

TURNER

Pamphlet

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**LAW**  
in  
the  
**USSR**

ROY TURNER  
**LAW**  
in  
the  
**USSR**



Рой Тернер  
СОВЕТСКОЕ ЗАКОНОДАТЕЛЬСТВО  
на английском языке  
Цена 30 коп.

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#### PUBLISHER'S NOTE

Roy Turner, a well-known lawyer from Sydney, Australia, visited the Soviet Union in 1978 at the invitation of his Soviet colleagues. On his tour of this country he had a good opportunity to see the Soviet legal system in action.

Roy Turner visited many legal institutions in Moscow and Leningrad: people's courts, procurator's and barrister's offices, and research centres where he studied the Soviet state, civil, criminal, family and labour codes of laws. He was keenly interested in what Soviet trade unions were doing to protect the health of working people. He met many leading Soviet lawyers, legal experts, trade union officials, doctors and psychiatrists.

On his return home Roy Turner wrote this book in which along with consideration of specific legal issues he presents general impressions of his tour of the Soviet Union and conversations he had with many people he met here.

It would be no exaggeration to say that this is the

first book of its kind ever published in Australia, in which a lawyer sets down his views on the Soviet legal system on the basis of first-hand information and not only facts gleaned from books. The author makes a comparative analysis of the main institutions of the Soviet legal system and English Common Law in Australia. Moreover, he points out that the legal system of any country should not be assessed only from the point of view of the strengths and weaknesses of the system of one's own country, for what is perfectly applicable in one society cannot automatically be transplanted to another society, especially one which functions in radically different social and economic circumstances.

Roy Turner's book is not a work of purely academic research, but a lively report of what he personally saw and heard while visiting the USSR. It is a book of impressions by an unbiased lawyer acquainting himself with the legal system of a socialist country. Although some of his judgements may seem hasty and rather perfunctory at times, he writes with perfect honesty. Furthermore, the author's high degree of professional skill enables him to paint an objective picture of the Soviet legal system and the administration of justice in this country.

As is well known, the Western press often lets its imagination run riot when it comes to reporting on the Soviet Union, maligning its legal institutions and alleging that human rights and legality are non-existent here, that life in the Soviet Union is regimented beyond all bounds. Roy Turner repudiates these fabrications. He shows that Soviet society functions according to lucidly formulated laws making up an efficient legal system which stands guard over every Soviet citizen, and that the workings of this law are improving all the time.

The Novosti Press Agency Publishing House is

publishing this book not only because it describes Soviet reality in objective terms, but also because it can well serve to improve understanding between nations with different social systems and to promote trust and friendship between them.

In a preface to the book Peter Nygh, Professor of Law and Head of the School of Law of Macquarie University, writes: "Mr. Turner's account is well worth reading by lawyers and non-lawyers alike". We fully share this view.

*Novosti Press Agency Publishing House*  
(Moscow)

## INTRODUCTION

*It gives me great pleasure to write a short introduction to Mr. Roy Turner's interesting account of his visit to the Soviet Union. The legal system of the Soviet Union is little known in Australia. Some allegations concerning its criminal law and practice have caused controversy here. However, most of the law of the Soviet Union is concerned with the ordinary lives of citizens, their family relations, their personal property rights, and the treatment and prevention of common crimes. Such matters do not give rise to sensational press reports, but they are the stuff out of which life is made.*

*Mr. Turner gives a fascinating insight into a legal system which combines the principles of Civil Law with socialist ideology. Each country must, of course, work out its own salvation in the law as well as in other matters. But each country can also learn from other systems. Mr. Turner's account is well worth reading by lawyers and non-lawyers alike.*

P. E. NYGH

Professor of Law and Head of School,

School of Law,  
Macquarie University.

TO MY WIFE BETTY -  
AND ALL WHO HELPED IN MANY WAYS.

## JOURNEY TO THE USSR

With a touch of humour the British Airways flight on Heathrow Tokyo via Moscow is James' unlikely call to duty. BAC 111 - Departing London 1.35 hours - arriving Moscow 6.55 hours.

It was Monday 17th of May 1973 and the Boeing 707 was filled to capacity mainly with Japanese tourists returning home. I had spent the last three days staying with my old sea-time navigator, George Frost, and his charming wife, Edna, in the beautiful County of Leicestershire in that part of England which was prior to the County amalgamation called Rutland. We had had three wonderful days together the three of us. Rekindling friendship, forged in those terrible war years we, now middle-aged former members of air crew, reminisced the happy days, and yet a little sadly, the bad days. Enjoying the rough Rutland County Ale - looking across fields where once the noble Stirling Bombers stood like huge paying mantises with gliders filling the dispersal areas and the white stripes around their

TO MY WIFE BETTY -  
AND ALL WHO HELPED IN MANY WAYS

...

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...

**JOURNEY TO THE USSR  
- behind the visit**

With a touch of humour the British Airways flight from Heathrow to Tokyo via Moscow is James Bondishly called Flight BA007 - departing London 11:35 hours; arriving Moscow 16:55 hours.

It was Monday, early in May, 1978 and the Boeing 707 was filled to capacity mainly with Japanese tourists returning home. I had spent the last three days staying with my old war-time navigator, Gordon Frost, and his charming wife, Edna, in the beautiful County of Leicestershire in that part of England which was prior to the County amalgamation called Rutland. We had had three wonderful days together, the three of us. Rekindling friendships forged in those terrible war years we, now middle-aged former members of air crew, reminisced the happy days, and yet a little sadly, the bad days. Enjoying the rough Rutland County Ale - looking across fields where once the noble Stirling Bombers stood like huge preying mantises with gliders filling the dispersal areas and the white stripes around their

bodies showing that these were the invaders. The busy airfields of the war years were now gone. In their place were fields of grain and grazing cattle. 570 Squadron and 38 Group were no more.

Flight BA007 climbed quickly away from Heathrow and headed eastwards. It was the first time for 33 years that I had flown from England in this direction. In peace time I had left London flying westwards to Canada, but now as in the far-off 40's I was flying eastwards.

