LAW IN THE SOVIET WORKPLACE: THE LAWYER'S PERSPECTIVE

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The USSR can survive without the rule of law which characterizes most western democracies, because the force of Soviet law lies in individuals, rather than codified regulations. The *iuriskonsult* (legal advisor), who personalizes legal authority, increases the stability of the system and provides tangible benefits for the economic and social order. Many Soviet citizens find solutions to their legal problems as a result of the *iuriskonsult*'s assistance, and this convinces them of the justness of the Soviet system. *Iuriskonsulty* can increase the economic efficiency of an organization, provide financial gains for workers, and improve the quality of labor relations. The impact of the lawyer on his organization is determined by the latitude accorded him by his manager.

I. INTRODUCTION

This study of the application of administrative, economic, and labor law by Soviet legal advisors (*iuriskonsulty*) and arbitrators (*arbitry*) is based on a unique body of data—interviews with 25 Soviet emigre lawyers in the United States, Canada, and Israel—as well as on the Soviet and western literature. The *iuriskonsulty* and arbitrators interviewed are worthy of more than the minimal attention paid them by western and Soviet scholars.[1] As individuals with professional exposure to the intricacies of the operations of Soviet enterprises, and as lawyers trained in attention to detail, they

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[1] Only two articles have been written by western scholars on the subject of *iuriskonsulty*. Giddings (1975) provides a good analysis of the legislation affecting *iuriskonsult* work. Luryi (1979) discusses the history of *iuriskonsult* work, the fundamental responsibilities of legal advisors, and personnel problems. The first Soviet book on *iuriskonsulty* was published by Shor (1960), and another dozen have been published since then. See, for example, Chudnov (1970; 1977). Articles on *iuriskonsulty* are published regularly in the journal "Khozaistvo i Pravo," but less scholarly attention is devoted to legal advisors in the major law journals, "Sovetskoe Gosudarstvo i Pravo," "Sovetskaia Iustitsiia," and "Sotsialisticheskaia Zakonnost."

are excellent sources of information on their own work as well as on the administration and operation of Soviet organizations that influence the daily lives of most of the Soviet population.

Iuriskonsulty and Arbitrators

Iuriskonsulty are the lawyers employed on a full or part-time basis by ministries, local Soviet enterprises, or educational and medical institutions. Among the most important of their numerous responsibilities are ensuring that the law is upheld in all spheres of organizational operations, improving the economic indicators of their enterprise, and providing legal assistance to employees of their organization and its trade union (Aristakov *et al.*, 1970: 13-24). The other group of lawyers interviewed, *arbitry*, henceforth known as arbitrators, perform a very different function from that of western arbitrators. They act as judges in "a system of economic courts with powers of both a judicial and administrative character" (Berman, 1963: 124). It is to them that *iuriskonsulty* must turn to resolve all economic disputes concerning their organization. The imperfections of the centralized state planning apparatus make economic disputes between enterprises frequent. Arbitration is not a court of last resort, but is a central component of the economic life of a Soviet enterprise. An analysis of the work of *iuriskonsulty* and arbitrators provides insights into such central areas of Soviet society as industrial production, the operation of enterprises, labor relations, the first and second economies (the second being the illegal economy), and the daily life of the Soviet working population.

Lawyers are mediators between the individual, the institution, and the established power structure. They make the Soviet system more personal, humanize the contacts between individuals and the established order, and find loopholes that make the encompassing legal system less rigid. Not all lawyers succeed in personalizing the Soviet legal system. Some lack the personal prerequisites, and others are not given the necessary latitude by their administrators. But the successful "problem solver" is the lawyer who succeeds in molding personal and institutional needs by the force of his or her own intelligence and character.

This study of a limited professional group has implications that transcend the experiences of the 25 individuals included in the study. These lawyers assume a role as the personalizers of

authority[2] that is not unique in Russian history. The third section and the corps of gendarmes in the reign of Nicholas I assumed such a role. This historical precedent as well as other later examples from Russian history suggests that there has been no absolute rule of codified law in Russia or the Soviet period as in the European tradition. Not only has the Russian and Soviet leadership often chosen to disobey the law, but those responsible for enforcing and upholding the law have acquired a force of their own independent of the institutions they represent.

The personalized approach to law described in this article exists because Russian and Soviet society, unlike that of Western Europe, does not have a deeply ingrained respect for the written law. In the European context, institutions are more important than individuals, but in the USSR individual personalities have prevailed over the force of law.

This study is one of the first[3] to make use of the information available from the third wave of emigration from the USSR, which began on a large scale in the early 1970's and continues at a reduced rate today. Several hundred former Soviet lawyers now reside in the West out of a total emigre population of approximately 250,000-300,000 persons.

The principal conclusions are that active lawyers become important problem-solvers in their enterprises. They become indispensable to the director and provide important financial gains for the workers. Effective lawyers also help improve labor relations and the economic efficiency of their organization. Unfortunately, many lawyers take a purely bureaucratic approach to their work, perhaps because of their training and work environment. But the last decade has seen greater appreciation by the Soviet leadership, and by legal professionals themselves, of the services that such lawyers can provide. Economic and administrative law can assume a vital rather than a merely formalistic role. Widespread evasion of

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[2] The lawyers interviewed did not themselves suggest that they were personalizers of authority. I reached this conclusion after analyzing the body of collected material. Soviet legal literature suggests that *iuriskonsulty* humanize the law concerning workers' rights. See, for example Chechik and Kiktenko (1980: 29) who wrote, "If the worker has a legal demand, he should not leave our office without being convinced that his right will be fulfilled . . . . We must remove from our vocabulary—'we don't know what to advise.'" The Soviet literature does not suggest that *iuriskonsulty* introduce flexibility into the economic law. See Zakharov (1980) and Strelkov (1978) for discussion of the official role of lawyers in helping the Soviet economy.

