, which admitted that the house had fallen into a state of dilapidation as the minor owner had no means for its maintenance. On giving this permission the office instructed the guardian to put the money realized into a savings bank in the name of his ward and that it was to be paid to him when he attained his majority.

In actual fact the house was turned over to Vernikov at the time the transaction was made, and he lived there together with his family. He completely repaired the place, paid all taxes on it and made all payments called for by the contract of sale except the last. Receipts for these payments were signed by the guardian until the seller reached the age of fourteen; thereafter by the seller and the guardian. But the seller declined to receive payment from Vernikov of the last 5,000 rubles. This

was of the essence, as the informal agreement stipulated that the seller was to notarize the deed of sale only after the last payment had been made.

Since he had completely carried out all his obligations under the contract, Vernikov deposited the remainder of the purchase price in a bank and instituted suit. He petitioned the court to recognize the contract of sale as valid and to compel the seller to have it notarized. In the Moscow Regional People's Court where his case was tried Vernikov did not have a lawyer. The court refused his request on the grounds that the transaction should have been put in formal shape and notarized on pain of being held invalid under the law. The court stated as an additional reason that the guardian had not deposited the sums he had previously received from the plaintiff in payment for the house in a savings bank to the credit of the ward.

At this stage Vernikov asked S. L. Gerson, a lawyer prominent in civil matters, to protect his interests in this difficult case.

On appeal for cassation to the Moscow Regional Court the lawyer maintained the principle firmly rooted in Soviet civil law that a transaction which is essentially legal in whole or in considerable part is considered valid in court even though it is a violation in form. As for the actions of the guardian, who did not deposit the money in a savings bank in the name of his ward, Gerson reasoned that this may be cause for the ward suing his guardian but did not concern third persons, since the law prescribes that money due to a ward under an agreement should be paid to the guardian and not to the ward. Besides, as has already been mentioned, as soon as the seller was fourteen he began to sign the receipts for the money himself in addition to the guardian, which was also in compliance with the law.

On the grounds set forth by the lawyer the cassational

tribunal annulled the decision of the People's Court and ordered a new trial.

By the time the case came up again, the vendor had reached his majority. He sued Vernikov in his own name in a counteraction to have him ejected from the house he had purchased, adducing in his support new legal grounds that took Vernikov and his lawyer by surprise.

The seller claimed, in the first place, that an important part of the transaction had not been fulfilled by the plaintiff, as he had made the last payment, about 5,000 rubles, only when the papers of the counteraction were served on him.

In the second place, it was asserted that the agreement of sale concluded in 1946 had undergone a novation and been converted into a lease. In corroboration the seller produced a document dated 1947 which stated that Vernikov rents the house in dispute from the seller for three years, paying 3,000 rubles rent. Lastly, the seller maintained that although in the informal agreement of sale the selling price of the house was set at 25,000 rubles, the parties had in reality agreed on 65,000 rubles, and that this could be proved by witnesses.

Counsellor Gerson, while maintaining the principal suit instituted by Vernikov, at the same time defended him against the counterclaim. He called the court's attention to the fact that according to the uncertified agreement the last payment on the house was not to be made on any specified day in the calendar but on the happening of a certain event—the drawing up of a formally notarized contract of sale. This event, however, the seller did not allow to happen, and from that point of view Vernikov affected the last payment sooner than he was obliged to, as no notarized contract had been concluded up to the day of trial.

At the same time the lawyer demonstrated that the lease by the defendant to the plaintiff in 1947, as was

confirmed by the relations between the parties and by documents, was not a novation of the sales agreement but was concluded parallel with it. The lease merely determined the manner in which the house in dispute was to be utilized until full payment had been made in accordance with the contract of sale. This, he stated, followed the proviso contained in the lease that all payments made on account of the purchase of the house up to the time of the execution of the lease were to retain their former effect. Moreover, the seller continued to accept payments due him under the contract of sale even after the execution of the lease, which estops him from claiming any novation. Lastly, the lawyer correctly reasoned that the defendant's assertion of an orally agreed purchase price of 65,000 rubles absolutely contradicts his claim to a novation of the contract of sale and its conversion into a lease. Besides, the defendant's offer to prove the selling price of the house by oral evidence is invalid, since the sum involved is over 500 rubles and under Soviet law such transactions must be in writing to have legal effect. The court agreed with all arguments advanced by counsel for the plaintiff, entered judgment in his favour on the principal action and rejected the counterclaim.

The right to dispose of one's personal property would be incomplete if the property of the dead did not pass into the hands of their rightful heirs.

Soviet law protects the right of inheritance and raises it to the status of a constitutional principle. It ensures the succession, after an intestate owner's death, of his personal property to his next of kin, to persons close to him, and finally to juridical persons, if so stated in a will. A decedent's estate may include besides property also proprietary rights, such as author's royalties.

An inheritance may devolve by operation of law or by will. Heirs by operation of law have the right to enter

upon their inheritance except to the extent that that right has been altered by will.

Heirs by operation of law are divided into three lines. First in line are the children of the deceased, his adopted children, the surviving spouse, incapacitated parents and other incapacitated persons who had been dependent upon the deceased for no less than a year before his or her death. Heirs of the second line comprise able-bodied parents. Heirs of the third line comprise brothers and sisters of the deceased. Heirs of the second line inherit only if there are no heirs of the first line; and heirs of the third line only if there are no heirs of the first and second line. If there are no heirs at all the property escheats to the state.

The law vests a testator with extensive rights to dispose of his property. He may, for instance, leave all of it to one of his heirs. But an exception is made here in the interests of minor children of the testator and other heirs unable to work. If a testator has no lawful heirs he may bequeath all his property to anybody, even strangers, or to juridical persons—to government or public organizations.

There is also the right of the transmission of inheritances, as when the right to inherit descends *from* a person who was in line to inherit (by operation of law or by will) but who died before his ancestor *to* that person's heirs.

Heirs are responsible to the decedent's creditors only to the extent of their inheritance.

Observance of the laws of inheritance is a substantial element of the protection of the right of citizens to own personal property.

An interesting case, in which problems of inheritance and family law cross each other, is related in *The Lawyer in Soviet Civil Procedure* by B. S. Antimonov and S. L. Gerson, a book referred to above.

