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RECOGNITION OF ILLEGALITIES, PROPOSALS FOR REFORM, AND IMPLEMENTED REFORMS IN THE SOVIET CRIMINAL JUSTICE SYSTEM UNDER GORBACHEV, GLASNOST, AND PERESTROIKA

David M. Simmons*

INTRODUCTION

Throughout the last several decades, Soviet jurists have referred to various "errors" and "mistakes" in the Soviet criminal justice system.¹ They usually failed, however, to further elaborate upon these vague references.² Since the accession of Mikhail Sergeevich Gorbachev to the position of General Secretary in the spring of 1985, many Soviet jurists, as well as numerous journalists, academics, and members of the general public have expounded upon these errors and mistakes with a surprising degree of candidness and vehemence.³ During the past four years, Soviet newspapers have published numerous detailed and alarming accounts of convictions of clearly innocent citizens, illegally obtained confessions that are often erroneous, the unofficial but influential role of Communist Party (Party) officials in the prosecution process, and the exceedingly low level of acquittals due to judges' fears of retribution from unhappy members of the bureaucracy.⁴

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1. See Wrobel, *Glasnost' and Soviet Criminal Trials*, in YEARBOOK ON SOCIALIST LEGAL SYSTEMS-1987 167-68 (W. E. Butler ed. 1988) (noting that for many years Soviet jurists have written about "errors" and "mistakes" in the criminal law).

2. *Id.*

3. See Shelley, *Criminal Law and Justice Since Brezhnev*, in LAW AND THE GORBACHEV ERA: ESSAYS IN HONOR OF DIETRICH ANDRE LOEBER 183 (D.D. Barry ed. 1988) (finding that Gorbachev's accession resulted in shocking disclosures of corruption and cruelty in the Soviet justice system); *Does The Judicial System Need Reform?*, 38 CURRENT DIG. SOVIET PRESS No. 42, at 1 (1986) [hereinafter *Judicial Reforms*] (discussing deficiencies of the Soviet criminal system). In late 1986, for example, R. Kudryavtsev, Director of the USSR Academy of Sciences Institute of State and Law, stated that the Soviet Union lacks well-trained lawyers, denies crucial rights to defense counsel (and thus, the defendants they represent), needs to eliminate judicial accusatory bias, and must punish frequent outright violations of procedural legality by the Soviet Procuracy. *Id.*

4. Solomon, *The Role of Defense Counsel in the USSR: the Politics of Judicial Reform Under Gorbachev*, 30 CRIM. L. Q. 83 (1988); see Tselms, *Verdict in Murder Trial Based on Coerced Confessions Overturned by Lucky Accident*, 38 CURRENT DIG. SOVIET PRESS No. 42, at 5 (1986) (providing a detailed account of a trial in Latvia). Tselms, a newspaper journalist, first noted that the suspects were physically "coerced" into giving false confessions to crimes they did not commit. *Id.* Second, even after the

The impetus behind these relatively recent accounts of injustice is Gorbachev's highly touted policy of *glasnost*, which calls for greater openness in almost all aspects of Soviet society.⁵ It is through this policy of openness that Gorbachev, in 1985, began attempting to further his call for *perestroika*, or restructuring, in the Soviet economy.⁶ By the end of 1986, however, after his initial attempts at economic restructuring failed, the General Secretary concluded that if he wanted to expedite economic reform, he would also have to implement significant political reforms.⁷ One such political reform that evoked tremendous attention from the government, the legal community, academia, average citizens,⁸ and especially the press was the sorely needed reform of the Soviet criminal justice system.⁹

This comment will examine those areas of the Soviet criminal justice system which, under *glasnost* and *perestroika*, the Soviets have identified and openly acknowledged as areas desperately needing reform. Part I of this Comment will provide a brief overview of the basic tenets

suspects recanted their false testimonies, they were sentenced to long periods of incarceration or death by a judicial panel that was determined to convict with or without evidence. *Id.* Finally, following the real wrongdoers' admissions of guilt, the court reluctantly acknowledged its "error." *Id.*

5. See Shelley, *supra* note 3, at 183 (noting that Gorbachev's policy of *glasnost* has led many newspapers and legal periodicals to print stinging exposes about the corruption of the Soviet criminal justice system).

6. See Beissinger, *Political Reform and Soviet Society*, 87 CURRENT HIST. 317, 317-18 (1988) (noting that although Gorbachev initiated only moderate economic reforms in 1985 and 1986, these initial "minor" reforms gained inevitable momentum and developed into a program of radical reform for almost all facets of Soviet governmental and social structures).

7. See Goldman, *Perestroika in the Soviet Union*, 87 CURRENT HIST. 313 (1988) (explaining that Gorbachev did not begin to stress *glasnost* until he realized that the Soviet people would not accept his idea of *perestroika* without the promise of a new openness in Soviet society). Gorbachev recognized the Soviet people's disillusionment with previous unsuccessful calls for economic reform and realized that he had to propose basic political reforms. *Id.*; see also Bialer, *Gorbachev's Program of Change: Sources, Significance, Prospects*, 103 POL. SCI. Q. 403, 423 (1988) (noting that Gorbachev's plan for political reform consists of three distinct elements: first, the reduction and decentralization of the Soviet bureaucracies; second, the democratization of Soviet life; and third, the enhancement of the role of law and legality).

8. Bialer, *supra* note 7, at 426.

9. See *New Calls for Reforms in Soviet Courts*, 39 CURRENT DIG. SOVIET PRESS No. 20, at 8 (1987) [hereinafter *Reforms in Soviet Courts*] (pointing out problems with the system, in particular that official trial records are often changed to "fit" the verdict, and that judges, who seldom question the "confessions" of the accused, often "assume" that defendants are guilty); see also Move, *Ways of Restructuring The Legal System: Complaint Against A Sentence*, 39 CURRENT DIG. SOVIET PRESS No. 31, at 23 (1987) (noting that the current procedure for handling complaints against judicial sentences is defective). The procedure is not regulated by any statute and as a result the complainant and his defense lawyer are denied the opportunity to meet personally with the judicial officials investigating and deciding the case. *Id.*

of Soviet criminal law and the structure of the criminal justice system in the Soviet Union. Part II will highlight those areas of the Soviet criminal justice system that the Soviet legal community, the Soviet press, and the general public have identified as areas in need of reform. Part III will discuss the Soviet government's proposals for reform of the Soviet criminal justice system that were introduced in 1986 through 1988. Part IV will examine those government proposals for legal reform that were implemented during the 1986-1988 period. Part V will identify and examine both the Soviet government's proposals for legal reform and the legal reforms that were enacted into law from the dawn of 1989 through the end of January 1990. Finally, the comment will conclude that, despite potentially overwhelming obstacles, including the traditional conservative tendencies of Soviet society in the face of proposed change, Gorbachev has succeeded in his desire to enact legal reforms that, if stringently obeyed, will drastically alter and improve the foundations of the Soviet criminal justice system.

I. OVERVIEW OF THE SOVIET CRIMINAL JUSTICE SYSTEM

The Western belief in the importance of the "rule of law," a rule providing that decisions should be made through the application of recognized principles or laws without injecting discretion into their application,¹⁰ is an entirely unacceptable concept within the traditional parameters of Soviet law.¹¹ The foundation of the Soviet legal and social structure is based upon *sotsialisticheskaya zakonnost* or socialist legality.¹² This is a principal through which the Communist Party has traditionally sought to promote effective enforcement of their policies by us-

10. BLACK'S LAW DICTIONARY 1196 (5th ed. 1979).

11. Wasserman, *The U.S.S.R. Legal System*, N.Y. L. J., Oct. 26, 1981, at 1. Marxist-Leninist doctrine rejects the idea of a "rule of law" because it believes that such a rigid notion of the idea of law is simply a means by which a class-oriented capitalistic society is perpetuated. *Id.*; F.J.M. FELDBRUGGE, G.P. VAN DEN BERG & W.B. SIMONS, *ENCYCLOPEDIA OF SOVIET LAW* 706 (2d rev. ed. 1985) [hereinafter F.J.M. FELDBRUGGE] (stating that the principle of a "rule of law" is a "meta-legal principle" that binds legislative power and is intended to curtail administrative power over citizens).

12. See F.J.M. FELDBRUGGE, *supra* note 11, at 706 (defining "socialist legality" as "a strict observance of law by all agencies of the state, social organizations, institutions, government officials, and citizens"); KONST. SSSR, *trans. in* Legislative Acts of the U.S.S.R. 1977-79, Book One, at 29 (noting that socialist legality is reflected in Chapter I of the Soviet Constitution, entitled "Principles of the Social Structure and Policy of the USSR"). Article 4 of the Constitution states that "[t]he Soviet state and all its bodies function on the basis of socialist law, ensure the maintenance of law and order, and safeguard the interests of society and the rights and freedoms of citizens." *Id.*

ing law as a tool for implementing their social policies.¹³

Under Lenin, the rule of law was formally proclaimed as a fundamental principle of the Soviet state.¹⁴ By 1925, however, the idea of a formal rule of law was replaced with notions of expediency and rule by common sense.¹⁵ The Leninist rule of law was conveniently ignored whenever it stood in the way of the will of the Party.¹⁶ It was not until after Gorbachev's rise to power, however, that the Soviet government actually acknowledged that a rule of law did not govern their state.¹⁷

A. SOURCES AND FUNDAMENTALS OF SOVIET LAW

Unlike Western criminal law, Soviet criminal law is almost exclusively statutory in nature.¹⁸ The Criminal Code of the Russian Republic¹⁹ explicitly states that the ultimate goal of Soviet criminal law is the protection of a prescribed set of specific social, political, and economic values that will perpetuate a socialist society.²⁰ It is ironic to note the inconsistency of this principle when compared with classic Marxist doctrine, which holds that law will ultimately become unnecessary and wither away when a true communist society is attained.²¹ Despite the Marxist belief that society is constantly undergoing social and eco-

13. See F.J.M. FELDBRUGGE, *supra* note 11, at 706 (stating that Socialist legality in the Soviet Union, in regard to the idea of a "rule of law," is not intended to limit the State bureaucracy's power over its citizens).

14. See Feofanov, *How Rule of Law has Fared in USSR*, 39 CURRENT DIG. SOVIET PRESS No. 32, at 7 (1987) (noting that, on the first anniversary of the October Revolution, a resolution entitled "On Strict Observance of the Laws," which heralded the importance of the "rule of law" as a fundamental tenet of Soviet society, was adopted by the Sixth All-Russian Congress of Soviets).

15. See *id.* at 8 (recounting how A.A. Solts and Nikolai Vasilyevich Krylenko, two influential Party members, introduced the idea of rebuking any notions of a "rule of law").

16. See *id.* (indicating that by the end of the 1920s many Soviet jurists were alarmed by the Soviet criminal justice system's blatant rejection of the "rule of law").

17. See Gorbachev, *Gorbachev Report Sizes Up Restructuring*, 40 CURRENT DIG. SOVIET PRESS No. 26, at 7, 19 (1988) (implying that a tradition of legal conservatism in the USSR has blocked the growth of a democratic rule of law).

18. Gorle, *Criminal Law*, in THE DISTINCTIVENESS OF SOVIET LAW 227, 231 (F.J.M. Feldbrugge ed. 1987).

19. Criminal Code of the Russian Soviet Federated Socialist Republic (UK RSFSR).

20. *Id.* art. 1. Article 1 of the UK RSFSR outlines the purposes of the Code: "[t]he Criminal Code of the RSFSR shall have as its tasks the protection of the social system of the USSR, its political and economic systems, socialist ownership, the person and rights and freedoms of citizens, and the entire socialist legal order against criminal infringements." *Id.*, *trans.* in Gorle, *supra* note 18, at 231.