[3] See Gabriel (1980). Other scholars who have conducted research among Soviet emigres on life in the USSR are Zvi Gittelman, George Breslauer, Rasma Karklins, and Michael Swafford.

the law by Soviet citizens, however, makes it difficult for law to realize its potential role in Soviet society, even though the long-range benefits of its greater observance would probably be advantageous for both Soviet managers and workers.

Management, lawyers, and workers usually obey the letter of the law when governmental interests are at stake. When personal financial or career interests are at stake, all participants in the workplace, even including on occasion the *iuriskonsult* of the enterprise, may evade the law. The over-regulation of Soviet society has forced individuals to find creative means to circumvent the law. This practice is not confined to the Soviet Union, as the work of Kurczewski and Frieske in Poland indicates (1977: 499). The valued lawyer, like his counterpart in the west, is the individual who finds legal loopholes for his employer. Finding the legal loophole only sometimes works to the mutual advantage of the state organization and the manager. But as all Soviet enterprises are state-owned, most Soviet citizens fail to identify with the interests of the state. Exploitation of the legal loophole often benefits only the individuals who manage or are employed by the enterprise. Circumvention rather than observance of the law all too often remains the norm in the Soviet workplace.

II. THE INTERVIEWS

From May, 1980, to April, 1981, I interviewed emigre *iuriskonsulty* and arbitrators in several cities in the United States, Canada, and Israel. The demographics of the Soviet emigration have produced very different immigrant populations on the two continents. Baltic, Central Asian, and Caucasian Jews go primarily to Israel, while other Soviet emigrants have come more recently to the United States and Canada.

Prior to the interview, almost all the lawyers completed a biographical questionnaire which solicited information on their age, nationality, social background, education, Komosomol and Party membership, marital status, work experience, income, and reasons for emigration. Most participants in the study also received a lengthy set of questions to prepare them for the hour-and-a-half to three-hour interview. These questions informed the interviewee that I was knowledgeable about Soviet society, administrative and economic law, thus forestalling the lawyer's desire to lecture about basics.

The individuals participating in the study were paid an amount determined primarily by the length of the interview and the uniqueness of their experience. The payments

generally ranged from $50 for a short interview in Israel to $175 for a lengthy interview in the United States.

All interviews were tape recorded. Interviewees were asked about the nature of the workplace, the working conditions, the responsibilities, and the problems of the *iuriskonsult* profession. Legal advisors were asked to describe their most common activities, their use of arbitration, the numbers and successes of their suits, their relationship with management, salaries and illegal compensation, and the extent and nature of economic crimes at enterprises where they had been employed. Broader questions probed the *iuriskonsult*'s role as an intermediary between management and workers.

Arbitrators were asked a narrower group of questions about their work conditions, job responsibilities and specialization, autonomy, party influence on their work, and the possible impact of corruption. They were also asked to comment on the competence of legal advisors and the impact they had on arbitrators' decision making.

III. CHOOSING THE SAMPLE

The individuals selected for the study were located through personal recommendations, the files of a placement service for emigre professionals, or advertisements in emigre newspapers. I eliminated from consideration those who responded carelessly, appeared motivated primarily by the prospect of financial remuneration, or exaggerated their career accomplishments. Aware that I could not obtain a representative sample of *iuriskonsulty* from the present emigration, I deliberately chose the most qualified lawyers. Some lawyers, both male and female, without broad experience were also selected to learn more about the impact of sex and length of employment on job performance.

The fact that my sample was almost entirely Jewish introduced several specific biases. Soviet career opportunities for Jews are limited. Fewer enterprises hire Jews as *iuriskonsulty* and arbitrators, and Jews have less chance of professional advancement. Because Jews are under close scrutiny, more legal advisors were observers rather than participants in the illegal activities of their respective enterprises.

More serious problems were introduced by the fact that this was a sample of emigres whose decision to leave the USSR presumably was motivated, in part, by hostility toward the Soviet system. Observations of only a limited section of the

sample are thus treated with caution, while those substantiated by a majority of this diverse group of lawyers are assigned more credibility. The strongest testament to the validity of my findings is the similarity of responses by lawyers of different ages and from most republics of the USSR, and the consistency of their responses with information provided in published Soviet sources.

I interviewed 25 individuals, aged 27 to 77, who worked either full or part-time as *iuriskonsulty* or arbitrators. Together these individuals had over 400 years of experience in almost all republics of the Soviet Union, dating back to the early 1930's.[4] The sample had been employed in major cities, towns, and rural settlements.

The lawyers had worked in many different kinds of organizations. They had been employed as legal advisors for an *ispolkom* (city government), for hospitals, educational institutions, orchestras, theatre companies, collective farms, voluntary public organizations (such as the union of writers, artists, and composers), a labor camp factory, cooperative organizations, as well as ministries for heavy and light industry. The only kind of organizations that were absent from my sample were military, closed institutions that handled secret materials, and trade organizations that dealt with foreign countries. While certain types of organizations were represented by only one emigre lawyer, the major categories of heavy and light industry were represented by enough lawyers to corroborate each other's observations. Thus, what follows is, in my judgment, a generally accurate portrayal of the work of *iuriskonsulty* and arbitrators in the Soviet workplace.

IV. WORKING CONDITIONS OF *IURISKONSULTY* AND ARBITRATORS

The working conditions of *iuriskonsulty* do not make their job attractive to ambitious young lawyers. It is primarily desk work, at low pay with limited job security and few prospects of significant promotion. Consequently, tens of thousands of jobs for *iuriskonsulty* remain unfilled throughout the USSR.

Few lawyers begin *iuriskonsult* work with any prior training in the field of administrative, economic, or labor law.

[4] Ten of the 25 lawyers were female; all but three of them were Jewish. They had been employed in all the Baltic and Slavic republics as well as Moldavia, several republics in Central Asia, and the Transcaucasus. Siberia and several autonomous republics were also included, as well as such remote regions as Kamchatka, Magadan, and Bilibino.