"In 1947, S. petitioned a People's Court to establish the fact of her having been married to F., now dead. In her Statement S. averred that she lived with F. as husband and wife since 1942, but their marriage was not registered in the lifetime of F. The object of her Statement was to obtain F.'s estate upon his death. S. asked that the court summon citizenness F. as an interested person, inasmuch as the decedent's estate was in her possession, terming her the 'first wife' of the deceased.

"The lawyer who undertook to defend the interests of citizenness F. flatly objected to the suit on the cogent ground that his client's marriage had been registered in 1922 and was never dissolved, and he offered the marriage certificate in evidence. Citizen F.'s cohabitation with someone else could not under the circumstances be construed as a marriage.

"However, at the request of petitioner S., three witnesses were examined in court. Each one of them span off her story like a lesson learned by rote, using absolutely identical expressions and giving identical details in her account, which was to the effect that shortly before F. died he told them that he never got along with his first wife; that as early as 1925, after a quarrel with her, he was granted a divorce at the Civil Status Registry; that the very next day his first wife received in his presence the notice from the Civil Status Registry that her marriage had been annulled; that afterwards there had been an apparent reconciliation between F. and his 'former, his first wife,' but that they lived all the subsequent years together without reregistering the marriage that the Registry had dissolved.

"Counsel for citizenness F. apparently took no interest in this unexpected evidence and merely asked whether F. had really spoken of a rescission of the marriage in precisely 1925. The witnesses unanimously reaffirmed their depositions. Thereupon the lawyer stated:

" 'In China people say that lies have short legs, meaning that you cannot get far with lies. This fully applies to the story told by these witnesses. It will take them no further than the threshold of this court. They have spoken of the well-known method of obtaining a divorce that existed in our country until July 8, 1944. But in 1925 this method was not yet the law of the land. Here these liars were tripped up. For in that year, 1925, the 1918 Code of Civil Status Acts of the Russian Federation was still in operation. In accordance with that code divorce cases were heard not by Civil Status Registries but by people's judges, except when both parties agreed to the divorce. This method was in effect until early in 1927. The deceased F. could not have obtained a divorce in a Registry in 1925 without the consent of his wife.'

"Upon this showing the court declined S.'s petition and specially decreed that the witnesses be made criminally responsible for their perjured testimony."

Let us acquaint our readers with one more interesting and complicated case.

The events were ushered in by a family drama.

In Leningrad, some time in October 1954, a certain Timofeyev shot and killed his wife and then himself. After they died their estate was found to include miscellaneous property, cash, money deposited on the current account of the wife, and other valuable assets.

The heirs were, on Timofeyev's side, his incapacitated mother and his minor daughter (by another wife); on the side of the murdered wife—her sisters.

The district notary public refused to issue to the sisters a certificate that they were entitled to inherit the estate and all assets were turned over to Timofeyev's mother and daughter.

The sisters thereupon asked the lawyer N. A. Victorova to sue the mother and daughter for their (the sis-

ters') share of the inheritance. A Statement was drawn up in which the sisters through their lawyer sued the defendants in accordance with the Soviet laws on marriage and the family and with the Civil Code for one half of the joint property of the Timofeyev spouses and for the personal wearing apparel of the deceased wife, as well as for the money in the savings bank deposited on her personal account.

By way of pre-trial preparation the lawyer asked that the Procurator's Office be required to produce for her inspection the case of the Timofeyev deaths and that the notary public be required to produce all documents connected with the inheritance certificates covering the Timofeyevs' property. As a result it was established that Timofeyev died a few hours after his wife. This circumstance made it possible for the sisters' lawyer to invoke the indisputable judicial principle in Soviet practice that a murderer cannot inherit from his victim. Consequently the principle that inheritances are transmissible does not apply here and hence the action of the notary who issued inheritance certificates to Timofeyev's relations only and refused to issue such to the sisters of his wife was wrong.

On the basis of these arguments the People's Court satisfied the demands set forth by the wife's sisters.

At this juncture events took an unexpected turn. A new person stepped upon the scene—Timofeyev's first wife, who demanded that the decision awarding part of the inheritance to the sisters of the murdered woman be annulled on the ground that the dead Timofeyev's second marriage was invalid. To corroborate her claim she produced a decision issued by the Sverdlovsk People's Court, which stated that Timofeyev's second marriage was invalid, as it was registered without a prior dissolution of the first marriage.

Thereupon lawyer Victorova went to Sverdlovsk and ascertained the following: Timofeyev concluded his second marriage in 1946 without a rescission of the first. However, in 1951 he formally rescinded the marriage with his first wife, in accordance with the law.

These facts gave rise to a number of difficult legal questions, particularly whether the second marriage, registered without the annulment of the first and therefore originally invalid became valid after the lapse of a few years when the first marriage was rescinded.

Victorova found the correct way out of this legal tangle. She started out from the premise that Timofeyev's first wife, regardless of the validity or invalidity of his second marriage, had no right to share in the estate he left and therefore had no right to sue, for at the moment of Timofeyev's death she was not his wife and therefore declaring the second marriage invalid could not create any subsequent legal rights for her benefit. For this reason the lawyer filed a cassational complaint asking the upper court to annul by way of supervision the Sverdlovsk People's Court's decision which had declared Timofeyev's second marriage invalid, since that suit was instituted by a party not interested in its outcome, a proceeding which the law forbids.

The President of the Sverdlovsk Regional Court agreed with the arguments advanced by the lawyer. The decision of the People's Court was vacated and the case dismissed by way of supervision.

However, while this case was being heard by way of supervision in Sverdlovsk, the Leningrad procurator protested the decedent estate proceedings to the Presidium of the Leningrad City Court. The latter annulled the decision handed down in favour of Timofeyeva's sisters and sent the case back for a new trial by a different People's Court.

By the time the second suit brought by Timofeyeva's sisters was tried the lawyer Victorova had secured a decision of the Presidium of the Sverdlovsk Regional Court to nullify the decision of the People's Court which had declared Timofeyev's second marriage invalid. In these conditions the People's Court reaffirmed its original decision in favour of the plaintiffs.

... Golovin contracted an ecclesiastical marriage before the October Revolution. The issue of that marriage was three daughters and a son. In 1928 he left his family and entered into actual marital relations with a woman named Martynova. They lived together, both worked and kept a common household. But he did not break relations with his children by the first marriage. He helped them financially and they used to visit him. However, he never went to see his first wife. Suddenly he became very sick. He was struck with paralysis and became a pensioner. Martynova attended to him with utmost self-sacrifice but after lingering two years he died, in 1945.