21. Wasserman, *supra* note 11, at 1. Marxist doctrine holds that when a true communist state has been created self-discipline and social awareness will make formal law unnecessary and obsolete. *Id.*

conomic transformations, the Soviet Union, over the last seventy years, has become increasingly dependent on rigid norms that have been codified into law, suggesting that society is simply a static entity.²²

A close examination of the Soviet Criminal Codes reveals that protection, not retribution, is the main goal of Soviet criminal law.²³ In the Soviet Union, the entire socialist legal order, including the private citizen and his legal rights, are the objects of this protection.²⁴ The Soviet Criminal Codes also highlight the basic premise of Soviet criminal law: the containment of potentially dangerous social acts.²⁵

Since the Soviet Union has no common law,²⁶ the legislature is the primary creator of criminal law.²⁷ One important exception to this rule, however, is that the Plenum, or full bench of the USSR Supreme Court, has the power to issue guiding explanations that are binding upon all lower courts and administrative bodies or officials to whom they might apply.²⁸ These explanations interpret legal rules and outline the preferred method for analyzing and applying certain criminal legislation in the context of a criminal trial.²⁹

B. COURT STRUCTURE AND THE TRIAL PROCESS

The court of original jurisdiction in the Soviet Union is the local people's court.³⁰ The bench of the people's court is comprised of one

22. See M. LOS, COMMUNIST IDEOLOGY, LAW AND CRIME 57-58 (1988) (noting that the very rigid codes promulgated in the past few years reject a flexible approach to the law and seem to resemble the fixed "bourgeois law" that was previously disapproved of in the Soviet Union).

23. Gorle, *supra* note 18, at 232.

24. *Id.*

25. *Id.*; see F.J.M. FELDBRUGGE, *supra* note 11, at 217 (explaining that, when deciding whether certain behavior is criminal, the main consideration in the Soviet Union is to determine whether the behavior constitutes a "social danger").

26. See J. HAZARD, W. BUTLER & P. MAGGS, THE SOVIET LEGAL SYSTEM: THE LAW IN THE 1980's 31 (1984) (contending that, despite Lenin's attempts to free the Soviet legal system from past influences, the Romanist tradition of denying judges the power to create law has survived as an element of the Soviet criminal justice system).

27. See *id.* (observing the Soviet belief that a new social order is created more expediently when the legislature, rather than the courts, is given the complete responsibility for promulgating the criminal law).

28. Butler, *Necessary Defense, Judge-Made Law, and Soviet Man*, in LAW AFTER REVOLUTION 99, 114 (1988). When the legislature is silent on a particular substantive area of the law, Soviet jurists look to these "guiding explanations" to provide them with a source of law. *Id.* at 113-14.

29. See O. IOFFEE & P. MAGGS, SOVIET LAW IN THEORY AND PRACTICE 58 (1983) [hereinafter O. IOFFEE] (noting, for example, that where the Soviet Criminal Code requires more severe punishment for stealing "on an especially large scale" the USSR Supreme Court decided that the dividing line between ordinary and "large scale" stealing is 2,500 rubles).

30. See Patterson & Doak, *Criminal Justice in Soviet Russia*, 4 INT'L J. OF COMP.

judge-chairman and two people's assessors, all of whom are elected through general elections.³¹ People's assessors are laypeople who, theoretically, enjoy the privileges of judges and participate fully in the rendering of judgments and in deciding all questions of law before the court.³² Despite the official claim that judges and people's assessors work on an equal plain, most Soviet jurists agree that the role of the people's assessors is a passive one dominated by the judges.³³ This mix of judges and people's assessors is also utilized in the Courts of the Territories and the Supreme Court of the Republic, which comprise the Courts of Appeal above the people's courts and serve as courts of original jurisdiction for major offenses.³⁴ The Supreme Court of the USSR is the court of final appeal, and is comprised of seventeen judges and twenty people's assessors.³⁵

Although from a cursory glance the Soviet trial system appears similar to the United States model, a closer examination uncovers fundamental differences.³⁶ The principal difference is that in the United States criminal trials are intended to serve as a forum for establishing and corroborating evidence,³⁷ whereas Soviet criminal trials simply serve as a "rubber stamping" review of the evidence and conclusions drawn during the preliminary investigation.³⁸ Unlike American courts,

& APPLIED CRIM. JUST. 113, 116 (1980) [hereinafter Patterson] (noting that minor offenses are heard in people's courts). Ten years is the maximum sentence that a people's court can levy, although most sentences involve only a simple public apology or self denunciation. *Id.*

31. F.J.M. FELDBRUGGE, *supra* note 11, at 212. People's assessors are considered the outstanding representatives of the community. O. IOFFEE, *supra* note 29, at 304. Their presence is to ensure that the defendant is judged by his "peers." Patterson, *supra* note 30, at 116.

32. See F.J.M. FELDBRUGGE, *supra* note 11, at 572 (stating that people's assessors were originally intended to serve as a populist element in the judicial system, thereby ensuring that justice was administered by a representative cross-section of the society); see also M. Los, *supra* note 22, at 60 (noting that people's assessors are not expected to possess any knowledge of the law). People's assessors continue to work full-time in their regular jobs while serving on the court. *Id.* But see Patterson, *supra* note 30, at 16 (finding that because law assessor's do not have a formal legal education they are often intimidated by judges and the entire judicial process).

33. See O. IOFFEE, *supra* note 29, at 304 (suggesting one factor that contributes to the dominant role of the judge is that, unlike a jury, which deliberates in seclusion, the people's assessors deliberate with the judge).

34. Patterson, *supra* note 30, at 116.

35. *Id.*

36. See Wrobel, *supra* note 1, at 169 (assessing the extent to which the Soviet trial system differs from the American and European systems).

37. See J. KAPLAN & J. WALTZ, EVIDENCE 12 (1987) (noting that exhibits are not offered as evidence until the trial, at which time the court will either receive or reject the exhibit as official evidence).

38. *Id.* Traditionally, trials in the Soviet Union have never served as forums for the inaugural presentation of evidence. *Id.*

whose primary concern is the determination of innocence or guilt, the primary concern of Soviet courts has been the promotion of a national spirit of socialism and communism.³⁹ Another difference is that in contrast to the United States' adversarial model, the Soviet court system follows the European inquisitorial model;⁴⁰ Soviet judges actively participate in the investigations, the examinations, and the discovery of evidence.⁴¹

The most determinative period in the Soviet prosecution process is the pretrial period,⁴² during which an investigation is conducted by an impartial investigator and supervised by a state prosecutor, both members of the Procuracy, an agency somewhat analogous to the United States Justice Department.⁴³ In this pretrial process, the investigator, rather than working independently under the auspices of the court, works under the direction of the Procuracy.⁴⁴ This feature of Soviet criminal procedure departs radically from Western European inquisitorial systems, where an independent judge oversees the preliminary investigation.⁴⁵ The Soviet Procuracy's simultaneous prosecutorial and supervisory functions cast serious doubt on their legitimate

39. See Patterson, *supra* note 30, at 117 (quoting chapter 1, article 3 of the Fundamental Principles of Criminal Legislation, adopted in 1960, which state that the function of the Soviet court system is "[t]o educate citizens in the spirit of loyalty to the motherland and to the cause of and in the spirit of strict and undeviating execution of Soviet laws, of attitude of care toward socialist ownership."); see also Gorle, *supra* note 18, at 265 (theorizing that criminal law is used by the Party as an instrument for directing and controlling social change).

40. See Gorle, *supra* note 18, at 261 (noting that the inquisitorial model introduced in Russia in 1716 by Peter the Great originated in Medieval ecclesiastical courts); see also Patterson, *supra* note 30, at 117 (suggesting that theoretically, in an inquisitorial model, the court, the prosecution, and the defense all work toward the common goal of uncovering the truth).

41. Patterson, *supra* note 30, at 117; see F.J.M. FELDBRUGGE, *supra* note 11, at 222 (stating that during this preliminary inquiry, the court, the Procuracy, and the investigator all evaluate the evidence on the basis of their internal convictions and on socialist legal doctrine).

42. Feofanov, *Illegality in Preliminary Investigations*, 39 CURRENT DIG. SOVIET PRESS No. 22, at 8 (1987).

43. Cf. Patterson, *supra* note 30, at 117-19 (noting that the investigator's and state prosecutor's findings during the "investigation" are inaccessible to the defense counsel until after the completion of the investigation).

44. See F.J.M. FELDBRUGGE, *supra* note 11, at 600 (noting that in pre-revolutionary Russia and the early years of the Soviet Republic, the court followed the French and German models of preliminary investigation by placing the investigators under the auspices of the court). In addition to serving as the prosecutorial agency, the Procuracy also serves as the "impartial guardian of legality" during the preliminary investigation. *Id.* at 601; Gorle, *supra* note 18, at 262 (observing that in addition to supervising the investigation, the procurator may choose to conduct the investigation personally).

45. Gorle, *supra* note 18, at 262. In comparison, the "investigation judge" in Belgium is legitimately independent, not subject to pressure from the procurer, and not a participant in trying cases in which he or she served as an investigator. *Id.* at 262.

impartiality.⁴⁶

The defense counsel's inability to enter into the case on behalf of the suspect until after the completion of the entire pretrial investigation further compounds the procurator's dubious role in the investigation.⁴⁷ Suspects usually remain totally unaware of their legal rights during the pretrial period.⁴⁸ In addition, the government may legally hold suspects for a substantial pretrial detention period without court approval and without offering release upon the posting of bail.⁴⁹

Sentencing options available to Soviet Courts include public censure or apology, confiscation of property, removal of title or rank, correctional labor, ineligibility to hold a public office, and exile or banishment from a certain region of the country.⁵⁰ In the case of incarceration, the court is limited to imposing a fifteen year maximum prison sentence.⁵¹ Imprisonment for life is not an option in the Soviet Union.⁵² The court may, however, impose the death penalty for an extremely wide spectrum of crimes ranging from treason and aggravated homicide to theft of state property and currency speculation.⁵³ Finally, it is important to note that the Soviet courts do not follow the presumption of innocence doctrine during the criminal trial process.⁵⁴ Although the Soviet Su-

46. F.J.M. FELDBRUGGE, *supra* note 11, at 601; *see* Gorle, *supra* note 18, at 262 (determining that Soviet criminal procedure fails to meet the fair trial and due process standards promulgated by the European Convention for the Protection of Human Rights and Fundamental Freedoms).

47. O. IOFFEE, *supra* note 29, at 290; KONST. SSSR, art. 158, *trans. in* Legislative Acts of the USSR 1977-79, Book One, at 68. Although a criminal defendant in the USSR has a constitutional right to legal aid, the constitution does not specify at what point in the trial process this right attaches to the defendant. *Id.*

48. *See* Wasserman, *supra* note 11, at 28 (noting that a suspect's lack of counsel means that the suspect is never informed of his right to refuse to testify during the investigation and that the suspect is never warned that any statement he makes can be used against him during the trial).

49. *See id.* (noting that the investigator on his own accord can detain a subject for as long as three days).

50. Patterson, *supra* note 30, at 120. Despite the broad range of sentencing options, since 1960, a trend of constraining the courts' discretionary powers while enhancing the severity of punishments has emerged. F.J.M. FELDBRUGGE, *supra* note 11, at 695.

51. Patterson, *supra* note 30, at 120. Courts impose this maximum term only when the defendant has committed a serious crime or has a high recidivism rate. *Id.*

52. *Prison Conditions, Practices Questioned*, 41 CURRENT DIG. SOVIET PRESS No. 35, at 11 (1989) [hereinafter *Prison Conditions*].