North of the English Channel and the Strait of Dover, over the North Sea to Holland. Many a dark night Flying Officer Hicks' crew in V8-0, old O for Oboe, would fly this way. Fifty feet over the sea and land, avoiding the radar and bringing supplies to the Underground. The bomb bays of the Stirling laden with containers to be parachuted to those brave patriotic men, women and children who would be in some field, waiting to signal us with a pre-arranged morse signal, flashed on a hand torch. The rendezvous was not easy to find but these dedicated people, defending their homelands, in occupied Europe, risked torture, atrocities and death at the hands of their Nazi oppressors. Our role seemed so insignificant as we stole in and out, alone in the darkness, whilst Bomber Command in their hundreds flew many thousands of feet above us, giving us an extra cover as they took death and destruction to the enemy.

On the nights of the full moon we would fly to Norway to drop supplies to the brave civilian fighters against fascism of that magnificent country. Flying up the Skagerrak and fords with mountains rising out of the sea, was no place to fly on a dark night. The usual enemy flak was not as dangerous as the mountains. We lost our Group Captain and

the Air Vice-Marshal commanding 38 Group over Norway, as well as many other brave young airmen.

On the Norway trips I would sit next to our skipper, Neville Hicks, the only other Australian in the crew of six or otherwise stand in the astrodome searching the skies for the night fighters. I could see Johnny Hunt, our rear gunner from Birmingham, moving his four Browning machine guns backwards and forwards as he constantly searched the great spaces behind us for radar-equipped night fighters, seeking to catch the unwary. He had saved us more than once and on one occasion had blasted a fighter a second away from the kill. That famous poet, Anonymous, wrote a poem, "Sir Patrick Spens", which in part says:

"To Noroway, to Noroway  
To Noroway o'er the faem;  
The King's daughter o'Noroway  
'Tis thou must bring her Hame."

I had altered the last two lines to read:

"To Noroway, to Noroway  
To Noroway o'er the faem;  
I fear I'll go to Noroway  
And nay come hame again."

Thirty-three years later and over twenty-eight thousand feet higher, it was and looked and felt quite different. The warm quiet aircraft with carpeted floors and air stewardesses hovering around their wards, serving delightful meals. Gone was the noise and the turbulence and the thump of flak around the aircraft. In its place was this luxurious transport, BA007 on its way to Moscow and Tokyo.

As I flew on towards Moscow my thoughts turned to what lay ahead.

My mission to Moscow was a professional matter

on behalf of a client but I was also hoping to use my visit to meet a long contemplated plan to have a first-hand look at Soviet law and, in particular, a look at Soviet family law. I had been struck by the similarities I had noted in the Soviet family law and the provisions I had given some modest assistance in drafting the Australian Family Law Bill passed by the Whitlam Government in 1975.

Looking back on World War II had turned my thoughts towards the question uppermost in the minds of many people today. Will World War II also prove to have been in vain? Must humanity know the horror of yet a third world war and all that it could mean in terminal consequences for all humanity in this nuclear age? Are there paths that can be opened towards better mutual understanding between this country I am about to visit and those countries generally referred to as the Western world?

What I have set out in the following pages does little more than make some comment and comparisons on Soviet law processes. If it helps to provide some better mutual understanding in this limited area alone perhaps it can make some positive addition to the wider mutual understanding which is so essential if the world is to find its way to a sane, secure and peaceful future for all.

## 2

### SOME HISTORICAL COMMENT

#### the civil law, common law contrast

Russia, now known as the Union of Soviet Socialist Republics, stretches from the Baltic Sea on the west to the Pacific Ocean on the east. As the sun rises on the Pacific shores it is setting on the shores of the Baltic. To the north she looks over the Arctic ice and seas. To the south she looks at the Asiatic mountains, the Caucasus, Asia Minor and the Black Sea.

A massive land covering almost one-sixth of the world's land surface, it has been aptly called "The Socialist Sixth of the World".

Here is an enormous nation with some 190 nationalities speaking 150 languages and dialects with 15 Union and 20 Autonomous Republics, 8 Autonomous Regions and 10 Autonomous Areas. It is a federal state uniting all these people in this gigantic area into a single fraternal family and advancing the composite socialist nations and nationalities - a population of 265 million people.



The vastness of the Soviet Union and its widely varied multinational, multilingual composition and characteristics obviously cannot be left out of any serious attempt to compare Soviet law and the law processes in English-speaking and other countries of the Western world.

Yet despite those great differences and the well-known differences in political and economic systems, in philosophy and ideology the tendency remains strong not to take these factors into serious, well-considered account when analysing any aspect of modern Soviet life.

It was with such thought in mind that I set out to seek a better understanding of Soviet law . . .

In 529 AD Justinian's Digest arranged in systematic form extracts from the centuries of legal texts from the Roman Law. It became history's most famous codification.

The Institutes of Justinian were required reading in the Latin, up until recent years, by Law students who at examinations would be required to translate parts of the Institutes and comment on the same. Roman Law now seems to be a forgotten subject.

It is probably true that most of the world's legal systems would have been different had it not been for Justinian's efforts in the sixth century in having a team of jurists gather the Roman Law together in written form. The development of the Civil Law as opposed to the Common Law, which is followed in most English-speaking nations, must be considered when examining the law of the USSR. To study the subject in detail is beyond an essay of this sort.

However, it does appear that much of the criticism in the West aimed at the law and procedure of the USSR stems from criticism of Civil Law procedures by Common Law lawyers opposed to the

Civil Law with its roots deep in the Roman Law and its codification. The Common Law born in England and nurtured there as well as in other English-speaking countries offers a different solution than that offered by the European legal system.

Whilst it was said of William the Conqueror that he brought the Canon Law to England in his baggage in 1066 AD, it was Henry II who broke away from the law being administered by local custom and said "There will be one law, common to all men and all land" and so the Common Law began.

The Magna Carta in 1215 AD became a repudiated document because Pope Innocent III so disapproved of the Charter that he placed all England under Papal interdict. Nevertheless the basic principles of the Charter have continued to grow over the years in the opinion of people concerned with freedom of the individual and the rule of law.