Shortly before his death he made a will certified by a notary, in which he left all his property to Martynova. A suburban cottage which the two had built together was the main item of the estate he left.

After Golovin's death his first wife filed a suit in which she asked that the will be set aside on the ground that his marriage with her had not been dissolved, in consequence of which she and her children were his heirs at law. Under these circumstances the deceased had no right to will away his property to any outside person.

At first Martynova defended her case herself, and judgment was rendered in favour of the plaintiff.

At this stage of the trial Martynova engaged the legal services of the lawyer T. M. Mikeshina. When the latter had studied the case she was driven to the conclusion that it was futile to fight the case further

unless a different legal basis on which to ground her claim could be found. And so she entered suit on behalf of Martynova for part of the cottage which her client had built jointly with the deceased and which was therefore their common property. This was a correct move, for there was no basis here for applying the rules of family law, since in the eyes of the law there can be only one legal marriage at a time and the rights of the wife and children were beyond dispute in this case. But the Civil Code provides, as the reader has already learned, that property acquired jointly is common property.

To make out a case on this new ground Martynova had to show that she, like Golovin, contributed her personal means and her personal labour to the building of the cottage. This was testified to by numerous witnesses. The court thereupon acknowledged her as the co-owner of the cottage and adjudged her one half of it, while the other half was declared part of the inheritance and was awarded to Golovin's first wife and his children.

The laws which regulate marital relations, relations of kinship, adoption, and the entrusting of children to families for their upbringing all go to make up the family law.

It is the function of Soviet family law to consolidate the family and protect the rights of parents, but the exercise of those rights must not infringe upon the interests of the children.

The compass of relations regulated by Soviet family law includes kinship. The law recognizes the following as direct, legal relatives in descending and ascending line: parents, children, grandfathers, grandmothers and grandchildren, and as collateral relatives—brothers and sisters. Also included here is the regulation of relations between stepfather and stepmother on the one side and stepson and stepdaughter on the other.

Strengthening of family ties and combating the frivolous attitude towards family obligations are among the objects of the lawmaker's solicitous care. To that end the registration of a marriage endows it with specific rights. Thus, only a registered marriage confers certain rights and imposes certain duties upon the parties to it. In the U.S.S.R. a marriage can only be dissolved by divorce proceedings, which end in a decree of divorce if sufficient cause is shown.

Marriage in the Soviet Union is a free and permanent union of two persons enjoying equal rights, a union based on love, comradely collaboration and mutual respect. Hence each party to the marriage is free to choose his or her own trade or profession, and his or her own place of residence. Each spouse may retain his or her name before the marriage or adopt the name of the husband or wife. Similar equality exists in regard to the proprietary rights of the spouses.

In case of divorce each partner to the marriage must for some time continue to give material assistance to the other if the latter is unable to work.

Soviet law strictly enforces the principle of monogamy. Hence if a new marriage is contracted without a dissolution of the previous one, the second is declared null and void. For this purpose there exists a special simplified court procedure. Bigamy is punishable as a criminal offence.

By virtue of the separation of church and state Soviet authorities recognize only civil marriage of Soviet citizens. Therefore ecclesiastical marriages do not by themselves confer any rights or impose any duties and are not protected by the state. However, marriages contracted by religious rites before December 1917 are of equal legal effect as registered civil marriages.

The special protection of the interests of children is an expression of Soviet law's particular care for

the rising generation. It is a characteristic feature of Soviet family law.

The Soviet state and Soviet society discharge essential functions in the sphere of bringing up the future generation. But this should not to any extent diminish the importance of rearing children at home, in the family. In the Soviet land the upbringing of children in public institutions and in the family supplement each other. The law attaches particular importance to the preservation of the family.

State protection of the interests of mother and child is proclaimed in the Soviet Union a constitutional principle. To this end a whole system of legislative guarantees safeguards the labour and other rights of mothers. Mothers of large families receive extensive assistance from the government.

Parents have the right to demand that children of theirs kept from them by any person or institution be returned to them. Such a demand may be refused by a court only if it is established that such a return would endanger the proper upbringing of the child. If parents exercise their rights to the detriment of their children, a court may deprive them of their parental rights, take their children from them and have them brought up by government institutions. But this does not exempt parents from their duty to maintain their children. Lately such cases have virtually vanished from court calendars.

Soviet law strictly enforces this parental duty of maintenance even in the event that the family has disintegrated. Deliberate non-payment of alimony is punishable as a criminal offence. Not only minor children are entitled to alimony but also children who have reached their majority, 18 years of age, but have lost their capacity to work.

Grown-up children must maintain their incapacitated parents and grandparents.

All these rights and duties apply in full to adopted children, who enjoy all the rights of the parents' own children.

Let us give an illustration of a lawyer's work in this sphere.

... Kharitonov and Popova met in the summer of 1945. They deeply fell in love with each other and soon married. Once a woman with whom he had been intimate and who bore him a daughter unexpectedly came to see him. She demanded that Kharitonov either marry her or relieve her of the child. He had to tell his wife the whole story and she eagerly consented to receive the child and be its mother, to raise and educate it. Thus the girl lost the woman to whom motherhood was only a burden but found a real mother, a woman with a pure and noble heart.

In 1946 the couple moved to Moscow. The girl fell sick. Popova never left her bedside. A year later she gave birth to a daughter, Lusya. She made no distinction in the bringing up of the children. They enjoyed their mother's care and attention in equal measure. Kharitonov's girl, Zhenya, did not know that she was not living with her own mother nor did the family's acquaintances and neighbours know.

However, the married couple gradually drifted asunder. The time Kharitonov spent at home dwindled more and more. He often was away on business trips for long stretches of time and lost interest in the children. Finally, in 1953, he abandoned his family and settled in the town where his parents lived.

Popova had great trouble to make ends meet and applied to the court to make her husband pay alimony for his children.

Kharitonov in reply filed a counterclaim in which he petitioned for the return to him of his daughter Zhenya, alleging that he lived with his parents in a large, roomy house and that the grandparents agreed to raise their granddaughter.

The Moscow City Court, which heard the case as a tribunal of the first instance, refused the counterclaim and awarded Popova alimony for the maintenance of the children. Kharitonov took the case to the Supreme Court of the Russian Federation which, holding that the lower court did not have before it sufficient evidence to permit of the assertion that the appellant Kharitonov was incapable of bringing up his daughter, annulled the judgment of the Moscow City Court and ordered a new trial.