53. *Id.*; *see* F.J.M. FELDBRUGGE, *supra* note 11, at 96 (noting that under the 1960-1961 Criminal Codes the number of different types of capital punishment offenses was greatly expanded). The codes, however, asserted that capital punishment was only a temporary measure. *Id.*

54. *See* Gorle, *supra* note 18, at 263 (noting that despite the Soviet Union's ratification of the International Covenant of Human Rights, adopting the "presumption of innocence," the Soviet Constitution of 1977 makes no reference whatsoever to such a belief); *see also* Fletcher, *The Presumption of Innocence in the Soviet Union*, 15

preme Court recognized this doctrine in 1978 through an official decree,⁵⁵ Soviet courts have not implemented it.⁵⁶

II. PROBLEMS IN THE SOVIET CRIMINAL JUSTICE SYSTEM AND A CALL FOR REFORM IN THE GORBACHEV ERA

A. PARTY INFLUENCES IN THE SOVIET CRIMINAL JUSTICE SYSTEM

One of the oldest and most controversial aspects of legal reform in the Soviet Union is the unofficial, but extremely powerful role that the Communist Party plays in the administration of criminal law and justice.⁵⁷ The Soviet press has rendered many vivid accounts of how both high and low level Party members routinely intervene in the judicial process.⁵⁸ The Party applies political pressure so that judges and people's assessors rule in favor of Party members, insulating members, their relatives, and their Party perks from the reach of the law.⁵⁹ This system of legal favoritism, known as telephone law,⁶⁰ places the inde-

UCLA L. REV. 1203, 1222 (1968) (stating that Soviet scholars' traditional avoidance of an open, public discussion of the presumption of innocence doctrine was simply a shield for the significant institutional struggle in Soviet law over the importance of this doctrine).

55. Gorle, *supra* note 18, at 263-64.

56. See Chaikovskaya & Anashkin, *Morality and the Law: Slander? I Don't Believe It!*, 39 CURRENT DIG. SOVIET PRESS No. 20, at 9 (1987) [hereinafter Chaikovskaya] (noting the "legal-proceedings nihilism" pervading the minds of jurists, law students, and the mass of society supports the more repressive and punitive aspect of the law rather than the legal guarantees it is supposed to provide).

57. See Shelley, *supra* note 3, at 197-98 (explaining that articles in the Soviet press on legal reform focus on the strong, established relationship between members of the judiciary and influential members of the Communist Party—a relationship strong enough to thwart investigations on a national level); see also Petrukhin, *Justice and Legality*, SOV. L. & GOV'T, 1988-89, at 19-20 (noting that the Soviet government has acknowledged the existence of Party interference in the Soviet criminal justice system and has officially resolved to abolish such Party interference). Despite the Soviet government's recognition of Party interference in the judicial process, the government has been unable to eliminate this problem. *Id.*

58. See Shelley, *supra* note 3, at 197 (describing newspaper article titles that are highly critical of the procurators' subordination to the Party's desires).

59. See Sharlet, *Politics of Soviet Law*, PROBS. OF COMMUNISM, 54, 56-57 (Jan.-Feb. 1986) (providing examples of how Nikolay A. Shchelokov, Leonid Brezhnev's Minister of Internal Affairs, received only Party sanctions and was not subjected to criminal prosecution for his involvement in a bribery scandal, and how a prominent Leningrad law professor used his Party connections to have attempted rape charges dropped against his son); see also Shelley, *supra* note 3, at 197 (noting how one procurator's attempt to prosecute an illegal and inequitable housing distribution was terminated by Party officials when they learned that a government official's daughter had benefitted from the scam).

60. See *Courts Ordered to stop Abusing the Law*, 38 CURRENT DIG. SOVIET PRESS

pendence of the judiciary in jeopardy by subordinating the judiciary to the whims of the Party.⁶¹ To the alarm of Soviet jurists, the use and power of telephone law has grown considerably in the last fifteen years.⁶²

Party interference has contributed to the drastic decrease in the number of acquittals granted by Soviet courts over the last twenty-five years.⁶³ Many Soviet jurists suggest that acquittal has disappeared altogether.⁶⁴ The low acquittal level is partially attributed to Party chiefs who instruct judges to avoid giving acquittals, thus bolstering the image of district officials as successful law enforcers.⁶⁵ This judicial acquiescence to Party officials' demands results from the judiciary's dependence on local authorities for their living allowances and for the needed political support for re-election and promotion.⁶⁶ In addition, a judge could incur Party sanctions for refusing to follow local Party criminal policy.⁶⁷

Proponents of legal reform advocate reforms that would free all members of the judiciary from the powerful grip of the Party, and create independent courts.⁶⁸ To create this independence, some Soviet ju-

No. 50, at 1, 5 (1987) [hereinafter *Courts Ordered*] (noting that technology has transformed "telephone law" into "intercom law" and might soon create "computer law").

61. See *id.* (noting that direct phone lines often ran between a judge's chambers and the district headquarters for purposes of "consultation"). This subordination of the judiciary to the Party is blatant and openly acknowledged by Party members. Sharlet, *supra* note 59, at 56. This fact was evidenced by the remark of one Party official, who said to a crowd of Soviet judges, "Yes, you judges are independent and subordinate only to law. But you are dependent on me, are you not?" *Id.* at 56.

62. See *Courts Ordered*, *supra* note 60, at 5 (noting that while in the 1970s only ten percent of Soviet judges acknowledged pressure from "outside sources," this percentage increased by over one hundred and fifty percent in the 1980s); see also *Judicial Reforms*, *supra* note 3, at 7 (noting that telephone calls from influential people or "old friends" often carry more weight than the written law).

63. See *Petrukhin*, *supra* note 57, at 28 (stating that the decline in acquittals is due to the poor quality of pretrial investigations). The acquittal rate in the Soviet Union fell from ten percent prior to the 1960s to 0.3% in the late 1980s. *Id.*

64. *Courts Ordered*, *supra* note 60, at 5. Despite the significant amount of attention that the lack of acquittals has received in the press, these writings have not generated any reform action on the part of the Government. *Id.*

65. See Solomon, *supra* note 4, at 84 (noting that Party leaders expect judges to cooperate with their occasional requests because acquittals, seen as failures, shed a negative light upon local Party officials and open the way for unwanted intervention by higher Party officials); Shelley, *supra* note 3, at 202 (noting that innocent citizens are convicted because the Party desires to secure convictions for reported crimes and Party sponsored prosecutions).

66. *Petrukhin*, *supra* note 57, at 21.

67. *Id.*

68. See Shelley, *supra* note 3, at 197 (stating that legal reformists urge professional judges not to subordinate their authority to the desires of local Party officials, including demands made over the phone); Savitsky, *Selecting Judges*, 40 CURRENT DIG. SOVIET PRESS No. 20, at 23 (1988) (stating that a blend of "political, legal, orga-

rists recommend taking the power to appoint judges away from the local district level Soviets and placing the power in the hands of higher legislative bodies.⁶⁹ Other Soviet jurists suggest lengthening the terms that judges serve to life terms.⁷⁰ Another proposal would limit the Party's power to recall judges.⁷¹

Judges perpetuate the illegal influence syndrome by exerting extremely noticeable, illegal demands on people's assessors.⁷² Many judges in the Russian Republic, for example, have simply abandoned article 30 of the Russian Code of Criminal Procedure,⁷³ which requires judges to consult with people's assessors before rendering a verdict.⁷⁴ Although people's assessors are intended to represent the average citizen's voice in the judicial process,⁷⁵ their presence is often a meaningless formality.⁷⁶

When people's assessors attempt to exercise their legitimate judicial powers of objection, the professional judges usually rebuke them.⁷⁷ Court officials often tell people's assessors that they should not question

nizational and material measures" is needed to alleviate the intolerable political pressure felt by courts today).

69. See *Petrukhin*, *supra* note 57, at 21 (recommending that the Presidium of the Supreme Soviet select all Soviet judges since decisions made by various Republic courts are handed down under the name of the Presidium).

70. See Savitsky, *supra* note 68, at 24 (suggesting that upon recommendation of the Soviet Minister of Justice the Presidium would appoint judges for life terms, thus terminating judges' dependence on the local Party members for their political and economic survival; *Petrukhin*, *supra* note 57, at 22 (suggesting the election of judges for either ten year terms or for life).

71. See *Petrukhin*, *supra* note 57, at 22 (proposing Party procedures that would re-examine judicial proceedings only when judges are charged with judicial misconduct, not with irritating local Party officials).

72. See *id.* (noting that since assessors are called to duty in the order desired by the judge, the judge can summon only those assessors whom he believes will accept his decision on any verdict).

73. UK RSFSR, art. 30.

74. See *id.* (noting that the Soviet Code of Criminal Procedure requires subjecting all judgments to a vote). Soviet judges' severe lack of deference to people's assessors has led to the almost complete disappearance of the dissenting opinion as a tool for shaping the law. *Id.*

75. See F.J.M. FELDBRUGGE, *supra* note 11, at 572 (noting that people's assessors are intended to fulfill the Marxist belief in informal, lay tribunals that include a strong populist influence).

76. See *Judicial Reforms*, *supra* note 3, at 4 (stating that the participation of people's assessors in the judicial process is a relatively meaningless act because there are too few of them on each panel, usually only two); see also F.J.M. FELDBRUGGE, *supra* note 11, at 574 (stating that assessors lack tangible power because they work as amateurs on a part-time basis alongside professional legal jurists who tend to intimidate them).

77. See Shelley, *supra* note 3, at 201 (retelling the story of how when one people's assessor participated actively in the courtroom the supervising judge said "send another people's assessor, such ones are not necessary").

a judge's professional judgement, but instead, simply support his decision.⁷⁸ Beginning in late 1986, the USSR Supreme Court, in plenary sessions, called for the enhancement of the people's assessors' role in the judicial process in an attempt to strengthen the principle of legality in the Soviet criminal justice system.⁷⁹ The court stated that the failure to allow people's assessors to exercise their full rights as arbiters of the law was a fundamental violation and could serve as a valid justification for the reversal of a judgment.⁸⁰

Despite the realization that people's assessors' roles are rarely consequential, legal scholars, as early as 1986, suggested increasing the number of people's assessors on each bench.⁸¹ Those who argue for expanding the number of people's assessors' claim that this change would further Gorbachev's goal of enhancing legality and democratization in the Soviet Union.⁸² The minority view, however, maintains that people's assessors are untrained and unqualified laypeople who should not retain the authority to decide the fate of their fellow citizens.⁸³ The minority's proposals for reform would completely remove the people's assessors from the Soviet bench.⁸⁴

B. DETERIORATION OF THE ECONOMIC, SOCIAL AND PROFESSIONAL STATUS OF THE SOVIET BENCH

Despite disagreement over the roles that judges and people's asses-

78. See *id.* (citing an example of how one people's assessor, who protested the harsh punishment levied against the defendant, was told that she should not vote to acquit the defendant because that would subject the defendant to extended confinement while a re-trial took place).

79. *Courts Ordered*, *supra* note 60, at 1. Under this possibility, judges should not underestimate the defense's role. The idea that judges should never place restrictions upon the rights of people's assessors was emphasized by the USSR Supreme Court. *Id.*; *Plenary Session of the USSR Supreme Court*, 39 CURRENT DIG. SOVIET PRESS No. 15, at 17 (1987) [hereinafter *Plenary Session*].

80. See *Plenary Session*, *supra* note 79, at 18 (1987) (noting the USSR Supreme Court's order that judges who attempt to prevent people's assessors from exercising their judicial power should face the possibility of penalization).

81. See *Judicial Reforms*, *supra* note 3, at 5 (suggesting the formation of a court of people's assessors with the responsibilities of the Chief Judge reduced to providing the people's assessors with only a legal form and basis for their verdict).

82. See *Reforms in Soviet Courts*, *supra* note 9, at 8 (claiming that a bench comprised of people's assessors is fairer and more humane in regard to sentencing than a bench of professional judges). People's assessors are more democratic because they do not give into the pressures of telephone law. *Id.*

83. See Tiudor, *The Legal System—Paths of Restructuring: Who Should Be A Judge*, 39 CURRENT DIG. SOVIET PRESS No. 23, at 19 (1987) (noting that for the purposes of passing legal judgement, assessors as legal amateurs are elevated to the rank of legal professional).

