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Lawyers in Soviet Work Life

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LAWYERS IN SOVIET WORK LIFE. By Louise I. Shelley. New Brunswick, N.J.: Rutgers University Press. 1984. Pp. xii, 175. \$25.

Soviet *juriskonsults*, the general counsel employed by state-run economic enterprises, are charged with protecting the legal interests of their enterprises. But they are hindered by an economic system that, because of its corruption and inefficiency, does not respond well to legal incentives.

Professor Shelley¹ has interviewed twenty-five emigré *juriskonsults* and economic-court judges (arbitrators), almost all Soviet Jews who left in the 1970's and settled in the United States, Canada and Israel (pp. 6, 15). Notwithstanding the obvious risk of bias in this non-random sample (p. 13), the interviews provide an interesting factory-level view of Soviet enterprises and the role of the *juriskonsult*. Too often, however, Shelley's view of the *juriskonsult*'s actual activities coalesces with her vision of what he may be capable of doing. The result is sometimes confusing.

Legislation enacted in 1972 charges the *juriskonsult* with five general responsibilities: (1) to ascertain that drafts of enterprise regulations conform to the law; (2) to defend the legal rights of the enterprise and its employees, in court if necessary; (3) to monitor the fulfillment of contracts and sue for damages in the event of breach; (4) to help improve the efficiency of the enterprise and the quality of its production; and (5) to educate the workers by providing consultation and delivering lectures (p. 34).² Officially he is "an active member of his organization rather than a bureaucrat on the sidelines" (p. 34), "able to use the law to combat economic inefficiency" (p. 35).

In practice, the *juriskonsult* falls far short of the legislative ideal. The *juriskonsult* strives to help his enterprise fulfill its plan by negotiating and monitoring supply contracts between enterprises, but the basic terms are imposed by central planning directives and may be impossible to carry out (p. 58).³ He can do little to avert the problems that arise from shortages, poor production standards and embezzlement (p. 58). He may sue enterprises that supply his own with substandard products, but cannot thereby deter future breaches because managers are rewarded more for fulfilling their production quotas than organizations are penalized for producing inferior goods (p. 61).

1. Associate Professor of Sociology at the American University School of Justice. She lived in the Soviet Union for a year and a half, and conducted the interviews in Russian. Pp. 6, 8. This book appears to be an expansion of a journal article, Shelley, *Law in the Soviet Workplace: The Lawyer's Perspective*, 16 LAW & SOC. REV. 429 (1981-82).

2. For a detailed summary of the 1972 law, see Giddings, *The Juriskonsult in the USSR*, 1 REV. OF SOCIALIST L. 171, 184-97 (1975).

3. See E. JOHNSON, AN INTRODUCTION TO THE SOVIET LEGAL SYSTEM 218-19 (1969).

Such suits, moreover, often exacerbate the existing inefficiency. Professor Shelley tells of a bread factory that was required to return its empty flour sacks to the food distribution center. The two enterprises were linked by a conveyor belt, but the belt traveled in only one direction. The factory had no truck, and the ministry refused to provide one. Unable to return the sacks, the factory was sued each year and compelled to pay huge fines to the food distribution center. Each year's fines would have sufficed to buy two or three trucks (p. 75).

Although one of the *iuriskonsult*'s major functions is to review management actions and veto or report illegal actions (pp. 33, 34), an enterprise director will sometimes induce or pressure the *iuriskonsult* (he may fire him at whim (pp. 46, 108)) to use his legal skills to help the director break the law in the most inconspicuous manner (pp. 110-11). Thus, the *iuriskonsult* may lend his expertise to covering up industrial accidents (p. 110), or helping a corrupt director evade prosecution (p. 84).

Notwithstanding these difficulties, Shelley argues throughout the book that the *iuriskonsult* can play an important part in the Soviet economy by vigilantly filing suit to recover fines for the enterprise (pp. 57-58, 62-64), by tracing the causes of inefficiency in the enterprise and proposing correctives (p. 4), and by improving labor relations (pp. 4, 144). In presenting anecdotal evidence in support of this proposition, however, she often fails to indicate whether she is describing what she considers to be the typical activities of *iuriskonsults* or an ideal role that the typical *iuriskonsult* may or may not someday fulfill. It is only through an occasional passing comment that the reader gathers that much of the discussion is normative. For example, she concedes at one point that "[o]nly a few [*iuriskonsults*] have become 'problem solvers'; most remain 'paper pushers,' content merely to review and complete the documentation required by their organizations" (p. 57).

The book itself provides ample anecdotal evidence of the reason *iuriskonsults* are unable to "transcend their usual roles" (p. 143). A textile factory *must* knowingly produce substandard cloth because it receives an inadequate supply of raw material (p. 62); an arbitrator simply has no choice but to affirm supply contracts that are known to be technically unfeasible (p. 61); lower-wage employees must accept side payments because it is impossible for them to live on their salaries (p. 84). Soviet theory as to the role of the *iuriskonsult*, Shelley concludes, "is based on the fallacious premise that the primary causes of interorganizational disagreements are legal rather than economic" (p. 58).⁴ Furthermore, ambitious Soviet law students typically aspire far

4. And if the systemic inefficiency is intractable, the corruption is worse. Shelley offers no hope at all for reducing it:

Until the members of the Soviet bureaucratic and Party elite identify their welfare with that of their enterprises, law will remain an ineffective weapon against the second [*i.e.*, ille-

beyond the position of *iuriskonsult*.⁵ The pay is low,⁶ there is little prestige (pp. 52, 142) and little prospect for a coveted Party post or other significant promotion (pp. 45-46). And Soviet legal education does not prepare lawyers well for *iuriskonsult* work (p. 57).