These subjects until the 1970's were at best a minor part of the law school curriculum. Although economic law has become a more important part of legal education in the past decade, no orientation is yet provided on the job responsibilities of *iuriskonsulty*. Without guidance or supervision, new *iuriskonsulty* have significant problems in learning to perform their responsibilities effectively. During their initiation period, many legal advisors make mistakes that have serious economic consequences for their enterprises. Talented *iuriskonsulty*, including many of those interviewed, are able to overcome these initial obstacles, but others never attain the competence or confidence necessary to provide their organizations with meaningful legal assistance.

The salary of most ordinary *iuriskonsulty* ranges between 90 and 140 roubles ($120 to $185) a month, depending on the size of the organization and the type of position. The principal means by which lawyers supplement their incomes is through *sovmestitel'stvo* or joint appointments. While *sovmestitel'stvo* is permissible only for younger service personnel, the practice is widespread across categories because of the shortage of lawyers and the inadequate compensation. Because of the poor training of law school graduates in administrative-economic law work, enterprises will often hire an experienced lawyer under a *sovmestitel'stvo* arrangement rather than an inexperienced young lawyer full time. Fewer female lawyers hold more than one *iuriskonsult* position, because they shoulder the extra burdens of housework and child care.

Job security is one of the great benefits of the Soviet system, but lawyers in social and economic organizations lack that characteristic security. Before the 1970's, legal advisors were regarded as among the most dispensable of all Soviet personnel. After 1970, *iuriskonsulty* became *nomenklatura* personnel, the system by which the Party maintains control over the individuals filling key posts. As a *nomenklatura* employee, the lawyer gained in status but lost the right held by members of trade unions to appeal to the courts for job reinstatement (Bulgakbaev, 1975: 115-118). In order to fire a *iuriskonsult* who antagonizes or confronts his director, a manager needs to request only the permission of the supervisory organization, a mere formality.

Iuriskonsulty are intended to be independent professionals who serve the needs of both management and employees of their organizations (Aristakov, 1970: 24-33). However, most of my respondents saw themselves as part of the administration

of their former organizations. Their job insecurity, lack of independence, low pay and prestige, and the remoteness of *iuriskonsult* work from the Party apparatus, explain its lack of appeal and the large number of vacant positions.

Arbitrators, on the other hand, had more favorable working conditions and higher occupational status. The arbitrators interviewed had worked in both systems of Soviet arbitration: *Gosarbitrazh* (state arbitration), the system subordinate to the Council of Ministers USSR that hears economic disputes between organizations belonging to different ministries; and *Vedomstvennyi arbitrazh* (department arbitration), the system under the general supervision of *Gosarbitrazh* that hears disputes between organizations that are subordinate to one ministry (Berman, 1963: 124-125).

Arbitrators are respected for their legal expertise, not only by *iuriskonsulty* but by other legal specialists. Their precise approach to the law and their reputation for honesty account for much of this prestige. Comfortable working conditions and salaries of 200 roubles a month confirm their image as professionals. Arbitrators are among the few Soviet legal specialists who are usually spared both Party interference and the idiosyncracies of their employers—features that make this solitary, sedentary work especially appealing to serious legal professionals. Arbitration work, however, is not idyllic. Many arbitrators feel frustrated in their work, because most of the problems they hear are caused by problems inherent in a centrally planned economy, and are therefore irremediable.

V. LAW AND THE FIRST ECONOMY

The primary responsibility of the *iuriskonsult* is to further the economic interests of his or her organization (Chudnov, 1970: 6). Much of this work is concerned with the operation of the planned economy. Both legal and extralegal means are used to ensure that plans are met. Most contractual disagreements are resolved by legal means; however, since compliance with the law can result in costly fines that damage the financial plan of an organization, managers with or without their lawyers collude to avoid the consequences of arbitration. Paradoxically, these violations of the law often benefit the state. Unlike the extralegal practices which promote the second economy, they harm neither the economic nor the legal order.

The lawyer cannot insure that his or her organization fills its plan, but the lawyer can have a significant impact on the

organization's economic indicators. An organization can meet its economic goals if it obtains the necessary raw materials on time and in sufficient quantities, gets prompt service from the railroads, stems major losses of goods through spoilage or theft, and creates an environment in which workers labor effectively. The lawyer can influence all of these conditions. By suing suppliers or railroads if they fail to supply needed goods or provide timely service, by helping to ensure punishment for those who violate the law, and by promoting good labor relations, the lawyer is addressing the problems that may otherwise hinder economic objectives.

Iuriskonsulty may employ other legal tools. If they closely monitor the preparation of contracts, participate in precontract disputes, mediate disputes before they go to arbitration, and acquire an encompassing knowledge of the legislation that affects the operation of their organizations, *iuriskonsulty* can often forestall suits or obtain the upper hand in many arbitration cases. A lawyer who viewed his role as prophylactic as well as remedial might analyze the causes of poor quality production that had resulted in suits against the organization. Thus, knowledge of production techniques is often as important as knowledge of the law or negotiating skill.

One successful approach was never to miss a deadline for filing suit. As soon as a delivery was missed or an inadequate delivery was made, the trading partner was immediately notified, and legal action was initiated. Conversely, when a claim was made against the organization, careful attention was paid to the details of the case, including the regulations that might absolve the organization of responsibility. With consistent application of these methods, suppliers would more likely provide needed materials to the enterprise with the aggressive *iuriskonsult* and would shortchange an organization with a passive one.

Skillful negotiations might also forestall a damaging suit, as the following example shows. A Ukranian *iuriskonsult*'s factory received a claim (*pretenziia*) asserting that inferior wine had been shipped to a trade base in Riga. Because the fines faced by an organization for delivering substandard goods are especially severe, the director of the wine factory asked his *iuriskonsult* to help resolve the conflict. The wine sent to Riga had some sediment left in the bottle from its previous contents. The wine in these bottles had no value and could not be sold. In the words of the lawyer involved in the negotiations, "I went to Riga to convince them not to send us back the wine, but I

had no hope of success. But in reality, all was much easier than I anticipated. I suggested to the trade base that the wine be sold in bulk and not by the bottle. They agreed . . . . From this time, whenever some questions arose concerning the quality of our product, I always traveled to different cities and tried to resolve the conflicts." In this situation the *iuriskonsult* had performed a role very similar to that of the *tolkach* (facilitator) present in almost every plant (Berliner, 1957: 209-218).