84. See *id.* (maintaining that people who do not have the appropriate professional training cannot master today's complex web of legal intricacies).

sors should play, a strong consensus supports the idea of drastically increasing the prestige and status awarded to judges.⁸⁵ Over the last few years, Soviet judges have suffered from too much work⁸⁶ and too little pay.⁸⁷ In an effort to expedite the excessive amount of work on their crowded dockets, judges often reduce the defense lawyer's and the witnesses' time in court.⁸⁸ A devastating result of the low pay is that the Soviet bench is rapidly losing many of its most mature and experienced members.⁸⁹

Because of this mass exodus from the bench, the average age of a Soviet judge is now alarmingly low.⁹⁰ In the Soviet Union, a person can become a member of the bench at age twenty-five.⁹¹ To counter this trend, some legal reformists have suggested a minimum age limit of thirty years for anyone who desires to serve as a people's judge and a limit of forty years for anyone wishing to serve on a superior court.⁹²

Legal reformists have also attacked the low level of prerequisites re-

85. See Cheremnykh, *On the Prestige of the Judicial System in a State Governed by the Rule of Law*, 41 CURRENT DIG. SOVIET PRESS No. 15, at 24 (1989) (noting that the material well-being of the judicial system has deteriorated below any acceptable level and that this chronic problem must end before any other judicial reform can proceed).

86. *Reforms in Soviet Courts*, *supra* note 9, at 8. The Federal Republic of Germany, while having less than one-quarter of the population of the Soviet Union, has the same number of judges. *Id.* This helps to explain why Soviet judges are overburdened and overtired. *Id.*; see Cheremnykh, *supra* note 85, at 25 (noting that one out of every five judges is relieved of his/her duties because of nervous disorders).

87. See Cheremnykh, *supra* note 85, at 24 (noting that the humiliating salaries of judges not only inhibit the judicial profession and the Soviet courts from achieving any semblance of prestige, but threaten the very existence of the current judicial system); see also *id.* at 25 (noting that the average pay in the USSR is two hundred and seventeen rubles a month, while the average pay in the Ministry of Justice is only one hundred and thirty seven rubles). Over 3,000 judges in the Russian Republic alone do not have a permanent residence and are homeless. *Id.*

88. *Reforms in Soviet Courts*, *supra* note 9, at 8. This reduction of time is achieved by rushing the arguments of lawyers and by cutting off the testimony of witnesses. *Id.*

89. See Cheremnykh, *supra* note 85, at 24 (noting that because the quality of the judicial corps has deteriorated so rapidly, the turnover rate of people's judges in recent years has exceeded fifty percent). Twenty percent of the judges in Russia, thirty-three percent of judges in the Ukraine, Belorussia, Kirgizia, Latvia and Estonia, and every last judge in Moldavia refuse to serve another term if their salaries are not drastically increased. *Id.*

90. See *id.* (noting that since the majority of the Soviet bench is extremely young, the bench has not mastered the law or acquired the wisdom and restraint that only comes with age).

91. Savitsky, *supra* note 68, at 23.

92. *Id.* V. Savitsky, director of the Department of Legality at the Soviet Academy of Sciences Institute of State and Law, stated that a man or woman of twenty-five years of age does not possess the wisdom or the experience necessary to be able to decide the fate of others. *Id.*

quired to serve on the Soviet bench.⁹³ Some members of the Soviet legal community believe a more intense and specialized education should stand as a requirement for those people wishing to serve on the bench.⁹⁴ Other members of the Soviet legal community have suggested that potential judges should also have some practical experience in the administration of justice.⁹⁵ Finally, some critics believe that all prospective members of the bench should be required to pass a state examination in order to join the bench.⁹⁶

C. THE ROLE OF THE PROCURACY IN THE PRELIMINARY INVESTIGATION

The most alarming aspect of the Procuracy's role in the pretrial investigation is that even though the Procuracy is the agency responsible for directing the investigation, the Procuracy also has the responsibility to oversee the investigation to prevent the commission of illegalities.⁹⁷ Thus, the Procuracy is in the advantageous position of reporting to no institution other than itself.⁹⁸ Soviet newspapers frequently publish highly critical accounts of the Procuracy's flagrant violations of socialist legality during the preliminary investigation.⁹⁹ The USSR Supreme

93. See Tiudor, *supra* note 83, at 19 (noting that the only prerequisite a person needs to become a judge is a law school diploma); see also Quigley, *Soviet Courts Undergoing Major Reforms*, 22 INT'L LAW. 459, 465 (1988) (complaining that people can obtain law degrees through correspondence schools).

94. See Tiudor, *supra* note 83, at 19 (implying that a law school degree is not a sufficient prerequisite for a judgeship and claiming that, beginning in their schools of higher learning, jurists should study with the goal of becoming a judge as their area of specialization).

95. See Savitsky, *supra* note 68, at 23 (suggesting that aspiring judges should spend at least three years working as an investigator, a defense attorney, or other similar legal specialist).

96. *Id.* Some jurists believe that potential judges should be tested for "maturity in life, moral irreproachability and . . . skill at accurately investigating the extremely complex legal situations that constitute the judge's daily work." *Id.*

97. See Petrukhin, *supra* note 57, at 20 (noting that the Procuracy's dual role in the pretrial period strips them of all objectivity and creates an accusatory bias towards prosecution); Vaksberg, *The Queen of Evidence*, in SOV. LAW & GOV'T 6, at 15 (Winter 1988-1989) (noting that neither justice nor legality will prevail as long as the bias toward prosecution exists); *Reforms in Soviet Courts*, *supra* note 9, at 10 (stating that because of this dual role, the prosecutor is put in the extremely advantageous position of supervising himself).

98. *Reforms in Soviet Courts*, *supra* note 9, at 10.

99. *Illegalities in Preliminary Investigation*, 39 CURRENT DIG. SOVIET PRESS no. 22, at 8 (1987) [hereinafter *Illegalities*]; see Gdlyan, *Ivanov: Investigators Run Amok?*, 41 CURRENT DIG. SOVIET PRESS No. 20, at 9-14 (1989) [hereinafter *Investigators*] (observing that, in May 1989, Soviet newspapers were filled with detailed accounts of a plethora of illegalities conducted by T. Kh. Gdlyan and N. V. Ivanov, two investigators in the USSR Prosecutor's Office, during numerous pretrial investigations). In an attempt to cause suspects to suffer psychological breakdowns, the prosecutors

Court has acknowledged that various local prosecutor's offices have leveled criminal charges against innocent people and convicted them without reliable evidence.¹⁰⁰

The first injustice encountered by many criminal suspects in the Soviet criminal justice system is pretrial detention.¹⁰¹ Immediately following an arrest, the Procuracy may detain suspects for many months without any justification other than the assertion of a need to question the suspect.¹⁰² Imposition of this lengthy pretrial detention without a trial¹⁰³ or the right to challenge the detention¹⁰⁴ compounds the injustice.

Besides criticizing the detention itself, some Soviet jurists have also protested against the harsh, prison-like conditions imposed on detainees in the temporary confinement facilities.¹⁰⁵ The severe deprivation of both human and legal rights to detained suspects, some of whom are

perpetrated various illegalities such as bribing witnesses, coercing witnesses and suspects to make false confessions or testimony, making warrantless arrests, fabricating evidence, and keeping suspects in prison-like detention for years without a trial or any justification. *Id.*

100. *Special Resolution of the Plenary Session of the U.S.S.R. Supreme Court*, Apr. 25, 1989, 41 CURRENT DIG. SOVIET PRESS No. 18, at 24 (1989) [hereinafter *Special Resolution*]; Berkhin, *In The U.S.S.R. Prosecutor's Office*, 39 CURRENT DIG. SOVIET PRESS No. 48, at 29 (1988) (discussing the case of V.B. Berkhin, a journalist, in which the Procuracy initiated proceedings against Berkhin for malicious hooliganism without any evidentiary basis to support their accusations). Even after these violations were exposed, the guilty members of the Procuracy were never called to account for their actions. *Id.*

101. See *Illegalities*, *supra* note 99, at 9 (noting that the law permits an initial detention period of up to 72 hours).

102. See O. IOFFEE, *supra* note 29, at 292 (commenting on the possibility of a suspect's "incommunicado" detainment for several months); see also FELDBRUGGE, *supra* note 11, at 222 (noting that if a suspect is detained for two months during the preliminary investigation, appropriate approval from Procuracy officials at various levels may lead to extension of the detention period to three, six, and ultimately to nine months); Quigley, *supra* note 93, at 463 (noting that the average period of pretrial detention is four to five months, although it often lasts as long as nine months).

103. *Glasnost and Perestroika are Changing Soviet Law*, L.A. Daily J., Sept. 21, 1988, at 4 [hereinafter *Glasnost and Perestroika*].

104. See Quigley, *supra* note 93, at 463 (noting that detainees have no right to request a court to review the legality of their detention). Although Soviet courts have the power to release suspects held in pretrial custody, they rarely exercise this power. *Id.*; see also *After An Anonymous Letter*, 38 CURRENT DIG. SOVIET PRESS No. 24, at 23 (1986) [hereinafter *Anonymous Letter*] (implying that pretrial custody as practiced in the Soviet Union is paramount to a criminal act).

105. See *A Suspect Is Not Yet A Criminal*, 40 CURRENT DIG. SOVIET PRESS No. 42, at 18 (1988) [hereinafter *A Suspect Is Not Yet A Criminal*] (stating that detained suspects are not given bed linen, and are forced to sleep on bare platforms with the other detainees); see also *Prison Conditions*, *supra* note 52, at 11 & 28 (noting that the atrocious living conditions in the detention centers, where there may be up to 40 people in one cell). Convicted felons in the USSR are given better living conditions than people held in pretrial custody. *A Suspect Is Not Yet A Criminal*, *supra* note 105.

innocent, has caused some detainees to suffer mental breakdowns and commit suicide.¹⁰⁶ Critics of this system claim that the root of the problem stems from the popular belief that detention is synonymous with criminal guilt.¹⁰⁷ In an attempt to remedy this situation, some Soviet jurists have proposed that the court decide the length of detainment of a suspect on an individual basis,¹⁰⁸ circumventing automatic approval for detention by the procurator.¹⁰⁹ Other Soviet jurists, however, including the former Chief Judge of the USSR Supreme Court, believe that courts should make no decisions regarding pretrial detention.¹¹⁰ These jurists, including some members of the Procuracy, have protested that without the power of detention the ability to enforce the law is severely limited.¹¹¹

Another common injustice encountered during the pretrial investigation is that innocent suspects will often confess to crimes that they did not commit because of the extreme mental and/or physical coercion applied to them by the investigator.¹¹² The impetus behind this illegal-

106. *A Suspect Is Not Yet A Criminal*, *supra* note 105. Detainees are deprived, for example, of the right to possess money, the right to take walks, and the right to read magazines or books. *Id.*; see *Prison Conditions*, *supra* note 52, at 28 (noting that is not unusual for people in detention centers to disintegrate completely and commit suicide).

107. See *id.* (stating that the "Statute on Procedures for the Detention of Persons Suspected of Committing Crimes," which was promulgated in the 1970s, legalized the harsh treatment that is applied to citizens in pretrial custody).

108. *Terebilov Backs Some Judicial Reforms*, 38 CURRENT DIG. SOVIET PRESS No. 43, at 5 (1986) [hereinafter *Terebilov*]. Some Soviet lawyers have called for a court procedure that would allow a person subject to arrest to challenge their arrest. *Id.*; Quigley, *supra* note 93, at 463. Other Soviet lawyers have suggested that arrested suspects deserve a right to prompt judicial arraignment. *Id.*

109. See *Glasnost and Perestroika*, *supra* note 103, at 4 (suggesting that the courts, and not the Procuracy, should decide if there is sufficient justification to detain a suspect).

