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## Final Judgment: My Life as a Soviet Defense Attorney

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FINAL JUDGMENT: MY LIFE AS A SOVIET DEFENSE ATTORNEY. By *Dina Kaminskaya*. New York: Simon & Schuster. 1982. Pp. 364. \$18.95.

A fair-minded, if indiscriminating, individual might occasionally ask: What real difference is there between the United States and the Soviet Union? For every Afghanistan, it seems, there is a Grenada. In the domestic sphere, whenever the Soviets pack one more dissident off to a labor camp, critics can note that America's hands are not entirely clean: witness, for example, the atrocities of the McCarthy era or the machinations of J. Edgar Hoover's FBI. For one troubled by such comparisons, Dina Kaminskaya's *Final Judgment* can help put matters into perspective and illustrate one important distinction between the two societies. And for one who already recognizes that distinction, *Final Judgment* is a useful reminder of the relative ease with which a totalitarian state can turn truth into falsehood and falsehood into truth.

Kaminskaya draws on her thirty-seven years as a Soviet defense attorney, or "advocate," to give the reader rare insight not only into the nature of the Soviet legal system, but also into the nature of Soviet society generally. She chose to become an advocate rather than a prosecutor partly because of her distaste for the severity of Soviet criminal punishments (p. 23) and partly because of the less stringent state control exercised over the advocacy profession, which is officially termed a "self-governing social organization" (p. 24). Unlike practically all other workers in the Soviet Union, Soviet advocates are not employees of the state (p. 24). Like any other Soviet organization, however, the advocacy profession must coordinate its work with appropriate bodies of the government and the Soviet Communist Party (p. 25).<sup>1</sup> Still, this relatively relaxed degree of state and Party control does not prevent an advocate from making a conscientious and spirited defense of the accused in a normal criminal case.

Formidable obstacles to the presentation of an *effective* defense, however, are posed by the nature of the Soviet criminal process. In

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1. The central role of the Communist Party in Soviet life is established by the Soviet Constitution:

The Communist Party of the Soviet Union shall be the guiding and directing force of Soviet society and the nucleus of its political system and state and social organizations. The CPSU shall exist for the people and shall serve the people.

Armed with Marxist-Leninist teaching, the Communist Party shall determine the general perspective of the development of society and the internal and foreign policy line of the USSR, direct the great creative activity of the Soviet people, and impart a planned, scientifically well-founded character to its struggle for the triumph of communism.

U.S.S.R. CONST. art. 6, reprinted in I W. BUTLER, COLLECTED LEGISLATION OF THE USSR AND CONSTITUENT UNION REPUBLICS, USSR I-1, at 5 (1980).

Soviet jurisprudence, a criminal trial is the culmination of a legal process that begins with an extended investigation by the procuracy (prosecution), police, Ministry of Internal Affairs, and, sometimes, the KGB (p. 51). Once the investigation is completed and an indictment compiled, the judicial process begins (p. 51). The pretrial functions of defense counsel are limited by law primarily to a study of the documentary material and the planning of defense tactics with the accused (p. 53). The advocate may also make requests for supplementary investigation, the calling and questioning of witnesses, arranging confrontations, and the provision of further expert evidence (p. 53). However, the *investigator*, rather than the court, may deny such requests and, not surprisingly, usually does (p. 53). At trial, while the prosecution and defense are theoretically equal, the preeminent status of the prosecutor generally makes itself apparent in the deference accorded to him as the state's representative of the court (p. 35). By way of explanation, Kaminskaya notes that the Soviet judiciary, while nominally independent, actually adheres to governmental and Party directives on penal policy (p. 56), a fact not startling in light of the control that the Party has over the selection of judges (p. 57). In practice, then, the Soviet criminal trial is merely a confirmation of the state-controlled investigation that led to the indictment of the accused.

Nonetheless, little incentive exists for any system wantonly to ignore the innocence of an individual charged with a non-political crime,<sup>2</sup> and Kaminskaya's description of a rape case that she handled, labelled "The Case of the Two Boys" (pp. 65-157), illustrates that the defense, along with justice, can triumph from time to time (though it took three separate trials in the case noted). Moreover, although one might reasonably argue that criminal procedures in most western countries, including the United States, are substantially fairer because of their greater protections for the defendant,<sup>3</sup> such a claim necessarily assumes that conviction of the innocent is a greater evil than absolution of the guilty. Most in the West probably agree that it is, but the fact that Soviet jurisprudence may take the opposite view need not ineluctably lead to the moral condemnation of Soviet society.

Condemnation should follow, however, from the Soviet Union's

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2. A major exception to this statement was Stalin's use of arbitrary arrests of innocent individuals to maintain his political control through terror. This practice has been eloquently and painstakingly chronicled in Aleksandr Solzhenitsyn's epic work, *The Gulag Archipelago*. See A. SOLZHENITSYN, *THE GULAG ARCHIPELAGO* (1973); cf. F. KAFKA, *THE TRIAL* (1925) (novel about clerk who never learned of the charges for which he was arrested, tried, convicted, and executed.)