A crucial period set in for Popova. She was highly excited when she told the whole story to her lawyer, T. M. Mikeshina. What woman would fail to understand her grief! The advocate told her: "There is no reason for you to be so upset. Soviet law protects the interests of children in every way possible. Our business is to prove that it is in Zhenya's interest to continue to live with you. To achieve this purpose we must get ready for some good and hard work, and this applies primarily to me, your lawyer. Let's buckle down to the task!"

On the basis of the materials produced by the lawyer and the testimony of witnesses the Moscow City Court established the following facts: that Popova had been raising Zhenya ever since she was one year old and that they were fondly attached to each other. The same strong attachment existed between Zhenya and her step-sister Lusya; to tear Zhenya away from the Popova family would inflict a great psychological trauma upon both girls.

Furthermore, Mikeshina called the court's attention to the circumstance that Kharitonov, who often left the

house on long business trips, was unable systematically to attend to Zhenya's upbringing. His parents, because of their advanced age and ill health, were likewise not in a position to look after her properly and the child would therefore be left to herself.

It must be said that Kharitonov, who was anxious to strengthen his position at the new trial, asked Zhenya's real mother to come to Moscow in the belief that it would not be difficult for her to induce the court to give her back her child and that she would then entrust the girl's future upbringing to him.

But the court firmly rejected that woman's claim to her child. The court was quite rightly of the opinion that having abandoned her one-year-old daughter at one time she had forfeited her right to raise her now.

Before rendering its judgment the court, in accordance with the usual practice in such cases, asked Zhenya in the private office of the presiding judge, amidst surroundings least reminiscent of a court room, with whom she would like to live—with papa and her grandparents or with mama and Lusya. She answered that she loved papa and her granddad and granny, but would go to them only with mama.

The court decided to leave Zhenya with Popova and ordered Kharitonov to pay alimony for the maintenance of both children. The Supreme Court of the Russian Federation refused to alter this judgment.

Soviet Housing Law is the aggregate of legal regulations governing the use of dwelling accommodations of all categories, including houses belonging to local Soviets, government departments, home-building cooperatives and individuals.

Disputes over the use of housing space (particularly actions of ejectment) are settled by the courts. To exemplify:

The girl student Yekaterina Lobanova came to consult the Leningrad lawyer P. P. Chistyakov. She told him the sad life story of her younger sister Anya.

Before the war the Lobanov family lived in Leningrad. In July 1941 the children were evacuated to the eastern part of the country. The father was called up and the mother stayed in Leningrad. During the city's blockade the mother of the girls died and the father perished at the front. The sisters were put in children's homes. Yekaterina, on finishing a secondary school, entered an institute of higher education.

Anya was destined to follow a different course of life. When nine years old she returned together with the children's home to Leningrad. Many orphans like her were taken by near relatives into their families. It was no surprise to anyone therefore that Shmakova, a female relative of the Lobanov family, should evince a desire to take charge of Anya and act as her guardian.

Upon assuming her guardianship Shmakova settled down in the flat of the girl's deceased parents. Soon she brought her mother and son to the flat. Then she exchanged the Lobanov flat for another where the whole Shmakova family installed themselves and where no one knew Anya. After the passage of some time Shmakova petitioned the District Guardianship Board to allow her to adopt the orphaned girl. As soon as the adoption was formally executed, Shmakova, now her mother, transferred the flat to her name and became full mistress of the house. Now she had achieved her purpose and her only remaining task was to get rid of the girl. At Shmakova's request Anya was again placed in a children's home.

The problem the lawyer faced was not merely one concerning housing. The interests of a minor had been infringed, the institution of guardianship had been misused from mercenary motives. The guardian Shmakova

who had betrayed her trust had to be made to answer at the bar of the court. And the lawyer began to act.

After a verification of all the facts he filed a petition in the People's Court in the name of the elder sister to declare the adoption invalid. Simultaneously, upon the lawyer's own petition, the court issued a special finding that Shmakova's case be turned over to the criminal authorities for using her guardianship to promote her own selfish interests.

Next the lawyer brought suit on behalf of the City Department of Public Education to have the exchange of flats declared null and void. This petition too was granted. The Lobanov sisters got their flat back and Shmakova was soon brought to account and sentenced to deprivation of liberty.

The Soviet Bar is greatly instrumental in the protection of labour rights of citizens. Soviet Labour Law, on the basis of which lawyers practise their profession in this sphere, is the legal expression of the principles of the socialist organization of labour. The foundation of Soviet Labour Law is the Constitution of the U.S.S.R., which proclaims the right of its citizens to work, that is, the right to guaranteed employment and payment for their work in accordance with its quantity and quality. The right to work, as is indicated in the Constitution, is ensured by the socialist organization of the national economy, the steady growth of the productive forces of Soviet society, the elimination of the possibility of economic crises, and the abolition of unemployment.

The Constitution likewise guarantees the right of Soviet citizens to rest and leisure, and to security in old age and in case of sickness or disability.

The Soviet Labour Law regulates in detail how people are to be employed, and collective and individual labour contracts concluded; it furthermore regulates dis-

missals, management, work quotas, remuneration for labour and other problems.

Under the terms of the labour contract each worker undertakes to perform a definite amount of work as a factory worker or an office employee at the enterprise or the office in question. The factory or office undertakes, on its part, to pay him a compensation according to the quantity and quality of labour he performs and to ensure him working conditions that comply with the law. There is no standard written form of labour contract, but in actual practice there are definite documents that constitute a contract of employment: an order by the management officially including the applicant for work in the list of its work force; the entering of certain data in the workbook issued to each worker.

The manner of dismissing personnel is regulated in every detail by Soviet Labour Law. The management may discharge a worker of the factory or office category only in the cases directly specified in the Labour Law Code, namely: if the factory or office in question is being completely or partially liquidated; if there is a curtailment of work or a reduction of the work force or if work is suspended for more than a month for reasons affecting production. Actually dismissals for these reasons are very rare, for the Soviet economy is not characterized by curtailment, but by gigantic uninterrupted growth. A reduction of the work force at any establishment may be necessary to perfect the system of management or to reduce the volume of output at the enterprise in question and increase it elsewhere. The Soviet court keenly safeguards the interests of the working people and will not allow any management to dismiss workers that have incurred their disfavour on the pretext that it must cut down its work force or on any other false pretext. It deals severely with officials guilty of unwarranted dismissal of workers. A worker may also be dropped

from the pay-roll on the initiative of the management if he is unfit for the work he is required to do, for systematic violation of labour discipline, or if he commits an offence connected with his work and established by a court judgment that has gone into effect.