Lawyers cannot always forestall suits. Most of the lawyers interviewed who had been employed in the economic sector filed at least one or two suits a week and defended approximately the same number. Most of these cases concerned deliveries of substandard, spoiled, or insufficient goods. Many lawyers interviewed were able to win nearly 90 percent of their cases because they capitalized on the incompetence of the opposition. The lawyer who can present clear legal arguments has a great advantage in arbitration. As an arbitrator explained, "The *iuriskonsult* comes to arbitration just to help the arbitrator." Whereas judges often decline to listen to a defense attorney's arguments, arbitrators listen and learn from the arguments of skillful *iuriskonsulty*. The most adept lawyers interviewed reported that their organizations amassed tens of thousands of roubles annually from the fines paid to the enterprise's fund as a result of legal action. These positive economic results increase the standing of the enterprise director and often enhance the financial compensation of employees of the organization.

Iuriskonsulty usually are the sole representatives of their enterprises in most arbitration hearings (Hazard, 1969: 132). Only in highly technical matters—those involving large sums of money or pre-contract disputes—does a member of the administration accompany the lawyer to arbitration. But in some economic disputes where the source of conflict is the system of centralized planning itself, neither the presence of management nor the *iuriskonsult* aids the organization's case. The following example, drawn from the experiences of a former arbitrator, shows the illogic of a system of fines when the planning system is at fault; it could easily have come out of a Voinovich novel or *Catch-22*.

Two organizations, a bread factory and a food base, were located next to each other. The base stored flour for shipment to the bread factory. Under the terms of the contract, the bread factory was required to return the flour sacks to the base. The

two adjoining organizations were separated only by a wall and linked to each other by a conveyor belt. The conveyor belt, however, worked in only one direction. The flour sacks were easily sent on this belt to the factory, but there was no way for the factory to return the large number of empty sacks. The factory had no truck, only a small horse which could carry a limited number of sacks on its back. The ministry provided neither the money to buy a truck nor the loan of a vehicle to return the packing materials. The factory was forced to pay enormous fines to the base, totally frustrating its effort to meet its financial plan. Every quarter the arbitrator was forced to impose fines ranging from 28,000 to 37,000 roubles; for that sum the factory could have purchased two or three trucks. But the ministry refused to grant the factory permission to buy a truck, and fines were continuously imposed. This tragi-comedy vividly illustrates the inability of arbitration to improve the efficiency of organizations when the cause of their problems is systemic rather than administrative. It is just this kind of preposterous situation that often caused managers to bypass standard legal channels not only in the Soviet Union but also in Poland (Kurczewski and Frieske, 1977: 495). The services of *iuriskonsulty* are not then used, and the managers of enterprises settle their organizational differences by telephone or over meals in restaurants.

When a particular arbitration decision prompts numerous complaints, the Party structure seeks other mechanisms to enforce its will. The Party does not have the right to change the decision of an arbitrator, but it has developed two strategies to overcome undesirable arbitration decisions. Party officials either inform the arbitrator that they do not want a decision affirmed, or they summon the director of the organization that has won the case and order him not to demand payment of the fine. However, Party interference in arbitration and extralegal case resolution by managers are exceptional procedures: hundreds of thousands of cases annually are handled routinely by *iuriskonsulty* and arbitrators (Hazard, 1969: 362).

Law, therefore, has an important role in the operation of the planned economy. The immediate problems plaguing Soviet enterprise—short supply of goods, poor quality, and inadequate assortment of materials—are often resolved by legal tools. Moreover, the skillful handling of legal disputes by sophisticated *iuriskonsulty* can do much not only to solve the immediate problems of their organizations but also to yield

solutions to longer-term organizational problems that undermine the ability of enterprises to fulfill their plans.

The impact of the law on the operations of Soviet enterprises is, nevertheless, limited. Legal decisions cannot force organizations to correct deficiencies and do not severely penalize poorly run organizations; the economic system does not permit unprofitable enterprises to go bankrupt. Managers are frequently unable to introduce changes that would remedy these defects, because the problems result from the system of centralized planning. Since the operation of organizations is governed by the planner, observance of the law remedies discrete operational conflicts, but cannot affect the central features of the economic system. Economic law in the Soviet workplace is thus peripheral rather than central to the operation of an organization.

Law governs the operation of the first economy as long as its observance does not compromise plan fulfillment or the financial interests of management. Most interorganizational conflicts—pre-contract disputes, claims, and suits—are resolved through legal channels by the work of *iuriskonsulty* and arbitrators. Managers and lawyers only rarely resort to extralegal activity to resolve the problems of the official economy as the millions of cases processed annually through arbitration testify. The frequent observance of the laws regulating the planned economy by the legal profession and the State ironically does not represent the triumph of law. Instead it affirms that economic and administrative laws are not central to the needs of the state or of individuals.

The next two sections on the second economy and the worker and the law show that violations of the law are rife when personal financial interests and societal goals are at stake.

VI. LAW AND THE SECOND ECONOMY

The numerous forms of the second or illegal economy involve all levels of employees in the Soviet workplace—workers, management, and the legal profession. Individuals participate in illegal economic activity to promote their personal welfare. Managers engage in unauthorized negotiations, conclude unofficial contracts for the delivery of necessary commodities, and resolve disputes without recourse to arbitration. Workers divert materials for resale. Gifts and favors are provided to arbitrators to influence the decision making process.

The enterprise lawyer has a complex relationship with these many manifestations of the second economy. He may be a participant and at the same time the individual charged with enforcing the law and recovering financial damages. The lawyer cannot use his legal weapons to control the extralegal actions of his director, but his activities can reduce the financial losses incurred by his enterprise and insure future supplies of necessary goods.

