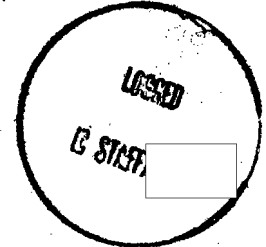


DIRECTOR OF CENTRAL INTELLIGENCE
Intelligence Producers Council
Washington, D.C. 20505

12 AUG 1988

IPC 7532/88
11 August 1988

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MEMORANDUM FOR: Members, Intelligence Producers Council
FROM:
Chief, Intelligence Producers Council Staff
SUBJECT: Report on Trends in Soviet Criminal Law,
State PEI FY 87/88 Task 1 Results

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1. In FY 1987, the Council approved a State Department PEI titled Analysis of Soviet Legal Trends Under Gorbachev. This effort recieved divided between FYs 1987 and 1988. The attached report is the result of task 1 of this effort. The report is provided for your information and use as appropriate.

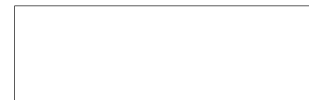
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2. We will disseminate additional reports for this and other PEI efforts as we receive them. If you require any additional information relating to the PEI program please let me know.



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Attachment



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SUBJECT: Report on Trends in Soviet Criminal Law, State PEI
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TO: See Attached Distribution List ---

FROM: INR/RES - Dallas Lloyd *DL*

SUBJECT: Report on Trends in Soviet Criminal Law

Attached is a copy of an external research study entitled "Changes in the Soviet Criminal Law System Under Gorbachev." It was prepared by Professor Peter Maggs, University of Illinois, Champaign-Urbana, as fulfillment of Task 1 of a larger on-going project on Soviet legal trends under Gorbachev. This project was designed by analysts in the Office of Analysis for the Soviet Union and Eastern Europe (INR/SEE), and is being jointly monitored by SEE and RES. It is being supported with funds awarded to SEE under the Production Enhancement Initiative (PEI) program managed by the Intelligence Producers Council Staff.

If you would like to have a copy of the appendix to the attached report please call me on 632-1955.

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As stated.

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CHANGES IN THE SOVIET CRIMINAL LAW SYSTEM UNDER GORBACHEV*

by Peter B. Maggs

Task 1 Report Under Contract 1724-720082

March 30, 1987

Submitted by:

Peter B. Maggs



STAT

*Research and writing was supported under United States Department of State Contract No. 1724-720082. The opinions, findings, and/or conclusions herein herein are solely those of Peter B. Maggs and are not officially endorsed by the Department of State.

CHANGES IN THE SOCIET CRIMINAL LAW SYSTEM UNDER GORBACHEV

EXECUTIVE SUMMARY

The Gorbachev period has been a time of much more publicity about the criminal law system, of increased discussion of possible change in the system, and of numerous changes in the system. By quantity, by far the largest number of changes in criminal legislation have been of types consistent with Brezhnev-era policies. These are in the area of corrections, technical law reform, and application of criminal law to new social problems. Three major criminal law "campaigns" begun under Andropov and Chernenko have been continued but gradually wound down under Gorbachev. These were the campaigns against corruption in the police, in the trade distribution network, and among officials. Four areas of change in criminal law reflect distinctly new policies of the Gorbachev regime. These involve the treatment of dissidents, the rehabilitation of victims of Stalin's purges, the reinstatement of acquittals, and the use of criminal law in the anti-alcohol campaign. The politically most significant new policy has been the early release of many persons convicted of slandering the Soviet state and the tolerance of speech activities that would have led to swift criminal prosecution under Gorbachev's predecessors. Also politically significant has been the high publicity given to the rehabilitation of victims of Stalin's purges, most notably the rehabilitation of Bukharin. The most significant development in

criminal procedure has been the start of a move away from the practice, which had developed under Brezhnev, whereby the courts did not acquit innocent defendants, but rather continually remanded their cases for further investigation or convicted them of minor offenses. The years 1986 and 1987 saw a huge expansion in the number of alcohol-related criminal convictions, followed by the decriminalization of most alcohol-related offenses, perhaps because of the overload they were placing on the criminal justice system.

PRELIMINARY NOTES

1. This Report is submitted in fulfillment of Task 1 of Contract 1724-720082. Task 1 reads:

A report shall be prepared identifying where possible dramatic changes have taken place in the criminal justice system. These changes may include the penalties, treatment of offenders, and total number of the incarcerated. Identify possible widespread social consequences that have developed as public perceptions of personal risk under the law enforcement system respond to change.

2. This report will be updated in the Consolidation Report to be submitted in connection with Task 5 of the Contract.

CHANGES IN THE SOVIET CRIMINAL LAW SYSTEM UNDER GORBACHEV

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CHANGES IN THE SOVIET CRIMINAL LAW SYSTEM UNDER GORBACHEV

I. Introduction

The Gorbachev period has been a time of much more publicity about the criminal law system, of increased discussion of possible change in the system, and of numerous changes in the system. It is useful to classify changes in the Soviet criminal law system under Gorbachev into three main categories: those that are consistent with Brezhnev-era policies; those that are consistent with Andropov-Chernenko era policies, though not with Brezhnev-era policies; those that mark a return to Brezhnev policies and a move away from Andropov-Chernenko policies; and those that reflect new policies of the Gorbachev period.

By quantity, by far the largest number of changes in criminal legislation have been of types consistent with Brezhnev-era policies. These are in the area of corrections, technical law reform, and application of criminal law to new social problems. Serious sociological research into the effectiveness of various forms of sentencing into the rehabilitation of criminals developed under Brezhnev. The results of this research led to a number of changes in corrections policy in the Brezhnev years. As further sociological findings were made, further changes were made in corrections policy under Andropov-Chernenko, and Gorbachev. While the rules of punishment have changed, the principle being applied is the same that was developed under Brezhnev, namely that corrections policy should be guided by scientific sociological findings. Legal measures for the

- 2 -

segregation of juvenile offenders from hardened criminals and measures for the sentencing of first offenders to penal settlements rather than labor camps are not examples of sudden liberalism under Gorbachev, but are a continuation of the policy of treating corrections as a technical rather than political issue. Under this policy, punishment may be made lighter or harsher, depending upon the results of sociological studies. A perfect example of the continuation of Brezhnev policy was the announcement in 1987 that the punishments of exile and banishment would be abolished. Hailed in the Western press as a sign of liberalization under Gorbachev, the abolishment of exile and banishment actually involved making punishment more severe because sociological findings have shown that the less severe punishment was not working. No longer will criminals be exiled from their home cities but be left free to roam about most of the country, nor will they be banished to specific remote localities without any provision for supervision. Instead, they will be sent to specific remote localities, where they will be forced to work at designated jobs under formal supervision. The punishment of exile and banishment will be replaced by the significantly harsher punishment of compulsory assignment to work in a remote locality.

Technical law reform flourished under Brezhnev in many areas of the law. Large bodies of legislation were codified or recodified. A project was put in motion to publish a Collection of Laws (Svod zakonov), for the first time since Speransky's 1832

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compilation of the Collection of Laws of the Russian Empire. The official adoption of plans under Gorbachev for the issuance of new criminal codes and the substantial reworking of criminal procedure and corrections legislation is a continuation of this Brezhnevian policy of regular improvement and updating in the technical quality of legislation. It remains to be seen if the new legislation on criminal law and procedure will go beyond technical redrafting to make major changes in the rules of law themselves.

The use of new specific criminal legislation to deal with newly emerging social problems was a characteristic of the Brezhnev period. Amendments to the Criminal Code under Gorbachev to deal with spreading AIDS and with "cult of violence" videotapes, while they involved problems that did not exist in the 1970s, used the same approach that would have been used to these problems in the 1970s. The harsh criminal penalties applied to the Chernobyl management dealt with a new type of catastrophic accident, but the result was no different than the treatment of those held responsible for catastrophic accidents under Brezhnev.

Three major criminal law "campaigns" begun under Andropov and Chernenko have been continued but gradually wound down under Gorbachev. These were the campaigns against corruption in the police, in the trade distribution network, and among officials. By their nature these campaigns required some years to complete due to the complexities of the investigations and criminal

- 4 -

proceedings involved. By their nature, they could not go on forever. As Soviet history shows, the optimum time to terminate a purge is when incompetent, disloyal, or corrupt officials of the old regime have been replaced by officials loyal to the new regime.

Four areas of change in criminal law reflect distinctly new policies of the Gorbachev regime. These involve the treatment of dissidents, the rehabilitation of victims of Stalin's purges, the reinstatement of acquittals, and the use of criminal law in the anti-alcohol campaign. The politically most significant new policy has been the early release of many persons convicted of slandering the Soviet state and the tolerance of speech activities that would have led to swift criminal prosecution under Gorbachev's predecessors. Also politically significant has been the high publicity given to the rehabilitation of victims of Stalin's purges, most notably the rehabilitation of Bukharin. The most significant development in criminal procedure has been the start of the move away from the practice, which had developed under Brezhnev, whereby the courts did not acquit innocent defendants, but rather continually remanded their cases for further investigation or convicted them of minor offenses. Under Gorbachev, with the prodding of USSR Supreme Court President Terebilov, the courts began a return to what had been the practice under Stalin--of acquitting non-political defendants who were in fact innocent. Gorbachev's anti-alcohol campaign, which made vodka expensive and hard to get, immediately

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engendered a great deal of illegal bootlegging and home distilling. The years 1986 and 1987 saw a huge expansion in the number of alcohol-related criminal convictions, followed by the decriminalization of most alcohol-related offenses, perhaps because of the overload they were placing on the criminal justice system.

It is important to distinguish changes in legislation (or its application) from changes in publicity or debate related to the law. "Glasnost" is a change in public relations and press censorship policy, a change that affects many areas, not merely criminal law. It allows more publication of information about what is happening in the criminal law system and greater freedom of debate about what should happen. As a result of "glasnost" foreign observers are learning more about how the Soviet criminal law system works (or are at least having to exert less effort to obtain data). They are also seeing Soviet officials and scholars engaged in a lively debate, characterized by numerous suggestions for radical change in the criminal law system.

A small group of liberal criminal law scholars, mainly associated with the Institute of State and Law of the Academy of Sciences, are making most of the proposals for change. Some of the changes they suggest, like most of the changes that have taken place, are consistent with prior policy. Others, however, involve significant or even radical departure from prior policy. Some proposals would be quite expensive to implement. The changes in criminal law made so far under Gorbachev have all

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shared the characteristic that they did not involve substantial expenditure of government funds. Indeed, they generally saved money, if one assumes that (given the social cost of breaking up families and of transferring skilled industrial labor to unskilled labor camp work) it is economically disadvantageous for the state to increase the labor camp population. (Gorbachev's major changes resulted in reducing the labor camp population by freeing dissidents, innocent people, and bootleggers. Some of the new proposals, even if politically noncontroversial, may face difficulties because of their cost.

Proposed changes that would be inexpensive to implement include: repeal of legislation against slandering the Soviet state, decriminalization of homosexual conduct, abolition of exile and banishment, reduction in use of the death penalty, making investigators independent of prosecutors, allowing earlier defense counsel participation in the preliminary investigation, providing jury trials, making judges and procurators independent of local party authorities, and introducing judicial review for Constitutionality. Proposed changes that would be more costly include: replacing correspondence legal education with regular legal education, building new, elegant courthouses, and reorienting labor camps toward education rather than production.

Given the fact that some of the proposed changes face strong popular and political opposition and that others are expensive, it would be a great mistake to suppose that all the proposals will be adopted. Those proposals that cost little money, face

- 7 -

little popular or political opposition, and enhance the international image of the Soviet Union are the most likely to be adopted. The best example of such a proposal is the abolition of exile and banishment. Even the proponents of decriminalization of homosexual conduct admit that their proposal will face difficulties because of the AIDS scare and general public prejudices. Indeed, there is considerable public pressure for tightening rather than loosening the laws on sexual conduct by making prostitution a crime.

Reduction in use of the death penalty is hardly a radical proposal, considering that the death penalty was abolished by Stalin in 1947 and fully restored only under Khrushchev. (Stalin may have thought that, given manpower losses from collectivization and World War II, a live forced laborer was more useful than a dead criminal.) There is some international propaganda value in cutting back on the death penalty, so it is probable that some reduction will be made. The extent of reduction may be limited by the strong public opinion in favor of maintaining the death penalty.

Changes in criminal procedure probably stand a better chance if they increase, or at least do not decrease, central control over the political process. Abolition of the present system of decisive local party influence in the hiring and firing of judges and procurators would increase the ability of central authorities to control the conduct of local party-government officials. Improving the fairness of pretrial procedures by separating the

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investigatory process from the procuracy or allowing earlier defense counsel participation would appear to be no threat to central authorities. Nor would improvement of appellate procedures to provide better scrutiny of trial court decisions pose any threat. New courthouses, better legal education, or more rehabilitation training in labor camps pose no threat, but may be deferred because of the costs involved.

Only a few of the proposed changes can be seen as involving any threat to central power. These include the proposed repeal of legislation on slander of the state, the introduction of juries, and the introduction of judicial review for constitutionality. While the legislation on slander of the state is only one of the numerous means the Soviet system has for controlling dissident activity, the repeal of the legislation would be a strong symbolic action indicating that freer speech would be allowed. The Soviet leadership must be worried about the real difficulties that freer speech has already created in nationalities relations in general and in the Armenian situation in particular, but must also see the real benefits in international goodwill and Soviet intelligentsia support. There will be a temptation to draft new legislation so as to still punish some types of speech, but to distinguish "dangerous" (e.g., ethnic demonstrations) and "harmless" (e.g., "daring" experimental theater productions) dissidence. The introduction of juries would represent a real threat to central control if they were available in political cases. Would an Armenian jury

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convict Armenian demonstrators? The use of juries in murder or rape trials, on the other hand, could bring fairer trials and a feeling of popular participation. Thus here, again, any legislation is likely to be a selective. Judicial review for constitutionality, though more easily controlled from above, would represent a new and untried direction.

The detailed discussion below will begin with an analysis of those developments in criminal law that may have had some effect on the power structure of Soviet society, by moving power up to the center or down to the individual. Then the analysis will turn to the less political issues of the use of criminal law to deal with specific problem areas of Soviet society and the application of social science findings to develop corrections policy. A summary of currently available statistics on crime and punishment will follow. Final sections will deal with current proposals for change in criminal law and their prospects of success.

II. Movement of Power Up from the Province and Republic Levels to Moscow

A. Introduction

A number of measures taken in the criminal law area have the common effect of moving up from the province and Republic levels to Moscow. These include cleanups of law enforcement agencies, reduction of the power of Party organizations to protect members of the local power structure, and purges of corrupt officials.

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Two important functions of the legal system are providing the center with information about activities in the localities and control over these activities. Changes made in law enforcement agencies promise more honest reporting of crime and corruption to central authorities. The reduction in Party protectionism, the purge of local officials, and their replacement of new officials, all increase the chances that local authorities will carry out centrally-mandated policies.

In a number of instances, the dismissal of Party officials who are corrupt or who have sheltered corrupt friends has created vacancies that Gorbachev has filled with his own men. This circumstance raises a number of questions which belong more in the realm of political science than of law. Is Gorbachev really interested in stopping corruption or only interested in having an excuse to replace officials? To the extent that his interest is the latter, are the ousted officials really guilty or are the charges spurious ones used to hide the real political grounds for the officials' removal? The latter question seems to be the easier one to answer. The charges against the officials seem to be well-documented; no one, either inside or outside the Soviet Union has provided any reason to doubt these charges. The former question disregards the necessary interrelation of political control and corruption. The fact that local officials are able to protect vast corrupt schemes from such central agencies as the courts, the Procuracy, the Ministry of Internal Affairs, and the KGB indicates that these local authorities have a degree of

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political power that is necessarily unacceptable to a strong central leadership. Thus the need to eliminate local protectionism is inherently related to the desire to exert central political control.

B. Cleaning Up Law Enforcement Agencies

1. Introduction

In the Brezhnev era, there were regular, but unpublicized efforts to clean up corruption in law enforcement agencies. These efforts were greatly intensified during the General Secretaryships of Andropov and Chernenko. In 1986 and 1987, efforts against corruption in law enforcement personnel were given much greater publicity. By late 1987, however, there were signs that the anti-corruption efforts had been scaled down. The high publicity anti-corruption campaign of 1986-87 must have had two major political payoffs for Gorbachev. First, it presented a picture contrasting the new era of "clean government" with a Brezhnev era of corruption. Because anti-corruption efforts were largely secret under Brezhnev, the change appeared greater than it was. Second, it allowed Gorbachev to replace key law enforcement personnel with people more amenable to his control from the center. The phasing down of the anti-corruption campaign must have had its purposes too. Once the new personnel was in place, its morale had to be maintained. This would not be possible under a system of permanent purges.

No law enforcement system is better than its personnel. One publicized aspect of restructuring has been the dismissal of

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corrupt and incompetent personnel in the judiciary, the procuracy, the police, and the KGB. While the press has published fairly detailed figures on the numbers of persons removed from the law enforcement system, comparable statistics have not been released for earlier periods. Therefore it is difficult to determine whether an extraordinary purge or normal housecleaning has taking place.