According to Soviet law a worker may be dismissed for violation of discipline only in case his violations were systematic and the measures taken to improve his discipline did not have the desired effect.

Any employee has the right to quit work at his own request, but must give the management two weeks' notice.

Soviet Labour Law prescribes a definite procedure for the examination of labour disputes between workers and the management. The first body to take up such disputes must be the Labour Dispute Commission, which is set up in each establishment and consists of an equal number of representatives of the management and the local trade-union organization.* Such commissions exist in factories on an all-factory scale and also separately for each shop. If an employee considers a shop commission's decision unfair he may appeal it to the all-factory commission. If the decision of this commission also does not satisfy him he may lodge a complaint with the factory trade-union committee. The trade-union committee's decision may be taken up to the People's Court. Decisions handed down by labour dispute commissions and factory committees are, if not appealed, of equal force and effect as court decisions and must be carried out without fail.

If a labour dispute is settled in court, the employee

* Labour Dispute Commissions were set up early in 1957. Before there were the R.C.C.s—Rate and Conflict Commissions—formed the same way. This explains why in the examples quoted below R.C.C.s are spoken of.

concerned—the plaintiff in the particular labour case—is wholly exempt from the stamp tax and other court expenses.

The administrative method of settling labour disputes consists in imposing the duty of settling such dispute upon an official or agency superior to the institution or enterprise in which the labour disputes originated. This method has been established for a definite group of officials having the right to employ and discharge and occupying responsible positions.

Whenever a labour dispute is heard in a court the judges carefully consider all the circumstances of the case from the point of view of defending the rights and interests of the workers to the utmost. Soviet lawyers to whom working people apply for legal aid in this class of cases do everything possible to have the legitimate demands of their clients satisfied. To exemplify:

...Engineer Mikhailov was engaged for many years in a Moscow plant as head of a department. During this period he submitted a number of valuable rationalization proposals and on many occasions was officially commended by the management for his good work. Now Mikhailov was intolerant of any shortcoming in the operation of the plant. This criticism, which at times was very trenchant and became known beyond the confines of the enterprise, was evidently not to the liking of its director. He tried to put a damper on Mikhailov but without success. Then the administration issued two orders at a six months' interval. The first envisaged the consolidation of two departments into one as a result of which Mikhailov was transferred to temporary work in a different department as an ordinary engineer. The second announced his discharge on the alleged ground of a shrinkage in the amount of work at the plant and the consequent abolition of the post he had held.

Mikhailov appealed his dismissal to the R.C.C. Its workers' section voiced its disagreement with the dismissal. But the management insisted, in consequence of which the matter was taken to court. Mikhailov engaged I. M. Zeitlin as his lawyer, and the procurator took part in the proceedings.

As a result of the judicial examination of the case and the lawyer's energetic defence of his client's interests it was established that actually there had been no diminution in the amount of work or number of workers at the plant, that the R.C.C. had not been given notice of any such diminution (as the law requires), that Mikhailov's new job could not be considered temporary, for he had been on that job for a considerably longer period than the law allowed for temporary work. Finally, the lawyer submitted to the court information that twenty-five days after Mikhailov's dismissal another worker had been put in his place.

The procurator asked the court to enter judgment in favour of Mikhailov, but not to stop there. He wanted a special finding against the director of the factory, and insisted on informing the competent Ministry of his flagrant violation of labour laws.

Mikhailov was reinstated and the factory ordered to pay him for his enforced absence from work.

... Selivanova, a bacteriologist, worked a long time in one laboratory and her conscientious work was noted in many testimonials given her by the management.

One day it issued an order transferring her to a different laboratory. She refused to be transferred on the ground that she was not acquainted with the kind of work that would be required of her there. The management then gave her a reprimand for violating discipline. At the legal consultation office to which she applied the lawyer on duty, D. G. Burstein, informed her that her punishment was unlawful. The next day she was called

to the office of management in charge of the laboratory she worked in and was again told to change her place of work. She again refused and this time her punishment was a strict administrative censure. Another two days elapsed and, as Selivanova had not entered upon her new job, she was dismissed "for systematic violation of labour discipline."

Thus every formal requirement authorizing dismissal was observed. The dismissal was preceded by two punishments which were "ineffective." But the management had not taken into consideration the legal maxim *non bis in idem* (one may not be punished twice for the same thing). Even if Selivanova was considered to have committed a breach of discipline in refusing to accept the new job, it was wrong to reprove her twice for the same act.

In the suit he brought in the People's Court the lawyer did not confine himself to this point. He primarily raised the issue of whether the work to which his client was transferred corresponded to that for which she had been taken on. The laboratory workers who had been summoned to testify on this point were of the same opinion as the plaintiff. Moreover, the lawyer declared that the Labour Law Code forbids the transfer of a worker to other work, even if in the same city, or office or factory, without the consent of the worker concerned. Thus counsel for the defence successfully proved the illegality of the transfer, the punishments and the dismissal itself.

As a result the court ordered Selivanova's reinstatement in her former job and instructed the administration to pay her wages for the period of her enforced absence from work. The administration did not dare to appeal this just decision.

Copyright cases are also encountered on the calendars of Soviet courts. In the Soviet state all conditions

necessary to engage in creative literary, scientific and art work exist. The writers', composers', artists', journalists', etc., unions make it their concern, in addition to their basic tasks, to protect the copyrights and other legal rights and interests of their members.

Soviet Copyright Law regulates the relations arising from the creation and use of works of literature, science and art. All its norms aim to promote the development of Soviet culture and to safeguard the legitimate interests of people doing such creative work.

An author may write under his own name or an adopted name (pseudonym) or without any designated name. As a general rule, an author enjoys the use of his copyright for life. After his death this right is transmitted to his heirs at law or his legatees for 15 years. The author has the right by all methods allowed under the law to reproduce and distribute his works and derive the proprietary advantages afforded thereby.