Most *iuriskonsulty* interviewed were observers rather than participants in the second economy. Lawyers who themselves refused to violate legal norms might encourage or tolerate the blatant criminal involvement of others. Some lawyers served as unofficial legal advisors to the major beneficiaries of the second economy, their directors, and enterprise management. More corrupt lawyers falsified reports to camouflage the diversion of funds or materials from authorized users, bought goods from the storerooms of state or cooperative stores under their jurisdiction at reduced prices, accepted payments from individuals threatened by criminal charges, and paid large bribes to individuals who could provide jobs.

The biography of one of the most colorful—and surely the wealthiest—*iuriskonsulty* interviewed illustrates the profits attainable by legal employment in areas of strong consumer demand. This Baltic lawyer first worked on a collective farm that produced canned and smoked fish. Fish products stolen from the collective farm warehouse were given him by workers seeking legal advice on the evasion of criminal responsibility. As the individual responsible for certifying the loss of inventory of the farm's warehouse, the lawyer approved inventory reports documenting nonexistent losses. The lawyer, the manager of the warehouse, and the manager of the *tsekh* (factory shop) were able to divide the goods that were reported to have spoiled. The shop manager, out of gratitude to the *iuriskonsult*, would permit him to buy smoked fish at one-eighth the retail cost—a privilege accorded by law only to the director. While this *iuriskonsult* could enrich himself through these three schemes, his profits were limited by the amount he could obtain and the time required to resell the items. Therefore, as soon as he had amassed money to buy himself a more lucrative position, he left the collective farm.

The profits earned at the farm were used to acquire a legal position at the bureau for the purchase and sale of homes, where the *iuriskonsult*'s duties were to approve all forms before they were notarized. This position lent itself to two

methods of enrichment. Individuals seeking to buy or sell homes had usually spent months or even years searching for desirable housing arrangements, and many were willing to pay the lawyer responsible for approving the deal. These bribes were one important source of illegal income for the *iuriskonsult*, but even more money could be obtained if the lawyer himself entered the housing market. Like many American real estate agents, this *iuriskonsult* looked for housing bargains. If he found a house being sold cheaply, he would offer the seller more than would be paid by the prospective purchaser. Then he would register the home in the name of friends or family, as it is illegal in the USSR to have more than one home, and renovate the house for resale. After he had completed the physical repair of the house, he would sell it at a tremendous profit, since nothing in the USSR is in more demand than housing. Such activity could be deemed enterprising in the west, but in the USSR the *iuriskonsult* was violating many laws, including those prohibiting speculation or misuse of positions of responsibility.

The illegal behavior of this *iuriskonsult* benefited only himself. But not all violations of the law by legal advisors are so self-serving. Other *iuriskonsulty* circumvent the law to provide economic benefits for their organization, its employees and management. Because many of the violations of law that harm the centrally planned economy are, however, vital to the Soviet system, this corruption provides the flexibility that Soviet society needs to survive.

Although blatant misuse of a *iuriskonsult*'s position is rare, courageous acts by *iuriskonsulty* are also infrequent. Lawyers in many enterprises all too often decline to assist the victims of management's illicit schemes. The following case drawn from one principled lawyer's experience shows how lawyers can aid the workers of their organization, but most decline to act, fearing management reprisal. The warehouse manager of a Ukrainian factory had stolen several thousand roubles' worth of goods from his inventory, but when the loss was discovered he managed to transfer blame to a warehouse employee. The enterprise lawyer was instructed by his organization's management to sue the accused worker. If this suit were successful, hundreds or thousands of roubles would be deducted from the worker's salary to compensate the enterprise for its loss. The *iuriskonsult*, infuriated at the thought that an innocent worker would suffer irreparable financial harm while the culprit escaped detection, devised a

strategy to help the worker. The *iuriskonsult* investigated the case and established that the documentation concerning the missing merchandise was so inadequate that the materials could have been damaged or stolen before they ever reached the warehouse. The courageous *iuriskonsult* directed the worker to a skilled defense attorney and discreetly transmitted his collected evidence. The warehouse employee was rightfully absolved of responsibility. But most enterprise lawyers would not dare protect an ordinary worker, fearing management's anger at their failure to recover roubles for the enterprise.

Neither the corrupt behavior of the employee of the Baltic housing project nor the principled actions of the *iuriskonsult* at the Ukrainian factory are typical; most legal advisors keep both their avaricious and samaritan instincts in check. They remain purely bureaucratic functionaries removed from the second economy—neither participants in its schemes nor protectors of its victims. Detachment from the second economy has its own rewards. Lawyers guard their moral principles, avoid arrest, and may gain rewards from managers appreciative of the lawyer's unseeing eye.

Iuriskonsulty benefit less from illicit economic activity at the workplace than many other industrial and trade employees, yet much of their work day is spent dealing with the financial damages inflicted by employees of their enterprise, their trading partners, and employees of the transport industry who participate in the second economy. By suing both organizations and individuals responsible for *nedostachi* (shortages), the *iuriskonsult* can recover significant sums from individuals and can receive goods and fines that aid the production, trade, and profits of an enterprise. By assisting the enterprise comrades' court and the procuracy in their prosecution of employees who steal from the organization, the lawyer is helping to stem the flow of goods from the first to the second economy.

Arbitration is the legal mechanism by which enterprise lawyers recover damages from other organizations for losses resulting from operation of the second economy. Arbitrators, because of their work assignments, are less subject to corruption than are most other members of the legal profession. Yet, even while they are deciding second-economy cases, many are themselves benefiting from its existence. Lawyers and managers often provide arbitrators with small gifts to receive favorable treatment for their organization.