2. Judges

USSR Minister of Justice Kravtsov, writing in Pravda, stated that the authorities had dismissed fourteen judges for incompetence, recalled 76 for abuse of office, and had subjected 837 to administrative liability. Unfortunately, his account does not give any detailed breakdown of the types of "abuse of office" that occurred. While the percentage of judges who lost their positions is small in terms of the total number of judges on the bench, the number might be large enough to frighten other judges away from practices such as accepting bribes or giving in to protectionist pressures from local officials.¹ The Vice-Chairman of the USSR Supreme Court, E. Smolentsev, reported a steady improvement in the educational level of judges over the years, resulting in a steady reduction in the number of cases reversed on appeal.² This trend, however, relates much more to the Brezhnev era than the Gorbachev period. The number of persons with a legal education increased dramatically under Brezhnev.

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There have also been reports of punishment of individual judges for abuse of their offices. Like the more general statement of the Minister of Justice, these individual reports may have some deterrent effect upon improper judicial conduct, but do little to provide a useful statistical picture.³

Legal scholars have suggested changes in the qualifications of judges, including improving legal education, raising the minimum age for judges, and bringing experienced lawyers into judgeships.⁴ These scholars have suggested that there should be far more judges. So far, however, the only actual increase has been in that of the support staff of the Supreme Court.⁵

3. Procurators

There have been some major changes in the Procuracy. However, Aleksandr Mikhailovich Rekunkov, who was appointed Procurator General in 1981, remained as Procurator General through Gorbachev's first years in power. The restructuring of the Procuracy began under Chernenko, and was symbolized by the restoration of Viktor Vasil'evich Naidenov to the position of Deputy Procurator General in 1984, a position from which he was reportedly fired under Brezhnev for overeager pursuit of a trail of corruption that led to members of the Central Committee. The sequence of events was as follows: on January 2, 1978, Viktor Vasil'evich Naidenov became Deputy Procurator General.⁶ On February 9, 1981, Aleksandr Mikhailovich Rekunkov moved up from Deputy Procurator General to be Procurator General of the USSR.⁷ An Edict of November 21, 1981, discharged Naidenov from his

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position as Deputy Procurator General. This Edict implied Naidenov's disgrace, by omitting the customary phrase "in connection with transfer to other work."⁸ On July 5, 1984, Naidenov again became Deputy Procurator General.⁹ On February 8, 1986, Rekunkov's first five-year term as Procurator General expired. I have been unable to find an edict reappointing him, but as of December 1987, he remained in the office of Procurator General.

A sensational article by Arkadii Vaksberg in Literaturnaia gazeta revealed the story behind the chronology of Naidenov's firing and rehiring.¹⁰ In 1981, the Procuracy was conducting an investigation into corruption among officials in Krasnodar. The investigation threatened Central Committee members Medunov and Shchelokov. They, according to Vaksberg, concocted a story that the Procuracy was forcing false confessions out of those accused in Krasnodar, and with this story they convinced Brezhnev himself to fire Naidenov. With Brezhnev's death, the corrupt Medunov and Shchelokov lost their Party positions. Andropov, on his deathbed, ordered Naidenov reinstated, and the authorities carried out the order under his successor. Vaksberg describes in graphic detail the meeting at which Naidenov lost his job. The article makes no mention of Rekunkov, but from the chronology above, it is clear that Rekunkov must have presided over the firing of Naidenov and so that Vaksberg's article is implicitly an indictment of Rekunkov.

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Rekunkov has repeatedly come in for severe criticism from the Presidium of the Supreme Soviet for failing to effectively supervise the Procuracy. A 1985 Decree found fault with law enforcement and protection of citizens' rights by the Procuracy and the local level and called for better central supervision.¹¹ Early in 1987, the Procurator General reported on restructuring in the Procuracy.¹² He indicated that better performance was being demanded of procurators at the local level and indicated that several procurators had lost their jobs for incompetence or corruption, but described no structural changes in Procuracy operations. The Soviet press has reported a number of isolated cases of punishment of procurators for improper activities in criminal prosecutions, but nothing like the wholesale purge of police officials.¹³ The official response to Rekunkov's claims of "restructuring" indicated that he had still done too little. This response was contained in a sharply critical Decree of the Presidium of the Supreme Soviet issued in March 1987.¹⁴

Only one, very minor structural change has occurred in the Procuracy. Legislation has created a new "Transport Department" in the USSR Procuracy to strengthen central influence over transport procurators.¹⁵

4. Police

a. Introduction

At least five types of police abuse have tainted the criminal law enforcement process: (1) taking bribes from common criminals to overlook their crimes; (2) overlooking crimes

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committed by local officials or their clients; (3) refusing to register complaints of hard-to-solve crimes so as to maintain a high percentage of crimes solved; (4) "solving" crimes by "framing" an innocent person; (5) using unacceptable police methods such as torture to obtain confessions. Similar abuses have, of course, plagued police systems throughout the world. What was different about the Soviet Union was that before "glasnost" the press generally ignored the existence of these abuses. A dramatic change came with the official announcement by the Ministry of Internal Affairs that 10,000 police employees had been dismissed in the period 1982-1987.¹⁶ The announcement did not indicate in any detail the causes of the dismissals, but other stories recount dismissals based on all the above types of police abuse. In addition to these reports of mass dismissals, the Soviet press has carried a number of reports of dismissals of individual police officials.¹⁷ The existence of the various types of police abuses that the Soviet press had described in the Soviet press are hardly surprising. Such abuses exist in many countries throughout the world. One change that has taken place in the Soviet Union is that there is now an official recognition that these abuses exist and an announced policy of dealing with them severely. Hard questions remain for the foreign observer. How effective has the implementation of this new policy been in practice? Do Soviet citizens have more respect for the police as a result of the announced new policy?

b. Taking Bribes to Overlook Criminal Activity

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Taking bribes from common criminals to overlook their crimes has long been a commonplace practice in the Soviet Union.¹⁸ Periodically there have been crackdowns on these practices.¹⁹ However, the Andropov-Chernenko period appears to have been one of an unusually severe campaign against policemen who took bribes. Although the height of this campaign has passed, stories of punishment of corrupt police officials still appear in this press, stories that may have some deterrent effect. For instance, in December 1987, Krasnaia zvezda reported that a court sentenced the former chief of the Volgograd Province Police, General Ivanov, to ten years in prison for taking bribes as part of a scheme to cover up thefts from industrial enterprises, and that the court also imposed severe sentences on the other police and economic officials involved.

c. Covering Up Crime Due to Influence from Local Authorities

Often press reports of disciplinary action taken against police do not distinguish between covering up crimes for bribes and covering up crimes due to influence from local authorities. Thus for instance, a report in Kazakhstanskaia pravda stated that 900 police employees were fired for various abuses, including the covering up of crimes, during the first half of 1987.²⁰ In a case reported in Pravda, a thief, who was blackmailed for "protection" by the police, turned the blackmailers in. The police officials received long sentences. The article did not

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exactly encourage turning in such blackmailers, since it reported that the thief who "blew the whistle" got three years himself.²¹

d. Refusing to Register Complaints of Hard-to-Solve Crimes

Perhaps the most common complaint against the police mentioned under Gorbachev has been their refusal to register complaints of hard-to-solve crimes, so as to maintain a record for solving a high percentage of reported crimes. This problem is part of the larger problem of perverse plan indicators that has had severe negative effects on the work of the courts and the procuracy as well. A decree of the Presidium of the Supreme Soviet specifically condemned this practice.²² A number of press reports have mentioned the discharge of police personnel for engaging in these practices.²³ This complaint is not a new one; it remains to be seen if current efforts will be more successful than previous attempts to deal with the underreporting of crime.

e. "Solving" Crimes by "Framing" an Innocent Person

An even worse phenomenon related to plan pressure on the police is that of maintaining high percentages of crimes "solved" and of giving in to public pressures to solve individual crimes, by using false testimony or forced confessions to "frame" innocent persons and thus be able to list crimes as "solved." The Soviet press has reported severe sanctions on police who use such tactics. Thus, for instance, an Izvestia article reported

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replacement of thirty staff members of the Belorussian Ministry of Internal Affairs as the result of an investigation into a false conviction engineered by Ministry officials.²⁴

f. Torture

An article in Ogonek appears to signal a practice of aggressive punishment of police who use torture to obtain confessions. Authorities dismissed police in Karelia who had beaten crime suspects and ousted local authorities who had encouraged or protected the police.²⁵

5. Psychiatrists

The Western press long has depicted psychiatric abuse in the Soviet Union as involving the confinement of sane or harmless dissidents as dangerous psychotics. Such abuses, however, have not involved the criminal law. (They may involve the criminal law in the future, since unlawful psychiatric confinement may be made a criminal offense.) A separate report, which I am now preparing, on Soviet administrative law, will deal with the psychiatric confinement of dissidents and other troublemakers. One type of psychiatric abuse is, however, closely related to corruption in law enforcement. It involves psychiatrists accepting bribes to declare criminals insane and thus help them avoid criminal responsibility.

Foreign observers of the Soviet legal system had given some attention to the feigning of psychiatric illness by sane criminals even before the period of "glasnost".²⁶ However, it was not until 1987 that disclosures in the Soviet press made the

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magnitude of the problem apparent. A campaign has been underway against psychiatrists who have accepted bribes for diagnosing criminals as "insane" to save them from criminal punishment. According to the press articles, Viktor Ivanovich Maliukin has headed a group in the Moscow City Procuracy, investigating bribetakers among psychiatrists. It appears that for 5,000 to 8,000 rubles, a criminal has been able to bribe his way out of jail.²⁷ Members of Maliukin's team reported that a case had been begun in September against a number of prominent psychiatrists: the Head of the Department of Higher and Secondary Education of the Main Administration of Educational Institutions of the USSR Ministry of Health, a Senior Research Associate of the All-Union Center for Mental Health, a Senior Research Associate of the All-Union Serbskii Scientific Research Institute of General and Forensic Psychiatry, and the head of a division of the Central Moscow Oblast Psychiatric Hospital. They said that in an earlier case a court had sentenced the Head of the Expert Commission of the Kashenko Hospital to nine years of deprivation of freedom, and that there had already been 15 to 20 cases, which were just the tip of the iceberg. They indicated that serious investigations had not yet begun outside of Moscow. This report, in Komsomol'skaia pravda, a newspaper with a huge circulation throughout the Soviet Union, undoubtedly came to the attention of every psychiatrist in the country who was taking or was contemplating taking bribes. Most of them had probably seen or heard of the earlier more fragmentary reports as well. This

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publicity is likely to have a significant deterrent effect, particularly if it reinforced with similar articles on action being taken against corrupt psychiatrists outside of Moscow.

The press articles pointed that two reasons why bribery had flourished were the lack of agreed standards of psychiatric diagnosis and the lack of effective judicial review of psychiatric findings. In August 1987, Soviet Deputy Foreign Minister Anatolii Adamishin told a Moscow press conference there were plans to introduce criminal liability for abuse of psychiatry.²⁸

6. The Phaseout of the Anticorruption Campaign

An article published in Izvestia in December 1987 and an article published in Pravda in January 1988 may have signaled the end of the all-out campaign on corruption in law enforcement agencies. Like Stalin's famous "Dizzy With Success" speech in the 1930s, these articles revealed that the campaign had involved some excesses. In the Izvestia article, the First Deputy Minister of Internal Affairs stated that in 1983-1985 there was something like a purge of internal affairs agency, and said the campaign had gone to far.²⁹ The Pravda article reported on the disciplining of local procuracy, judiciary, and KGB officials who, apparently under pressure to report a cleanup of the police in their area, had persecuted an innocent police official.³⁰

C. Preventing Party Protectionism

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The most serious obstacle to the elimination of corruption is protectionism by local Party officials. In some cases these officials are part of the corrupt scheme themselves; in other cases, they are taking bribes from the officials engaged in corrupt activity; in still other cases, they impede investigations to avoid creating the impression that they are bad managers who have allowed corruption to furnish. The authorities are taking two major approaches to this problem. One is regularly publishing stories of the imposition of severe punishment upon persons who have used their Party positions to protect themselves and their friends from criminal responsibility. The other is the publications of speeches and official resolutions against the practice. However, these approaches are the same ones that have had only limited success in the past. If the Politburo decides to continue the campaign against corruption among lower level officials, it may well decide to go further and accept suggestions (discussed below) of the legal elite for structural changes in the to reduce local Party influence in the criminal justice system.

Two long-standing Party practices make possible the exercise of protectionism by Party authorities. The first is the custom that the Procuracy will not initiate criminal prosecution against a Party official until the official's Party organization has tried him and expelled him from the Party. The second is that under the "nomenklatura" system, local Party authorities control the hiring, firing, and promotion of judges and procurators.

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These practices do not give the local authorities full power to exercise protectionism; higher Party authorities can always overrule any decision of local Party officials.

Numerous newspaper articles in 1986 and 1987 carried the message that dire consequences were in store for those who used their Party position to protect those guilty of criminal offenses. A June 1986 Izvestia article was strongly critical of the fact that local authorities kept from the jurisdiction of the courts a Party member apparently guilty of criminal activity on the grounds that Party investigation of his case was proceeding.³¹ An October 1986 Pravda article emphasized the danger Party officials ran if they practiced protectionism.³² It reported the discharge from the Party and expulsion from office of an oblast First Secretary and other Party and government officials who had practiced protectionism. A December 1986 Izvestia article³³ told the fate of a district Party first secretary, who attempted to pressure the district procurator to drop criminal proceedings against a collective farm chairman, who had been buying stolen milk to inflate his farm's production reports. The first secretary also attempted to protect the farm chairman by having the local governmental authorities refuse to waive the immunity the farm chairman enjoyed as a deputy to the local Soviet. The end result, however, was that higher Party agencies, fired the first secretary from his post and expelled him from Party membership, while the press lavishly praised the procurator. This story described events that occurred in 1982-

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1984. the removal of the powers of protectionism of the particular local Party official reflected Andropov's policy and its continuation under Chernenko.³⁴ However, Gorbachev's "glasnost'" is responsible for the widespread publicity given to the case.

Another case, which apparently received only local publicity, involved punishment for protectionism itself. An official of the Kazakhstan Party Central Committee, Andrei Statenin lost his Party position in February 1987, during the shakeup of the Kazahstan Party organization, for "protectionism" and other offenses (which included theft of furniture and corruption in distribution of apartments). The court sentenced him to eight years in a labor camp for his crimes.³⁵

Anti-protectionism also became a favorite theme of speeches by high officials. The Chairman of the USSR Supreme Court hinted at the problem of protectionism in a 1986 speech, stating, "Sometimes nonobjectivity is the result of the influence of officials,"³⁶ The Procurator General was much more specific in attacking protectionism.

Or how should one evaluate, for example, the work of the leadership of the Procuracy of the Turkmenian SSSR (procurator A. Kharchenko), who, so to speak, sat with their hands folded and did not look at the materials they had taking account of the state of affairs revealed in Uzbekistan. And in Tashauz Province and a number of other places, false reports of plan fulfillment, theft, and

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bribery connected with the sale and processing of cotton were flourishing. Moreover, when such cases nevertheless arose, they "pressed on the brakes," the guilty parties were let off with a gentle fright; they were convicted for carelessness or were completely freed from responsibility. It required the interference of the Procuracy of the USSR and the Central Committee of the Communist Party of Turkmenistan. The causes of this, as an audit conducted not long ago showed, were political nearsightedness, professional helplessness and lack of desire to resist the local authorities.³⁷

Despite the accomplishments to which Procurator General Rekunkov pointed, first the Presidium of the Supreme Soviet and then the Central Committee of the Party severely criticized the Procuracy.

In a decree of March 27, 1987,³⁸ following up on a 1985 decree³⁹ critical of the Procuracy, the Presidium of the Supreme Soviet stated:

Procurators lack the necessary integrity in the struggle with phenomena of localism, departmentalism, bureaucratism, and abuses by officials causing harm to the interests of society and the rights of citizens. . . . [The Procuracy must] strengthen its demands toward all procuratorial and investigative cadres for the irreproachable fulfillment of their service duty. [The

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Procuracy must] react instantly and sharply to the violation of legality by officials regardless of their posts and ranks. It must ensure the timely and full exposure of crimes, the inevitability of punishment for guilty parties. A published summary of a Central Committee Resolution of June 4, 1987, entitled, "On Measures for Increasing the Role of Procuratorial Supervision and Strengthening Socialist Legality and the Legal Order," contained the following:

. . . Some of the Procuracy officials did not adhere to principled positions of legality, and came under the effect of local influence and narrow departmental interests. They did not always put a timely end to large-scale thefts of socialist property, bribery, report-padding, and deceptive practice into which large groups of people were drawn, including high-ranking officials.

Certain local Party committees, instead of supervising and helping the Communists working in the Procuracy, took insufficient steps to eliminate omissions in their activity, and engaged in administrative fiat and unjustified interference in Procuratorial functions.

. . . Party agencies are obligated to ensure the undeviating bringing to life of Leninist principles of the independence of the Procuracy, to stop any attempts to put pressure on Procurators as they adopt decisions on matters within their competence or to interfere in the investigation of criminal cases . . . 40

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The Central Committee came out strongly against protectionism in 1986:

. . . every instance violation of legality, no matter by whom, must receive a principled, sharp appraisal and must be subjected to a harsh condemnation, with the guilty parties must be most strictly punished. In this respect, it is necessary to firmly implement the requirement of the Statutes of the CPSU on the dual responsibility of Communists--to the state and to the Party--for violation of the law. With respect to those who try to flout Soviet laws and citizens' rights, there cannot and must not be any liberalism or leniency.

. . .