If his copyright is infringed, the resultant dispute may be settled by an action in court. The law considers suits for authors' fees as of the same category as suits for wages, and they therefore enjoy the same privileges. Thus no court charges are exacted from authors.

The principal and most characteristic feature of the lawyer's work in the copyright field is perhaps the need to penetrate deeply into the sphere of science, literature or art in which the object in dispute lies. Lawyers consulted by authors must immerse themselves in metallurgy or choreography, astronomy or the history of literature, chemistry or musical criticism—in any subject that enables them to grasp the thoughts of their author-clients, to get the gist of the objections raised by their opponents, to put proper questions to the experts, whose participation is almost indispensable in every trial of this description.

At the same time it must be borne in mind that in many cases dealing with an author's rights the important thing is not only and not so much the material results achieved (for instance, in a suit for fees or royalties) as the restoration of the damaged moral texture of the author.

Let us examine such a case.

... Docent Zelenin concluded an agreement with a publishing house under the terms of which he undertook to submit to it within a definite period of time the manuscript of a textbook for higher schools on the fundamentals of safety engineering. One of the conditions of the agreement was that the textbook must correspond to the approved curriculum. But at the time the agreement was made no such curriculum existed as yet.

Zelenin handed in his manuscript four months after the term agreed upon had expired. Moreover, its volume was five author's signatures in excess of that specified in the agreement. Besides, during that period another publishing house had put out a textbook by Zelenin bearing the same title but designed for secondary technical schools.

The publishing house thereupon rescinded the agreement on the ground that it was overdue, exceeded the volume specified and that Zelenin had already published his work at another publisher's. To strengthen its position the publishing house on its receipt gave the manuscript for review to an old scientific opponent of Zelenin's and received from him a reply highly uncomplimentary to the author.

The latter now turned to A. I. Waxberg for legal advice. His very first words to him were: "I do not know what you can do for me. You see, I want the book published, but the court cannot compel the publishing house to put it out." Unfortunately that was true. The court has no such power. It has not even the power to put the

unlawfully rescinded contract in operation again as such an action is not provided for in the laws on authors' rights. The suit therefore took on the form of an action for the payment of the author's fees. On the hearing of this case the court was bound to go into the question of whether Zelenin had fulfilled the obligations he had undertaken and whether the publishing house had the right to rescind the contract.

The plaintiff contended that a cancellation on account of the excessive length of the manuscript was unwarranted. The defendant merely had the right to demand that it be correspondingly shortened. The contract cannot be torn up unless the author refuses to comply with that demand. But Zelenin had not received any instructions on that score from the publisher.

As for the author's failure to deliver the book on time, that gave the publishing house the absolute right to rescind the contract. But in the case under consideration if the author had observed the time limit it would have led to the violation of another stipulation in the agreement—that the manuscript must correspond to the approved curriculum, and by the stipulated date of delivery the curriculum had not yet been approved. Thus conditions not dependent on either party to the agreement made it impossible for Zelenin to carry out this provision. He delivered the manuscript shortly after the curriculum was approved.

The assertion of the defendant that Zelenin's work had already been published by another publisher was actually not true as the two textbooks essentially had nothing in common. But even if they had had, the objection would have been unfounded in the eye of the law, for at the time when the secondary-school textbook came out, the time limit within which the university textbook had to be got out by the defendant had expired. Hence the

author had the right to do with his work what he deemed best.

The legal battle was fiercest over the last point raised by the publishing house: did Zelenin's work contain scientific, technical or methodological shortcomings which did not permit of its being printed? Here the dispute transcended the legal field and entered the field of specific knowledge. It was decided to request the management of the institute at which Zelenin was working to obtain reviews of the manuscript from a number of competent scientific institutions. Favourable replies were received from the Textbook Department and the Commission of Experts of the Ministry of Higher Education of the U.S.S.R., the Safety Engineering Departments of two institutions of higher education and the Institute of Labour Protection of the All-Union Central Council of Trade Unions.

Since the plaintiff and the defendant presented diametrically opposite reviews and only competent experts could properly analyse them, it became necessary to have recourse to a commission of forensic experts.

A long-drawn-out fight ensued, first, on the candidates to the commission and, second, on the wording of the questions to be submitted to the experts.

All experts proposed by the plaintiff were rejected by the defendant. Vice versa, the plaintiff reposed no confidence in the publisher's candidates. Finally the plaintiff and his lawyer made the following somewhat risky proposal to the court: they would agree in advance to any expert if he had published not less than five works and had been teaching for not less than five years in the scientific field in question.

The court thereupon appointed a commission of three: two doctors of science and one candidate of science. Although two of them had repeatedly come out against

Zelenin in scientific discussions, the latter raised no objection to them. But the task of formulating the questions to be presented was no less difficult.

The publishing house put two questions: 1) Is Zelenin's manuscript of the high standard required of textbooks and 2) Can it be said that the textbook for technical schools was written by Zelenin on the basis of the textbook manuscript meant for universities?

These were tricky questions. The first one was wholly a matter of opinion as there is no precise criterion of what a "high standard" is. The second one, if answered in the affirmative, would in any event weaken morally the plaintiff's position, although it had no legal significance.

The questions put by the defendant were countered by those of the plaintiff which admitted only of answers that were demonstrable, and that could be argued and verified, viz.: 1) Does the manuscript correspond to the curriculum? 2) Do the latest achievements in science and technology find reflection in the manuscript? 3) Does the manuscript contain untenable scientific or technical theses? 4) What methodological errors does the manuscript contain? 5) Are there any substantial differences with regard to designation, volume, content, level of exposition and illustrative matter between the textbook published for secondary technical schools and the manuscript which is the subject-matter of the present dispute?

The findings of the experts were completely in favour of the plaintiff. As these replies exhausted the business assigned to the experts they refused to answer the publisher's questions.

On the day before the trial the author was invited to the publishing house where a compromise was suggested. Zelenin did not want to enter into any negotiations without his lawyer. He was called and they all drew up

an agreement together. The publishing house immediately paid the author his fee and pledged itself to get out his textbook at the earliest possible date.

...Maximov and Butov applied to V. G. Blumenfeld, a Moscow lawyer, for legal advice. In 1948 they concluded an agreement with a publishing house according to the terms of which they assigned to it the right to publish and republish a textbook for chauffeurs that they had written. In accordance with the decision of the government of the Russian Federation dated July 12, 1944, it was agreed that the first edition should comprise 100,000 copies. The authors' fees for the second and following editions were to be paid at the rates provided by the copyright laws and the agreement (for the second and third editions—60 per cent of the contractual rate fixed for the first edition, for the fourth edition—50 per cent of the stated rate).