110. *Terebilov*, *supra* note 108, at 5. Terebilov believes that courts should not suffer the burdens of pretrial detention matters because at such an early stage of the investigation the courts do not have a sufficient amount of information on which to base any ruling regarding detention. *Id.* In addition, Terebilov believes that if a judge were to make a determination about the release of the detainee, he would infer his belief as to the guilt or innocence of the suspect and would thereby jeopardize the "fairness" of the trial. *Id.*

111. See *Don't Take Away Themis's Sword*, 39 CURRENT DIG. SOVIET PRESS No. 51, at 21 (1988) [hereinafter *Themis's Sword*] (stating that in order to uncover the truth, the investigator must isolate or detain subjects to prevent them from conspiring on a lie). Without this power of detention, claim some investigators, the criminal released before trial just "laughs in your face" and possibly escapes criminal prosecution. *Id.*

112. See *Courts Ordered*, *supra* note 60, at 4 (stating that in one case, confessions were literally beaten out of fourteen people who were later found innocent); see also Tselms, *supra* note 4, at 5 (noting how physical coercion was used to obtain a false, forced confession); *Anonymous Letter*, *supra* note 104, at 23 (claiming how one witness

ity is the formidable pressure placed on investigators to solve all their cases at any price.¹¹³ The injustice of the confession is magnified when a defendant repudiates his confession in court and the trial judge refuses to accept the repudiation.¹¹⁴ Judges will often blindly accept the tape recorded confession of a defendant made during the preliminary investigation and reject the courtroom repudiation of illegally procured testimony.¹¹⁵ Legal scholars argue that confessions cannot form the basis on which a verdict rests without the support of other credible evidence.¹¹⁶

The situation above underscores what many legal reformists see as a fundamental error in the Soviet criminal justice system: the judiciary's lack of adherence to the principle of a presumption of innocence.¹¹⁷ Proponents of legal reform, led by members of academia, have repeatedly called for the official establishment of a presumption of innocence.¹¹⁸ They realize, however, that traditional Soviet doctrine rejects this principle.¹¹⁹ In fact, supporters of legal reform complain that many

was illegally coerced into giving testimony by an investigator threatening detention).

113. See *Courts Ordered*, *supra* note 60, at 4 (acknowledging how the people in charge of the case were issued a warning: "[s]olve the case, or else").

114. *Reforms in Soviet Courts*, *supra* note 9, at 8. Although the suspect had retracted his confession, the court, on very dubious grounds, still found the defendant guilty of murder and sentenced him to 15 years in jail. Tselms, *supra* note 4, at 5. Even after the defendants had explained that they were forced to slander themselves, one of the people's assessors simply rejected their statements and said, "[b]ut . . . who will confess to a crime if he isn't beaten?" *Courts Ordered*, *supra* note 60, at 4.

115. See *Petrukhin*, *supra* note 57, at 27-28 (noting that judges are too quick to dismiss allegations that a tape-recorded confession was procured by illegal means without sufficiently verifying the allegations). If the investigator had a legitimately solid case, he would not attempt to obtain a recording of the accused's confession. *Id.* Recordings of confessions, whether audio or visual, can prove that a confession was procured, but cannot prove that the confession was *legally* obtained *Id.* (emphasis added).

116. *Reforms in Soviet Courts*, *supra* note 9, at 8. Petrukhin, a Doctor of Jurisprudence, relies on article 77 of the Russian Republic Code of Criminal Procedure. UK RSFSR, art. 77.

117. See *id.* (stating that the lack of adherence to the belief in a "presumption of innocence" is one of the main reasons for the extremely low acquittal rate in the Soviet Union); see also Chaikovskaya, *supra* note 56, at 9 (noting that the principle of a "presumption of innocence" "fits with difficulty even into the minds of jurists; some officials talk about it through clenched teeth, and others seem to acknowledge it while their actions make clear that they deny it in practice").

118. See Chaikovskaya, *supra* note 56, at 9 (proposing the suggestion of G. Anashkin, Doctor of Jurisprudence, of incorporating the principle of a "presumption of innocence" into the new procedural legislation that is currently in the drafting stages); see also Butler, *Legal Reform in the Soviet Union*, 1 THE HARRIMAN INST. F. 1, 4 (Sept. 1988) (stating that the authors of the Theoretical Model Code of Criminal Procedure, completed in the spring of 1988, "strongly recommended" the incorporation of the term "presumption of innocence" in that doctrine).

119. Chaikovskaya, *supra* note 56, at 9. In a study they were conducting, Professors A. R. Ratinov and G. Kh. Yefremova asked the question, "[w]hat . . . would be

members of the Soviet bench adhere to the policy of presumption of guilt, the ultimate expression of accusatory bias.¹²⁰

III. GOVERNMENT PROPOSALS FOR LEGAL REFORM UNDER GORBACHEV, 1986-1988

The first official government references to legal reform under the policies of *glasnost* and *perestroika* originated from Gorbachev in his Political Report to the 27th Congress of the Communist Party of the Soviet Union (CPSU) in February 1986.¹²¹ Gorbachev called for a general strengthening of socialist legality through the promotion of democracy¹²² and the rule of law.¹²³ The only specific reform that the General Secretary proposed at that time, however, was to enhance the prosecutors' supervisory role over the prosecution process.¹²⁴ By the autumn of 1986, the Soviet government was discussing how to improve Soviet jurisprudence and create a society in which all people would understand the laws under which they live.¹²⁵

Liberated by Gorbachev's broad and vague statements regarding legal reform, the major Soviet newspapers began printing in late 1986 a series of scathing articles that uncovered major pockets of corruption within the Soviet criminal justice system.¹²⁶ In response to these harsh

the just thing to do, to convict or to acquit a defendant if the court has doubts about his guilt but it is impossible to obtain additional . . . evidence?" *Id.* More than two-thirds of the survey participants did not know what they would do, and one in seven said that they would convict in that case. *Id.*

120. See *Courts Ordered*, *supra* note 60, at 4 (noting that courts often begin a case relying on a presumption of the defendant's guilt); see also *Reforms in Soviet Courts*, *supra* note 9, at 8 (citing a survey of 736 people's judges, in which 43% said that before the trial even begins they form an opinion that the defendant is guilty).

121. *The 27th Congress of the Communist Party of the Soviet Union: The Political Report of the C.P.S.U. Central Committee to the 27th Congress of the Soviet Union—Delivered by Comrade M. S. Gorbachev, General Secretary of the C.P.S.U. Central Committee, on Feb. 25, 1986*, 38 CURRENT DIG. SOVIET PRESS No. 8, at 4 (1986) [hereinafter *Political Report*].

122. *Id.* at 26. Although Gorbachev claimed that a great amount of legal reform had already taken place, he stressed adherence to the norms of Soviet law because legality was a vital part of Soviet democracy. *Id.*

123. See *Butler*, *supra* note 118, at 1 (noting Gorbachev's call for a "reliance upon law" throughout the Soviet Union); see also *Political Report*, *supra* note 121, at 26 (stressing that the interests of the state and the interests of citizens, which include democratic tenets of justice and citizens' equality before the law, demand protection).

124. *Political Report*, *supra* note 121, at 26.

125. See *The Party Consults With the People—M.S. Gorbachev Meets With the Working People of Krasnodar and Stavropol Territories*, 38 CURRENT DIG. SOVIET PRESS No. 38, at 3 (1986) (suggesting improvement of lawyers' training and the implementation of a program of elementary legal education for working people).

126. See *Shelley*, *supra* note 3, at 196 (noting that in September 1986, *Literaturnaya Gazeta* published a detailed, blistering expose written by the chief of the

attacks, various branches of the Soviet government proposed more specific and targeted judicial reforms.¹²⁷ The Chairman of the USSR Supreme Court, for example, suggested removing the investigative arm of the judicial process from the auspices of the Procuracy and placing it in a neutral, separate department, such as the Ministry of Internal Affairs.¹²⁸ Despite opposition, the Chairman also proposed permitting a single judge to hear all minor criminal cases (approximately one-third of the total) without the assistance of people's assessors¹²⁹ and granting defense lawyers a slightly greater participatory role in the pretrial investigation.¹³⁰

In November 1986, the CPSU Central Committee responded with a resolution suggesting that many of the problems in the criminal justice system would be eradicated if state agencies and officials would not deviate so seriously from legal norms already established under statutory law.¹³¹ The resolution strongly urged support for a "strict obser-

criminal law theory division of the Institute of State and Law that led to an onslaught of articles that revealed a corrupt criminal justice system). Since then, articles discussing the fundamental deficiencies of the Soviet criminal justice system have regularly appeared and called for a drastic overhaul of the system. *Id.*

127. See *Legal Dialogues: Justice and the Times*, 38 CURRENT DIG. SOVIET PRESS No. 43, at 5 (1986) [hereinafter *Justice and the Times*] (discussing the opinions of V. Terebilov, Chairman of the USSR Supreme Court, on the exposure of wide-spread illegalities in Soviet law enforcement and judicial agencies and what effect the climate of openness and the official policy of restructuring has had on the Soviet criminal justice system); see also *In the C.P.S.U. Central Committee—On Further Strengthening Socialist Legality and Law and Order and Increasing the Protection of Citizens' Rights and Legitimate Interests*, 38 CURRENT DIG. SOVIET PRESS No. 48, at 8 (1986) [hereinafter *Strengthening Socialist Legality*] (noting that the C.P.S.U. Central Committee passed a resolution stating the 27th Party Congress' Policy of bringing democracy into all aspects of Soviet society cannot be separated from the goals of promoting socialist legality, the constitutional rights of Soviet citizens, and strict adherence to the fundamental tenets of social justice).

128. See *Justice and the Times*, *supra* note 127, at 5 (suggesting that removal of the investigating arm of the Soviet criminal justice system from under the direction of the Procuracy would make the prosecutor's supervision over the pretrial investigation more objective, complete, and consistent with Gorbachev's policy of strengthening Soviet legality).

129. *Id.* Terebilov, noting that his suggestion to eliminate people's assessors in certain cases goes against the general tenor of legal reform under *glasnost*, stated bluntly that the role of lay assessors in uncomplicated cases is simply pro forma. *Id.* Terebilov stated that eliminating people's assessors in some cases, which he claimed was consistent with democracy, would create desperately needed time for hearing more complex cases involving people's assessors. *Id.*

130. See *id.* at 6 (stating that defense counsel participation from the initiation of criminal proceedings is "too early," but suggesting that, when pretrial detention is involved, defense lawyers should participate upon the presentment of the indictment).

131. See *Strengthening Socialist Legality*, *supra* note 127, at 8 (claiming that only a divergence from established legal norms could explain the theft and bribe-taking in the Soviet criminal justice system exposed by the Soviet press and stating that people must vigorously fight such corruption in the ministries and departments of the legal

vance of laws,"¹³² contending that this would further the process of *perestroika*.¹³³ More specifically, the resolution called for: (1) a better and more comprehensive legal education for both working people¹³⁴ and professional legal personnel;¹³⁵ (2) more scrutinizing attention to the work done by lawyers, legal consultants, and all officials charged with enforcing the law;¹³⁶ and (3) an end to the biased, callous, and often indifferent way that preliminary investigations are conducted.¹³⁷

In 1987, the Presidium of the USSR Supreme Soviet issued a resolution instructing the USSR Ministry of Justice to adopt all of the reforms necessary for a major overhaul of the ministry's legal service programs for the public.¹³⁸ Noting that Soviet citizens have a constitutional right to a defense,¹³⁹ the resolution stated that the legal aid offices were not performing the services necessary to protect this right,¹⁴⁰ and that the defense services they do provide were substandard and inadequate.¹⁴¹ The Presidium also noted that local Soviets and their executive committees were not exerting adequate pressure and influence upon the judicial agencies which they were supposed to monitor, such as the legal aid offices.¹⁴² Stating that legal personnel, includ-

system because it violates the interests of Soviet society).

132. *Strengthening Socialist Legality*, *supra* note 127, at 8. The Resolution called upon the Communist Party Central Committees at all levels of the Party hierarchy, from the territory to the district level, to ensure strict observance of socialist legality. *Id.*

133. *Id.*

134. *See id.* (stressing that the working class must understand the unity of rights and obligations).

135. *See id.* (implying the need for raising the professional qualifications of legal specialists).

136. *See id.* (noting that increased attention must be paid to the accuracy and quality of the work of legal personnel).

137. *See id.* at 9 (calling for an end to unsubstantiated pretrial detention and illegal criminal indictments).

138. *See In the Presidium of The U.S.S.R. Supreme Soviet—On Judicial Agencies' Work to Provide Legal Service to the Public*, 39 CURRENT DIG. SOVIET PRESS No. 30, at 20 (1987) [hereinafter *Legal Services*] (noting that the judicial agencies that provide legal services to the Soviet citizenry are in desperate need of qualified personnel).