The attention of Party committees has been called to the need to strengthen the political leadership of law-enforcement agencies, to oversee their activity and increase their responsibility for the accurate performance of the functions entrusted to them. In this respect, the Central Committee of the CPSU indicated that no interference will be allowed from any side in the investigation and court examination of specific cases.⁴¹

The Politburo also emphasized the importance of fighting protectionism:

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Having discussed the question of the further strengthening socialist legality, the Politburo emphasized that in the process of restructuring and of deepening expanding socialist democracy, the undeviating observance of laws takes on even greater significance for the development of our state system, self-government by the people, the ensuring of social justice and the unshakability of the constitutional rights and freedoms of the working people. In this connection, it is necessary to consistently reorganize the work of the Procuracy, the police, the courts, and other law-enforcement agencies. They must serve as an example of the strictest observance of the legal order, reliably protect citizens' interests and, at the same time, resolutely put a stop to antisocial phenomena and wage an unrelenting struggle against crime and other law violations. It was pointed out that any attempt from any side whatsoever to interfere in the investigation and trial of specific cases is impermissible. Party committees were advised to regard their efforts to strengthen legality as one of their most important political tasks. The areas were defined in which it is necessary to further increase the responsibility of ministries and departments and also trade union and other public organizations in their struggle for the interests of society and the state and for the unfailing observance of citizens' labor, housing, and other rights.⁴²

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There is no doubt that the combination of rhetoric from the Politburo, the Central Committee, the Chairman of the Supreme Court, and the Procurator General and object lessons from cases described in the press may have some effect on the willingness of Party officials to engage in protectionism and on that of procurators and judges to succumb to pressures from Party officials. However, a number of leading Soviet legal scholars think that such rhetoric and publicity is not enough--that structural changes are needed in the system for the selection of judges.

This system as it works in practice make judges heavily beholden to local Party authorities.⁴³ The citizens of a district (raion) or city (gorod) directly "elect" the judges of the district "People's Court" (the lowest courts of general jurisdiction, not to be confused with a "Comrades Court"--an informal tribunal with extremely limited powers). In practice the district or city Party committee plays a major or decisive role in their selection. At the next level, that of the province (oblast) or large city (such as Moscow or Leningrad), the province or city Soviet selects the judges. This means that the province or city Party committee controls the selection. Judges serve for a term of five years, but may be recalled earlier on Party recommendation. Without making specific suggestions, the Director of the Institute of State and Law has stated that one of the major tasks of restructuring of the legal system should be creating an atmosphere of "independence from local influence."⁴⁴

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A leading Soviet criminal law scholar has argued that the republic supreme soviets or their presidia, rather than voters or local governments, should choose district, city and province judges, that judges enjoy a ten year term of office, that district People's Court Judges be on the start roles of the province or large city Soviet. Most importantly, he has suggested that they be subject to the jurisdiction of the Party committee at that higher level ("i tam zhe sostoiat na partiinom uchete").⁴⁵ Other legal scholars made similar suggestions at a 1986 meeting with members of the USSR Supreme Court.⁴⁶ Another writer has suggested that increasing the number of people's assessors would make it harder for local Party officials to influence the courts.⁴⁷

D. Purging Corrupt Local Officials

1. Introduction

Because the Party under Brezhnev allowed neither open discussion of the extent official corruption nor publication of criminal statistics, there is no way to gauge the extent of either such corruption or of anticorruption efforts at the time of Brezhnev's death. However, the guaranteed life tenure for local Party officials and the power that went with it must have greatly facilitated corruption. It is clear that Andropov launched a well-publicized campaign against corruption and that this campaign has been continued under Chernenko and Gorbachev. Brezhnev's successors must have perceived a declared war on corruption as having a number of potential advantages. These

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would include (1) improving economic performance by preventing diversion of funds into unproductive uses, (2) improving the morale of hard-working citizens by the ostentatious punishment of a parasitic class, (3) facilitating the replacement of elderly, corrupt, inefficient officials, with more capable younger personnel, who would be loyal to the new leader, (4) curbing nationalistic forces by concentrating attacks on corruption in non-Russian areas, (5) improving the Soviet image abroad, (6) raising public morale, (7) for Andropov and Gorbachev, satisfying their own personal values as legal professionals. Gorbachev inherited an full-fledged anti-corruption operation at the time when various investigations had reached the point that well-documented charges could be brought. While there is no evidence that he increased the level of criminal law pressure against corruption, he definitely increased the amount of publicity and succeeded in replacing a large number of officials labeled as corrupt leftovers from the Brezhnev era.

Publicity about the anticorruption efforts has taken several forms. The main one has been the publication by the Soviet press of numerous accounts of individual cases of punishment of corrupt officials. These reports hardly could have escaped anyone's attention, but the points they implied were made explicit by Procurator General Rekunkov in an interview published in Pravda in which he summarized the progress of the anticorruption campaign.⁴⁸ The Bulletin of the Supreme Court of the USSR (read by many in the legal profession and almost no one outside the

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legal profession) has published more formal and technical legal reports of corruption cases.

The corruption reports have suggested that the most serious problems were in Uzbekistan and Kazakhstan. The newspapers reported that, in these republics, very high Party and government officials were involved in the theft of incredible amounts of government funds. Reported cases from Slavic regions, in contrast, have generally been limited to corruption in particular economic organizations rather than in the government-Party structure.

2. Central Asia

a. Kazakhstan

Gorbachev's "takeover" of the Kazakhstan Communist Party in late 1986 and early 1987 was accompanied by extensive use of criminal law and other measures to clean out corruption there. The "good life" enjoyed there by corrupt officials before the takeover is described (with pictures) in an article in Ogonek.⁴⁹ According to another news report, a court sentenced Andrei Statenin, administrator of affairs of the Kazakh Party Central Committee until his ouster in February 1987 for various types of corruption, to eight years in a labor camp for "embezzlement of state property."⁵⁰

b. Uzbekistan

A major cleanup occurred in Uzbekistan, where corruption centered in the cotton-processing industry eventually involved huge numbers of economic, governmental, Party, and law

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enforcement officials. A news report appeared in 1985, which mentioned Party action, but no criminal charges.⁵¹ In 1986, a detailed report of criminal proceedings appeared in the Bulletin of the Supreme Court of the USSR, with summaries in Pravda and Izvestia.⁵²

A special Supreme Court panel sentenced the Uzbek Republic Minister of the Cotton-Processing Industry to death for corruption. The panel gave his thirteen codefendants long labor camp terms. According to the Supreme Court, Usmanov personally received 500,000 rubles out of a total of 800,000 in bribes.

Izvestia gave nation-wide publicity to another case of corruption in Uzbekistan in June, 1987.⁵³ The newspaper stated that the a court had convicted A.K. Karimov, the former First Secretary of the Bukhara Province Party Committee, of taking and giving bribes over the period 1977-1983 and had sentenced him to death. It further stated that the courts had already convicted others involved in the bribery schemes and that the authorities were investigating additional suspects. An official report in the Bulletin of the Supreme Court of the USSR⁵⁴ provided further details. The 1983 date for the end of the criminal activity suggests that this case, like a number of other corruption cases that reached their conclusion under Gorbachev, had its beginning under Andropov or Chernenko.

3. The Caucasus

A widespread campaign against corruption in Georgia was reported in the Soviet press in 1985 and 1986.⁵⁵

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4. The Slavic Provinces

a. Rostov

A cleanup of the trade organization in Rostov-on-Don was begun before Gorbachev came to office. The cleanup continued under his leadership, with the sentencing in 1986 of one Rostov trade official to death and another to the maximum term of fifteen years.⁵⁶ The most recent victim of the Rostov scandal was Brezhnev's private secretary, who was jailed for using his influence to block an investigation in the case.⁵⁷

b. Krasnodar Trade Cleanup

A corrupt group of trade officials in Krasnodar, with connections in the Central Committee, were able to avoid prosecution under Brezhnev, but were finally cleaned out in the years after his death. This is the case discussed above in connection with the issue of corruption in the Procuracy.⁵⁸ Like the Rostov scandal, it involved a direct negative reflection on the Brezhnev regime.

5. Moscow

a. The Trade Distribution System

The major campaign against corruption began under Andropov with the arrest of the director of the leading grocery store/delicatessen in Moscow, "Gastronom No. 1" (also known as the Eliseevskii Gastronom, after the name of its pre-revolutionary owner). In 1984 a court convicted him of involvement in numerous schemes of bribery and theft and

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sentenced him to death. Soon thereafter a newspaper published a report of his execution.⁵⁹ The anti-corruption campaign begun with this case continued under Chernenko, and was further continued, with renewed publicity under Gorbachev.⁶⁰

b. The Foreign Trade Establishment

The Bulletin of the Supreme Court of the USSR has given reports of severe punishments against Soviet foreign trade officials. In 1986, a special panel of the Criminal Division of the USSR Supreme court convicted a number of Soviet foreign trade officials of receiving bribes from foreign businesses and stealing Soviet government funds.⁶¹ The court imposed severe sentences and also issued a formal demand that the Ministry of Foreign Trade institute anti-corruption measures. As a result, the Ministry issued new internal regulations and a number of its officials were subjected to official and Party discipline and in some cases discharged. Those convicted, V.A. Praslov, D.K. Mikhailov, Iu. A. Lykov, and A.A. Nikitin., had held high positions in the Soviet foreign trade combine, Soiuzveshstrojimport.⁶² This is a Soviet construction firm that deals with foreign customers and subcontractors. (Incidentally, it was the firm that built the new American Embassy in Moscow.)

Another special panel of the Criminal Division of the USSR Supreme Court sentenced Vladimir Sushkov, the former Deputy Minister of Foreign Trade to thirteen years in a labor camp for taking bribes amounting to 126,857 rubles from representatives of foreign business firms. The panel sentenced his wife, Valentina

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Sushkova, former Deputy Head of the European Department of The Administration for Scientific and Technical Cooperation with Capitalist and Developing Countries of the State Committee on Science and Technology, to eleven years for her receipt of 368,933 rubles in bribes, and his assistant, E.G. Kuz'minykh to six years, all with confiscation of property.⁶³

In both cases, the court report indicated that the crimes continued until 1985, indicating that the prosecution started at about the time Gorbachev became head of the Party.

6. Miscellaneous

In addition to these reports indicating the cleanup of centers of corruption, the newspapers have been carrying large numbers of reports of convictions in separate incidents of corruption. While these do not bear a particular pattern, the quantity of newspaper reports is clearly meant to increase the fear of prosecution on the part of officials tempted by opportunities for corruption, and convince the populace that something is being done about the parasitical official class. Since a number of the cases involve quite high officials, they also signal that high office is not a guarantee of protection against prosecution. Reported cases include: selling draft deferments;⁶⁴ theft in the RSFSR Ministry of Light Industry;⁶⁵ bribery and blackmarketeering in the USSR Ministry of Tractor and Agricultural Machinebuilding and Ministry of Construction, Road, and Public Service Machine Building;⁶⁶ bribery in car sales in Moldavia;⁶⁷ bribery, blackmarketeering, and smuggling in the

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Ministry of Energy and Electrification of the USSR;⁶⁸ acceptance of bribes by the former Chairman of the USSR State Committee for the Supply of Oil Products, T.Z. Khuramshin.⁶⁹ the reported arrest of Brezhnev's son-in-law;⁷⁰ the sentencing of a housing official who took bribes for assigning apartments to thirteen years in a labor camp;⁷¹ the sentencing of a bookkeeper who stole 327,000 rubles to death;⁷² a corrupt auditor;⁷³ bribery for admission to educational institutions;⁷⁴ bribery of a doctor by students and patients;⁷⁵ a fifteen year sentence for a deputy minister;⁷⁶ accepting bribes by a labor camp administrator;⁷⁷ a bribe to get a design done.⁷⁸

III. Movement of Power Down from the Oblast' and Republic Levels to Low Level Officials and the Public

Province and republic level officials are losing power not only to Moscow, but also to those under their jurisdiction. In particular, they are losing power to control law enforcement officials in their localities and losing power to persecute local "whistleblowers" who inform on their crimes to the central authorities.

A. Reducing Local Party Control of Local Law Enforcement Officials

The way in which local party control over low level local officials is being reduced is illustrated by an significant incident that took place in late 1986 and early 1987 involving a local KGB official. The KGB, acting on the behest of local

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authorities in Voroshilovgrad, participated in the arrest and physical mistreatment of an investigative reporter who was exposing the local authorities' misdeeds. Eventually, the KGB severely disciplined the official responsible and his superiors. The head of the Ukrainian Republic KGB lost both his job and his position on the Ukrainian Politburo.⁷⁹ An understanding of the role of the KGB in this incident is essential to an understanding of what has happened to the criminal law enforcement system under Gorbachev. A leading authority on the KGB offers the following interpretation:

[Chebrikov, the head of the KGB,] did not, however, make another public statement until January, 1987, when he suffered the humiliation of acknowledging on the front page of Pravda that the KGB had been responsible for the unlawful arrest and detention of an investigative reporter in Voroshilovgrad. . . . In view of the proposals for reforms in the legal codes and for a restructuring of the legal organs, it appeared that the Gorbachev leadership was no longer going to allow the KGB the freedom to flout Socialist legality in the name of political security.⁸⁰

In my opinion, this incident and its aftermath should be interpreted quite differently, as strengthening rather than weakening the KGB. I believe that important messages were sent to three major groups: KGB staff members, local Party officials, and the public at large. KGB staff members were informed that they could be dismissed if disobeyed orders from the center and

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were caught kowtowing to local Party officials who were trying to cover up their own wrongdoing. Local Party officials were informed that they could not expect the local KGB to overlook corruption or suppression of evidence thereof. The public at large was informed that it could expect cooperation and protection rather than persecution if it reported on the corruption or inefficiency of local officialdom. The importance of these messages was emphasized by the fact that Chebrikov's statement was printed on the front page of Pravda.

B. Protecting Whistleblowers

A "whistleblower" may be defined as someone who reports on his superiors to authorities in a higher level organization or in an organization outside his chain of command. A major type of abuse of Soviet criminal law has been its use to silence "whistleblowers" and thereby protect corrupt local authorities from sanctions by central or parallel authorities. An excellent study of "Whistleblowing" in Brezhnev's last years concluded the authorities failed to provide good protection for whistleblowers.⁸¹ A more recent study indicates that somewhat better protection has been provided by more recent curbs on use of criminal prosecutions by Soviet politicians to silence "whistleblowers."⁸²

Protection of whistleblowers serves two distinct functions. First, it allows the whistleblower to continue to transmit information to higher authorities, something the whistleblower may be rendered unable to do if unjustly convicted and sent to a

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labor camp or if improperly sent to a psychiatric hospital. Second, it removes the fear that would prevent many citizens from becoming whistleblowers in the first place.

Criminal Law has a dual function in protecting whistleblowers. The first is that the system must be structured so that influential authorities cannot secure the unjustified conviction of whistleblowers. The second is that those who would persecute whistleblowers must themselves be subject to the threat of criminal liability. In this connection a new article was put in the Russian Republic Criminal Code in 1985:

Article 139-1. Persecution of a Citizen for Criticism

Intentional infringement by an official of the rights and legally protected interests of a citizen connected with persecution of him for submitting, by the established procedure, of proposals, declarations, appeals or for criticism contained in them, or for making critical statements in some other form-- shall be punished by a fine of up to three hundred rubles or by discharge from the position held.

the same actions, if they have caused essential harm to the rights and legally protected interests of the citizen--

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shall be punished by deprivation of freedom for a term of up to two years or by corrective task for a term of one two years or by discharge from the position held.

The appearance of this article of the code was reinforced by the publication of a Supreme Court decree giving details of how it should be applied.⁸³ An article in Literaturnaia gazeta gave wide publicity to the new legislation.⁸⁴

The real sanctions in practice against those who persecute "whistleblowers" appear not to be those stated in this new article of the Criminal Code, but rather the imposition Party and job discipline. The threat of these sanctions is conveyed by press reports of particular cases in which local officials who tried to silence whistleblowers suffered serious consequences. A more specific message is given to the legal profession by published court cases involving whistleblowing.

The most significant press report was already mentioned above, the extensive purge of Ukrainian officials in the aftermath of the persecution of a whistleblowing reporter in Voroshilovgrad was a strong signal from the central authorities that interference with channels of communication from below will not be tolerated. In Moldavia, the murder of a whistleblower lead to the discharge of a number of economic and law enforcement officials.⁸⁵ A Moldavian veterinarian from the republic's Kriulyany raion was shot dead by two gunmen on April 6 after revealing incidents of corruption on a collective farm in the

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raion. In the preceding months, managers of the collective farm had taken action against Virdesh, who in turn appealed without result to higher Party and legal organs. The newspaper said the Moldavian Party's Central Committee bureau had assessed the murder as "a political act of revenge for criticism revealing figure-padding and other illegal activities." It said three officials including the head of the collective farm had been fired and expelled from the Party. The district deputy procurator and a Moldavian Central committee member to whom Virdesh appealed also were discharged. Severe Party reprimands were placed in the files of nine more officials. T. Lavranchuk, Ministry of the Interior (Police) of the Moldavian Republic and the chief of his political department were censured.