The publishing house got out successively in 1950—50,000 copies and in 1953—150,000 copies, paying the authors, as the contract stipulated, a fee of 100 per cent of the contractual rate for the first 100,000 copies and 60 per cent for the second edition of 100,000 copies.

At the end of 1953 a supplementary edition of the textbook amounting to 200,000 copies appeared, which, according to the agreement, was to be considered as the third and fourth editions. But the publishing house credited them with only one, a third, edition, calculating that 200,000 copies made one edition for the purpose of fixing the fee. It claimed that its authority for fixing the fee this way was the order of the former Chief Administration of the Polygraphic Industry, Publishing Houses and the Book Trade under the Council of Ministers of the U.S.S.R. dated October 10, 1951, which instructed the publishing house that thereafter on concluding agreements concerning textbooks for the train-

ing of persons engaged in mass trades the standard edition should be fixed at 200,000 copies and not 100,000 as before.

At the trial of the suit which the authors instituted their lawyer reasoned as follows:

If the publishing house considered that the work performed by the authors was of that category of literature for which a greater number of books per standard edition is now prescribed than the agreement calls for, it should have given timely notice of this to the authors, as this means a substantial worsening of their situation in comparison with the provisions of the agreement and the law.

The lawyer then criticized the legal nature of the Chief Administration's order. Inasmuch as the number of copies to the edition is fixed by decision of the government of the Republic, the Chief Administration had here virtually assumed the role of interpreter of government decisions, which it had absolutely no right to do.

Counsel further pointed out that the publishing house was utterly unable to refute the well-grounded assertion of the authors that their work was mass literature in the field of production and technique, the edition standards for which were fixed by government ordinance.

All these arguments advanced by counsel were accepted by the People's Court, which entered a judgment that fully satisfied the authors' claim.

Another case, conducted by lawyer Y. L. Vakman, may be considered typical from the point of view of protecting an author's copyright against infringement by using a work he created without his consent.

...The sculptress Terentyeva contracted with a porcelain factory to produce for it a bust of the poet Vladimir Mayakovsky. Upon delivery of the bust the factory paid her the stipulated sum, and then reproduced it and had it manufactured and sold on a mass scale but declined to

pay Terentyeva her copyright fees. However, the agreement for the delivery of the sculpture to the factory as its property contained no provision permitting it to reproduce and distribute the bust for profit without the consent of the authoress. This circumstance, the lawyer argued, entitled the sculptress to sue for damages, i.e., for payment of an appropriate fee.

The case was tried in a Leningrad People's Court and in the City Court but without success. Vakman then lodged a cassational complaint by way of supervision with the President of the Supreme Court of the U.S.S.R., who protested the proceedings in the Court Collegium for Civil Cases of the Supreme Court of the Russian Federation. The collegium agreed with the reasoning of the lawyer, annulled the judgment that had been pronounced and ordered a new trial, in which the plaintiff won her suit.

Civil lawyers frequently have to handle cases that involve obligations arising from the infliction of injury or damage to persons or property.

Soviet law provides that compensation for harm inflicted should consist a) in restoring the previous condition and, when restoration is impossible, b) in paying compensation for the loss, damage or injury sustained.

According to Soviet law only loss of or damage to property is compensated. No damage suit lies for an aspersion of one's reputation, honour, or human dignity. Attacks upon them are punished administratively (reprimand, demotion, etc.) or judicially (fine, deprivation of liberty, etc.).

The injured party is under no legal obligation to prove the guilt of the injurer. The guilt of the person that inflicted the injury is assumed. This is of the utmost importance because the injured party is often not in a posi-

tion to establish and furnish proof of all the circumstances that caused the injury.

There are cases in which the court finds that the victim of the accident in question was guilty of contributory negligence in some degree or other.

Special provision is made for determining the responsibility for injuries caused by a so-called source of enhanced danger. The law specifies that enterprises whose activity involves enhanced danger for people close by, such as railways, tramlines, mills and factories, are responsible for any injury or damage caused by the source of enhanced danger, unless it is shown that the injury was the result of an irresistible force or of deliberate intention or gross negligence on the part of the injured party himself.

If the injured party is maimed, his compensation is calculated in accordance with the degree (percentage) of loss of his working capacity and his average wages. "Average wages" is here construed to include all regular earnings. If the maimed person needs an attendant the court may order the guilty party to pay for the attendant besides paying the compensation awarded. If the injury affected the complainant's health, the expenses incurred incidental to his cure—for special alimentation, for artificial limbs, etc.—must be reimbursed. If death ensues as a result of the injury inflicted, the defendant will be ordered to pay the burial expenses and the sum necessary to maintain the family that lost its breadwinner.

These are the most important factors considered on determining the compensation to be paid for injuries inflicted.

Most of the disputes that arise in this sphere are settled out of court. But when the injurer for some reason or other cannot reach agreement with the injured party

or denies his responsibility altogether, the case must be taken to court.

Let us cite a few cases for illustration.

On his home trip at the end of his holiday, at a railway station on the Omsk line, a mentally deranged passenger named Roshchin alighted from his train and applied at the medical centre for assistance. He was questioned and examined and his documents scanned by the physician on duty who established that the patient suffered from acute psychosis and had hallucinations. The physician did not, however, have the patient sent to a medical institution for treatment, as was his duty, but gave him a certificate requesting his admission to a hospital in Omsk. The patient had to travel by rail for six hours without anyone accompanying him. On leaving the medical centre and seeing a goods train approaching, Roshchin lay down on the tracks and was run over by the train. Roshchin's widow, who was unable to work and had an eight-year-old child, asked the lawyer A. M. Romanov to handle her case.

He explained to his client that since the fatal injury was caused by the negligent attitude toward his duties on the part of the railway physician, the railway administration had to compensate the family for the loss of their breadwinner.

The People's Court which heard the case gave judgment for the plaintiff. However, on appeal for cassation the defendant denied the railway's liability on the ground that Roshchin's psychical inferiority was a debatable point and suggested that Roshchin might have deliberately committed suicide. Without critically examining this argument the City Court annulled the judgment of the People's Court and ordered a new trial.