139. KONST. SSSR, art. 158, *trans. in* Legislative Acts of the U.S.S.R., 1977-1979, Book One, at 68.

140. *See Legal Services*, *supra* note 138, at 20 (noting that the USSR Ministry of Justice receives about 13,000 complaints each year regarding the inefficiency and ineffectiveness of its services).

141. *See id.* (noting that many lawyers do not provide useful assistance because they are inadequately qualified and often use various excuses to sidestep their duties in representing defendants).

142. *See id.* (noting that local executive committees rarely review their agency directors' reports and devote little energy to fostering the proper working conditions in which courts and legal aid offices should operate).

ing many lawyers, have indifferent attitudes toward their duties and/or are simply incompetent people who abuse their positions,¹⁴³ the resolution proposed the installation of significantly higher standards for all personnel in judicial agencies.¹⁴⁴

As Gorbachev's tenure approached its third anniversary in May 1988, it was clear that the emphasis of his proposals would involve a new and stronger approach to the application and enforcement of existing laws.¹⁴⁵ It also appeared that any government proposal for legal reform would take an exceptionally long time to implement.¹⁴⁶ This was evidenced by the fact that many of the reforms that Gorbachev proposed to the Central Committee in May 1988 echoed the proposals he made to that same body in early 1986.¹⁴⁷ Gorbachev did introduce for the first time, however, two radical priority proposals: (1) the implementation of an adversarial system into the trial process,¹⁴⁸ and (2) a steadfast adherence to the principle that all defendants must be presumed innocent.¹⁴⁹ In addition to Gorbachev's proposals, the Soviet government also considered preliminary proposals to divide the prosecutor's office and the courts into two separate and independent departments.¹⁵⁰

The Soviet government's most extensive and detailed slate of propos-

143. See *id.* (stating that responsible positions in legal agencies are sometimes held by people who show a predilection for extortion).

144. See *id.* (proposing that a "spirit of integrity and honesty" should be instilled in judicial employees).

145. See Polyakou, *Toward the 19th All-Union Party Conference: The Law is Obligated to Protect*, 40 CURRENT DIG. SOVIET PRESS No. 19, at 20 (1988) (noting that Professor G. Minkousky, an honored scholar, jurist, and participant in drafting the new criminal legislation, has stated that radical, new principles regarding the application of the law must gain acceptance if the legal restructuring process is to succeed). Minkousky stated that to facilitate reform, the Soviet legal community must implement new legal applications recognizing the change from the principle of "anything not permitted is prohibited" to the principle that "anything not prohibited is permitted." *Id.*

146. Butler, *supra* note 118, at 1.

147. See *Central Committee Hears Gorbachev on Theses-Communique on the Plenary Session of the Central Committee of the Communist Party of the Soviet Union*, 40 CURRENT DIG. SOVIET PRESS No. 21, at 8 (1988) [hereinafter *Communique*] (calling once again for the formation of a socialist society based upon "the rule of law" and stressing the need for strict observance of statutory law and general principles of democracy, especially within the confines of the criminal justice system).

148. See *id.* (noting that a change to an adversarial system would provide equality at law for all the parties involved); see also Bialer, *supra* note 7, at 426 (noting that the Soviet government has considered ways of restructuring the public defender's office in a manner that would enhance the rights and ensure the independence of public defenders).

149. *Communique*, *supra* note 147, at 8.

150. See Bialer, *supra* note 7, at 426 (noting that both the courts and the public prosecutor's office are currently located within the same agency, the Ministry of Justice).

als for legal reform to date was enthusiastically introduced by Gorbachev in a major address to Party officials in June 1988.¹⁵¹ The General Secretary once again reiterated and reinforced many of his past proposals for legal reform,¹⁵² including his now characteristic call for a "socialist state governed by the rule of law."¹⁵³ This time, however, Gorbachev also outlined a surprising array of new and fairly specific proposals to reform the criminal justice system.¹⁵⁴

Gorbachev's proposals stressed the need to guarantee the independence of judges from outside political influences.¹⁵⁵ The General Secretary proposed extending judicial terms from five years¹⁵⁶ to ten years and permitting only higher level Soviets to have the power to elect judges.¹⁵⁷ Gorbachev also proposed a reduction of the prosecutor's distracting tangential duties, so that the prosecutor could concentrate al-

151. *On Progress in the Implementation of the Decisions of the 27th C.P.S.U. Congress and the Tasks of Deepening Restructuring—Report by M.S. Gorbachev General Secretary of the C.P.S.U. Central Committee, at the 19th All-Union C.P.S.U. Conference on June 28, 1988*, 40 CURRENT DIG. SOVIET PRESS No. 26, at 7 (1988) [hereinafter *The Tasks of Deepening Restructuring*].

152. *See id.* at 20 (calling once again for (1) the introduction of the adversarial principle; (2) equality at law for all parties; (3) the elimination of accusatory bias on the part of judges; and (4) an uncompromising adherence to a belief in the presumption of innocence principle); *see also* Butler, *supra* note 118, at 1 (implying that Gorbachev's June 1988 speech to the Party conference mirrored the speech he presented to the Congress).

153. *See The Tasks of Deepening Restructuring, supra* note 151, at 19 (claiming that persistently pushing for the democratization of Soviet society should finally establish a socialist state where the rule of law governs without question). One new, satisfying element in Gorbachev's latest proposal for legal reform was that for the first time in a major address, the General Secretary explained exactly what he meant by the rule of law when he said:

The principal characteristic of a state governed by the rule of law is that the supremacy of the law is in fact ensured. No state agency, official, collective, Party or public organization, and no person is exempt from the duty of submitting to the law. Just as citizens are responsible to their state of all the people, the state authorities are responsible to the citizens. Their rights should be reliably protected against any high-handedness on the part of the government and its representatives.

Id.

154. *Id.* at 19-20. Before outlining his specific proposals, Gorbachev noted that many of his proposals are necessary to counteract the extreme legal conservatism that pervades the Soviet legal system and threatens to undermine his attempts to pursue democratic social development. *Id.* at 19. Gorbachev also stressed that while legal restructuring is occurring, the principle that "everything that is not prohibited by law is permitted" must come foremost in everyone's mind. *Id.*

155. *See id.* (stating that the Leninist view of the courts' role, which stresses the independence of judges, must be strictly adhered to so that judges are subordinate only to the written law).

156. KONST. SSSR, art. 152, *trans. in* Legislative Acts of the U.S.S.R. 1977-79, Book One, at 67.

157. *The Tasks of Deepening Restructuring, supra* note 151, at 19.

most exclusively on supervising the interpretation and application of laws within the context of the prosecution process.¹⁵⁸

To facilitate this last proposal, Gorbachev proposed transferring the majority of the Procuracy's investigative functions to the Ministry of Internal Affairs' investigative branch.¹⁵⁹ Gorbachev also validated and accepted Soviet defense attorneys' request for self-governance within their profession¹⁶⁰ and the right to participate more actively in hearing cases.¹⁶¹ Finally, in an attempt to expedite and facilitate all of the above proposals, Gorbachev reemphasized the urgent need to improve the training,¹⁶² retraining,¹⁶³ and compensation of legal experts and personnel.¹⁶⁴

The 19th All-Union Party Conference adopted all of Gorbachev's proposals as official government initiatives in the form of conference resolutions.¹⁶⁵ The conference resolutions, for example, proposed and promoted Gorbachev's desire for a criminal trial system that is: adversarial,¹⁶⁶ open,¹⁶⁷ based on the presumption of innocence,¹⁶⁸ and free from prosecutorial bias.¹⁶⁹ The conference also accepted and expanded upon how they specifically intended to implement and enforce

158. See *id.* at 20 (noting that, over the last twenty years, prosecutors have had many additional duties thrust upon them, resulting in the neglect of their duty to supervise the legality of the prosecutorial process). The Central Committee's resolution stressed that this situation is intolerable and called for a return to the Leninist position in which a prosecutors' main function is to supervise the interpretation and application of Soviet laws. *Id.*

159. *Id.*

160. *Id.*

161. See *id.* (relaying Gorbachev's belief that the creation of a legal bar with the power to govern itself would further the cause of protecting citizens' rights).

162. See *id.* (stating that a universal legal education must begin in grammar schools and continue throughout all schools and institutions of higher learning).

163. *Id.*

164. See *id.* (noting that the "material security" of legal personnel is a serious problem that must be solved).

165. *Resolutions of the 19th All-Union C.P.S.U. Conference: On Legal Reform*, 40 CURRENT DIG. SOVIET PRESS No. 38, at 15 (1988) [hereinafter *On Legal Reform*]; see Butler, *supra* note 118, at 7 (commenting that legal reforms cannot hinder further social development). The June 1988 Party Conference's endorsement of Gorbachev's proposals for legal reform invigorated the General Secretary's program of legal restructuring. *Id.*

166. *On Legal Reform*, *supra* note 165, at 15; see F.J.M. FELDBRUGGE, *supra* note 11, at 152 (noting that although these resolutions are intended to be general in nature, so as to leave the state ample flexibility in implementing them, it is actually the Party that, in reality, has the discretion to implement its decisions as it deems appropriate) (emphasis added).

167. *Id.*

168. *Id.*

169. *Id.*

Gorbachev's proposals: (1) to guarantee the independence of judges,¹⁷⁰ (2) to enhance the power and responsibility of people's assessors,¹⁷¹ (3) to restore the prosecutor to a purely supervisory role,¹⁷² (4) to create a self-governing bar of defense lawyers,¹⁷³ and (5) to upgrade the level of education maintained by all personnel serving in judicial agencies.¹⁷⁴

When the Central Committee met in a plenary session in the latter part of July 1988, they officially adopted the resolutions passed by the Party Conference and set an ambitious implementation deadline of mid-1989.¹⁷⁵ The Committee stated that the revision of traditional judicial penalties, including the narrowing of the number of offenses subject to criminal liability was of great importance.¹⁷⁶ In addition, the Central Committee boldly predicted that the reorganization of the court system would only require a short period of time.¹⁷⁷ They also mentioned the draft laws for the improvement of the bar and the pre-trial investigation period, stating that discussion of these drafts would

170. See *id.* (enumerating Gorbachev's proposed goals for Soviet legal reform). In order to guarantee unconditional judicial independence, the Conference stated: (1) that the CPSU Central Committee would set specific sanctions enforceable against anyone attempting to interfere in any activity of the court, and (2) that higher level Soviets should elect judges for longer terms of office. *Id.*

171. See *id.* (recommending an increase in the number of people's assessors in complex cases); see also Butler, *supra* note 118, at 8 (noting that the conference proposed to increase the number of lay assessors used in certain cases from the current two to six or possibly twelve). Many people misconstrued this as the introduction of a jury system. *Id.*

172. See *On Legal Reform*, *supra* note 165, at 15 (noting a resolute intention to recreate the "Leninist prosecutor"). This prosecutor's sole function is to "monitor the application of Soviet laws and vehemently attack any violations of socialist legality." *Id.*; see also Butler, *supra* note 118, at 8 (noting that on May 23, 1988, A. Ia. Sukharev, who was not a career procurator, was appointed as the new Procurator General). This foreshadows the possibility that eventually the Procuracy will have supervisory, but not investigative duties. *Id.*

173. *On Legal Reform*, *supra* note 165, at 15.

174. See *id.* (describing conference suggestions for improving the quality of legal education). These suggestions included: (1) increasing the number of students who attend school on a full-time basis, (2) placing more emphasis on clinical courses, and (3) stressing the importance of independent thought and comparative law. *Id.*

175. See *Resolution of the Plenary Session of the C.P.S.U. Central Committee: On Practical Work to Implement the Decision of the 19th All-Union Party Conference*, 40 CURRENT DIG. SOVIET PRESS No. 30, at 9 (1988) (stating the Central Committee's goal of legal reform). The resolution of the Central Committee stated specifically that their aim was to implement judicial reform in the Prosecutor's Office, the courts of arbitration, the investigative agencies, the bar and legal services, and in criminal legislation. *Id.*

176. See *id.* (stating that it is important for penalties not requiring the deprivation of freedom to have a broader application).