The case of Midhat Shakirov, First Secretary of the Bashir Autonomous Republic Party Committee was an object lesson to make it clear to both Party officials and prospective whistleblowers that Moscow would not tolerate an abuse of this type and would punish those responsible. Leonid Safronov, Second Secretary of the Ufa City Party Committee objected to Shakirov's choice of a new First Secretary for the City Party Committee. On Shakirov's orders local officials of the People's Control Committee, the Party Control Committee and the Procurator's Office conspired to convict Safronov under falsified charges. When a higher court reversed this conviction, other falsified charges were brought. The First Secretary ordered the arrest of a Party official who had refused to give false testimony against Safronov. Another

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whistleblower in Bashkiria, the physician R. Bogdanov, had refused to sign false economic documents. In retaliation falsified charges were brought against him. The local court convicted him on these charges and sentenced him to four years' deprivation of freedom.⁸⁶ Eventually, the intervention of Procuracy officials and higher courts led to the reversal of all the convictions. A court decision restored Bogdanov to his old job and awarded him back pay. Radio Moscow reported in early June that after discussing the Pravda article exposing Shakirov, the Bashkiria Party Committee asked the Central Committee to remove Shakirov from his position as First Secretary.⁸⁷ Two weeks later, Radio Moscow reported that the Party authorities had removed Shakirov for "incorrect methods of leadership, the persecution of disagreeable workers, and gross violations of the law."⁸⁸

A case reported in the Bulletin of the Supreme Court of the USSR was clearly meant as a message to the lower courts that they should not allow themselves to be used as a means for the persecution of whistleblowers. In this case, R.V. Kengerali had attempted to report illegal activities by his superiors. They trumped up a charge that he had accepted a bribe himself. The lower courts convicted him, the republic Supreme Court freed him.⁸⁹ The decree was emphatic in its condemnation of the attempt to use criminal law against a whistleblower.

1. Protecting Whistleblowers from Unjustified
Psychiatric Commitment

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An account of an attempt to use psychiatry by corrupt local officials against someone who was blowing a whistle on their illegal activities appeared in a Pravda article in May 1987. As was mentioned just above, this article told how local authorities persecuted a physician and medical administrator, R. Bogdanov, who refused to sign economic documents containing false data. When the local authorities had him arrested, they also subjected him to a psychiatric examination as part of their intimidation effort.⁹⁰ In the following months the Soviet press reported a number of additional cases involving the use of psychiatry to silence "whistleblowers." An article in Izvestia in July 1987 reported how psychiatrists had agreed to the confinement in mental institutions of several people who had reported abuses to authorities.⁹¹ An article in November 1987 in Komsomol'skaia pravda reported how factory management had a worker committed for complaining about how they ran the factory.⁹²

The public admission that local authorities are using psychiatry to deal with whistleblowers suggests that further changes are likely to be made. In a statement in August 1987, Soviet Deputy Foreign Ministers Anatolii Adamishin said there were plans to introduce criminal liability for abuse of psychiatry and also stricter administrative controls and more patient rights.⁹³

Two rather contradictory elements appeared in the whistleblower picture in 1988. The first was the adoption of a decree stating that the authorities were not to act on anonymous

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accusations. The second was beginning of the end of the adulation of Pavlik Morozov, the peasant boy who had attained glory under Stalin by denouncing his father as a criminal.⁹⁴ Both these developments suggest that there is a fine line still to be drawn between the whistleblower to be protected and the hated informer and anonymous accuser of the Stalin period.

IV. Exposing and Treating the Sore Spots in Soviet Society

A. Introduction

Publicized campaigns against particular types of crime have been characteristic all periods of Soviet legal history. There have been an unusually large number of such campaigns during the Gorbachev period. These campaigns have differed in various ways from campaigns under previous General Secretaries. In the case of alcohol, the government caused the crime problem by its sharp restrictions on liquor sales in a situation reminiscent of way Prohibition led to crime in the United States in the 1920s. In the case of drugs, glasnost' allowed publicization of a problem that was previously officially a "non-problem." Some of the problems at which criminal legislation is aimed are products of the times rather than of specific new policies--offenses relating to videotape distribution and to AIDS, for instance.

B. Illegal Alcohol Production and Distribution

A major item in Gorbachev's domestic "perestroika" and "uskorenie" (speedup) policies is the anti-alcohol campaign. This campaign has involved a dramatic reduction in the official

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production of alcoholic beverages, severe restrictions on the availability of these beverages in restaurants and stores, and a sharp increase in their price. The result has been an increase in a number of types of criminal offenses. These include making and possessing equipment for home-distilling, theft of raw materials for use in home-distilling, engaging in home-distilling, selling home-brew, and illegal private trade in alcoholic beverages. The USSR Supreme Court has called for the courts to be vigilant against all of these offenses.⁹⁵

The increase in the price and reduction in the availability of vodka led to a massive increase in arrests and criminal trials for home-distilling. By the spring of 1987, the volume of these cases was such that they must have begun to overload the criminal justice system. The USSR Minister of Internal Affairs reported that in 1986 the courts had imposed criminal sentences on 130,000 persons for home distilling and that enforcement agencies had inflicted administrative punishment on 70,000 more.⁹⁶ He said that of the criminal sentences, two thirds were fines and 23% corrective labor tasks. (A person sentenced to corrective labor tasks may continue at his job, but loses various benefits and has a substantial portion of his wages taken.) Courts sentenced over 1000 repeat offenders to labor camps. According to other newspaper reports, home-distilling charges were brought against 100,000 persons in the first half of 1987.⁹⁷

This massive enforcement campaign had some deterrent effect. It was accompanied in most localities by an amnesty for those who

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voluntarily surrendered their stills to the police. According to the Minister of Internal Affairs, in Chernigov Province alone citizens turned in 32,800 stills were turned in the course of eighteen months. For the USSR as a whole, he said policy had confiscated or accepted 900,000 in the same period.⁹⁸ (The high rate of voluntary surrender of stills is explained by a police practice of alternating periods of severe crackdowns on home distilling with periods of amnesty for those who turned in their stills voluntarily.)

The huge number of home distilling cases must have created manpower problems for the criminal justice system. Soviet law requires the facts of each case to be proved in court, even if the defendant admits his guilt. Thus hundreds of thousands of convictions for illegal distilling meant hundreds of thousands of trials. As a leading Soviet criminal law expert recently pointed out, the Soviet judiciary is seriously understaffed. He noted that despite the fact that the population of the USSR was 4.7 times greater than that of West Germany, the number of judges was the same in both countries, about 15,000.⁹⁹

It may well have been pressure on the capacity of the judicial system that led the Presidium of the USSR Supreme Soviet to adopt, on May 29, 1987, a decree providing that first time home-distilling offenders would be subjected to administrative, rather than criminal liability, thus removing these cases from the criminal courts and substituting a simplified administrative procedure for a full court trial.¹⁰⁰ This simplified procedure

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had long been in effect for the possession of home-brew for personal use. It had been introduced in 1986 for home preparation of wine.¹⁰¹ It was now extended to first time to the manufacture of home-brew and the possession of home-distilling equipment. Under the new legislation, the police could fine offenders on the spot and destroy stills and home-brew without having to go to court. While the law provides for a procedure for appeal of such fines to a judge, such appeals would be likely to be extremely rare in practice, because of their slight chance of success.

Under the new legislation, although criminal penalties are dropped for first offenders, criminal sanctions will be kept and indeed made more harsh for repeat offenders. However, the total number of persons subject to criminal charges should fall dramatically, both because first offenders will be more careful and because undoubtedly family members will take turns being "first offenders" when family distilling operations are caught.

In addition to home-distilling, there are a number of other types of alcohol-related offenses. Persons buying alcoholic beverages to resell for a profit are guilty of blackmarketeering. Those engaging in the widespread practice of stealing sugar and other raw materials for making alcohol from state enterprises and collective farms are guilty of serious theft crimes.

C. Drugs

As late as April 1986, however, Soviet publications were denying that there was a drug problem in the Soviet Union. An

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article in Meditsinskaia gazeta by the head of a course in Soviet law at a medical institute stated: "Drug addiction exists on a comparatively small scale in the Soviet Union. Not a single instance of the use of heroin, cocaine or LSD-type drugs has been recorded in our country in the past decade."¹⁰² By January 1987, a very different story was appearing in the Soviet press. A.V. Vlasov, the USSR Minister of Internal Affairs, gave an interview to Pravda in which he indicated that the Soviet Union indeed had a substantial drug problem. He stated that "46,000 people are on the books with a medical diagnosis of drug addiction."¹⁰³ He called for tough limits on wild hemp, on poppy growing, for more police action against pushers, and for identification and treatment of users. Police, agricultural, and health officials repeated these thoughts in interviews in an article published in August 1987.¹⁰⁴ As a drug crime prevention measure, in the fall of 1987 the government ordered an end to the cultivation of opium poppies.¹⁰⁵

The police mounted a highly publicized campaign against drugs, which were reported to be directly or indirectly responsible for 40,000 crimes a year.¹⁰⁶ They were reported to be using helicopters and airplanes for spotting drug plantings.¹⁰⁷

Because of the previous suppression of information about drug addiction, it is hard to know to what extent there is a stepup in the anti-drug campaign, as opposed to a stepup in the publicity about the campaign. One factor which could have led to

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a major anti-drug campaign could have been worry about spreading of AIDS among drug addicts through contaminated needles and from addicts into the general heterosexual population. While Soviet authorities have announced a crash program to produce disposable needles, at present needles are still in short supply, meaning that needle sharing must be common among intravenous drug addicts.

D. Prostitution

There has also been a much more open discussion of prostitution. Articles appeared with detailed information on this previously taboo topic, decrying the absence of criminal penalties.¹⁰⁸ Legislation in 1987 made prostitution illegal, but placed it in the category of a minor administrative offense (like a traffic violation), rather than a criminal offense. The maximum fine was set at 100 rubles for the first offense and 200 for succeeding offenses.¹⁰⁹ In October 1987, Komsomol'skaia pravda, published a letter to the editors linking prostitution to AIDS and saying that the new administrative measures were laughable. If medical research should establish that there is a substantial link between prostitution and AIDS in the Soviet Union, and if the present administrative measures prove as ineffective as their critics suggest, the proponents of criminal sanctions for prostitution are likely to have their way.

E. Spreading AIDS

Worry about AIDS is now been reflected in various aspects of Soviet criminal law. The severe crackdown on drugs and tentative

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steps against prostitution both may reflect leadership concern about the spread of AIDS. The lack of official enthusiasm for the legalization of homosexual conduct may also reflect this same concern. Worry about AIDS has led to the definition of a new criminal offense, putting another at risk of AIDS infection, has been added to Soviet criminal legislation. An amendment to labor camp legislation will allow the segregation of those infected with the AIDS virus.

At its meeting of August 13, 1987, the Politburo "approved additional measures aimed at preventing the outbreak of AIDS in our country and deepening international cooperation in the battle against this disease."¹¹⁰

An Edict These enacting these "additional measures" was adopted on August 25, 1987. It included the following provisions:

To establish that knowing placing of another person at risk of infection with the disease AIDS--

shall be punished by deprivation of freedom for a term of up to five years.

Infection of another person with the disease AIDS by a person knowing that he has this disease,--

Shall be punished by deprivation of freedom for a term of up to eight years.¹¹¹

Amendments to the legislation governing labor camps adopted in 1987 provided for the establishment of segregated camps for

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convicts suffering from infectious diseases. This legislation would make it possible to avoid the spread of AIDS through sexual contact in the camps.¹¹²

F. Videopiracy

Soviet criminal law has had to deal with one major new technological development--the video cassette recorder. The recorder threatens the government policy of restricting and controlling both the media and private business operations. A high percentage of foreign videotapes would be pornographic by strait-laced Soviet standards. Copying them would thus violate the criminal code provisions on pornography. Video pornography prosecutions have been reported in the Soviet press.¹¹³ Videotape copiers could also be liable for anti-Soviet agitation and propaganda, and for violation of the new "anti-Rambo" law that forbids distributing tapes dedicated to the "cult of violence and cruelty."¹¹⁴ This law adds the following article to the RSFSR Criminal Code:

Article 228-1. Preparation of Distribution of Works Propagandizing the Cult of Violence and Cruelty

The preparation, distribution showing, or possession with the purpose of distribution or showing of films and videotapes or other works propagandizing the cult of violence and cruelty ,--

shall be punished by deprivation of freedom for a term of up to two years or by corrective tasks for the same

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period, or by a fine of up to three hundred rubles with the confiscation of the works and the means of their preparation and demonstration.

Persons making videotapes for sale or reselling tapes at a profit are also subject to persecution under the laws governing black market activities. Video violators are hard to catch because they commit victimless crimes in the privacy of their apartments. Thus the criminal law alone cannot control illicit private tape distribution. Not surprisingly therefore the criminal law approach is being supplemented by the efforts of Soviet customs and postal services, which are taking various measures to control the inflow of undesirable tapes into the country.¹¹⁵

G. The Economy

Generations of Soviet leaders have tried to use criminal law to attack problems in the Soviet economy, but with little success. The problems at which their criminal measures have been aimed are symptomatic of fundamental flaws in the economic system. The economic forces creating the criminal behavior are so strong that it is no easy task for the legal system to deal with them.

One serious economic problem is the practice of "report-padding" (pripiski). Soviet managers, under intense pressure to fulfill plans, routinely exaggerate their performance reports. The result is that they receive undeserved bonuses, national economic planning proceeds on faulty data, and they keep their

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jobs despite poor real performances. Their superiors often tolerate this abuse since the superiors' own work is evaluated on the basis of the aggregate of work reported by subordinate organizations. Law enforcement agencies must engage in a continuing struggle with report-padding. Much of what happened in this area under Gorbachev occurred so early in his tenure that it must have been planned before he took office, and must have involved the unthinking continuation of old policy.

In June 1985 The USSR Supreme Court issued an order binding on all lower courts explaining how the law on report-padding was to be interpreted. This order added little new to similar orders previously adopted on the subject by the Court. There was, however, a shift in emphasis, with pressure put on the courts to convict not the lower level employees who had physically made the false book entries, but rather the higher level management who had engineered the report-padding scheme.¹¹⁶ An authoritative summary of judicial practice in report-padding cases, published in the last issue for 1985 of the Bulletin of the Supreme Court of the USSR, provided the lower courts a practical guide to the law of report-padding. This summary emphasized again that responsibility was to be placed on top management, not ordinary employees.¹¹⁷

Production of poor quality goods is closely related to report padding. It is another way of simulating plan performance without fulfilling the spirit of the plan. Because Soviet pricing and plan indicator systems do not take adequate account

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of the quality of goods, and because there is no free market which would reject low quality goods, it is necessary for the authorities to bring direct pressure on enterprise managers to make them produce good quality goods. The most notable recent step in this direction has been Gorbachev's system of "state acceptance," which involves having factory output checked by an independent quality control organization. However, there has long been on the books legislation making production of poor quality goods a criminal offense. Detailed instructions for the application of this legislation were given in a USSR Supreme Court order dated April 5, 1985.¹¹⁸ A follow up article in the Bulletin of the Supreme Court of the USSR encouraged courts to take a strict attitude toward management who produced poor quality goods.¹¹⁹ These exhortations, however, do not appear to have made any significant changes in prior practice. Almost no reports of application of criminal legislation on quality appear in the Soviet press, though complaints do appear from time to time that the legislation is underenforced.

In addition to indirect forms of cheating the government by exaggerating the quantity and quality of goods produced, there are more direct forms, whereby accounting books, and salary and bonus payments are manipulated to line the pockets of dishonest managers. These last forms of cheating, along with the taking of bribes, are the object of the anticorruption campaign described above.

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Recently, Soviet commentators have been coming to the conclusion that the application of criminal law to economic matters may be making a bad situation worse. A paradox of Soviet criminal law is that although the laws against padding of reports and manipulation of compensation are relatively ineffective to prevent the problems to which they are addressed, they are quite effective to obstruct innovative management techniques. Any new incentive scheme developed at the local level is likely to fall afoul of this criminal legislation. Along with the perennial calls for more severe enforcement of criminal legislation against cheaters in the economy, new voices are speaking out ever more often under Gorbachev, asking that care be taken not to stifle initiative by overzealous criminal law enforcement. One area in which major changes may well be underway is that involving the drawing of the line between criminal acts by management and legitimate innovative entrepreneurial activity. While the Soviet press, in numerous articles cited above in the section on corruption, has lauded the efforts of procurators and courts to prosecute corrupt and thieving officials, the same press has taken quite a different attitude toward prosecution of officials who stretched the law, not for personal gain, but to create better organizational and incentive systems. It has favored these officials and has criticized those law enforcement organizations that have stifled initiative in the name of enforcing the law. A number of articles criticized the criminal prosecution of managers collective farms and other organizations

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that had found themselves in a legal no man's land when they hired outside construction teams ("shabashniki") to do essential work that could not be completed in any other manner.¹²⁰ In an interview in Izvestia, USSR Procurator General Rekunkov also warned of the dangers of treating high incomes as criminal, saying there should be a way for those who work hard to earn a lot of money.¹²¹ The matter was also taken up in a discussion between Supreme Court members and legal scholars reported in the Bulletin of the Supreme Court of the USSR. The legal scholars argued that the courts should be cautious so that daring innovators would not find themselves accused of economic crimes.¹²² A decision published in the Bulletin in 1987 took the same line. The headnote of this decision read, "Criminal responsibility for abuse of official position is impossible if the action of the guilty party is not connected with mercenary or other personal interest."¹²³ Also in 1987, the labor authorities attempted to clarify the situation by providing clearer guidelines for innovative pay schemes.¹²⁴

H. Blackmarketeering

The basic cause of blackmarketeering is the unavailability or underpricing of goods and services through official channels. Criminal prosecution of blackmarketeering thus treats the symptoms rather than the disease. The problem is made worse by the fact that excessive zeal in prosecution of blackmarketeers can deprive citizens of access to products they need. For

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instance, the only way peasants can get crops they grow to market is by bribing truck drivers to carry them on trucks owned by state enterprises. Overenforcement of the law in this area can lead to urban food shortages, as Pravda has pointed out.¹²⁵ While there may have been some increase in tolerance for such essential blackmarket activities, there has been no increased tolerance for ordinary blackmarketeers under Gorbachev. However, greater care has been taken to distinguish blackmarketeers from persons engaged in legitimate private labor activities. In 1985, the USSR Supreme Court issued a clarifying order designed to prevent certain legitimate activities, such as growing vegetables under a sharecrop arrangement, from being misclassified as blackmarketeering.¹²⁶

The relation of two packages of legislation passed in 1986 to blackmarketeering requires some explanation. These are the legislation against "non-labor income" passed in the spring of 1986¹²⁷ and the law on individual enterprise passed in the late fall of the same year.¹²⁸ Some commentators saw this succession of legislative acts as involving a vacillation in Gorbachev's policy toward private income. Actually, both laws were drafted simultaneously; issues connected with them had long been under discussion by Soviet legal scholars. The two sets of legislation are not necessarily inconsistent. Each attacks the black market but in different ways. The laws on "non-labor income" attempt to restrict black market activity directly. The legislation on individual enterprise, by expanding the list of permitted and

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taxed activities, seeks to tame and regulate certain activities, thus transferring them from the black market to the mainstream economy.