Prior to the English Bill of Rights in 1688, Charles I had been tried for treason by a court that most historians say was of doubtful legality. He was nevertheless executed.

The Glorious Revolution of 1688 marked the end of the first of the three great European revolutions; the second being the French Revolution of the next century and the Russian Revolution in the subsequent one.

Sybil Bedford, "The Faces of Justice", looks at the law in a general sense as practised in France, Switzerland, England and Germany. An admirable work. However the examination of the law as practised in the Civil Law countries is a subject worthy of a special study in itself. In condominiums, that is, where control of a state's affairs is vested in two or more other states, one has the advantage of being able to see both the Common Law and the Civil Law working together.

Since there are advantages in both Common and Civil Law it is said that the people would prefer to have their commercial transactions tried under Civil Law but if charged with a crime to be tried under the English Common Law.

It has been put in another way. One is better off, if innocent, to be the subject of the Civil Law inquisition, than the English Common Law investigation with its "presumption of innocence". However if guilty, the "presumption of innocence" and a trial by jury procedure with its theory that it is better for "nine guilty men to go free than for one innocent man to be found guilty", is much more to the guilty person's advantage.

Some 1400 years after Justinian, the Russian Revolution took place. All over the globe legal history had been developing. The English Common Law, the Civil Law in Europe, the history of China, India, Africa and the Americas, all contain aspects of law reform and social changes of a major kind.

In the USSR some dispute exists between learned scholars as to what the legal history of Russia was in those more than a thousand years. However, with the arrival of the Kievan state and a united Russia, Christianity in the Greek-Catholic form and Byzantine culture began from the tenth century onwards to materially change the way of things.

The codification of the whole Laws of Old Russia in 1832 was contained in fifteen great volumes containing 60,000 sections.

Historians in the USSR identify the introduction of many European social forms and manners with Peter the Great and the Emperors and Empresses who followed his reign. It seems reasonable to presume that as Russia became Europeanised, the Church and the Law also became exposed to the customs of a different culture. The concepts of the

Civil Law and of codification were there. As a law student, Lenin would have studied a legal philosophy much different to those his contemporaries were studying in England, the USA, Canada or Australia.

In Common Law countries the judiciary are not elected but appointed for life. In theory the appointments are free of political patronage. Unfortunately, this is not always the case. The jury system of trial by one's peers assures that in matters of freedom of the individual, questions of fact are decided by the jury; the judge decides on matters of Law. The judiciary is free from obvious political direction. The prerogative writs are key court authorisations aimed at protecting the freedom of the individual and ensuring a free trial for the citizen in Common Law countries. The Writ of Habeas Corpus ensures that a citizen cannot be held without trial. (At the present moment in Indonesia people have been held in custody for more than 10 years without trial). The other prerogative writs give the Superior Court the power to direct judges, government departments, magistrates, public servants and quasi governmental agencies to obey the law. These writs play a role similar to that played in the USSR by the Procurator-General although they function under different legal systems.

In addition, under Common Law, the law enforcement officers, the police or the militia, whatever they may be called, are bound by strict rules of evidence. The citizen must first of all be warned that any evidence given in the interview may be taken down in writing and used as evidence against the citizen in any subsequent trial. The citizen can refuse to give any evidence, other than his or her name and address. There are certain well-known exceptions to these rules.

The interviewing officer cannot hold out any promise or threat to a person being interviewed, so as to get a statement of facts. The strict rules as applicable to law enforcement officers are often under attack as being too restrictive on the officers in trying to catch the wrongdoer. Allegations are sometimes made that the rules are more honoured in the breach than the observance and that physical violence is used against the citizen or threats or promises made or held out to persuade the making of an incriminating statement against that person, or perhaps accomplices or some other person. Here again the rules of evidence applicable to the unsubstantiated statement of an accomplice or in certain sexual offences, place great restrictions on the investigating officers and the courts. The difficult technical rules of evidence, in the Rule of Law countries, need specialised study. Particularly in the field of corporate crime or white collar crime, more and more criticism is made of the rules of evidence which allow the skilled advocate to protect his client behind a camouflage of highly sophisticated legal defences.

Some judges in Australia have tried to use the Civil Law system of inquisition, in preference to the Common Law. The High Court recently criticised a Family Court Judge who referred to his being able to conduct a preliminary inquiry in a divorce matter as an inquisition and not bound by the laws of evidence. This court is one of the courts which almost without exception conducts its business in a closed court. This has attracted much comment because of the inability of the press and public to observe what the judges are doing. In general terms, in the Civil Law type of inquisition, the investigators of a suspected crime or offence do not have the restrictions placed upon them as do their counter-

parts in a Common Law system, either in procedure or evidence. The police make a full investigation and then submit the evidence to the "inquisitor" who can call witnesses and compel them to answer questions. Refusal to answer questions varies in its effect in various countries but it is fair to say that it does not help to prove innocence. In some countries the "inquisitor" sits alone, in others there may be three judges and on occasions a jury of sorts.

In all civilised systems of justice certain prerequisites are agreed as common norms.

The USSR has an elected parliament whose laws are passed according to its Constitution and enforced in a method broadly similar to the methods used in the capitalist nations. These laws are codified in the Civil Law style and are freely available. The administration of justice is in accordance with the Constitution and the law. Indeed, the objective concepts of human rights and of the freedom of the individual are the same in both systems. However, it is in the law itself that differences arise, as they do in the procedure of law enforcement.

In Australia itself the law varies from State to State as it does from State to Commonwealth. Queensland's street march legislation is a case in point. Federal law on uranium mining, land rights and conservation issues are others. In New South Wales we have great public controversy over drinking drivers. Scandinavia has for more than 40 years sent drinking drivers to jail. Road blocks and random breath tests are used with an alcohol test lower than the NSW test. Offenders receive a minimum 30 days prison sentence. Fines are related to the driver's income. They can be exceedingly heavy fines up to \$ 1,500 for a first offence in addition to 30 days imprisonment. In Finland until 1975 first offenders were sentenced to three months imprisonment.