177. *Communique on the Plenary Session of the Central Committee of the Communist Party of the Soviet Union*, 40 CURRENT DIG. SOVIET PRESS No. 30, at 4 (1988). The CPSU Central Committee stated that legal reform is firmly linked to the democratization of the Soviets' activity. *Id.*

take place "in the near future."¹⁷⁸ The Central Committee made similar predictions regarding the improvement of legal services and the introduction of universal legal education for the entire USSR.¹⁷⁹

IV. IMPLEMENTED GOVERNMENT PROPOSALS FOR LEGAL REFORM, 1986-1988

A. DIRECTIVES OF THE USSR SUPREME COURT

Despite the Gorbachev regime's numerous and revolutionary proposals for legal reform of the Soviet criminal justice system, only a few of these proposed reforms actually reached the legislative implementation stage by the autumn of 1988.¹⁸⁰ The minimal number of reforms enacted before the fall of 1988 were implemented not by Soviet legislatures, but through directives or "leading explanations" issued by plenary sessions of the USSR Supreme Court.¹⁸¹ The Soviet government treats these leading explanations as valid sources of law.¹⁸²

As early as the spring of 1986, the USSR Supreme Court, in plenary session, began issuing very general directives designed to instill the idea of socialist legality and a "strict observance of the laws" within the lower courts.¹⁸³ The court demanded, for example, that all courts must decide guilt on an individual basis in order to avoid false convictions.¹⁸⁴ Furthermore, V.I. Terebilov, the chairman of the USSR Supreme Court, stated that judges should no longer simply apply the old, stereotypical, proforma assessments of legal situations that base themselves on any normative acts that contradict the Soviet Constitution.¹⁸⁵

178. *Id.*

179. *Id.* The Committee suggested the possibility that these acts would be adopted by the end of 1988. *Id.*

180. Butler, *supra* note 118, at 1.

181. See F.J.M. FELDBRUGGE, *supra* note 11, at 743 (noting that the Supreme Court's ability to issue "guiding" or "leading explanations" during their plenary sessions gives them quasi-legislative power to indicate how various court rules and procedure should be interpreted and applied). These are binding upon all lower courts. *Id.*

182. *Id.*

183. See *Plenary Session of the U.S.S.R. Supreme Court*, 38 CURRENT DIG. SOVIET PRESS No. 16, at 22 (1986) (stating that a "strict observance of the laws" can bring about a realization of the democratic tenets of justice and citizens' equality without regard to official rank).

184. See *id.* (stating that false convictions are the most blatant violations of the law). The Soviet Supreme Court held that in every case of a false conviction, "a citizen's honor and dignity [must] be fully restored, along with his employment, property, housing and other rights." *Id.*

185. *Report on the Activity of the U.S.S.R. Supreme Court—Report by Deputy V. I. Terebilov, Chairman of the U.S.S.R. Supreme Court*, 40 CURRENT DIG. SOVIET PRESS No. 23, at 13 (1988). The Chairman suggested that new, unconventional assess-

Additional directives were issued by the Supreme Court in its December 1986 Plenary Session. This session was a reaction to the Central Committee's adoption of a resolution entitled "On Further Strengthening Socialist Legality and Law and Order and Increasing the Protection of Citizens' Rights and Legitimate Interests"¹⁸⁶ and produced directives that were more forceful and specific.¹⁸⁷ These directives sought to regulate the pretrial period more vigorously by denying pretrial detention whenever it is unwarranted¹⁸⁸ and by reducing the courts' power to add or cut time from the investigation period without sufficient justification.¹⁸⁹ When it is impossible to obtain the evidence needed to support an indictment, the Supreme Court stated that a court can exercise only one option; acquittal.¹⁹⁰ The Court also stressed that judges, regardless of their personal preference, must conduct open trials and do not have the option to restrict public access to the trial process.¹⁹¹ Finally, the Supreme Court rejected blanket judgments and emphasized that all courts must take the specific circumstances of each case into consideration and make a committed effort to individualize penalties.¹⁹²

In April 1987, the USSR Supreme Court, in plenary session, issued another series of very pointed directives aimed almost exclusively at reforming the pro forma role played by most people's assessors.¹⁹³ The Supreme Court stated unequivocally that under no circumstances should professional judges restrict the rights, powers, or duties of people's assessors.¹⁹⁴ In particular, the Supreme Court strongly urged people's assessors to exercise their power of dissent through their vote and

ments of legal issues must be applied by Soviet courts. *Id.*

186. *Strengthening Socialist Legality*, *supra* note 127, at 8.

187. *See Plenary Session of the U.S.S.R. Supreme Court*, 38 CURRENT DIG. SOVIET PRESS No. 50, at 1 (1986) (enumerating and explaining these specific directives).

188. *See id.* (noting that the Court is required to take steps to remedy unwarranted pretrial detention and is obligated to remand these cases for additional investigation).

189. *See id.* (forbidding courts to remand cases for further investigation when there is a lack of evidence to support an indictment).

190. *Id.*

191. *See id.* at 2 (noting that every person has a right to take notes in a courtroom during a trial, but they must receive the presiding judge's permission to use any cameras or video equipment).

192. *Id.*

193. *See Plenary Session of the U.S.S.R. Supreme Court*, 39 CURRENT DIG. SOVIET PRESS No. 15, at 17 (1987) (observing that the Soviet Supreme Court does not look favorably on those judges who underestimate the function of the people's assessors).

194. *See id.* (noting that all court members, irrespective of their status as a professional judge or lay assessor, must jointly and equally decide upon all questions dealing with the establishment of facts, the identification of the defendant, and the reasons and conditions surrounding the violation).

through dissenting opinions.¹⁹⁵ The Court emphasized that a professional judge's failure to abide by legislation requiring active participation of people's assessors in the adjudication process is a fundamental violation which constitutes possible grounds for the reversal of a decision and/or the penalization of the guilty officials.¹⁹⁶

B. CONSTITUTIONAL AMENDMENTS

Excluding the USSR Supreme Court's promulgation of a handful of directives, the only substantial government proposals for legal reform that were implemented by the close of 1988 were several amendments to the Constitution of the USSR which the government ratified in December of 1988.¹⁹⁷ One, however, cannot underestimate the importance of the changes made in chapter 20, article 152 of the Soviet Constitution, which prescribes the length of term for both people's judges and people's assessors.¹⁹⁸ Under the old article 152, which was adopted in the new Soviet Constitution of 1977-78, people's judges and people's assessors served five year and two and a half year terms, respectively.¹⁹⁹ The December 1988 amendments extended these terms to ten years for people's judges and five years for lay assessors.²⁰⁰ As Gorbachev has noted, the purpose of this change was to ensure the independence of judges.²⁰¹

The second major change in article 152 was the addition of three new paragraphs that change the governmental level from which judges and people's assessors are chosen.²⁰² Under the new additions, the appropriate Soviets of People's Deputies will elect the courts on the corre-

195. See *id.* (stating that a people's assessor has a "moral obligation" to utilize his legal right to voice his difference of opinion in writing and suggest a possible alternative judgement).

196. *Id.* at 18.

197. *Law on Constitutional Amendments*, Pravda, Dec. 3, 1988, at 1-2, reprinted in FOREIGN BROADCAST INFO. SERV. Soviet Union, Dec. 5, 1988, at 48, 56 [hereinafter *Constitutional Amendments*].

198. See *Communique on Meetings of the U.S.S.R. Supreme Soviet*, 40 CURRENT DIG. SOVIET PRESS No. 48, at 1, 9 (1988) [hereinafter *Nov. 30th Communique*] (noting Gorbachev's belief that the constitutional amendments are important because they help ensure the independence, objectivity, and impartiality of judges).

199. KONST. SSSR, art. 152, trans. in *Legislative Acts of the U.S.S.R. 1977-1979*, Book One, at 67.

200. *Constitutional Amendments*, *supra* note 197, at 56.

201. *November 30th Communique*, *supra* note 198, at 9.

202. *Constitutional Amendments*, *supra* note 197, at 56. Gorbachev has stated that these additions are important because "[t]he independence of the courts is determined largely by the way in which they are formed." *November 30th Communique*, *supra* note 198, at 9.

sponding district, city, regional, provincial, and territorial levels.²⁰³ As a result, the higher-level Soviets will elect the judges, while the general public will elect lay or people's assessors in an open vote, either at their residence or at their place of work.²⁰⁴

V. RECENT GOVERNMENT PROPOSALS FOR LEGAL REFORM AND IMPLEMENTED REFORMS

The creation of USSR Lawyers' Union was the first major legal reform enacted in February 1989.²⁰⁵ By January 1990, the Union had already united approximately 20,000 defense lawyers.²⁰⁶ Unlike the Soviet bar which is governed by the Ministry of Justice,²⁰⁷ this new union is an independent, self-governing organization in which members belong on an individual basis.²⁰⁸

One of the goals of this unprecedented organization is to unite lawyers who, by working together, can help to create a state based on the rule of law.²⁰⁹ To further this goal, according to Georgy Alekseyevich Voskresensky, Chairman of the Board of the USSR Lawyers' Union, the existence of a strong, independent and uncompromised coalition of lawyers is required.²¹⁰ But, says Voskresensky, such a coalition will not flourish until defense lawyers are removed from their subordination to state agencies.²¹¹

One of the most extensive draft laws under discussion in early 1989 was the draft law entitled "On the Status of Judges."²¹² Finally

203. *November 30th Communique*, *supra* note 198, at 9. Gorbachev drew attention to the fact that higher level Soviets will now elect people's courts, which is a result of the people's desire to ensure that the work of judges is free from intervention by local authorities. *Id.*

204. *See id.* (emphasizing Gorbachev's belief that as a result of this voting arrangement, the people will elect [t]he assessor, representatives will elect the judges).

205. *U.S.S.R. Lawyers' Union Created*, 41 CURRENT DIG. SOVIET PRESS No. 8, at 22 (1989).

206. *See Do Defense Lawyers Need Defense*, 42 CURRENT DIG. SOVIET PRESS No. 1, at 27 (1990) [hereinafter *Defense Lawyers*] (noting that the overwhelming majority of defense lawyers have joined this union).

207. *Id.*

208. *Id.*

209. *See Lawyers Union Formed*, 40 CURRENT DIG. SOVIET PRESS No. 46, at 21 (1988) (listing Lawyer's Union's goals). The new Lawyer's Union will also interact with other existing legal groups, represent lawyers rights, and band with similar groups in other socialist countries. *Id.*

210. *See Defense Lawyers*, *supra* note 206, at 27 (stating that this type of coalition is an indispensable condition for the creation of a law-governed state).

211. *See id.* (stating that, as long as defense lawyers are subordinate to state agencies, they cannot be independent).

212. *See on the Courts Independence and Judges Prestige*, 41 CURRENT DIG. SOVIET PRESS No. 12, at 26 (1989) [hereinafter *Independence and Prestige*] (stating that

adopted by the members of the USSR Supreme Soviet's Council of the Union and Council of Nationalities on August 4, 1989,²¹³ this new law reinforces article 155 of the Soviet Constitution.²¹⁴ This reinforcement arises out of the fundamental guarantees in this new law that are aimed at ensuring the independence of judges and people's assessors,²¹⁵ and the impartiality of the judiciary in general.²¹⁶

In late May 1989, Gorbachev addressed the full membership of the USSR Supreme Soviet and updated them on the progress of his program of restructuring.²¹⁷ Gorbachev referred to many of the same broad themes and proposals he had been discussing for the previous four years.²¹⁸ This time, however, Gorbachev added a startling new proposition to his list of reforms when he unexpectedly mentioned that he was seriously considering the introduction of trial by jury.²¹⁹ Gorbachev also noted, with urgency, the need to accelerate his plans for restructuring in order to combat the rising rate of crime, including corruption, extortion, and bribery, factors threatening to destroy the foundations of Soviet society.²²⁰

The USSR Supreme Court submitted their most recent draft laws to the chambers of the USSR Supreme Soviet in July 1989 for consideration.²²¹ The drafts elaborated on a proposal to increase the number of judges and people's assessors in important, complex cases.²²² Another

the USSR Supreme Court members helped draft this law).