I. Disastrous Accidents

Under Gorbachev, the longstanding policy of bringing criminal charges against those responsible for disastrous accidents has continued. The main change is that as a result of "glasnost" there is more press coverage. The two major accidents to be reported in the Soviet press were the Chernobyl nuclear catastrophe and the collision of two ships in the Black Sea. In each case, those deemed responsible received long terms in labor camps.¹²⁹

J. Military Discipline

There was one slight change in military criminal law, with an expansion, in 1985, of the cases in which convicted military personnel could be assigned to disciplinary battalions in lieu of ordinary punishment. Obviously the fact that a disciplinary battalion might face combat in Afghanistan would increase the deterrent effect of such an assignment, given the Soviet tradition of using disciplinary battalions for the most dangerous combat tasks.¹³⁰ The Afghan war may have also increased the need for disciplinary battalions.

K. State Security

While the legislature made only one relatively minor change in Soviet legislation on state security under Gorbachev, the

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press regularly reported on security-related activities of the KGB. The USSR acceded to the international convention on hostage-taking, and amended its criminal legislation to provide for punishment in cases of hostage-taking with international elements, so as to conform to the requirements of the convention.¹³¹ The KGB appeared in the press in connection with the Daniloff case¹³² and in connection with the prosecution as war criminals of persons who had sided with the Nazis during the Second World War.¹³³ A foreign student in Armenia was convicted of subversive activities and expelled from the USSR.¹³⁴ As mentioned above, those responsible for violence in the Alma Ata riots were convicted and given severe sentences.¹³⁵

L. Juvenile Crime

There has been one significant change in punishment measures applicable to juveniles, the development of legislation allowing retention of offenders in juvenile institutions until the age of twenty rather than eighteen. This change will be discussed in further detail below, as an example of the application of social science to corrections policy. The Supreme Court has also issued a decree demanding that the special procedural guarantees for juveniles be better enforced in practice and that there be a crackdown on juvenile access to liquor.¹³⁶

V. Amnesties and Rehabilitation

Two major amnesties have occurred in the period 1985-1988. In 1985 there was an amnesty in honor of the fortieth anniversary

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of Soviet victory in World War II.¹³⁷ In June 1987, the Supreme Soviet adopted an amnesty in honor of the seventieth anniversary of the October Revolution.¹³⁸ The 1985 amnesty must have been largely drafted during the pre-Gorbachev era. It was a relatively limited amnesty compared to the quite far-reaching 1988 amnesty. In addition to these two legislated amnesties, there was an informal amnesty in 1987 of dissidents serving terms for slandering the Soviet system.

The 1985 amnesty in honor of World War II victory freed or reduced sentences for veterans, labor heroes of the home front, wives and widows of disabled veterans, and war widows. It also freed various categories of persons not connected with the war: pregnant women and women with minor children, men who were disabled or over 60, and some juvenile offenders. Other offenders with short sentences had the remainder of their sentences commuted to freedom with compulsory assignment to labor. Dissidents serving sentences for slandering the state or illegal religious activities were specifically excluded from this amnesty as from previous amnesties. The 1985 amnesty essentially represented no change from the policy of various amnesties under Brezhnev. Offenders who presented little danger to society were freed. Serious offenders and dissidents were excluded from the amnesty. The exact choice of whom to free seems to have been based on social science findings concerning the benefits of "compulsory" assignment to work over imprisonment for the rehabilitation of minor offenders. An additional element was

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probably the desire to encourage patriotism by showing the Soviet public that veterans would be singled out for particular favors. The exclusion of dissidents followed the pattern of earlier amnesties.

In February 1987, the Soviet press reported that forty persons convicted under Art. 70 (Anti-Soviet Agitation and Propaganda) and Article 190-1 (Distribution of Knowingly Untrue Fabrications Slandering the Soviet State and Social Order) of the RSFSR Criminal Code had made statements have made statements promising to desist from illegal activity. The Presidium of the USSR Supreme Soviet formally decided to release them as a "humane act" in the spirit of "perestroika."¹³⁹ The June 1987 amnesty (discussed in detail below) included some persons imprisoned for dissident speech and for illegal religious activity. The freeing of dissidents was a bold new step for the current regime and marked a sharp turn with the policy of its predecessors. While the number of individuals affected was not large, the message to the public was an important one, and a major encouragement to freer speech.

The 1987 amnesty freed categories of persons quite similar to those freed by the 1985 amendment. The 1987 amnesty freed all veterans "of the defense of the Soviet motherland", not just World War II veterans. As before pregnant women, women with minor children, the elderly and invalids were given their freedom. Women and minors serving short sentences who had served specified portions of their sentences were released. Sentences

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for various types of crimes presenting little danger to society were reduced. Besides respect for veterans, the amnesty, like the 1985 amnesty, reflected social science findings on the categories of criminals that could safely be released early. As in earlier amnesties, those convicted of serious crimes against the state were excluded. Contrary to the practice in earlier amnesties, persons meeting the general qualifications for amnesty were given the benefits of the 1987 amnesty even if they were guilty of dissident activities under the following articles of the RSFSR Criminal Code (or similar articles of the codes of other republics): Article 190-1 (Distribution of Fabrications Known to be False Defaming the Soviet State and Social System), Article 190-2 (Desecration of the State Seal or Flag), Article 190-3 (Organization of, or Active Participation in, Group Activities Violating Public Order). Also contrary to prior practice, religious offenders were given amnesty benefits even if they were guilty of violating the following articles of the RSFSR Criminal Code (or similar articles of the codes of other republics): Article 142 (Violation of the Laws on Separation of the Church from the State and the School from the Church), Article 227 (Infringement of the Personality and Rights of Citizens under the Guise of Performing Religious Rites). Like the release of dissidents earlier in 1987, this application of the amnesty to political and religious dissidents was a green light for more free speech and was an important step toward improving the international image of the Soviet Union.

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Another important symbol of change has been the rehabilitation of many famous victims of Stalin's purges, including all major political figures except the infamous Yagoda.¹⁴⁰ The rehabilitation of figures such as Bukharin and Chayanov, who had opposed Stalin's economic policies is particularly important in symbolizing the greater freedom of speech now being allowed on economic questions. Reports of the rehabilitation of ordinary victims of Stalin's purges who were not properly rehabilitated under Gorbachev's predecessors serve to darken his predecessors' reputation.¹⁴¹

VI. Applying Social Science Findings to Penal Policy

A. Introduction

Under Gorbachev, Soviet legislators have adopted no major changes in either the criminal codes, which define crimes and specify the applicable punishments or the criminal procedure codes, which specify pretrial, court, and appeal procedures. However, they have adopted a number of moderately significant changes in the legislation on corrections procedures, which specify the details of confinement in labor camps or other forms of punishment. Policymakers appear to have attempted to employ the findings of Soviet social scientists about the effect of various types of punishment on recidivism. They also seem to have attempted to improve the economic productivity of those held under confinement. Both policies had their origins in the Brezhnev years. The changes under Gorbachev involve the

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application in practice of theories introduced in the Brezhnev period, a time when penologists had considerable financial support for their research and considerable freedom to publish recommendations for reform in specialized legal journals. The proponents of these theories have continued to push them strongly under Gorbachev, moving from legal journals to the public press.¹⁴²

Major amendments occurred in 1985 in legislation on criminal penalties.¹⁴³ The Presidium of the Supreme Soviet formally adopted these amendments on April 2, 1985. They are highly complex, and thus must have been in the drafting process for a considerable period before their adoption. Further amendments, of a more limited nature, were adopted in October 1987.

B. The 1985 Amendments

The purpose of the 1985 amendments is explained in an excellent article by a Moscow State University law professor.¹⁴⁴ They allow the separation of first offenders and less dangerous offenders from hardened criminals. They provide for a substantial expansion of the use of "colony settlements." These are essentially penal villages where the convicts cannot leave and must work at assigned jobs, but are free of the extreme restrictions of labor camps. Social science data has shown that they are more effective than labor camps in the rehabilitation of the less serious offenders. They are probably also economically more effective. Previous law had provided for the routine transfer of juvenile offenders to regular labor camps when they

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reached the age of 18. The 1985 legislation authorized??? retention of juveniles in juvenile detention facilities up to the age of 20, to prevent mixing them with the hardened criminals in the regular labor camps.

The 1985 legislation makes it possible for courts to allow persons given compulsory assignments to work in replacement of suspended sentences of deprivation of freedom to travel to their assigned place of work on their own rather than in a prison convoy under guard, thus saving the state considerable costs and saving the convict considerable discomfort.

From various indicators, it appears that current sentencing policy is making substantially greater use of suspended sentences with compulsory assignment to work.¹⁴⁵ The Supreme Court has issued some detailed rulings on the application of this type of punishment.¹⁴⁶

C. The 1987 Amendments

The 1987 amendments introduce a number of relatively minor changes into the Fundamental Principles of Corrective Labor Legislation and the Corrective Labor Codes of the Republics.¹⁴⁷ The only interesting change is one which would allow the creation of special labor camps to isolate those infected with the AIDS virus. No specific mention is made of AIDS, but provision is made for a new category of labor camps "designated for the custody and treatment of persons with an infectious illness."

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Technical changes seem largely to be designed to give corrections administrators somewhat greater flexibility in the management of prisoners. The Ministry of Internal Affairs and the Procuracy are explicitly given the power to make rules as to when first-time offenders will be sent to corrective labor institutes outside their republics. A change is made in the category of offenders who can, with their consent, be kept in the investigative prison to do housekeeping work rather than being sent to labor camps. The rules on minors are changed to allow minors sentenced to a "general regime" camp to be transferred upon reaching age 18 to a "strengthened [harsher] regime camp" depending upon various factors, including their conduct. Presumably the availability of this threat will ease the problems of camp discipline. The rules for those in camps of a special [especially harsh] regime are changed to abolish the requirement that they be kept in cells. Especially dangerous criminals and those whose death penalty has been commuted must still be kept in cells. This change is related to changes on rewards and penalties for prisoners and gives the camp administration greater flexibility in rewarding prisoners by letting them out of cells or of disciplining them by putting them into cells. The provisions on labor are amended to provide for the issuance of "Rules of Internal Labor Order" for prisoners.

VII. Proposed Social Science Based Corrections Law Reform

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Two proposed reforms of Soviet corrections law are based on social science theories. One would involve reorienting labor camps from emphasis on economic plan fulfillment to emphasis on rehabilitation. The other would involve the addition of compulsory assignment to labor to sentences of banishment.

The press has published criticism of the orientation of labor camps for juveniles, accusing the camp administrations of putting more emphasis on fulfilling production plans than on rehabilitation.¹⁴⁸ A model lenient camp has been praised by a periodical aimed mainly at foreign readers.¹⁴⁹ In 1987, Literaturnaia gazeta published a very critical letter from an adult labor camp inmate on life in the camp.¹⁵⁰ This, of course, has been a virtually taboo subject since soon after the publication under Khrushchev of Solzhenitsyn's "One Day in the Life of Ivan Denisovich."

When in November 1987, the USSR Minister of Justice announced that the revision of criminal law under way would eliminate the punishments of exile and banishment, the Western press overreacted.¹⁵¹ The press treated this as (1) a surprise and (2) a major softening of Soviet criminal penalties. In fact, the abolition of exile and banishment was a reform supported by Soviet scholars, who based their support on hard sociological research data. The scholars' demand however was substitution of harsher punishment for exile and banishment. They wanted to continue to send criminals to remote localities, but rather than leaving them free to roam without jobs, to confine them to penal

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settlements or at least to require them to work at particular jobs.

Far back into Russian history and throughout the Soviet period, courts have sentenced defendants to exile (sending them to live in a designated locality) and banishment (sending them away from a particular locality). Serious doubts about this policy were expressed long ago.¹⁵² In recent years, the courts have curtailed their use of these punishments as the result of the influence of sociological studies on Soviet sentencing policy. A 1983 publication of the Institute of State and Law of the Soviet Academy of Sciences explained:

In the legislation and judicial practice of the USSR both types of punishment [exile and banishment] occupy a secondary position. Research by Soviet scholars has shown that in judicial practice only isolated instances of the application of these measures are encountered and that at the present time they are insufficiently effective. The proportion of recidivism after the completion of such punishment is around 25%, which greatly exceeds the recidivism rate for all other types of punishment not connected with deprivation of freedom. The scholars consider that the basic cause of the insufficient effectiveness both of exile and of banishment consists of the fact that far from all the persons to whom these punishments have been applied have been involved in socially-useful work.¹⁵³

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With the decline in exile and banishment as punishment has come a growth in the use mentioned above, of imposition of a suspended sentence with compulsory assignment to labor and in the use of sentences to "settlements" rather than to labor camps. Both these approaches achieve the same goal of removal of the convict from the community where he was committing crimes, but they add the element of forced labor to the exile. Even without a specific sentence of banishment, any long sentence imposed on a resident of a major city, may carry with it an implicit sentence of banishment, since a convict's residence permit is automatically cancelled if he is given a sentence of over six months. There has been some complaint in the Soviet press about the problem of a vagrant class being created by this practice of cancelling residence permits of convicts.¹⁵⁴

VIII. Statistics on Crime

A. General Trends in Criminal Convictions

Since the early days of Stalin's power, the Soviet censors have prohibited the publication of systematic statistics on crime. Fragmentary data on particular crimes or particular regions of the country has been released from time to time. A Dutch researcher has done a remarkable job of gathering and interpreting this fragmentary data, but his book and a detailed follow-up article, the only usable compendia of Soviet judicial statistics.¹⁵⁵ This Dutch scholar summarizes the criminal

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statistics for the period (1980-84) immediately before Gorbachev became first secretary as follows:

Taken together, these data show that in the second half of the 1970s, the number of sentences remained fairly stable at a level of some 800,000 sentences annually. During 1980, it started to increase probably by about 5-10% at first and by some 25% during 1982. Thereafter it stabilized at a level of 1,050,000 or some 35% higher than was the case in the second half of 1970s.

In October, 1987, Izvestia published an article that provided information of a type that had previously been secret, but which fell far short of providing a full statistical picture of the crime situation. This article read as follows:

In the Ministry of Justice of the USSR

The Ministry of Justice of the USSR has consider the question of the work of the courts for the first six months of the current year.

According to the statistical reports of the courts, among those convicted there were less persons who had committed crimes in a state of intoxication. Violations of safety rules for the movement of means of transportation were reduced--10,562 persons where convicted for this type of crime with serious consequences, which was 18.6 percent less than in the preceding year.

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In the country as a whole, there were less instances of violent crimes against the individual, there was a reduction in hooliganistic phenomena, particularly in the RSFSR, Belorussia, Kirgizia, and Armenia. 4,682 persons were convicted of intentional homicide; 53,008 of all types of hooliganism.

At the same time there continues to be a high level of encroachments on socialist and personal property. In the first half of this year, 64,231 persons were convicted of theft of state or social property; 63,574 persons were found guilty of the theft of personal property of citizens. These crimes were most widespread in Kazakhstan, Moldavia, and Estonia.

The conviction rate for home-distilling of hard liquor for sale rose by 39 percent. This particularly relates to a number of oblasts of the RSFSR, and also to the Ukraine and Kazakhstan.

More crimes were uncovered connected with narcotics and the number of persons convicted for these crimes increased accordingly. For instance, in the Uzbek SSR 1,473 persons were convicted, which is 62 percent more than in the first half of the past year. There was a growth of those convicted in Moldavia and Latvia.

The data of judicial statistics are being analyzed by specialists.

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The results of the analytic work will be used for raising the effectiveness of prevention of violations of the law.¹⁵⁶

While the publication of this short list of statistics is a step in the direction of "glasnost", it leaves much to be desired. The vast majority of crimes are omitted. The article provides little comparative historical data even for those crimes that are listed.

The Moscow Chief of Police has begun conducting weekly briefings in which he gives fairly detailed crime statistics for the city of Moscow.¹⁵⁷

B. Specific Types of Crime

1. Crimes Against the State

While on his visit to the United States in December 1987, General Secretary Gorbachev stated that only 22 persons were being held under Article 70 of the RSFSR Criminal Code.¹⁵⁸

2. Religious Offenses

No data appear to have been published on the number of persons convicted of religious offenses. While the June 1987 amnesty freed some persons convicted of religious offenses, religious offenders have not enjoyed special treatment comparable to that given to persons convicted under Article 70. The Soviet press has reported one case involving severe punishment for an underground religious publisher.¹⁵⁹

3. Crimes of Violence

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One of the successes of the anti-alcohol policy appears to have been a reduction in the number of crimes of violence. The official report quoted above stated with respect to violent crimes:

In the country as a whole, there were less instances of violent crimes against the individual, there was a reduction in hooliganistic phenomena, particularly in the RSFSR, Belorussia, Kirgizia, and Armenia. 4,682 persons were convicted of intentional homicide; 53,008 of all types of hooliganism.