That only small-scale corruption exists in arbitration testifies not only to the quality of the personnel but also to the powerlessness of this institution to have a significant impact on the operation of Soviet organizations. If arbitration had a significant effect, a different type of person would seek arbitration work. Individuals interested in receiving bribes would seek employment in these economic courts and managers would press Party officials to select individuals they could influence rather than lawyers competent to assess the intricacies of administrative and economic law. Managers of organizations would not limit their gifts to small items but would use the extensive financial resources at their disposal to obtain desirable results.

Little incentive now exists to influence the decision making of arbitrators, because so many decisions are purely formal and have little impact on the economic welfare of an organization. The small-scale corruption existing in arbitration does not have significant long-term consequences for any enterprise, because the institution of arbitration does not affect the ability of an organization to accomplish its most important objective—the fulfillment of its plan. Corruption "merely" affects costs and profits which lack the significance in the Soviet context that they have in Western capitalist societies. The absence of large-scale corruption in arbitration is the ultimate testimony that the decisions made by arbitrators are not of vital concern to the parties affected.

Management's reluctance to interfere in the arbitration process is further evidence that the law is often allowed to govern the planned economy but not to curb the operation of the second. The second economy has survived and proliferated because it provides tangible benefits to millions of individuals. Soviet authorities have failed to use the legal weapons necessary to combat this major economic drain on the first economy, because they are the major beneficiaries of the second. Until Soviet management identifies its interests with that of enterprises, law will remain an ineffective weapon against the second economy; *iuriskonsulty* and arbitrators will continue to be permitted only to remedy the damage inflicted by the second economy rather than to fight it. The failure to consistently observe economic law introduces increased flexibility into the Soviet system. Many of the violations in the second economy overcome the rigidity of the planned economy, a fact recognized by "top authorities in Moscow" (Granick, 1960: 132-133). Without some of these violations, production

deadlines, delivery schedules, and enterprise plans could not be met.

VII. LAW AND THE EMPLOYEE

After reading about the role of law in the first and the second economies, skeptics may question whether the rule of law actually exists in Soviet society. Examination of the law affecting employees in the Soviet workplace provides evidence that there is a significant role for law in Soviet society. As one former *iuriskonsult* said during his interview, "If there is anyone who needs and benefits from our services, it is the worker at the workplace."[5] Management can resolve many of its problems through the Party apparatus, but the ordinary individual without access to this powerful body must depend on the law for protection.

Soviet workplaces are more than just places of employment. They are institutions that often provide for the housing, medical, and recreational needs of their employees. It is only natural, therefore, that workers will look to the staff of the organization for the resolution of their problems. The enterprise *iuriskonsult* is often the individual to whom workers and service personnel turn for assistance in both work-related and personal problems. The frequency with which workers utilize these legal services testifies to the relevance and importance of the law to their daily existence. *Iuriskonsulty* can often provide meaningful assistance to enterprise employees, because the problems that most often need resolution pertain to those areas of law that are most closely observed by Soviet authorities: civil, labor, family, land, and inheritance law. As worker concerns are in areas of minor interest to Party officials, the chances of realizing one's objectives after consultation with the *iuriskonsult* are good.

The legal problems of men and women often differ. Women frequently seek legal advice on ways to combat physical abuse by husbands, initiate divorce, obtain alimony, and provide for the nonfinancial needs of their children. Men rarely seek advice on divorce proceedings; their concerns are often work-related, pertaining to such matters as vacation leave and overtime pay. If these problems can be solved by the enterprise's commission on labor disputes, the lawyer might

[5] The economic responsibilities of the *iuriskonsult* are considered primary by Soviet authorities (Chudnov, 1970: 15-25). Ironically, many *iuriskonsulty* feel that they are appreciated more for their educational function among the Soviet working population.

summon it to hear the problem; otherwise, the initiation of judicial proceedings might be necessary. Recent rural emigrants may have special problems. Much of the Soviet working-class population has only recently emigrated from the countryside, and many workers face problems with the land and family left behind. *Iuriskonsulty* must advise workers on land law, the division of property among relatives, and questions of inheritance. Workers may also be concerned with urban housing problems and request that the *iuriskonsult* write complaints or appeals to improve their residential situation. In labor camp, the problems encountered by the *iuriskonsult* are almost the same. The inmates are, however, restricted from discussing their work-related problems with the labor camp factory *iuriskonsult*.

The legal consultation provided by the *iuriskonsult* complements the legal service available from trade unions, the procuracy, and the *advokatura*. These organizations that provide low-cost legal service in the areas of law most respected by Soviet administrative and judicial authorities help insure citizen support for the Soviet system. While many workers still fear the operation of criminal courts, many have faith in the ability of Soviet civil and labor law to satisfy their daily needs. A much-appreciated function of lawyers is to provide information to workers on their legal rights.

Iuriskonsulty are often caught between the desires of management and the needs of workers. Lawyers must sometimes enforce administrative actions that harm enterprise employees. This enforcement role may be tolerable when worker misconduct is involved, but when the administrative action is self-serving, the lawyer often performs this function unwillingly. Several lawyers described the reluctance with which they initiated suits to evict former workers from enterprise housing or wrote decrees forcing workers to donate a Saturday to their enterprise without financial compensation.

In cases of worker dismissals, the lawyer is often caught between his role as advisor to management and the trade union and his personal interest in aiding the worker. The *iuriskonsult* has no required role in dismissal decisions, but many lawyers interviewed reported that management and the union often consulted them on the proper action to take. As unions and management are theoretically on opposing sides (Ruble, 1981: 45-63; Brown, 1966: 174-202), the lawyer may sometimes assume the role of mediator in the dismissal process. In fact, it is extremely difficult to fire a worker, and a

dismissed worker can be reinstated to his job if any legal procedures have been violated. The following example illustrates management's problems in a worker dismissal case.