213. *Time Of Bold Decisions*, 41 CURRENT DIG. SOVIET PRESS No. 38, at 18 (1989) [hereinafter *Bold Decisions*].

214. KONST. SSSR, art. 155, *trans. in* Legislative Acts of the U.S.S.R. 1977-1979, Book One, at 68.

215. *Independence and Prestige*, *supra* note 212, at 26.

216. *Bold Decisions*, *supra* note 213, at 18.

217. *On the Basic Guidelines of the U.S.S.R.'s Domestic and Foreign Policy*, 41 CURRENT DIG. SOVIET PRESS No. 25, at 1 (1989) [hereinafter *Basic Guidelines*].

218. *See id.* at 7 (noting Gorbachev's desire to expand legal education, increase the financial compensation of all judicial employees, and ensure strict adherence to the law).

219. *See id.* (noting that Gorbachev received applause from the USSR Supreme Soviet when he suggested the possibility of implementing trial by jury).

220. *Id.*

221. *See What Kind Of Court Do We Need?* 41 CURRENT DIG. SOVIET PRESS No. 28, at 23 (1989) (noting the lack of public discussion on these drafts because the press has no permission to publish the drafts, which is why the Chairman of the USSR Supreme Court agreed to discuss them with a Pravda reporter). The two legislative acts that the USSR Supreme Court submitted to the USSR Supreme Soviet for consideration were: "Principles of USSR and Union-Republic Legislation on the Judicial System, and a Law on the Status of Judges in the USSR." *Id.* The purpose of the later draft was *inter alia*, to increase the prestige of the judicial system, guarantee the independence and impartiality of the judiciary, and outline the requirements that must be met by candidates for the bench. *Id.*

222. *Id.*

proposal suggested expanding the bench to either two judges and three lay assessors or to one judge and four assessors.²²³ The draft principles also explicitly stipulated for the first time that all citizens, no matter what their official Party position, are equal before the law.²²⁴ Also introduced in print for the first time was the presumption of innocence principle.²²⁵

Conspicuously missing from the new draft laws, however, was any proposal to revive trial by jury within the Soviet Union.²²⁶ Despite Gorbachev's earlier reference to his possible support of a trial by jury, the new chairman of the USSR Supreme Court, Yevgeny Alekseyevich Smolentsev,²²⁷ voiced strong opposition to any notion of re-introducing trial by jury.²²⁸ Smolentsev, although acknowledging certain problems with the Soviet system of using people's assessors, maintained that the substantial benefits of using people's assessors negate any possible disadvantages that their use might create.²²⁹

Something or someone changed Smolentsev's views very quickly. On November 2, 1989, Smolentsev presented various draft laws on the judicial system to the USSR Supreme Soviet, including a proposal for the introduction of trial by jury.²³⁰ More startling than the proposal itself, however, was the fact that within less than two weeks after Smolentsev's proposal of a limited form of trial by jury was officially approved and enacted into law by the Supreme Soviet.²³¹ The new law states that in cases involving crimes that, by law, warrant either the

223. *Id.*

224. *See id.* (noting that in the recent past many citizens guilty of committing various degrees of crime have avoided the prosecution process because of their high official positions).

225. *Id.* The new "Presumption of Innocence" provision states that "[t]he accused is presumed innocent until his guilt is proven in the manner prescribed by law and established by a court judgement that has entered into legal force." *Id.*

226. *See id.* (noting that both scholars and commentators on public affairs have suggested reviving the practice of trial by jury in the Soviet Union).

227. *See Congress of People's Deputies, Day 11 (cont.)*, 41 CURRENT DIG. SOVIET PRESS No. 32, at 16 (1989) (noting that the USSR Supreme Soviet's election of Yevgeny Alekseyevich Smolentsev as the new Chairman of the USSR Supreme Court was confirmed by the Congress of USSR People's Deputies on June 8, 1989).

228. *See id.* (noting that Smolentsev's contention that the civilized world is rejecting the idea of trial by jury as an "archaic and inefficient" practice).

229. *See id.* (noting Smolentsev's assertion that the advantage of using people's assessors is that they, in his belief, have all the rights of a judge). The disadvantage is that instead of choosing the best qualified citizens to serve as people's assessors, people are often chosen to serve as lay assessors because they "are more dispensable than others at their factories or offices." *Id.*

230. *A Step Toward A State Based On The Rule Of Law*, 41 CURRENT DIG. SOVIET PRESS No. 44, at 15 (1989).

231. *Justice Minister Reviews Court Reform*, 41 CURRENT DIG. SOVIET PRESS No. 50, at 18-19 (1989) [hereinafter *Justice Minister*].

death penalty or incarceration for more than 10 years, "the question of the defendant's guilt *may* be decided by a jury" (an expanded panel of people's assessors) (emphasis added).²³² Although its implementation will raise many procedural questions,²³³ this fundamentally different form of court procedure will enrich the legal system and elevate the level of justice.²³⁴

The new law on jury trials was just one, of several new, drastically revolutionary laws intended to overhaul the criminal justice system that was adopted by the Supreme Soviet in an extraordinary piece of legislation entitled "Principles on USSR and Union-Republic Legislation on the Judicial System."²³⁵ Article 9 of this legislation states that "[j]udges and people's assessors shall be independent and shall be subordinate only to the law."²³⁶ Despite the principled words of article 9, the frank reality is that old wielders of Party influence will hesitate to relinquish their power,²³⁷ making genuine judicial independence a difficult goal to attain.²³⁸ If history is a guide, this outlook does not improve, considering the fact that almost the exact same words that appear in article 9 have long been clearly delineated in article 155 of the Constitution of the USSR,²³⁹ but have fallen on deaf Party ears.²⁴⁰

Article 14 of the November 13th legislation delineated two additional fundamental and long overdue rights for defendants.²⁴¹ The first section of this article, which states that all suspects, accused persons and defendants have a right to a defense through legal assistance,²⁴² is

232. *Principles of USSR and Union-Republic Legislation on the Judicial System*, art. 11, trans. in *Justice Minister*, supra note 231, at 19.

233. See *Justice Minister*, supra note 231, at 19 (noting that those Union republics that decide to implement this quasi-jury trial system will have to: (1) develop the procedural laws relating to this system; (2) settle questions regarding the appeal process and the administration of this system; (3) develop voting procedures for the jury; and (4) determine questions of jury size).

234. *Id.*

235. See *Principles of USSR and Union-Republic Legislation on the Judicial System*, arts. 9, 11, 13, & 14, trans. in *Justice Minister*, supra note 231, at 19.

236. *Principles of USSR and Union Republic Legislation on the Judicial System*, art. 9, trans. in *Justice Minister*, supra note 231, at 19.

237. *Justice Minister*, supra note 231, at 18 (noting that Party bosses at various levels—from the bottom to the top of the hierarchical Party ladder—"are used to being in charge of everything, including justice").

238. *Id.*

239. KONST. SSSR, art. 155, trans. in *Legislative Acts of the USSR, 1977-1979*, Book One, at 68. This article states that "[j]udges and people's assessors are independent and subject only to the law." *Id.*

240. *Supra* notes 57-67.

241. *Principles of USSR and Union Republic Legislation on the Judicial System*, art. 14, trans. in *Justice Minister*, supra note 231, at 19.

242. *Id.*

an expansion of article 158 of the Soviet Constitution, which had only granted this right to people formally charged as "defendants."²⁴³ More importantly, however, this section specifically states, for the first time, that a defense lawyer has the right to participate in the preliminary investigation "from the moment of detention, arrest or filing of charges."²⁴⁴ Although defense lawyers welcome this norm,²⁴⁵ they assert that this new right will only become effective when they are permitted to extensively review files and meet privately with clients.²⁴⁶ Finally, the second section of article 14 explicitly states, also for the first time, that the "presumption of innocence" doctrine, a fundamental legal principle of the Western world that traditionally has been vehemently rejected by most members of the Soviet judiciary,²⁴⁷ must be applied in all Soviet courtrooms.²⁴⁸

In addition to the momentous legislation enacted on November 13th, various draft law provisions still under consideration address the issues of "liability for contempt of court . . . noninterference in the settlement of cases, and the inviolability of judges and people's assessors."²⁴⁹ Another important draft provision imposes liability upon anyone who attempts to influence any decision of a judge or lay assessor through the use of the mass media.²⁵⁰ One draft law includes provisions that address the question of a judge's compensation and benefits,²⁵¹ which are pathetically²⁵² and embarrassingly low.²⁵³ Finally, intensive work is

243. KONST. SSSR, art. 158, *trans. in* Legislative Acts of the USSR, 1977-1979, Book One, at 68. This article states that "[a] defendant in a criminal action is guaranteed the right to legal assistance."

244. *Principles of USSR and Union Republics Legislation on the Judicial System*, art. 14, *trans. in* Justice Minister, *supra* note 231, at 19. This means that a lawyer now needs to devote much more time participating in the preliminary investigation than he currently spends just reviewing case files and appearing in court for the hearing of the case. Justice Minister, *supra* note 231, at 18.

245. Justice Minister, *supra* note 231, at 28.

246. *See id.* (asserting the opinion of Georgy Voskresensky, Chairman of the Board of the USSR Lawyer's Union).

247. *Principles of USSR and Union Republics Legislation on the Judicial System*, art. 14, *trans. in* Justice Minister, *supra* note 231, at 19.

248. *Supra* notes 54-56.

249. *Independence and Prestige*, *supra* note 212, at 26.

250. *See id.* (adding that publishing news of a crime may influence a court's decision).

251. *See id.* (noting that disciplinary standards for judges and procedures for nominating judicial candidates and their subsequent swearing-in are also issues addressed in the draft law).

252. Justice Minister, *supra* note 231, at 18 (asserting that 200 rubles per month for a person who carries a colossal workload and a burden of immense responsibility is ridiculous).

253. *See id.* (noting that the USSR Minister of Justice, V. Yakovlev, feels like "sinking through the floor" when his foreign colleagues ask about judges' salaries in the

also in progress on a draft law dealing with reform of the laws on corrective labor, a reform whose main thrust is to make sentences more humane.²⁵⁴

CONCLUSION

That the Soviet government has tolerated and agreed with a great amount of the overwhelming number of criticisms that the Soviet criminal justice system has received in the last five years is, in itself, a tribute to Gorbachev's policy of *glasnost*. The wide ranging revolutionary proposals for reform of the Soviet criminal justice system advanced during Gorbachev's tenure are unprecedented and long overdue. Change in the Soviet Union, however, especially when it involves the restructuring of ingrained legal norms and procedures through the legislative process, is a slow and arduous task. Although many members of the Soviet government, the legal community, the academic world, and the press corps realize that reform in the criminal justice system is desperately needed, the spirit of conservatism that pervades every aspect of Soviet society is a difficult and often impossible force to overcome.

Despite these potentially daunting obstacles, Mikhail Sergeevich Gorbachev has, to the amazement of many observers, including this author, succeeded in transforming a substantial number of his proposals for reform of the criminal justice system into legitimate, state-mandated reforms. Whether these reforms can be enforced, however, is still to be determined. Nevertheless, even if all of these reforms are validated through successful implementation, there is still much more work to be done before the Soviet criminal justice system is totally free of its archaic and oppressive characteristics. This sentiment was candidly expressed in late November of 1989 by V. Yakovlev, the USSR Minister of Justice, when he stated that:

[A] new atmosphere, a new attitude, new salaries, new physical conditions, new laws will gradually form the only climate in which the tree of true, independent justice can grow. That tree will grow; I am convinced of this. But it will take time, colossal efforts, and sanctions: People must be held accountable for disrespect for the courts. But this is a very complicated question, so, in essence, we will have to be prepared to fight for the future of justice.²⁵⁵

Soviet Union).

254. See *id.* (noting that this draft law attempts to increase the effectiveness of sentences, especially in regard to punitive measures).

255. *Justice Minister, supra* note 231, at 18.