4. Theft Crimes

a. Theft of State and other "Socialist" Property

In the period immediately preceding Gorbachev's becoming First Secretary, there was a sharp increase in the number of convictions for the theft of state and other socialist property. This paragraph is based upon two articles by S. Gusev, First Deputy Chairman of the Supreme Court of the USSR.¹⁶⁰ Unfortunately some key language in these two articles is ambiguous. Literally, it seems to refer to all thefts, but interpreted in the light of the context, it appears more likely to refer only to thefts of state or other "socialist" property." He said that these thefts were up by 49.2% in 1981-1985 over those for 1971-1975. In the first half of 1986, Gusev stated, "the level of convictions for theft continued to increase." The 1987 Ministry of Justice announcement stated, "there continues to be a high level of encroachments on socialist . . . property. It

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the first half of this year [1987], 64,231 persons were convicted of theft of state or social property . . . "161 This figure does not include minor thefts of state and social property, which are handled by an administrative procedure rather than through the criminal courts. There were over 950,000 such administrative sanctions imposed in 1981-1985, or over 190,000 such cases a year. Presumably the sanctions continued at the same level in 1986 and 1987.

The number of convictions for large and extremely large thefts of state and other "socialist" property grew even more sharply in the immediate pre-Gorbachev period. It rose in 1981-1985 by 55.8% over the figure for 1976-1980. According to Gusev, this sharp increase was largely due to better work by law enforcement officials. Gusev went on to say for theft in large quantities the courts give almost 70% of the guilty parties long sentences, and for thefts in extremely large quantities, the courts gave almost all the defendants long sentences. While the press has not published statistics for cases of large scale theft for 1986 and 1987, there is every reason, from the prevalence of press reports of individual cases, to suppose that the campaign against such thefts that began under Andropov has continued under Gorbachev.

b. Theft of Other Property

According to the Ministry of Justice, "there continues to be a high level of encroachments on . . . and personal property. In

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the first half of this year [1987], . . . 63,574 persons were found guilty of the theft of personal property of citizens."

5. "Hooliganism"

The Criminal Code defines "Hooliganism" is defined by the criminal code "intentional actions, grossly violating social order and expressing a clear disrespect toward society." In practice, persons convicted of this crime would be considered to be "drunk and disorderly" in the United States. A success of the anti-alcohol campaign has been the reduction of this type of crime. According to the Ministry of Justice, the courts convicted 53,008 of all types of hooliganism in the first half of 1987, which was a reduction as compared to 1986.

6. Election Fraud

With the appearance of a few contested elections under Gorbachev's policy of "demokratizatsiia," a news report has appeared of a conviction for election fraud.¹⁶²

7. Criminal Traffic Violations

One of the successes of the anti-alcohol program has been a reduction in the number of drunken drivers. The Ministry of Justice reports that, "Violations of safety rules for the movement of means of transportation were reduced [in the first half of 1987]--10,562 persons were convicted for this type of crime with serious consequences, which was 18.6 percent less than in the preceding year [1986].

8. Home Distilling

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The vast increase in convictions for home distilling as a result of the anti-alcohol campaign, and the subsequent decriminalization of first offense home distilling has been discussed above.

9. Labor Camp Population

Despite promises of more openness, the authorities have continued the long-standing policy of prohibiting the publications of statistics on labor camp population. Following an approach developed by the Dutch scholar van den Berg, it is possible, however, to arrive at some estimate of the number of persons sentenced to a labor camp each year. According to a statement by USSR Minister of Internal Affairs A.V. Vlasov, "in the country as a whole, criminality decreased during 1986 by 4.6% in comparison with the year 1985." He said that homicides were down by 21.7%; grave injuries by 24%, open stealing and robberies by 25%. Since these crimes which fell in number were crimes for which labor camp sentences are typically imposed, one might expect in the long run a proportionate fall in the number of labor camp inmates. Van den Berg estimates that the labor camp population will soon level off at about 1,200,000, if current policies are followed.¹⁶³

10. The Death Penalty

The death penalty continues in relatively wide use. Under Soviet law, courts may apply the death penalty not only for crimes of violence, such as murder, but also for large scale

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theft of state property. One feature of the anti-corruption campaign under Gorbachev has been the use of the death penalty against relatively high officials, including the First Secretary of the Bukkhara Party Committee and the Uzbek Republic Minister of the Cotton-Processing Industry,¹⁶⁴ as well as against ordinary economic criminals, such as a bookkeeper who stole 327,000 rubles¹⁶⁵ crooked local retail trade officials.¹⁶⁶ These death penalties received wide publicity in newspapers such as Pravda and Izvestia. The Bulletin of the Supreme Court of the USSR reported the Uzbek cotton case in detail. There can hardly have been an executive or a lawyer in the USSR who did not learn that the death penalty was being used actively against corrupt officials. It seems unlikely that the USSR Procurator's Office would decide on its own to request the death penalty against a former oblast' Party first secretary or a former republic cabinet ministers. Thus, presumably, the use of the death penalty in such cases has been approved at the highest level of Soviet authority.

The death penalty continues to be used against particularly dangerous murderers. Thus for instance the Bulletin of the Supreme Court of the USSR reported the imposition of a death sentence against G.M. Mikhasevich, who had committed a number of murders, rapes, and robberies.¹⁶⁷

In at least two cases with political implications the prosecutor sought and obtained the death penalty. K. Ryskulbekov was sentenced to death for killing a people's volunteer police

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aide in the Alma Ata riots.¹⁶⁸ Federenko was tried and executed as a war criminal.¹⁶⁹

IX. Plans for Technical Law Reform

From a purely technical point of view, Soviet criminal legislation badly needs revision. The criminal legislation now in effect first appeared in the late 1950s and early 1960s. New legislation has introduced hundreds of amendments into the codes. The USSR and Republic Supreme Courts have issued volumes of instructions on the interpretation of the codes. The result is that the codes no longer fulfill their purpose of providing a clear, comprehensive, logically-organized guide to the law. In the 1970s and early 1980s, Soviet lawmakers and legal scholars cooperated in the technical redrafting of legislation in many areas of the law, and in a massive project to publish Code of Laws (Svod zakonov) for the USSR and for each of the republics. The redrafting and updating of criminal legislation is a logical continuation of this policy.

The legislative plan for the Russian Republic for 1987-1990¹⁷⁰ calls for the preparation of the draft of a new Criminal Code for the Republic.¹⁷¹ The plan designates the following organizations to participate in the drafting process: the Presidium of the RSFSR Supreme Soviet, the RSFSR Ministry of Justice, the RSFSR Procuracy, the RSFSR Supreme Court, and the Ministry of Internal Affairs of the RSFSR. There is little doubt that there will be a new criminal code within the next few years.

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The current USSR plan for drafting legislation¹⁷² does not include a section on drafting criminal law in general. Despite the lack of mention of criminal law revision in the plan, active preparation of new criminal legislation is taking place at the USSR level. This was revealed in a statement by the USSR Minister of Justice, Boris V. Kravtsov, in an interview with TASS.¹⁷³ Scholars at the Institute of State and Law have prepared new draft criminal legislation and expect to take an active part in the preparation of any new criminal codes. The USSR legislative plan does include provisions for preparing a USSR Law on State Security, to be prepared by the Ministry of Justice, the KGB, the Ministry of Defense, the Procuracy, the Ministry of Internal Affairs, and the USSR Academy of Sciences. This law may contain provisions amending or replacing provisions of the Law on State Crimes, which is repeated verbatim in the Republic criminal codes. That some amendment to this law is under consideration was indicated in a statement by Soviet Foreign Ministry spokesman Gennady Gerasimov in February 1987, when he said there was a possibility of the repeal of the law on "anti-Soviet agitation and propaganda."

The Russian Republic legislative plan also calls for the drafting of revisions to the criminal procedure code, but does not call for a new criminal procedure code. Relatively few amendments have been made in the RSFSR Criminal Procedure Code since its adoption in 1960. Therefore, from a purely technical

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point of view, it is far less in need of revision than the Criminal Code.

The major unanswered question at this point is whether the new criminal code and revised procedural code will amount to more than technically improved recodifications of existing legislation. The answer will depend upon the fate of various proposed changes in criminal legislation that "liberal" criminal law reformers are now taking advantage of "glasnost" to propose in the press.

X. Liberal Law Reform?

A. Introduction

Glasnost' has made it possible for a number of criminal law specialists who could be classified as "academic liberals" to publish proposals for the reform of criminal law, criminal procedure, and punishment. The proposals to be discussed here would not cost a significant amount of money, would not have a major effect on the crime rate, and would not affect the authority of the Politburo. Their adoption would significantly improve the international image of the Soviet legal system. The debate is of a kind quite familiar to Americans--liberal law professor against conservatives and some law enforcement officials.¹⁷⁴

B. Dissidents

The Soviet criminal justice system has a very poor image outside the Soviet Union, an image that undoubtedly has a

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negative effect on the overall ability of the Soviet Union to achieve its foreign policy goals. It has also had a poor image at home, thus reducing the legitimacy of the Soviet authorities in the eyes of their own people. A number of measures have been taken under Gorbachev to improve this image. The courts have rehabilitated many victims of Stalin's purges including the prominent defendants of the 1938 show trials. Most notable has been the partial rehabilitation of Bukharin. The government has set up a Human Rights Commission. Rejected applicants for emigration may now file formal appeals. However, perhaps the most significant change with respect to the international image of the Soviet Union has been the release of a number of dissidents, the reduction in the use of the criminal law against dissidents, and the announcement of impending softening of criminal sanctions on dissident speech. However, despite all this activity, there has been absolutely no change to date in the criminal legislation on the books. Current discussion involves two articles of the RSFSR Criminal Code (and by implication similar articles of the codes of the other republics). These are Articles 70 and 190-1, which read as follows:

Article 70. Anti-Soviet Agitation and Propaganda

Agitation or propaganda carried on for the purpose of subverting or weakening the Soviet regime or of committing particular, especially dangerous crimes against the state, or the circulation, for the same purpose, of slanderous fabrications that defame the Soviet state and social system,

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or the circulation or preparation or keeping, for the same purpose of literature of such content, shall be punished by deprivation of freedom for a term of six months to seven years, with or without additional exile for a term of two to five years, or by exile for a term of two to five years.

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

Article 190-1. Circulations of Fabrications Known to be
False That Defame the Soviet State and Social
System

The systematic circulation in oral form of fabrications known to be false that defame the Soviet state and social system and also, the preparation or circulation in written, printed or any other form of works of such content shall be punished by deprivation of freedom for a term not exceeding three years, or by correctional tasks for a term not exceeding one year, or by a fine not exceeding 100 rubles.

Article 190-1 differs from Article 70 in that Article 190-1 omits the requirement that the activity be "for the purpose of subverting or weakening the Soviet regime or of committing particular, especially dangerous crimes against the state." In

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the past year, Soviet legal scholars have repeatedly pointed that Article 190-1 punishes conduct done without the intent to harm the state. Leading criminal law scholars who have spoken on the subject have been unanimous in suggesting the abolition of Article 190-1, but have generally suggested that Article 70 should be retained for use in case of serious threats to the state. Particularly outspoken have been criminal law Professors Sofia Kelina and Aleksandr Iakovlev of the Academy of Sciences' Institute of State and Law.¹⁷⁵ Article 190-1, incidently, was added to the code only in 1966 and so can be viewed as a feature of the now out-of-favor Brezhnevism. Having allowed widespread public suggestions for the repeal of Article 190-1, Soviet leaders would suffer some international embarrassment if the article were retained in the code. Two outcomes seem possible. The first is repeal of Article 190-1, with retention of Article 70, but in somewhat modified form--perhaps with lesser penalties or limited to ethnic agitation. The second is repeal of both articles, with Soviet authorities relying on the wide variety of other administrative and criminal law measures available to them to control dissidence. The effectiveness of these measures is shown by the apparent cessation or virtual cessation of the use of Articles 70 and 190-1 under Gorbachev. The repeal of both articles would of course produce great dividends in international public opinion. However, it might further exacerbate the growing problem of demands for rights by ethnic groups.

C. Homosexual Conduct

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Homosexual activity between consenting adults is a crime under Soviet law.¹⁷⁶ Influential criminal law scholars, such as Sofia Kelina and Aleksandr Yakovlev have called for the elimination of criminal liability for homosexual activity unless force was used or minors were involved.¹⁷⁷ Yakovlev, however, indicated that because of the AIDS scare in the Soviet Union, this reform was unlikely to come about soon. Articles in the Soviet press have specifically urged that homosexual conduct continue to be banned because of AIDS.¹⁷⁸

D. Jury System

The jury system was initiated in Russia in the nineteenth century. It was severely restricted in the early twentieth century after juries acquitted a number of persons accused of politically motivated crimes. The jury system was abolished after the revolution. In its place Lenin put a system, borrowed from German commercial courts, of one judge and two "people's assessors," all three of whom deliberated together. This system has in fact resulted in control of the outcome of cases by the judge, who is, as has been mentioned, very subject to local Party influences. From time to time Soviet legal scholars have suggested the reinstatement of a jury system. Sometimes this call is thinly disguised as a suggestion that there should be more people's assessors.¹⁷⁹

E. Activating the Role of People's Assessors

President Terebilov of the USSR Supreme Court has not gone so far as to argue for a jury system, but has stated strongly

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that people's assessors should have a more active role, rather than merely rubber-stamping judges' decisions.¹⁸⁰

F. Judicial Robes

The proposal for a jury system is not the only example of Anglophilia among Soviet criminal law professors. One has suggested that the prestige of the courts be increased by having the judges wear robes.

G. Acquittals

There has been an increasing recognition in the Soviet Union that the imposition of quotas on police to solve crimes (discussed above), upon procurators to get convictions, and on trial and appellate courts has had a very negative effect on the criminal justice system. Investigatory authorities have refused to accept complaints. Individuals have been "framed" and confessions have been forced¹⁸¹ so that crimes can be solved. Courts have refused to convict the innocent, condemning them to extended reinvestigations. Appellate courts have feared to reverse trial courts, lest the courts under their supervision appear to be doing poorly.

In an article published in January 1985, Arkadii Vaksberg, a well-known reporter for Literaturnaia gazeta, criticized a prosecutor for sending a law-abiding citizen who had killed in self-defense for psychiatric examination. There was no indication, however, of any impropriety on the part of the psychiatric institution.¹⁸²

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In an excellent study, Professor Peter Solomon has chronicled the virtual disappearance of acquittals from Soviet criminal procedure.¹⁸³ USSR Supreme Court Chairman Terebilov and other officials have sharply criticized this disappearance of acquittals.¹⁸⁴ The USSR Supreme Court has issued a binding order on the need to acquit the innocent.¹⁸⁵ A recent Supreme Court case reversed a lower court for failing to order an acquittal when it should have, signaling that pressure may be beginning from above to restore acquittals.¹⁸⁶

Supreme Court President Terebilov has also called for more effective efforts to restore the rights of those acquitted.¹⁶⁰

H. Remove Investigators from Procurator's Office

The Soviet system of preliminary investigation of criminal cases differs in a very significant way from that in Western European countries. In the USSR, investigators in serious cases are subordinate to the Procuracy; in Western Europe, investigators are subordinate to the judicial branch of government. Despite laws purporting to insulate the investigatory and prosecutorial functions of the Procuracy, there is an inherent conflict of interest, since an investigator's career depends upon recommendations for promotion from officials whose primary function is prosecution. Liberal commentators are now suggesting that the investigatory apparatus be removed from the Procuracy and be assigned to the judiciary, the Ministry of Justice, or an independent organization.¹⁸⁷

I. Defense Counsel Participation

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A long-standing demand of Soviet criminal law scholars has been to give Soviet defense lawyers access to their clients before the end of the preliminary investigation.¹⁸⁸ It now appears that this demand will finally be satisfied in the new criminal procedure legislation being drafted.¹⁸⁹

J. Improving the Status of the Bar

To date, the status of lawyers who defend criminals has remained unchanged. Defense lawyers and their academic supporters have taken advantage of "glasnost" to make a number of suggestions for improving their situation. These suggestions are usually phrased in terms of improving the ability of lawyers to provide an adequate defense to their clients. Perhaps not entirely coincidentally, the suggestions would improve the status, pay, and security of defense attorneys.¹⁹⁰ Suggestions include: that practicing lawyers should get a fairer share of membership on policy-making committees and of awards for outstanding lawyers; that there should be a USSR association of defense lawyers; that the official scale of charges for lawyers' services be adjusted sharply upward. This last proposal is of more than economic significance. The current ridiculously low official fee scale has led to a widespread custom of under-the-table "tipping" of lawyers, "MIKST" in Russian slang. Each lawyer is faced with an unhappy choice: to live in poverty, or to subject himself to blackmail and possible prosecution by officials who know he is taking illegal payments. Most lawyers choose the latter and thus lose their independence.