In preparing for the new hearing of the case the widow's lawyer obtained from the Procurator's Office the materials pertaining to Roshchin's self-killing and peti-

tioned the court to appoint a post-mortem commission of forensic psychiatric experts. After studying Roshchin's case history and certain other data the commission arrived at the conclusion that at the moment of the self-killing Roshchin was insane.

Relying on the findings of the experts the lawyer readily showed that the defendant's arguments were utterly untenable. As Roshchin was insane he could not answer for his actions. There was therefore no ground to claim that his self-killing was a conscious act.

The court concurred with the argumentation of the lawyer and imposed upon the railway the duty to compensate the widow and her daughter for the damage caused them by the death of the family provider.

... Vinogradov, an actor, consulted lawyer T. M. Mikeshina on the following case: At Trubnaya Square in Moscow he seated himself in the last car of a tram. At the same time another tram was coming down the street, which at that point was very steep. Suddenly the brakes of the descending tram refused to work and it dashed down at a speed beyond control. When Vinogradov raised his foot to board the stationary tram, the descending tram crashed into it with tremendous force. As a result of the accident the actor lost one leg, while the other was severely mangled.

The liability of the Moscow Tram Administration was beyond all dispute. The only issue was the amount of the damages to be paid. Ordinarily this question presents no difficulty. But in the present instance the earnings of the actor varied. In addition to the salary he received from his constant place of employment, a theatre, he was paid by the Radio Committee, which regularly invited him to perform at its concerts.

Mikeshina informed her client that to begin with experts must establish the extent to which he had lost his capacity to work. They found that he had lost 100 per

cent of his professional and 80 per cent of his general working capacity. Thus he was entitled to compensation amounting to 100 per cent of his salary, with a deduction of 20 per cent of the wage of an unskilled worker.

On receiving a certificate stating Vinogradov's average monthly earnings at the Radio, the lawyer obtained in court a statement of his total earnings, both theatre and radio, since the injury he had sustained incapacitated him from work at the theatre and elsewhere.

The court then awarded the actor 4,000 rubles monthly for the rest of his life, which compensation was to be paid by the tram administration. Counsel for the defence asked additionally for other forms of compensation allowed by Soviet law, namely, payment to the injured of the difference between the temporary incapacity benefits he received during the time he was in hospital and his average earnings, compensation for the cost of his artificial limb, the value of the clothes spoiled by the accident, etc.

All these demands were satisfied by the court.

...A young woman named Seleznyova once came to lawyer P. I. Chernykh, manager of the Krasnopresnensky District Legal Consultation Office, for advice. She had no left hand. Her story was in brief: one morning she was going to work by tram, as usual. When the latter came to her stop and Seleznyova, following other passengers, was getting off the platform, the motorman suddenly made the car move with a jerk. She fell and her hand got jammed under the right front wheel. When she recovered from the accident she sued the tram depot for damages. A special medical commission established that as a result of the accident the plaintiff became an invalid who had lost 80 per cent of her professional and 70 per cent of her general capacity to work.

The defendant's representative claimed that the plaintiff was getting off the car while it was in motion and that therefore the depot could not be held responsible for the resultant injury. The record contained the deposition of the witness Biryukov, who confirmed the defendant's line of argument. Biryukov was not summoned to the court sitting. The court held that the plaintiff was guilty of contributory negligence as a result of which her claim to damages was allowed only partially. The City Court left the judgment unchanged. That was the situation when Chernykh stepped into the case.

"Tell me, what car did you ride in, the front car or the rear?" he asked his client.

"The front one."

On learning the number of the car from the record of the case the lawyer inquired at the Technical Department of the Tram Depot how the doors of that car were built and received the necessary document showing this.

The supervisory complaint for cassation filed in the Presidium of the Moscow City Court was satisfied, the original decision annulled for insufficient investigation and the case returned for a new trial by a People's Court of a different composition.

At the trial the representative of the defendant kept on insisting on the plaintiff's contributory negligence. Then counsel for the plaintiff asked the tram man how the doors of the car opened and shut. The representative replied that he did not have the necessary data. Thereupon the lawyer showed the certificate he had received from the tram trust stating that the doors worked automatically. The motorman of the tram when called to the witness stand was asked: "Can the door be opened by anyone else besides the motorman?" The answer was in the negative. "Has the motorman the right to open the door while the tram is running?" Again a negative answer. Question: "In that event could Seleznyova get off while

the car was moving?" Eloquent silence. The truth was evident to all.

At the lawyer's request the witness Biryukov was called. He stated that he did not see how Seleznyova got off the tram, but when he saw her lying on the ground he concluded that the accident was due to her having alighted while the tram was in motion.

Chernykh now cited the decision of the Supreme Court of the U.S.S.R. sitting in banc, according to which a court may find that there was contributory negligence only if the accident in question occurred in consequence of the wrong action of the defendant coupled with gross carelessness or gross negligence on the part of the injured party. No such carelessness or negligence on the part of Seleznyova had been shown.

The court decided to award Seleznyova damages in full.

The authors of this book strove to tell their readers of the multifarious activity of Soviet lawyers, to demonstrate the organizational forms in which this activity manifests itself, to disclose the content of the work of the skilled Soviet legal practitioner by quoting appropriate examples.

In their assessment of the structure and the democratic forms of organization of the Soviet Bar the authors' aim was to reveal the foundation upon which the genuine independence of the Soviet lawyer rests—an independence that permits him to perform his functions boldly, to submit only to the dictates of the law and his conscience.

The main feature characterizing the activity of Soviet defence counsel is the utterly consistent, courageous, principle-governed defence of the rights and interests of the citizens. The Soviet advocate will not forget for a

moment that the right of the accused to be defended by learned counsel is one of the principles proclaimed in the Constitution of the U.S.S.R., the fundamental law of the land.

The authors furthermore wanted to bring home to their readers the distinguishing characteristics of the Soviet counsellor in action: ability in every criminal and civil case properly to combine the interests of the individual with those of the state, a combination that does not waive one jot or tittle of the rights and legitimate interests of the individual.

They endeavoured to enlighten the public on the basic object of the humanitarian labour Soviet lawyers are engaged in—seeing to it that not one innocent person is convicted and that every guilty one is punished but only to the extent of his actual misdoing and with full consideration of all extenuating circumstances. If they have achieved some measure of success in their endeavour the authors will consider their task fulfilled.