Throughout Scandinavia the drinking driver sometimes on a second offence and always on a third loses his or her licence for life.

I am certain that in NSW such laws would be considered unnecessarily harsh if presented to the Parliament in a private member's bill.

Similarly with a wide variety of other crimes, we find that some behaviour is treated much more seriously in some countries than in others. The punishment even for the same behaviour varies enormously. The use of capital punishment is the most obvious example.

So that as various countries have different views of what behaviour amounts to a crime, so do they differ in what they consider to be the appropriate punishment.

In my discussions with my legal friends in the USSR I found that we shared common ground in the abhorrence of torture, physical and mental cruelty, slave labour and any attack on the dignity of man. They were able to point to many examples of this sort of behaviour in Western countries which they alleged were played down in the Western press, whereas proper trials in Moscow were distorted in their reporting.

The chairman of the Moscow Bar pointed out to me that the BBC had raised as an issue the refusal to allow an English barrister to appear in a Russian court in the Orlov case. As he rightfully pointed out, "What nonsense". The English barrister's right of appearance was limited. He had no more right to appear in the Moscow City Court than he had to appear in any court in Australia, Canada or the USA.

Further, it was drawn to my attention that criticism was raised in the fact that, in certain trials, the Moscow City Court was always full and Western

observers could not get into the court. My barrister friend drew my attention to the prominence of such reporting and correctly pointed out that in any trial of notoriety the public quickly queued up outside the court. This is the case in the Old Bailey as it is in the Central Criminal Court or even the High Court of Australia as shown in the Petrov Commission.

Subjective criticism of another country's laws using the laws of one's own country as the guidelines leads to much misunderstanding.

An argument used is that all countries should have laws and follow legal procedures similar to those of the English Common Law system.

However, many countries take a contrary view. They exercise their legal and moral right to make laws which they believe to be proper. These may be laws which we find unacceptable in the conditions of our country. The South East Asian practice of shooting drug runners without trial is such a law, or holding thousands of people for many years without any charge being preferred or any trial held.

The High Court of Australia in a majority decision recently stated that the Common Law prevented a citizen who was serving a life sentence for a capital felony from bringing an action in the courts for an alleged wrong. A dissenting judgement pointed out that the Universal Declaration of Human Rights provided in Article 7 that:

"all are equal before the law and are entitled without any discrimination to equal protection before the law."

If an International Court of Human Rights was established, one could ponder upon what countries would be willing to have such a court review the human rights questions raised in their own coun-

tries. A court of such authority and power, if agreed to by all concerned, would certainly be able to set a standard for all nations to follow.

The Common Law which is followed in the English-speaking nations of the world has no application in the Soviet Union which seems to have a legislation more akin to the Civil Law countries. Both the legal systems of the USSR and England are far superior to those in many other countries.

The difference between the Common Law and Civil Law is not the difference between a good system and a bad system. Perhaps somewhere around 10 per cent of the world's population follow Common Law procedures. The overwhelming majority live under Civil Law systems which their lawyers believe to be superior to the Common Law.

There are probably five major legal systems in the world: the Civil Law, the Common Law, the Law of the USSR (which is close to Civil Law in many respects), Hindu Law and Islamic Law. The Common Law is a minority system.

It is unnecessary to argue whether one system is superior to the other. All have their highs as well as their lows.

At those stages in history when the state appears to be under challenge the Law is invoked to protect the state. History is filled with many examples of this truism. It applies to all systems.

The freedom of the judiciary, the Rule of Law, the Prerogative Writs and Trial by Jury are noble Common Law concepts and yet the election of judges and of people's assessors for five- and two-and-a-half-year periods, as in the USSR, are equally noble, as indeed is their 1977 Constitution.

I hope my comments and observations may assist in giving a greater appreciation of Law in the USSR and at the same time encourage a more ana-

lytical and informed understanding and less emotional examination of the issues involved for truly as Harold Wilson said:

"We must learn to live together in peace.  
Otherwise we will die together in War".

### RIGHTS PLUS OBLIGATIONS "the law of life is concern of all..."

(1977 Constitution of the USSR)

There are seven buildings scattered throughout Moscow which are built in the well-known style of the Moscow State University. They look like wedding cakes and seem in silhouette almost oriental. The University is 32 stories high and is the largest of these immense buildings.

Hotel Ukraine on Kutuzov Prospekt is one of these seven imposing structures that are always prominent on the skyline in Moscow. It was here that I stayed in this most comfortable and spacious hotel. Ideally located on a graceful curve of the Moskva River it is a busy tourist centre and from the front rooms looks north-east across the river and about 1.5 miles down Kalinin Prospekt, past the boulevard of high rise buildings and shops with its park and flowering trees, to the Kremlin. On my first night the city celebrated "Victory Day" with an immense fireworks display which went on for what

seemed to be hours. Rain and rain clouds did not stop the most incredible spectacle of the skies all over the city being filled with rockets bursting into sparkling balls of every conceivable colour.

Next day I went for an early morning walk and decided to make for the Red Square. It was a chilly walk, even with the sun shining. As my first appointment was not until the afternoon I had plenty of time to wander around and contemplate on my projected interviews and investigations in the coming weeks at the Moscow City Court, the Central Committee of the Metal Workers of the USSR, the Ministry of Justice, the Moscow Bar Association, four Hospitals and a Law School.

I asked myself: how did the law and the practice of Law differ from that in Australia? How different were the Court procedures, the type of cases and how did the administration of law differ from the traditional English Common Law? All critics tend to judge others by using the measuring stick of their own country's behaviour as the objective norm of perfection.

Justinian had said in the sixth century,

"Justice is the set and constant purpose which gives to every man his due. Jurisprudence is the knowledge of things divine and human, the science of the just and the unjust."

In the mid 19th century Marx and Engels commented,

"Your very ideas are but the outgrowth of the conditions of your bourgeois property, just as your jurisprudence is but the will of your class elevated into a law, a will whose essential character and direction are determined by the material conditions of existence of your class."