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K. Better Review

Supreme Court President Terebilov has said that reviewing courts should call up and examine the full records of the cases they are reviewing rather than making the cursory review that is all too common at present.¹⁹¹

L. Death Penalty

The death penalty has a complex history in Soviet law. It was abolished by Stalin in 1947 and reinstated for a few crimes in the 1950s and for many more by Khrushchev in the early 1960s. Recently there has been a debate over the death penalty in the press. However, since much of this debate has taken place in the Moscow News, which has extremely limited circulation within the Soviet Union, it is unclear if this debate is meant for Soviet or foreign consumption.¹⁹² Criminal law scholar Aleksandr Yakovlev spoke out against the death penalty in an article in the mass circulation magazine Ogonek. Citizens send a massive number of pro-death-penalty letters to the editors in reaction to this article.¹⁹³ Death penalty opponents, speaking out in the Soviet Union under glasnost', have doubted the deterrent effect of the death penalty. Nevertheless it is being used. Why? There are a number of possible explanations: (1) the Politburo may think it does have a deterrent effect, if not on those who commit crimes of passion, at least on those who commit complex embezzlement schemes; (2) the threat of the death penalty may be useful to the investigatory authorities in persuading economic criminals to talk about the roles of their co-conspirators; (3) the public

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may be inspired to work harder if given the impression that thieving officials are being dealt with severely.

There has been discussion in the Soviet press and by Soviet officials on what will happen to the death penalty during the process of the revision of criminal legislation that is now under way. In an interview with Radio Moscow, criminal law specialist Aleksandr Yakovlev predicted that new criminal legislation would abolish the death penalty for economic crimes.¹⁹⁴ Two high Soviet officials, the USSR Minister of Justice, Boris Kravtsov, and the RSFSR Minister of Justice, Aleksandr Sukharev, have stated publicly that the death penalty will be abolished for some crimes. However, neither indicated the crimes for which the penalty would be abolished.¹⁹⁵ The areas mentioned by the most authoritative Soviet spokesmen involve the abolition of the application of the death penalty to women and to persons over sixty. No authoritative Soviet official appears to have publicly mentioned abolition of the death penalty for economic crimes. Indeed, as mentioned above, the death penalty is still being applied very actively for such crimes.

M. Publication of Statistics

Statistics on crime and punishment were freely published in the Soviet Union until the early 1930s, when their publication was stopped under Stalin. In 1986 and 1987, Soviet sociologists and legal scholars wrote a number of articles were published by leading legal journals calling for the systematic publication of crime statistics.¹⁹⁶ In April 1987, the Politburo authorized

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fuller publication of legal statistics.¹⁹⁷ Legal scholars, the Ministry of Justice, and the Moscow police are releasing more statistics. However, there still has been no publication, and no announcement of plans to publish comprehensive statistics of crime and punishment.

XI. Increased Investment in the Criminal Justice System?

A. Introduction

Liberal legal scholars and various groups within the legal profession are asking for a number of changes in the legal system that differ from the changes just discussed in that they would require involve increased investment. This is not a battle of legal liberals versus legal conservatives. No one in the legal profession objects to increased government spending on the legal system. Even outside the profession, no one is suggesting that the changes proposed would be a bad idea. But given the state of the Soviet economy, it is not surprising that governmental authorities have not moved quickly to provide the requested funds.

B. Ending Correspondence Legal Education

A substantial percentage of law students in the Soviet Union are enrolled in correspondence ("zaochnyi") legal education. They do assignments by mail and have only occasional intensive training sessions at the institution in which they are enrolled. As far as correspondence courses go, Soviet correspondence legal education is fairly well organized, with capable instructors and

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good quality materials. However, the quality of the training falls far short of that available in the day or evening divisions of law faculties and legal institutes. A leading Soviet legal scholar has called for the elimination of correspondence legal education and the expansion of regular legal education as a necessary step toward creating a better prepared legal profession.¹⁹⁸ This change would probably lead to better trained lawyers, but would be extremely expensive to implement.

C. More Elegant Courthouses

Most Soviet courthouses are shabby. Soviet legal commentators point out that this shabbiness deprives courts of the necessary dignity and authority. They have called for the refurbishing of old courthouses and the construction of new courthouses. This call has met with some success--work is progressing on a new "Palace of Justice" in Moscow.

D. Orienting Labor Camps Toward Reform Rather Than Plan Fulfillment

The Soviet press has published a number of articles decrying the fact that the emphasis in labor camps appears to be more on the fulfillment of economic production plans than on rehabilitation. The articles have particularly criticized the situation in juvenile camps.¹⁹⁹ However, turning the camps from places of production and punishment into places of education would be an extremely expensive undertaking with no guarantee of results.

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XII. THE FUTURE

A great deal has happened in the Soviet criminal law system under Gorbachev. Many of the changes, however, involve continuation of policies developed in the past and thus cannot be specifically attributed to the current regime. The most important policies that can be directly attributed to his influence include the strengthening of central law enforcement agencies at the expense of local political authorities, the reduction in the use of criminal law against dissidents, a much greater publicity of facts and statistics about crime in the USSR, and a freer debate about the future of Soviet criminal law. So far, none of the changes undertaken has directly required any significant investment of money. One change, however, is a part of policies that could prove very expensive. The significant reduction in the use of criminal sanctions against dissident speech and demonstrations is an element of larger policies of "glasnost" and "demokratizatsia" that have worked well in the Russian heartland, and have played well to the foreign press, but that have unshackled immense grievances of the non-Russian peoples of the Soviet Union.

The promised new Criminal Code and new criminal procedure and corrections legislation may be expected to appear in due course. At least cosmetic and perhaps real reductions will be made in the use of the death sentence. Improvements will be made in the image of Soviet criminal law with new courthouses and increased rights for defense counsel. Experiments will continue

NOTES

¹G. Ovcharenko and A. Cherniak, "Avtoritetsuda," Pravda, May 13, 1987, pp. 3, 6.

²"Iuridicheskie dialogi. Mera otvetstvennosti," Izvestia, March 14, 1986, p. 3.

³I. Usmankhozhaev, "'Pravda' vystupila. Chto sdelano? 'Chestnoe imia'," Pravda, July 25, 1986, p. 3; Sovetskaia Belorussia, June 10, 1986, p. 4, translated as "Resolution of the Belorussian Republic Supreme Soviet," CDSR, Vol. 38, No. 24 (1986), p. 23 (two judges removed for unjust convictions). Leonid Zhukhovitskii, "Pisatel'i obshchestvo. Ostorozhno--pripiska!," Lit. gaz., June 11, 1986, p. 13 (Evpatoria judge, investigator force youths to confess to thefts in effort to improve city's poor crime-fighting statistics.).

⁴I. Tivodar, "A v sud'i--kto?," Pravda, June 10, 1987, p. 3.

⁵Ob uvelichenii shtatnoi chislennosti apparata Verkhovnogo suda SSSR. Ved. SSSR, 1985, no. 32, item 585.

⁶Ved. SSSR, 1978, No. 2, item 24.

⁷Ved. SSSR, 1981, No. 7, item 155.

⁸Ved. SSSR, 1981, No. 48, item 1259.

⁹Ved. SSSR, 1984, No. 28, item 486.

¹⁰Arkadii Vaksberg, "Sud'ba prokurora," Lit. gaz., Oct. 26, 1987, p. 13.

¹¹Po otchetu General'nogo prokurora SSSR o deiatel'nosti prokuratury SSSR po nadzoru za ispolnieniem trebovanii sovetskikh zakonov ob ukreplenii pravoporiadka, okhrane prav i zakonnykh interesov grazhdan. Ved. SSSR, 1985, no. 27, item 480.

¹²A. Rekunkov, "Puti i perspektivy perestroiki v organakh prokuratury," Sotsialisticheskaiia zakonnost', 1987, No. 2, pp. 7-14.

¹³I. Usmankhozhdaev, "'Pravda' vystupila. Chto sdelano? 'Chestnoe imia'," Pravda, July 25, 1986, p. 3; A. Gorbinov and A. Vlasov, "Posle vystupleniia 'Izvestii.' Nakazany za volokitu i popustitel'stvo. Sluchai na 22-m kilometr--No. 156," Izvestia, July 23, 1986, p. 3; "Posle vystupleniia 'Izvestii.' Stol' dolgoe ozhidanie," Izvestia, Aug. 5, 1987, p. 2.

¹⁴Postanovlenie Prezidiuma Verkhovnogo Soveta SSSR o khode vypolneniia Postanovleniia Verkhovnogo Soveta SSSR "Po otchetu

General'nogo prokurora SSSR o deiatel'nosti prokuratury SSSR po nadzoru za ispolneniem trebovaniia sovetskikh zakonov ob ukreplenii pravoporiadka, okhrane prav i zakonnykh interesov grazhdan." Ved. SSSR, 1987, no. 13, item 167:

Procurators lack the necessary principledness in the struggle with phenomena of localism, departmentalism, with bureaucratism and abuses by officials causing harm to the interests of society and the rights of citizens. There still are intolerable cases of ignoring the requirements of law in the initiation of criminal cases, the arrest and detention of citizens, of baseless bringing of individual persons to responsibility.

¹⁵Ob izmenenii v strukture Prokuratury Soiuza SSR. Ved. SSSR, 1986, no. 13, item 217.

¹⁶G. Alimov, "Brifing v MVD SSSR," Izvestia, May 27, 1987, p. 6.

¹⁷Sovetskaia Kirgizia, July 7, 1987. According to Radio Liberty, this issue reported that the Kazakhstan Republic Minister of Internal Affairs in Kazakhstan, Dzhusupbek Akmatov, had been replaced by a high-ranking senior criminal investigator, Viktor Goncharov. The newspaper said Akmatov had been replaced because of "serious inadequacies in his work." A typical isolated report of a crackdown was a story about the firing of police officers .

and investigators in the Udmurt Autonomous Republic. "V komitete Partiinogo Kontroliia pri Ts K KPSS," Pravda, Dec. 8, 1987, p. 3. Another typical story told how a court sentenced the former chief of the Volgograd Oblast police, General Ivanov, to ten years in prison for taking bribes as part of a scheme to cover up thefts from industrial enterprises. The court also imposed severe sentences on others involved. Krasnaia zvezda, quoted in Radio Liberty, The USSR This Week, Dec. 11, 1987, at Dec. 5.

¹⁸Konstantin Simis, USSR: The Corrupt Society (New York: Simon & Schuster, 1982), pp. 180-204.

¹⁹Ibid., pp. 96-125.

²⁰Kazakhstanskaia pravda quoted in a Reuters dispatch summarized in Radio Liberty, The USSR This Week, July 24, 1987, at July 21.

²¹"Iz zala suda. Voru vora," Pravda, Aug. 31, 1987, p. 8.

²²"O rabote Sovetov narodnykh deputatov Kaluzhskoi oblasti po obespecheniiu okhrany obshestvennogo poriadka i bor'be s pravonarusheniami," Ved. SSSR, 1986, No. 52, item 1047; Pravda, Dec. 30, 1986, p. 2.

²³Kazakhstanskaia pravda, quoted in Reuters dispatch summarized in Radio Liberty, The USSR This Week, July 24, 1987, at July 21; G. Alimov, "Brifing v MVD SSSR," Izvestia, May 27, 1987, p. 6.

²⁴"Glasno o glasnosti. Kuda smotrit militsiia. Beseda s ministrom vnutrennykh del Belorusskoi SSSR V. A. Piskarevym," Izvestia, April 16, 1985, p. 3.

²⁵Dmitrii Likhanov, "Bronnirovannye mundiry," Ogonek, 1987, No. 7, pp. 30-31.

²⁶O.S. Ioffe and P.B. Maggs, Soviet Law in Theory and Practice (New York: Oceana, 1983), p. 244.

²⁷Sotsialisticheskaia industriia, Feb. 1, 1987, concluding a two part series, summarized in Radio Liberty, The Soviet Union This Week, Feb. 6, 1987, at Feb. 1. Many further details were provided in "Zakrytaia tema," Komsomol'skaia pravda, Nov. 11, 1987, p. 4.

²⁸Radio Liberty, The Soviet Union This Week, Aug. 21, 1987, at Aug. 18.

²⁹A. Illesh, "Militsia i glasnost'," Izvestia, Dec. 28, 1987, p. 4.

³⁰"V komitete Partiinogo Kontroliia pri TsK KPSS, Pravda, Jan. 20, 1988, p. 2, col. 1.

³¹"Vozvrashchais' k napechatannomu. 'Posle anonimki'," Izvestia, June 13, 1986, p. 6.

³²V. Loginov, "Pri svete pravdy. S Plenuma Ts K Kompartii Turkmenistana," Pravda, Oct. 24, 1986, p. 2.

³³E. Kondratov, "Glasno o glasnosti. Tak gde zhe byl prokuror," Izvestia, Dec. 2, 1986, p. 3.

³⁴For general background, see Peter H. Solomon, Jr., "Soviet Politicians and Criminal Prosecutions: The Logic of Party Intervention," Soviet Interview Project, University of Illinois at Urbana-Champaign, Working Paper #33 (1987). Also see Louise Shelley, "The Political Functions of Soviet Courts: A Model for One Party States," Review of Socialist Law, 13 (1987), 263.

³⁵Kazakhstanskaia pravda, quoted in an October 13, 1987, Reuters dispatch, reported in Radio Liberty USSR This Week, Oct. 16, 1987, at Oct. 13.

³⁶V.I. Terebilov, "XXVII S"ezd KPSS i zadachi po

sovershenstovaniiu sudebnoi deiatel'nosti," BVS SSSR, 1986, No. 3, p. 4.

³⁷A. Rekunkov, "Puti i perspektivy perestroiki v organakh prokuratury," Sots. zak., 1987, No. 2, pp. 7-14, at p. 9.

³⁸Postanovlenie Prezidiuma Verkhovnogo Soveta SSSR o khode vypolneniia Postanovleniia Verkhovnogo Soveta SSSR "Po otchetu General'nogo prokurora SSSR o deiatel'nosti prokuratury SSSR po nadzoru za ispolneniem trebovaniia sovetskikh zakonov ob ukrepleniia pravoporiadka, okhrane prav i zakonnykh interesov grazhdan." Ved. SSSR, 1987, no. 13, item 167.

³⁹Po otchetu General'nogo prokurora SSSR o deiatel'nosti prokuratury SSSR po nadzoru za ispolneniem trebovaniia sovetskikh zakonov ob ukrepleniia pravoporiadka, okhrane prav i zakonnykh interesov grazhdan. Ved. SSSR, 1985, no. 27, item 480.

⁴⁰"V Tsentral'nom Komitete KPSS. O merakh po povysheniiu roli prokurorskogo nadzora i ukrepleniia sotsialisticheskoi zakonnosti i pravoporiadka," Pravda, June 19, 1987, p. 1.

⁴¹"V Tsentral'nom Komitete KPSS. O dal'neishem ukrepleniia sotsialisticheskoi zakonnosti i pravoporiadka, usilenii okhrany prav i zakonnykh interesov grazhdan," Pravda, Nov. 30, 1986, pp. 1-2.

⁴²"V Politbiuro TsK KPSS," Pravda, Oct. 3, 1986, p. 1;
Izvestia, Oct. 4, 1986, p. 1.

⁴³See George Ginsburgs, "The Soviet Judicial Elite: Is it?," Review of Socialist Law, 11 (1985), 293.

⁴⁴"Iuridicheskie dialogi. Pravo i demokratiia," Izvestia, Oct. 4, 1986, p. 3. (Iu. Feofanov interviews Academician Vladimir Kudriavtsev, Director of the Institute of State and Law of the Academy of Sciences of the USSR.)

⁴⁵V. M. Savitskii, "Pravosudie i perestroika," Sovetskoe gosudarstvo i pravo, 1987, No. 9, p. 29 at p. 30.

⁴⁶"V sudebnykh kollegiiakh Verkhovnogo Suda SSSR," VVS SSSR, 1987, No. 1, p. 43.

⁴⁷"'Moral' i pravo. V pol'zu spravedlivosti," Lit. gaz., Sept. 24, 1986 p. 13. Interview with criminal law scholar Alekandr Maksimovich Iakovlev of the Institute of State and Law.

⁴⁸"Zakon est' zakon," Pravda, March 25, 1987. The Procurator General stated:

The procuracy and other law enforcement agencies have conducted considerable work in recent years in the struggle against report-padding, bribery, and other abuses. Their attention has been concentrated primarily on the exposure of the organizers of these crimes and on a deeper study of the mechanisms by which they have been committed. There should be no repetition anywhere of a situation like that which developed in the recent past in Uzbekistan. As the former Chairman of the Council of Ministers of Uzbekistan, Khudaiberdyev, openly recognized, as the result of the faulty style of work of the republic's leadership, an atmosphere gradually developed of general deception and report-padding.

Bribery that paralyzed the Trade Administrations of Moscow and Rostov flourished on the same faulty basis of lack of oversight and lack of responsibility.

⁴⁹Iurii Lutin, "Zhizn' za 'kirpichom'," Ogonek, 1987, No. 16, p. 6.

⁵⁰Kazakhstanskaia pravda quoted in Reuters, as summarized in Radio Liberty, The USSR This Week, Oct. 16, 1987, at Oct. 11.

⁵¹Pravda vostoka, Nov. 22, 1985, pp. 2-3, translated as "Conform to the Times.--How the Decisions of the 16th Plenary

Session of the Uzbekistan Communist Party Central Committee Are Being Implemented," CDSP, Vol. 37, No. 51 (1986), p. 5.

⁵²"V Sudebnoi kollegii po ugovnym delam Verkhovnogo Suda SSSR," BVS SSSR, 1986, No. 6, p. 28; "B Verkhovnom sude SSSR," Pravda, Aug. 28, 1986, p. 6; E. Zhanov, "Sudebnyi ocherk. Delo o khlopke," Izvestia, Sept. 5, 1986, p. 6 and (Part II) Sept. 6, p. 3.