Still intent on demonstrating the *iuriskonsult*'s importance, Shelley exalts his role in counseling and protecting individual workers who seek his aid. He may advise an illegally dismissed worker how to regain her position and receive back pay (p. 106), and he counsels workers on personal problems such as divorce or physical abuse by husbands (p. 115). *Iuriskonsults*, the author concludes, are "personalizers of the law" (p. 144) who "provide the flexibility needed for the survival of the Soviet legal system" (p. 145).⁷ Here again, her argument appears to be normative rather than descriptive. She observes that "[n]ot all lawyers personalize the Soviet legal system; most, presumably, remain bureaucrats concerned solely with legal formalities" (p. 144).

Ultimately, Shelley's attempt to give substantial significance to the *iuriskonsult*'s work is not convincing. There is little that even the most conscientious and strongest-willed *iuriskonsult* could accomplish in the world she so clearly paints, a world in which debilitating inefficiency and virulent corruption nurture each other.⁸

This is, nonetheless, a valuable book. It provides an authentic glimpse of a little-known branch of the Soviet legal profession whose activities, modest as they are, touch every aspect of Soviet organizational life.⁹ The first Soviet book on *iuriskonsults* appeared only in

gal] economy, and *iuriskonsults* and arbitrators will be permitted only to remedy the damage inflicted by the second economy instead of fighting to eradicate it.

P. 95.

5. They are more likely to become *advokats* (who argue criminal defense and both sides of private civil litigation), procurators (who investigate and prosecute serious crimes) or judges (who, as in most civil law countries, rise through the ranks of a judicial civil service). See generally Barry & Berman, *The Soviet Legal Profession*, 82 HARV. L. REV. 1, 7-32 (1968).

6. The pay is slightly less than the average wage of Soviet workers, pp. 28, 42, though a few very successful *iuriskonsults* earn up to three times the average wage. P. 45. Furthermore, apart from an occasional bribe from an embezzling employee, pp. 80-82, or favor from a corrupt director, p. 84, there are relatively few opportunities for illegal enrichment. Pp. 80, 85. The chief *iuriskonsult* for one trade organization was able to buy scarce goods at cost from the stores under the organization's jurisdiction. The stores, however, gave similar goods free to the inspectors, the heads of numerous departments and members of various police and prosecuting agencies. The *iuriskonsult* explained that "[w]ith all these people on the take, not much depended on the *iuriskonsult*." P. 82.

7. Of course, one hopes that conscientious lawyers and judges everywhere attempt to perform the same function, bending and modifying the inert written law to accommodate circumstances.

8. For a capsule overview of this troubled economy, see *President Chernenko's Moving Target*, ECONOMIST, Oct. 6, 1984, at 71 (based on recently published data in CENTRAL INTELLIGENCE AGENCY, HANDBOOK OF ECONOMIC STATISTICS (1984)).

9. See p. 142.

1960,¹⁰ though they antedate the revolution.¹¹ English-language works tend to either devote only a few pages to the *iuriskonsult*¹² or merely analyze the legislation.¹³ One recent work is apparently by a former *iuriskonsult*,¹⁴ but Shelley's perspective, through her sample, is far wider. As she recognizes (p. 13), her sample is not random. Almost all the interviewees were members of an unpopular minority who were so dissatisfied with life in the Soviet Union that they chose the difficult route of emigration.¹⁵ Further, their views on their work are not tested by the opinions of enterprise directors, employees or economic planners. A more representative sample, however, is not likely to be available soon.

10. L. SHOR, ORGANIZATSIIA IURIDICHESKOI SLUZHBY NA PREDPRIATII I V SOVNARKHOZE (2d ed. 1964), cited in Barry & Berman, *supra* note 5, at 17 n.50.

11. Luryi, *Jurisconsults in the Soviet Economy*, in 3 SOVIET LAW AFTER STALIN 169 (1979).

12. See, e.g., S. KUCHEROV, THE ORGANS OF SOVIET ADMINISTRATION OF JUSTICE: THEIR HISTORY AND OPERATION 572-74 (1970).

13. Giddings, *supra* note 2.

14. Luryi, *supra* note 11. See Giddings, *supra* note 2, at 184.

15. She appears to exacerbate some of these biases. For example, in screening potential interviewees, she rejected those who "appeared to be motivated by the prospect of financial remuneration" (the interview fee). P. 12. Having thereby eliminated the venal from her sample, she is able to conclude from the interviews that *iuriskonsults* "appear to be less involved in illegal economic activity [than other legal professionals]. . . . [F]ew *iuriskonsults* appear to take advantage of the available opportunities." P. 80.