Then in the early 20th century Lenin observed,  
"A law is a political measure, it is politics."

I had decided that whatever were the origins of the law in the Soviet Union I would accept it as a separate system. A system of law being part of the socialist state. The philosophical arguments of positivism and natural law and of the effect of scientific socialism of Marx and Lenin, occupy the endless attention of many academics in the Western world. Western Universities employ full-time professors specialising in the Law of the USSR, carefully monitoring its every move. Theories abound... "The 30 years under Stalin". "The Khrushchev years".

The Revolution and the works of Lenin have all been carefully analysed.

One could easily get caught up in historical debate, enmeshed in past political and social complexities. I decided that in investigating the specific field of Soviet Law I would direct my studies and research not to the past but to what is the current, actual process of Soviet law.

As a practising lawyer schooled, conditioned and active in the Common Law processes of Australia's legal system I would use my visit to try to make an objective study of the Civil Law type system as currently practised under the specific political, social and economic situation in the USSR today.

In line with this decision to concentrate on contemporary realities, I decided to start with the new 1977 Constitution of the Soviet Union.

The new Constitution was adopted at the Seventh (Special) Session of the Supreme Soviet of the USSR, Ninth Convocation, on the 7th October, 1977. The preamble is a statement of the historical position as the legislators see it and this preamble is, because of its authority, an expression of the philosophy of the legislators.

The General Secretary, Leonid Brezhnev, in address-

ing the 25th Congress of the Communist Party of the Soviet Union in February, 1976 announced the forthcoming new Constitution and explained the need, the reason and the objects of the new Constitution. The draft was distributed widely and published in the press. When the first Soviet Constitution was adopted in 1918 most adults were illiterate. Today, data shows that a total of 140 million took part in discussing and shaping the new 1977 Constitution. Despite the obvious problems, mass meetings were held on an industry and locality basis throughout the widely varied multilingual regions and republics. Lawyers and others made over 100 suggestions to improve the draft and these were duly discussed before the draft was altered and subsequently approved.

There is no doubt that this new document has been most carefully drafted and has codified the improvement of the legislation referred to by Mr. Brezhnev.

Reading the 174 articles of the Constitution, the rights of the citizens are spelt out but also are their obligations. These obligations are of prime importance. Perhaps in this way the document is unique. The preamble and the Constitution must be read as a whole document so as to appreciate that although the USSR is a federal state with 15 states or Union Republics, and, to this extent, similar in construction governmentally to Australia, the USA and Canada, the philosophy is quite different.

"It is a society in which the law of life is concern of all for the good of each and concern of each for the good of all. It is a society of true democracy, the political system of which ensures effective management of all public affairs, ever more active participation of the working people in running the state, and the combining of citizens' real rights and freedoms with their obligations and responsibility to society."

This reference to the obligations of the citizen as well as their rights is the tandem that people living in another economic and social system tend to overlook. We, in our system, do not put to the forefront the obligations of our citizens. True there is the Christian ethic and the natural law and the concept of natural justice. The presumption that every citizen knows the law and that ignorance of the law is no defence. We are all presumed innocent, but innocent of what? Of a law we are presumed to know? Of a law that not even practising lawyers could confidently say they know? This Common Law fiction, whilst in practice it works well is subject to the criticism of many, particularly the proponents of the Civil Law.

Chapter Seven of the Constitution and the 31 articles entitled "The Basic Rights, Freedoms, and Duties of Citizens of the USSR" is of particular interest. It raises a point for discussion as to whether we should have a written Bill of Rights in Australia.

The full Constitution of the USSR is too lengthy to reproduce in a booklet such as this. However it merits study and is readily available in most socialist bookshops in Australia.

An interesting fundamental of legal theory in the Soviet Union is that consideration of the rights and freedoms of man is not divorced from his obligations. Separation of rights and freedoms from obligations may be a growing characteristic of the anarchistic trends in some sections in the West; such separation is absent from the social, political and legal conditions of socialist society in the USSR. As the 1977 Constitution puts it,

"The law of life is concern of all for the good of each and concern of each for the good of all."

Soviet lawyers I spoke with emphasised that bour-

geois constitutional law offers insufficient protection of the interests of national minorities.

Federalism in the West is constitutionally recorded on paper whilst in practice an intensive centralisation of power is taking place in conditions that leave no real place for the freedom of the individual. National contradictions in countries such as North America and Australia are said to be due to the refusal of the central government to take the vital needs of national minorities into account.

My study of existing Soviet constitutional law is that it not only provides a concept of rights coupled with obligations but is based on the theory that to divorce rights from obligations is to alienate the individual from society and, even more so, from the socialist state based on the people as a whole. This alienation causes a separation of man from his living environment.

The cult of the autonomous individual means that ultimately people do not belong to anything. They are unable to identify themselves with anything outside themselves. This is the basic cause of the overwhelming loneliness and retreat into the frustration of individualism that curses societies of the modern world. It is a basic factor in the individualist "one-out" or "look after Number One" tendencies that are strong characteristics of capitalist society.

Legal scholars of socialist law I spoke with in the USSR say that the democratic status and equality of the individual under socialism, irrespective of origin, social or property status, nationality, sex, education, attitude to religion, occupation, residence and other circumstances show how the rights and freedoms of the individual are guaranteed in fact by the economic and political system of socialism.

These basic concepts of the freedom of the individual associated inseparably with social obligations



(differing as they do from those in the West), when joined with "economic crimes and crimes against the state" and processed in the Soviet Union's Civil Law type system, cause most of the confusion and criticism in the West when examining law in the USSR.

## 4

### THE SOVIET COURTS

what are they?

how are they formed?

how do they operate?

how do they compare with other courts?

My visit to the Ministry of Justice was a particularly valuable experience. It enabled me to have a long valuable conversation with four lawyers who are experts in the law and the organisation of the courts in the USSR. Indeed I greatly appreciated the honour of being able to have Mr. Yevgeny P. Batunov, the Head of the General Courts Department of the USSR, as leader of the group. He is a fit youngish man of obvious authority and good humour. His ease in answering my questions with examples, quotes and statistics were in accord with the high position he holds.