⁵³"V Verkhovnom Sude SSSR," Izvestia, June 4, p. 6.

⁵⁴"V Sudebnoi kollegii po ugovnym delam Verkhovnogo Suda SSSR," BVS SSSR, 1987, No. 4, p. 22. According to the obverse of the title page, 167,250 copies of this issue were printed, which would be enough for an extremely high percentage of the legal profession to receive personal copies.

⁵⁵Zaria vostoka, June 2, 1985, pp. 1-2; Zaria vostoka, Dec. 5, 1985, p. 1; V Prokulture SSSR. Po normam berezhlivosti," Pravda, May 12, 1986, p. 3.

⁵⁶"S chernogo khoda," Izvestia, July, 16, 1984, p. 6; G. Filimonov, "Shal'nye den'gi. Zametki iurista," Pravda, Nov. 30, 1985, p. 3; A. Illesh, "Razmyshleniia posle suda. V kontse chernogo khoda," Izvestia, Feb. 6, 1986, p. 6.

⁵⁷Iurii Feofanov, "Kto u telefona: razmyshleniia v sudebnom zale," Izvestia, Jan. 16, 1988, p. 3.

⁵⁸Arkadii Vaksberg, "Moral' i pravo. Sud'ba prokurora," Lit gaz., Oct. 26, 1987, p. 13.

⁵⁹V. Kassis and L. Kolosov, "Iz zala sudy. Razplata," Izvestia, Aug. 2, 1984, p. 6.

⁶⁰Moskovskaia pravda, Sept. 29, 1985, p. 3; "Iuridicheskie dialogi. Vokrug prilavki," Izvestia, May 30, 1986, p. 3.

⁶¹"v Sudebnoi kollegii po ugovnym delam Verkhovnogo Suda SSSR," BVS SSSR, 1986, No. 5, p. 21.

⁶²Businessman's Moscow (Delovaia Moskva), '84 (Moscow: V/O Vneshtorgreklama, 1984), p. 145.

⁶³"v Sudebnoi kollegii po ugovnym delam Verkhovnogo Suda SSSR," BVS SSSR, 1987, No. 4, p. 22; see also TASS quoted in Radio Liberty, The USSR This Week, June 19, 1987, at June 15.

⁶⁴Krasnaia zvezda, around April 3, 1987.

⁶⁵"v Sudebnoi kollegii po ugovnym delam Verkhovnogo Suda SSSR," BVS SSSR, 1985, No. 5, p. 23.

66"V sudebnoi kollegii po ugovnym delam Verkhovnogo Suda SSSR," BVS SSSR, 1986, No. 1, p. 37.

67"V Sudebnoi kollegii po ugovnym delam Verkhovnogo Suda SSSR," BVS SSSR, 1986, No. 3, p. 41.

68"V Sudebnoi kollegii po ugovnym delam Verkhovnogo Suda SSSR," BVS SSSR, 1986, No. 4, p. 18.

69"V Sudebnoi kollegii po ugovnym delam Verkhovnogo Suda SSSR," BVS SSSR, 1987, No. 1, p. 39.

70Reuters and UPI, Feb. 3, 1987, quoted in Radio Liberty, The USSR This Week, Feb. 6, 1987.

71"Ironicheskii detektiv. Pazplata za rotozeistvo," Izvestia, May 29, 1987, p. 6.

72Selskaia zhizn', March 24, 1985, p. 4.

73"Juridicheskie dialogi. Ot vygovora v prikaze do stat'i UK," Izvestia, May 29, 1986, p. 3.

74V. Itkin, "Uroki sudebnogo dela. Ekzamen vziatkoi," Izvestia, June 3, 1985, p. 6.

⁷⁵Sovetskaia Rossiia, March 22, 1985, p. 2.

⁷⁶Iu. Feofanov, "Sudebnyi ocherk. Katastrofa v 'mednykh trubakh'," Izvestia, Oct. 9, 1985, p. 6.

⁷⁷Sotsialisticheskaiia industriia, summarized in Radio Liberty, The USSR This Week, June 26, 1987, at June 20.

⁷⁸A. Vorotnikov, "Iz zala suda: Za proekt--vziatku," Pravda, Dec. 8, 1987, Vol. 39, No. 49 (1988), p. 18.

⁷⁹E. Kondratov, "Glasno o glasnosti. Tak gde zhe byl prokuror," Izvestia, Dec. 2, 1986, p. 3; M. Odinets and M. Poltoranin, "Vozvrashchaias k napechatannomu. Za poslednei chertoi," Pravda, Jan. 4, 1987, p. 3; V. Chebrikov, "Posle vystupleniia 'Pravdy.' Za poslednei chertoi," Pravda, Jan. 8, 1987, p. 1; A. Vlasov, "'Pravda' bystupila, shto sdelano. 'Za poslednoi chertoi,'" Pravda, January 30, 1987, p. 2; Pravda Ukrainy, quoted by Reuters, summarized in Radio Liberty, The USSR This Week, May 29, 1987, at May 28 (The head of the KGB in the Ukraine, Stepan Mukha, retired following a scandal over the false arrest of a journalist in the Ukrainian city of Voroshilovgrad. Mukha was been replaced by Nikolai Golushko.); Radio Moscow-1, 19:30, July 16, 1987, as reported in Radio Liberty, The USSR This Week, July 17, 1987, at July 16. ("The Central Committee of the

Ukrainian Communist Party removed former Prime Minister Aleksandr Lyashko and former Ukrainian KGB chief Stepan Mukha from the Ukrainian Party Central Committee Poliburo. Lyashko, who was a full member of the Politburo, retired as prime minister on July 10 at the age of seventy-one. Mukha, who was a candidate member, was replaced as KGB chief in the Ukraine earlier this year following the disclosure of KGB involvement in the wrongful arrest of a Soviet journalist.") B. Plekhanov, Meditzinskaia gazeta, Oct. 16, 1987, p. 2, translated as "Looking Truth in the Eye: REPRISAL.--A Story of How a Doctor Was Pressed to Commit Perjury," CDSP, Vo. 39, No. 43, p. 23 (Investigative reporter Berkhin dies. Story of attempt to "frame" the Krenins for pornography to make them incriminate Berkhin.).

⁸⁰Amy Knight, "The Soviet Security Police on the Eve of Its Seventieth Anniversary," Radio Liberty Report 484/87, December 8, 1987.

⁸¹Nicholas Lampert, Whistleblowing in the Soviet Union: Complaints and Abuses Under State Socialism (London: Macmillan, 1985).

⁸²Peter H. Solomon, Jr., "Soviet Politicians and Criminal Prosecutions: The Logic of Party Intervention," Soviet Interview Project, University of Illinois at Urbana-Champaign, Working Paper #33 (1987).

⁸³Postanovlenie No. 9 Plenuma Verkhovnogo Suda SSSR ot 18 apreliia 1986 "O premenenii sudami zakonodatel'stva ob otvetstvennosti dolzhnostnykh lits za narushenie poriadka rassmotreniia predlozhenii, zaiavlenii, zhalob grazhdan i presledovanie za kritiku," BVS SSSR, 1986, No. 3, p. 25.

⁸⁴L. Grafova, "Chto zhdet paskvianta-inkognito i zazhishchika kritiki," Lit. gaz., Jan. 1, 1986, p. 11.

⁸⁵Sovetskaia Moldavia as quoted by Reuters, May 28, 1987, summarized in Radio Liberty The USSR This Week, June 5, 1987, at May 30. M. Volkov, "Nepreklonnaia Khalima: Proisshestvie v Chardzhou kotoroe vzvolnovalo gorod," Pravda, Dec. 28, 1987, p. 4 (Crime and corruption fighting Party official murdered. Province Party secretary resigns for "health" reasons.).

⁸⁶v. Prokushev, "Partiinaia zhizn': chto za konfliktom 'Presleovanie prekratit' . . .," Pravda, May 6, 1987, p. 2.

⁸⁷Radio Moscow-1 (19:00) reported in Radio Liberty, The USSR This Week, June 12, 1987, at June 10. (Party officials in the autonomous republic of Bashkiria asked the CPSU Central Committee to oust Midhat Shakirov as their first secretary. The Party Committee decided it was impossible for Shakirov to keep his job

after they discussed an article about Bashkiria which appeared in Pravda on May 6.).

⁸⁸Radio Moscow-2 (21:00), reported in Radio Liberty, The USSR This Week, June 26, 1987, at June 23.

⁸⁹Decree of the Plenum of the Supreme Court of the Azerbaidzhanian SSR of July 30, 1985, BVS SSSR, 1986, No. 4, p. 30.

⁹⁰V. Prokushev, "Partiinaia zhizn': chto za konfliktom 'Presleovanie prekratit' . . .," Pravda, May 6, 1987, p. 2.

⁹¹E. Maksimova i I. Martkovich, "Bez zashchiti," Izvestia, July 11, 1987, p. 1.

⁹²A. Novikov, S. Razin, and M. Mishin, "Zakrytaia tema," Komsomol'skaia pravda, Nov. 11, 1987, p. 4.

⁹³Radio Liberty, The USSR This Week, Aug. 21, 1987, at Aug. 18.

⁹⁴New York Times, March 21, 1988, p. 1.

⁹⁵"Primenenie sudami zakonodatel'stva, napravlennogo na bor'bu s p'ianstvom i alkogolizmom," BVS SSSR, 1986, No. 4, p. .

35; Postanovlenie No. 15 Plenum Verkhovnogo Suda SSSR ot 1 noiabria 1985 g., "O praktike primeneniia sudami zakonodatel'stva, napravlennogo na usilenie bor'by s p'ianstvom in alkogolizmom, BVS SSSR, 1986, No. 1, p. 3; S.I. Gusev, "O praktike primeneniia sudami zakonodatel'stva, napravlennogo na usilenie bor'by s p'iantstvom i alkogoizmom," BVS SSSR, 1986, No. 1, p. 27.

⁹⁶"Ostanovit' samogonshchika. Interv'iu s ministrom vnutrennykh del SSSR A.V. Vlasovym, Izvestia, March 11, 1987, p. 3.

⁹⁷V. Pavlenko, "Vsem mirom protiv p'ianstva," Trud, July 19, 1987, p. 4; "Reid 'Izvestii' Put' k trezvoi zhizni," Izvestia, May 12, 1987, p. 3; "Obshchimi usiliiami: možno i nuzhno vesti bor'bu za trezvoi obraz zhizni," Izvestia, Dec. 10, 1985, p. 3.

⁹⁸"Ostanovit' samogonshchika. Interv'iu s ministrom vnutrennykh del SSSR A.V. Vlasovym, Izvestia, March 11, 1987, p. 3.

⁹⁹V. M. Savitskii, "Pravosudie i perestroika," Sovetskoe gosudarstvo i pravo, 1987, No. 9, p. 29 at p. 30.

¹⁰⁰"Ob otveststvennosti za samogonovarenie," Ved. SSSR, 1987, no. 22, item 313; "O vnesenii izmenenii i dopolnenii v nekotorye zakonodatel'nye akty RSFSR," Ved. RSFSR, 1987, no. 24, item 839; O poriadke primeniia stat'i 1 Ukaza Prezidiuma Verkhovnogo Soveta SSSR "Ob otvetstvennosti za samogonovarenie," Ved. SSSR, 1987, No. 25, item 350.

¹⁰¹Edict of May 28, 1986, O vnesenii izmenenii i dopolnenii v nekotorye zakonodatel'nye akty RSFSR, Ved. RSFSR, 1986, No. 23, item 638.

¹⁰²Iu. Sergeev, in Medit'sinskaia gazeta, April 9, 1986, p. 3, translated as "Legal Knowledge: Narcotics.--Liability for Illegal Use and Theft," CDSP, Vol. 38, No. 14 (1986), p. 28.

¹⁰³"Kovarnye grammy durmana. Na voprosy chitatelei otvechaet ministr vnutrennykh del SSSR," Pravda, Jan. 6, 1987, p. 3.

¹⁰⁴"Opasnoe pristrastie. Narkotiki i narkomany: tri aspekta problemy," Lit. gaz., Aug. 20, 1987, p. 11.

¹⁰⁵G. Alimov, "Poslednie plantaqt'sii. Priniato reshenie o polnom prekrashchenii posevov maslichnogo maka v strane," Izvestia, Oct. 6, 1987, p. 2; O zapreshchenii poseva i

vyrashchivaniia grazhdanami maslichnogo maka, SP SSSR, 1987, No. 40, item 128.

¹⁰⁶A. Illesh, "Iz kompetentnykh istochnikov: Kak militsiia boretsia s narkomaniei," Izvestia, May 13, 1987, p. 6; A. Illesh and E. Shestinskii, "Iz kompetentnykh istochnikov: Eshche raz o narkomanii," Izvestia, Nov. 23, 1987, p. 4.

¹⁰⁷V. Shcherban', "Reportazh s pristrasiem: durman," Izvestia, June 27, 1986, p. 6.

¹⁰⁸L. Kislinskaia, "'Legkoe povedene' na vesakh pravosudiia," Sovetskaia Rossiia, March 12, 1987, p. 4; G. Kurov, "Uspoved' 'Nochnoi babochki,'" Sovetskaia Rossiia, March 19, 1987, p. 4; G. Nerobeyeva, Sovetskaia Belorussia, Dec. 6, 1987, p. 2, translated as "On the Subject of Morality: We Shouldn't Avert Our Eyes," CDSP, Vol. 39, No. 50 (1988), p. 27 (prostitution in student dormitories).

¹⁰⁹"O vnesenii izmenenii i dopolnenii v zakonodatel'stvo RSFSR ob otvetstvennosti za administrativnye pravonarusheniia," Ved. RSFSR, 1987, No. 23, item 800.

¹¹⁰"v Politbiuro TsK KPSS," Pravda, August 14, 1987, p. 1.

111 "O merakh profilaktiki zarazheniia virusom SPID," Ved. SSSR, 1987, No. 34, item 560.

112 "O vnesenii izmenenii i dopolnenii v Osnovy ispravitel'no-trudovogo zakonodatel'stva Soiuza SSR i soiuznykh respublik," Ved. SSSR, 1987, No. 41, item 679; "O vnesenii izmenenii i dopolnenii v Ugolovnoi, Ugolovno-protsessual'nyi i Ispravitel'no-trodovoi kodeksy RSFSR," Ved. RSFSR, 1987, No. 43, item 1501.

113 v. Pilipenko, "Osobyi sluchai: Videofirmach," Komsomol'skaia pravda, Sept. 20, 1985, p. 4; N. Kishchik and E. Bostrukhov, "Videouroki," Izvestia, Oct. 15, 1985, p. 3.

114 "O vnesenii dopolnenii v Ugolovnyi kodeks RSFSR," Ved. RSFSR, 1986, No. 32, item 904.

115 "Tamozhnia," Pravda, Aug. 24, 1987, p. 4.

116 Postanovlenie No. 7 Plenum Verkhovnogo Suda SSSR, "O praktike primeneniia sudami zakonodatel'stva po delam o pripiskakh i drugikh iskazheniiakh otchetnosti o vypolnenii planov," BVS SSSR, 1985, No. 4, p. 10.

117 "Primenenie sudami zakonodatel'stvo ob otvetstvennosti za

pripiski i drugie iskazheniia otchetnosti o vypolnenii planov (Obzor sudebnoi praktiki), BVS SSR, 1985, No. 6, p. 35.

¹¹⁸Postanovlenie No. 1 Plenuma Verkhovnogo Suda SSSR ot 5 apreliia 1985 g. O praktike primeneniia sudami zakonodatel'stva ob otvetstvennosti za vypusk iz promyshlennykh predpriatii nedobrokachestvennoi, nestandartnoi ili nekomplektnoi produktsii i za vypusk v prodazhu takikh tovarov v torgovykh predpriatiiakh, BVS SSSR, 1985, No. 3, p. 13.

¹¹⁹S.I. Gusev, "O praktike primeneniia sudami zakonodatel'stva ob otvetstvennosti za vypusk iz promyshlennykh predpriatii nedobrokachestvennoi, nestandartnoi ili nekomplektnoi produktsii, a takzhe za vypusk v prodazhu takikh tovarov v torgovykh predpriatiiakh, BVS SSSR, 1985, No. 3, p. 33.

¹²⁰I. Kruglianskaia, "Doroga," Izvestia, April 18, 1985, p. 3; "Posle kritiki. Kogda oslablen kontrol'," Pravda, April 16, 1986, p. 3; I. Kruglianskaia, "Vozvrashchaias' k napechatannomu. Proverki na dorogakh," Izvestia, May 31, 1987, p. 3.

¹²¹"O chestnom i nechestnom ruble beseduem s General'nym prokurorom SSSR A. Rekunkovym korrespondent 'Izvestii'," Izvestia, June 2, 1986, p. 3.

122"v sudebnykh kollegiiakh Verkhovnogo Suda SSSR," BVS SSSR, 1987, No. 1, p. 43.

123Case of O.P. Ovchinikova and A.S. Novichikhina, BVS SSSR, 1987, No. 2, p. 22.

124Ob utverzhdenii Tipovogo polozheniia o brigadnom khozraschete i brigadnom podriade, Tipovogo polozheniia o kollektivnom podriade na proizvodstvennykh uchastkakh ob"edinenii, predpriiatii i organizatsii, Biulleten' Goskomtruda, 1987, no. 3, p. 51.

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