A young woman in a small community in a remote area of the Far East was fired by the communications office where she had worked. She was so lazy that even delivering telegrams in the very small community proved to be too much of an exertion; she tore up half the telegrams and threw them away. The woman was fired on the grounds of *nedoveriia* (unreliability), but this cause for dismissal is not recognized by the labor code. She appealed to the lawyer of the *raion* (regional) trade union office for assistance. The trade union lawyer prepared the documentation of the case on her behalf and pressured her supervisor to take her back on the job, even though the *raion* trade union lawyer sided with the dismissed woman's supervisor. The communications administrator was forced not only to rehire her but also to pay her for the 20 days she did not work after her illegal dismissal. Because of such efforts by trade union organizations, many contested dismissals do not reach the courts.

The regional trade union organization may also proceed illegally in worker dismissal cases. An example of this was provided by a former *iuriskonsult* at a transport organization. The transport organization, with the assistance of the enterprise *iuriskonsult*, was trying to rid itself of a troublemaker. The trade union organization before and during the trial used illegal tactics to force the administrator to rehire the individual in order to let him subsequently "resign of his own free will." The organization resisted, knowing that the worker would first agree to resign and then refuse once he had returned to work. After the investment of much effort, the transportation organization finally prevailed over the illegal pressure of the *raion* trade union organization.

The force of law will often prevail when management is not intent on violating the law, or when the trade union resorts to illegal means. But little protection is afforded the worker by labor law when administrators deliberately violate the law. One former *iuriskonsult* reported that his director, annoyed at a subordinate's conduct, made an illegal and damaging entry in the worker's *trudovaia knizhka* (labor book), or permanent record of employment. The *iuriskonsult* informed the unfortunate employee of his right to have this entry removed. The *iuriskonsult*'s assistance helped neither of them, as the legal advisor was dismissed and the negative comment

remained on the labor book to limit the future professional life of the employee.

A *iuriskonsult* formerly employed at a labor camp factory reported even greater and more consistent violations of labor law. While the branch of the procuracy responsible for overseeing the enforcement of law in labor camps would intervene if the inmates were not given warm clothes in winter, they would not interfere for anything "so trivial" as a labor code violation. Inmates were often required to work seven rather than their usual six days, because the manager of the labor camp factory wanted to fulfill the plan.

Managers sometimes try to intervene in judicial proceedings to obtain dismissals that they cannot obtain through other legal channels. A former judge recalled being pressured by the local Party organization to find in the administrator's favor in a worker dismissal case. The judge responded that he would decide the case on its merits; the worker was subsequently reinstated, to the chagrin of the director. But all cases in which the Party interferes in judicial proceedings do not end as fairly for the worker. As the former judge pointed out, many judges are afraid to follow their principles when facing Party pressure, even when the pressure concerns labor law, one of the areas of law most respected by Party officials.

The courts generally observe the labor laws governing worker dismissals and industrial accidents. The observance of these laws ironically leads to many violations by management—not only in the previously discussed area of worker dismissals, but even more frequently in the case of industrial accidents. Many managers try to hide the fact of an accident, because they know the courts will impose criminal penalties on those deemed responsible and that organizations will be deprived of their place in the competition for the payment of bonuses. Because workers are aware that their rights are fully supported in this area, it is not in their interest to hide injuries. But if the physical damage is not permanent and the enterprise provides financial incentives greater than the worker could obtain by reporting the injury, the victim may often agree to an unofficial settlement. The arrangements concluded with the injured worker are strictly illegal and must be executed in such a way as not to arouse the suspicion of the authorities. The lawyer is often pressured by management to lend his expertise to these negotiations, as he is the only individual capable of concealing overt evasion of the law.

While all Soviet lawyers are not equally skilled in hiding industrial accidents, few are sufficiently principled to resist management pressures to participate in schemes to hide workers' injuries. Moreover, many lawyers justify their participation in such machinations by stating that the injured worker is well provided for and that chances are slim that the managerial personnel truly responsible for the accident will be punished.

Iuriskonsulty are also forced to take management's side in housing cases. These cases concern either the distribution of housing or the eviction of former workers from enterprise apartments. Housing is distributed to enterprise employees in accordance with eligibility lists. Management uses available housing as its bargaining card to retain desired personnel or bribe injured workers, and it is not always in its interest to observe the priority lists. Because trade union representatives are not knowledgeable in the law, they are often ineffective guardians of the housing rights of employees. Since *iuriskonsulty* are viewed as the right hand of management, many legal advisors are made to understand that their role is not to promote the equitable distribution of available apartments but to help management achieve its objective. Only in Estonia, "where Soviet law really exists," are the waiting lists for available apartments closely observed, and violators of these laws punished.

While several *iuriskonsulty* discussed cases in which they were forced to initiate legal proceedings to evict former workers from enterprise housing, they found that their hesitation to enforce these inhumane laws was shared by prosecutors and judges. The unwillingness of legal personnel to force people out of their apartments has meant that the laws have failed to achieve their desired result—attracting workers to enterprises that could not otherwise be competitive in a tight labor market. As wages are centrally established and uniform, the work conditions and perquisites offered by an organization are more important than the wage or position offered. Apartments, the most desirable of enterprise perquisites, have been a drawing card for workers. But the inability of *iuriskonsulty* to assure the eviction of former workers has made it impossible for enterprises to retain the workers they have attracted. Whereas Party officials have been able to insure the execution of state policy in criminal cases, they have not been as successful in the area of housing law. Although Soviet legal personnel seem willing to enforce even the most

inhumane of criminal laws if they believe that the individual is culpable, they are not willing to impose harsh housing laws on working citizens. In the post-Stalinist period, the Party and the legal community have chosen not to "enserf" the working class population through the housing laws, a reflection of the lessening of societal controls.

The force of criminal law is felt not only in the court system, but also at the workplace. Petty criminal violations that occur at the work site are handled by the comrades' courts, a court of fellow workers which can impose fines of up to 50 roubles (Iudel'son, 1962). Almost all the *iuriskonsulty* interviewed were involved with the comrades' court of their organization. As one lawyer explained, "Comrades' courts are not comprised of lawyers, but they must decide cases in accordance with the law when in fact they do not know the law. Therefore, they must turn frequently to the *iuriskonsult* for assistance." In some organizations the *iuriskonsult* headed the comrades' court or wrote its decision concerning cases of drunkenness on the job, unwillingness to work, petty theft from the enterprise, and violations of labor discipline.