Professor Alexandra I. Pergament, a mature woman lawyer is the Secretary of the committee which drafted the Family Law Code of the Constitution. She is an expert in her field and I found her questions on how the Australian Family Law worked

for Australian Aboriginals remarkable in their well-informed content. I was able to agree with her that we had not yet made a sufficient study of our aboriginal marriage laws to be able to submit useful recommendations at this stage. The multilingual and multinational character of the peoples of the USSR with numerous unique groups has meant that they have retained special laws even of a tribal nature for certain areas. This again is a challenging study for another day.

Mr. Vladimir Svetov is the Deputy Head of the International Department of the Ministry and he together with Mr. Alexander Ivanenko made up the group I interviewed. Much of my observations arises from our discussions.

We found much common ground and it appears that the two groups which are most vulnerable to marriage breakdown are those married either two or 20 years. I explained that a major problem in Australia is caused by men in their mid forties to their sixties leaving their wives. These women after 20 or 30 years of marriage during which time they had borne the children and raised them, had also looked after their husband's welfare and the home. The children had reached adulthood and married and left home. The wife then looked forward to a rewarding quiet, happy life with her husband only to find that her husband had found a younger woman, usually a woman in her late twenties or thirties. These husbands seek a divorce to marry the younger woman and usually the family home is sold and the older woman feels badly treated. Without doubt this is a major complaint which arises in Australia.

My hosts explained to me that they had a similar problem in the USSR but without the property problem.

As Professor Alexandra Pergament put it to me, "What evil lurks in the hearts of men".

The absence of the property problem cannot be overlooked in any comparison of either the law or the court structure in the USSR.

On any early morning walk from my hotel to the Kiev Railway Station Square, I walked along the boulevard bordering the Moskva River. Children were playing under the trees. Quite a few people were exercising their dogs on the well-grassed lawns under the trees. There were German shepherds, air-dales, poodles and even a fox terrier. Part of the way was past a contingent of semi-trailers from Bulgaria. Outside the hotel the car park was crowded with tourist buses from England, Finland, Holland and other places. Barges moved up the river, and the Lenin Hills with the spires of the Moscow University dominated the horizon.

I began to consider the remarkable fact that there is no private property in the USSR. The citizen has his or her personal property but the large private ownership which dominates ownership of land and the means of production in capitalist countries is non-existent. As a result, all that litigation which comes before our courts arising from disputes over private property, e.g. Company law, trusts including family trusts, trade practices, shipping, brewery, company take-overs, passing off suits, complicated and little cases—land valuation, property development companies, mining companies, restraint of trade, challenges to environmental planning, company election disputes, private law contract cases, super-annuation cases—the list is endless—do not exist in the USSR.

There are no insurance cases, no banking cases, no company cases. In addition there is no dispute over workers' compensations. There is no dispute

over personal injuries caused by industrial accidents. There is no dispute over personal injuries caused by the use of a motor vehicle. There are in fact no disputes of a common law nature over personal injuries at all.

This absence of disputes arising from the ownership of private property and of disputes arising from personal injuries means that if a similar system applied in Australia at least 80 per cent of all time now spent in court disputes would be eliminated. During the Whitlam years the National Rehabilitation and Compensation Scheme was alleged to, of itself, promise savings of 80 per cent of all court time as well as saving hundreds of millions of dollars in legal expenses. Strong objection from the legal profession helped to defeat the proposal by delaying the legislation until the unconstitutional removal of the Whitlam Government in 1975.

I am certain that objective consideration of the all-up cost of personal injury litigation in Australia when measured alongside the financial and social advantages of proposals such as those advanced by the Whitlam Government or of a system similar to that in the USSR must become more urgent as the soaring and unsatisfactory health costs in Australia plague the people and governments of all persuasions.

It is alleged that two months of the profit arising from the whole work force of Australia is spent on health care without any apparent improvement in the health of the citizen. I would estimate the period to be three months if one adds the all inclusive costs of personal injury litigation.

It became obvious to me that this absence of private property litigation and personal injury disputes in the USSR resulted in a major difference in the law and its practice in our respective countries.

Similarly this absence of private property and excessive personal wealth is reflected both in the Family Law as well as the Criminal Law jurisdictions. In keeping with the Civil Law concepts they are referred to as codes and not laws in the USSR.

In Australia we have what could be called a three-tier court system in each state. The appeals to the High Court of Australia would make it a four-tier system.

Our courts of summary jurisdiction where magistrates sit are similar to the people's court of the USSR. Indeed the magistrates' or police courts are referred to in Australia, by some, as the people's courts.

Our District or County Courts can be compared with the regional or city courts of the USSR.

The Supreme Courts of our various States are at a common level with the Supreme Courts of the various Union and Autonomous Republics.

The High Court of Australia can be compared with the Supreme Court of the USSR.

However it must be remembered that whereas our magistrates sit alone and are appointed by the government and are public servants retiring at between 60 and 65 years in the people's courts in the USSR both the judge and the two people's assessors who sit with him or her are elected by the people. Similarly in our district and Supreme Courts our judges are appointed by the Attorney-General of the day and are appointed till a retiring age of 70 years. Our High Court judges some years ago ruled that they were appointed for life and quite a few sat until they were over 80 years of age. This rule applied to all Federal judges. However a recent referendum of the people approved of a new law that makes new appointments retire at either 70 or 65.

The Federal judges are appointed by the Attorney-General of the day.

In courts in the USSR the judges are elected for a five-year term. They usually sit with two people's assessors who are also elected but for a term of two and a half years.

The election of judges and the elections of people's assessors is a markedly different system of that in Australia, where judges are appointed by the political party in power. These appointments are for periods which now extend until they are 65 or 70. There are limited cases in which judges sit with a jury of either four or twelve. There is a popular misconception that the jury system is in widespread use in Common Law countries. The reality is that the jury system applies in approximately ten per cent of Western procedures.

Women being appointed to the Bench in Australia is a new concept and to date the appointments are few. This is in contrast to the USSR where women play a major role in judicial functions as they do elsewhere in their society.