3. Of course, these protections might not be as great as some believe. See, e.g., Amsterdam, *The Supreme Court and the Rights of Suspects in Criminal Cases*, 45 N.Y.U. L. REV. 785 (1970); Kamisar, *Equal Justice in the Gatehouses and Mansions of American Criminal Procedure*, in Y. KAMISAR, F. INBAU, & T. ARNOLD, *CRIMINAL JUSTICE IN OUR TIME* (1965).

systematic suppression of political dissent. If the abstract notion of "freedom" has any concrete element, it lies in the ability of a citizen to voice an opinion at variance with the position of his or her government. While the oft-repeated observation that Soviet citizens lack such freedom may seem trite to some, Kaminskaya's description of her defense of political offenders (pp. 161-319) demonstrates that it remains a compelling truth.

Kaminskaya represented dissidents such as Yuri Galanskov (tried with Alexander Ginsburg) and Vladimir Bukovsky in their struggles to induce the Soviet state to recognize legitimate human rights. She did so not necessarily because she agreed with their cause (though she often did) (pp. 37-38), or because she had any hope of changing the predetermined result of their trials (p. 49), but because she saw her action as a moral imperative that would play "a part in developing a respect for the law among Soviet people" (p. 50). The Soviet Constitution guarantees freedom of speech, of course.<sup>4</sup> However, no Soviet court, even if it were so inclined, may declare a law unconstitutional (p. 50). This leaves an advocate representing a political offender charged, for example, with anti-Soviet agitation and propaganda,<sup>5</sup> with one argument — that his or her client's conduct did not fall within the statute's proscription. And, as Kaminskaya makes clear, this is not an argument that will succeed where the KGB has conducted the investigation.

One might respond to such observations with examples of how other governments, including local and federal authorities in the United States, have similarly abused the legal process. However, few do so as systematically, consistently, and effectively as the Soviet

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4. In accordance with the interests of the working people and with a view to strengthening the socialist system, citizens of the USSR shall be guaranteed the freedom of: speech, press, assembly, meetings, street processions, and demonstrations.

The realization of these political freedoms shall be ensured by granting public buildings, streets and squares, extensive dissemination of information, and the possibility of using the press, television, and radio to the working people and their organizations.  
U.S.S.R. CONST. art. 50, *reprinted in* I W. BUTLER, COLLECTED LEGISLATION OF THE USSR AND CONSTITUENT UNION REPUBLICS, USSR I-1, at 17 (1980).

5. The crime of "anti-Soviet agitation and propaganda" and its punishment are defined in the Soviet criminal code:

Agitation or propaganda conducted for the purpose of subverting or weakening Soviet authority or of committing individual especially dangerous crimes against the state, the spreading for the same purposes of slanderous fabrication defaming the Soviet state and social system, and equally the spreading or manufacture or keeping for the same purposes of literature of such content, shall be punished by deprivation of freedom for a term of from six months to seven years and with or without exile for a term of from two to five years or by exile for a term of from two to five years.

The same actions committed by a person previously convicted for especially dangerous crimes against the state, and equally committed in wartime, shall be punished by deprivation of freedom for a term of from three to ten years and with or without exile for a term of from two to five years.

LAW ON CRIMINAL RESPONSIBILITY FOR CRIMES AGAINST THE STATE art. 7, *reprinted in* IV W. BUTLER, COLLECTED LEGISLATION OF THE USSR AND CONSTITUENT UNION REPUBLICS, VII-8, at 5-6 (1979).

Union, a fact dramatically underscored by Kaminskaya's book. In a country such as the United States, alternative non-governmental sources of information exist that can at least attempt to ferret out corrupt practices and expose them to the light of public opinion (and, it is hoped, generally do). In the Soviet Union, the dissemination of information is a perquisite of the Party and the government bodies that it controls. A concomitant of this difference is that in a country like the United States, political change occurs: unpopular views may become, if not widely accepted, at least acceptable. In the Soviet Union, political change occurs only as decreed from on high by the Party, and any incipient movements outside of the Party's purview are crushed as soon as their shoots break through the soil of societal conformity.<sup>6</sup> The difference in the relative abilities of the American and Soviet governments to shape internal perceptions of reality to their liking distinguishes the two societies, a distinction that may make a difference to those concerned about things such as freedom and truth.

In 1977 Dina Kaminskaya and her husband, Konstantine Simis, were expelled from the Soviet Union.<sup>7</sup> Kaminskaya writes: "Often I am asked to name the principal, immediate cause of the KGB's pressure on us and the subsequent demand that we leave the Soviet Union. I never know how to answer that question, or which particular cause to single out. Our whole life was the cause . . ." (p. 346).

One hopes that it was not a cause taken up in vain.

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6. Thus, even groups whose aims are consistent with official Soviet policy, but which are organized outside of official channels, are not tolerated by the Soviet regime. See, e.g., N.Y. Times, Aug. 9, 1982, § 1, at 7, col. 4 (leader of independent Soviet peace group reportedly held in psychiatric hospital and administered depressant drugs against his will).

7. The expulsion of Kaminskaya and Simis followed her disqualification as an advocate in political trials and the discovery of a manuscript written by him. Simis' book was published in the United States in 1982 under the title of *USSR: The Corrupt Society*.