Iuriskonsulty in different republics had varying degrees of success with the comrades' courts. In a comment typical of the RSFSR, one Moscow lawyer reported that the workers of his enterprise could not care less about the decisions made by this court. In Central Asia, the comrades' courts reach beyond the factory and often appeal to the spouse, the parents, and the children for assistance in changing the individual's behavior. This outreach was successful in a community where the extended family is important. In Estonia, other workers would try to change the behavior of the errant one. The impact of the comrades' courts is thus influenced by the national character of the republic in which they operate.

In the final analysis, and allowing for regional differences, it is the managers of Soviet enterprises who determine the legal environment for workers. Indeed industrial managers, more than the judiciary, are quite often the final arbiters of the law. The preeminence of the manager in the workplace, discussed by Granick in *The Red Executive* (1960: 129-151), has been corroborated by these interviews. The relationship between the enterprise *iuriskonsult* and the manager helps to determine the extent to which the laws governing human conduct and the economic relations of a Soviet enterprise are observed.

VI. CONCLUSIONS

Soviet lawyers often bend the law to the needs of their constituency. The services of *iuriskonsulty* are valued especially because of their potential as "personalizers" of the law—although, as we have seen, the extent to which a lawyer will bend the law depends on the situation, the lawyer's own values, and his or her relationship with the enterprise administrator. In social and cultural organizations, for example, where the law more frequently performs its intended function, lawyers can and do play a more traditional role.[6] But in all Soviet organizations the successful *iuriskonsult* mediates among individuals, the institution, and the established power structure. This is not a recent development; lawyers whom I interviewed indicated that since the early decades of the Soviet period, lawyers have moderated the impact of the law on the daily lives of the population. Lawyers have accomplished this role by freeing enterprises from the stranglehold of a centrally planned economy. They have introduced flexibility into industrial labor relations by negotiating private agreements with injured workers, intervening in unwarranted dismissals, and settling other worker-management disputes. The iuriskonsult can assume as vital a role in releasing his organization from the constraints of a centrally planned economy as does the more widely known fixer, the *tolkach*.

This portrait of Soviet lawyers raises some interesting questions which can be addressed only briefly in this article. One such question concerns the consequences of the widespread disregard of the established legal order which my respondents have reported. It seems clear enough that Soviet authorities take a dispassionate though disapproving view of pervasive legal corruption. But only when legal violations by justice and Party personnel reach alarming levels, and threaten to destabilize the regime, are officials ready to curb such illicit activity.[7] Soviet officials seem to tolerate extensive extralegal activity because they view it as a safety valve and perhaps even

[6] Lawyers employed in social and cultural organizations reported a greater adherence to the law in their organizations than in factories, trusts, and trade bases; because they were not under pressure to fulfill economic plans and increase productivity in order to win bonuses, prizes, and the "thirteenth" salary for workers and management. Exempt from many of the pressures that cause violations of the law in the economic sector, those organizations dealing in noncontroversial areas have the luxury much of the time to observe both the intent and the specific provisions of the law. The activities of these lawyers more often resemble social workers than *iuriskonsulty*.

[7] Soviet authorities have recently taken both legal and extralegal measures to curb corruption in Azerbaijan (Grigo, 1981).

as a source of stability for the regime. The fact is that law is not a central force in Soviet society. Adherence to socialist legality is often stressed, but this must be understood in the context of traditional Russian views of law. The old Russian saying, "It is not what you say, but how you say it to me," summarizes the Soviet approach to law. The manner in which it is conveyed may be more important than its content. Molding the law to meet individual needs is more important than *applying* the law objectively.

The dominance of informal negotiations and extralegal procedures does not mean, however, that the law is not needed in Soviet daily life. *Codified* law may not be central, but established law does govern the daily economic transactions of Soviet business life and the domestic problems of primary concern to Soviet workers. Close adherence to the written law is possible when the interests of the state and its citizens do not conflict. Therefore, when decisions affect *only* governmental institutions or *only* private citizens, codified law prevails. It is when the interests of institutions and citizens diverge or conflict that informal adjustments are necessary.

There is little relationship between the extent of legal regulation and conformity to law in the USSR. Respect for the law appears to be inversely related to the extent of codified law. Like the stratified modern societies of Black's model (1976: 13), the USSR has extensive legislation. But the applicability of Black's model ends there, because the USSR is not dependent on much of this regulation for maintaining societal stability. New regulations governing every facet of daily work life are issued constantly but distributed haphazardly to the legal profession. Only the most sophisticated and diligent *iuriskonsulty* learn of all relevant legislation, and they use this largely unknown body of law only when they prepare for arbitration.

A second question raised but not directly addressed in this paper concerns the uniqueness of the relationship between Soviet *iuriskonsulty* and enterprise managers. The extralegal activities described by these emigre lawyers do bear at least a superficial similarity to the activities described by Macaulay (1963) in his study of American corporate lawyers and contractual relationships. It is certainly true in the USSR, as in the United States, that "informal pressures inherent in continuing business relationships can take the place of law in resolving contract disputes" (Black and Mileski, 1973: 7). But the similarity ends there. American corporate lawyers are

rarely if ever involved in adjusting the personal problems of American workers. Furthermore, there is the question of current debate among scholars of the American legal profession, of the relationship between corporate lawyers and clients. Heinz and Laumann, for example, stress client control (1981: Ch. 10), while Macaulay (1979; 1982) seems to emphasize the influence of lawyers on clients. Of course, much depends on the type of enterprise and the structure of the lawyer-client relationships. While individual *iuriskonsulty* may influence the enforcement of law in the workplace, most of these lawyers lack power, status, or independence. Therefore, the role and influence of the Soviet *iuriskonsult* and the American corporate counsel are hardly comparable.

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