Article 151 of the new Constitution reads:

"In the USSR justice is administered only by the courts. In the USSR there are the following courts: the Supreme Court of the USSR, the Supreme Courts of the Union Republics, the Supreme Courts of Autonomous Republics, Territorial, Regional, and city courts, courts of Autonomous Areas, district (city), people's courts, and military tribunals in the Armed Forces."

The Soviet Court system then is on four levels, or including the comradely courts, 5 levels.

1. The Supreme Court of the USSR is the High Court or superior court. Its members are elected by the Supreme Soviet of the USSR and consists of a Chairman, Vice-Chairmen, members and people's assessors. The Chairmen of the Supreme Courts of

the Union Republics are ex officio members of the Supreme Court of the USSR, and the organisation and procedure of the Courts are defined in the Law on the Supreme Court of the USSR (Article 153).

The Court on request advises the Presidium of the Supreme Soviet of the USSR. In its own volition it also advises the Presidium on areas which it sees as needing legislative action. However the Court's main function is as an ultimate Court of Appeal or protest in national matters. However it may exercise a right to try a case in the first instance. Thus the Military Collegium of the day tried the case of the US Intelligence Pilot Francis G. Powers whose plane was shot down whilst he was on a spying mission over the territory of the Soviet Union.

2. The Supreme Court of a Union Republic supervises the judicial activity of all the courts within that Republic. There are 15 separate Union Republics plus 20 Autonomous Republics. Cases with particular complexity or particular social significance are sometimes tried in the first instance, but generally it is a Court of Appeal.

3. The Regional Courts seem comparable to the English County Court or New South Wales District Court system. The court however is largely engaged in reopening cases in the exercise of supervisory power in connection with protests from chairmen of higher courts and procurators of republics, territories and regions.

But the court also deals with appeals from the lower courts as well as dealing with grave crimes in the first instance. Crimes against the state as set out in the Criminal Code, crimes against justice, murder with aggravating circumstances, treason, terrorism, espionage, anti-Soviet propaganda and agitation or participation in an anti-Soviet organisation. In Moscow, because of its population of some 8.5 million

people it has its own court at this level called the Moscow City Court. The Supreme Court of the USSR is located in Moscow, near the Kremlin.

Because of limited time I was not able to observe all courts in session or to have a discussion with judges of all the courts. However one of the most important talks took place during a visit to the Moscow City Court. I had a conference with the Chairman of the Court, Judge Lev Almazov, together with his deputy, Zoya Korneva and the Chairman of the Criminal Jurisdiction, Nikolai Ryazhensky.

The Court and its offices occupied a two-storied building some distance from the centre of Old Moscow. It took me some time to realise that in Moscow and Leningrad, a part of the deliberate practice of the City Fathers is to retain and restore the old buildings. Nine separate areas of the city are set aside from the wreckers' hammers. The newer parts of the city are quite separate from the old. The restoration of the buildings is remarkable and the beauty and style of buildings themselves are pure vintage Moscow.

The buildings and the streets show the fact that this is an area of extremely cold weather in winter. Double windows and heavy doors are needed for protection and provision is made for snow to be cleared from the roofs and pavement as a daily service.

The court room was similar to many of our courts, not as ornate or impressive as those beautiful court buildings that we have in our country towns in New South Wales nor as spacious and functional as the modern Sydney court complex. Nevertheless it was superior to some of the old courts in which our District Court judges sit in Sydney.

**4. People's Courts:** The people's courts handle 97 per cent of all criminal cases. They constitute the judicial body closest to the population. They deal with all civilian cases, property, labour, housing, marriage, family and other disputes. An important feature is that judges are elected not appointed. (This is so for all levels, not just the people's court.)

At the election of judges in 1975, 9,230 were elected for five years. A total of 3,020 were women. The people's assessors elected amounted to some 700,000 people, again with a great number of these being women. They are elected for two years and sit for two weeks a year, during which sitting period they are paid. During the hearing the assessors and the judge have the same vote and rights. It is possible for the majority verdict to be the two people's assessors.

As previously mentioned the people's courts approximate our magistrate's courts. But the sharp difference in all these courts is that the very highly technical rules of evidence which we have in our courts have no application.

As in all Civil Law countries the rules of evidence do not follow the Common Law examples.

So that in comparison with our courts we find, firstly, that the courts themselves are differently constituted and appointed.

Secondly, the courts follow a Civil Law type procedure and have rules of evidence different to our courts.

Thirdly, whilst the law in both countries shows broad similarities it is in the concept of socialism with its "rights and obligations" ideology and the active role to be played by all the population in making and enforcing the law where we find a sharp difference with the attitude in our country.

The complicated Federal and State court structure of the USA which lends itself to endless appeals and delays so that people accused of criminal offence can put off the day of reckoning for many years finds no place in what is a much more simple system in the USSR.

Further, it was pointed out to me that all punishment is aimed at re-educating the violator and at the same time enlarging the participation of people in the management of public affairs. The process aimed at raising the consciousness of an offender to a higher level of awareness of social responsibility to his or her fellows, impressed me.

Then again I was impressed by the educational programmes said to be available to all the citizens but particularly to those who were to offer themselves for election as a people's assessor. Such a programme is given at the People's University of Legal Knowledge of Lenin Ward of Kazan.

Civil and Criminal Law is specially taught for those who are to play an active role in the "comradely courts".

I was informed of a faculty of voluntary people militia (police) where the volunteer militia study administrative law, protection of public order, protection of the person in criminal law and also questions of criminology.

This concept of educating the people in the processes of the law, of having people actively participate in both the making of the law and in seeing that the law is carried out has a high priority.

In the USSR there is much more than lip service given to this idea. The participation in the management of public and state affairs and the enhancement of the role and activeness of public organisations and of actively playing a role in law enforcement and trying to stop infringements

the law goes far beyond any concepts of a similar nature we have in the West.

Mr. G. G. Weeramantry in his "Law in Crisis" refers with approval to this aspect of Soviet law. He says:

"Western style democracies have much to learn in this regard from the Soviet experience, where remarkable results have been achieved in re-educating citizens so as to give them a better understanding of the principles upon which the Soviet legal system is built. In this task of re-education jurists have been invited to co-operate and an important aim is that citizens be trained to obey a law not because they feel bound in conscience to observe it without coercion of any kind."

5. Comradely Courts. These courts which I see as courts of primary jurisdiction in the five-tier court system of the USSR have no counterpart in Australia.

They are courts which encompass the basic social ideology. Widespread throughout the Soviet Union I was told that some two million people participate in approximately 280,000 comradely courts, which are elected by a show of hands at general meetings in factories, offices and collective and state farms, residents in an apartment block, a village, or provided no less than 50 people are in the group.

Members are elected for two years but may be recalled by a vote of the electors. There is no appeal from the decision of the court but they are subject to direction to have a rehearing, given by a local trade union committee or a local Soviet of People's Deputies.

Practice shows, so I was informed, that public assurance of ten proves a more effective means of education than fines or gaol terms. So that all punishment is aimed at re-educating the violator. They are so called upon to instil in people intolerance of

violations of the laws and standards of morality and to develop a respect of honour and dignity and help strengthen labour discipline and combat antisocial behaviour.

In addition to their jurisdiction over insults, slanders, petty hooliganism, family conflicts, conflicts arising out of shared flats (caused by the housing shortage) and despoiling public property, apparently it is a frequent practice for courts and procurators to refer minor offences such as first offenders petty larceny charges to the comradesly courts.

I did not have the opportunity to see a court sitting but I was told that the trade union committees actively support them and they assist in all sorts of labour and family problems as well as playing an active role in combating alcoholism and mistreatment of children or women. The accused has the right to have his case heard by a higher court and a face financial punishment should he or she not wish to face public censure.

The already quoted Mr. G. G. Weeramantry in "Law in Crisis" further has this to say:

"To citizens and lawyers who tend to look upon their particular legal system—whether Civil Law, Common Law or any other—as embodying the totality of juristic wisdom, the richness of other systems can sometimes be a revelation."

To such objectivity I modestly give my wholehearted approval.

## FAMILY LAW Similarities and differences

My visits to the Moscow City Court required the services of a taxi cab for transport. We drove past the red brick walls of the Kremlin, a word which means castle and admired the Italian architects' work of the 15th century in encompassing this site of a medieval settlement. The Bell Tower of Ivan the Great and the Assumption Cathedral showed their numerous gleaming golden cupolas above the red walls of the castle. The Kremlin is now the site of the Government of the USSR.

I had read the history of the War of 1812. The patriotic fever it aroused proved a turning point in the evolution of the Russian national consciousness. It set a new stage for the development of Moscow away from the previous domination of St. Petersburg. It is said that the 1812 Patriotic War marked the awakening of the people and that the architecture reflected a wish to serve the people. Whatever the explanation, there is without doubt a certain distinctiveness about Russian architecture. I feel sure that once having observed the unique

beauty of the buildings of Moscow, the numerous churches and their Byzantine cupolas (or "golden domes" as they are called), the passages, the ever-changing facades of offices and apartments, one would always be able to identify the peculiar, unique Muscovite architecture.

Judge Lev Almazov of the Moscow City Court, veteran of the victorious war against the Nazis, has jurisdiction over the 8,5 million people who live in the capital city of the USSR. He is a large, happy, kindly family man with plenty of the Russian sense of good humour and hospitality. The foreign press often mention his name.

He greeted me warmly as a fellow lawyer and even more warmly as a fellow war veteran. We joked about our respective ages. We paid respect to our respective families and wives. We both had seen a lot of water go under the bridge and instantly relaxed in each other's company. His Deputy and the Lady Chairman of the Family Law Division I believe enjoyed the light banter between Judge Almazov and myself whilst we partook of rich Russian coffee and those wonderful Russian chocolates that make for enjoyable conversation and a feeling of relaxation. Our discussions were too far ranging and too long to quote verbatim. However, I was impressed by the vital awareness of the Judge and his associates, not only of the totality of their own responsibility and discipline but also their scholarly knowledge and courteous understanding of the role of the lawyer and the law in the capitalist nations. The expressions of friendliness and desire for peace which I believe were heartfelt and sincere, I found our discussions extremely helpful. We settled down to discuss the Soviet approach to family law. But first I must deal with some capitalist approaches to family law.

Professor Nygh in his introduction to "The Family Law Service" writes:

"Family Law, as it operated in Australia until 1976, represented a hotch potch of various historical and social influences. The strongest of these influences was the ancient Canon Law of the Church which, until 1857, exercised jurisdiction over most family law matters in England. In both England and Australia this jurisdiction had been transferred to the secular Courts but the Church law and its influence remained visible."

Professor Nygh goes on to describe the notions upon which the family law was based and which became increasingly more difficult to justify in the modern world.

These included the notions that marriage was a sacrament, that there was an innocent and guilty party, that the husband had a proprietary interest in his wife and allowed damages to be sought in adultery cases by either the husband or the wife, the theological notion that on marriage the parties became "one flesh", that marriage was the sole career opportunity for a woman.

In the Common Law countries, family law was very slow to change. Divorce was legally recognised in the Civil Law countries long before it was recognised in the Common Law countries. Divorce was available only for the rich who could afford the ancient act of criminal conversation and the Private Act of Parliament or the annulment of the marriage by the Church.

Prior to the Revolution, the legislation in Russia was based upon the notion of inequality between the husband and the wife with the husband having absolute power over his wife and children. The Church was supreme in all marital matters. This state of affairs existed throughout both the Civil and Common Law countries for centuries with very little change.



Judge Lev Almazov explained to me that women had no political rights under the Russian Empire laws. Moreover they suffered greatly as regards all other civil rights the old law provided; Article 107 of the Code of Laws of the Russian Empire provided that "The wife must obey her husband as head of the household..." The husband could demand the police transport his wife back to him if she left him. The women's rights to succession were very small and discrimination against women was extremely widespread.

How different now with 148 women members of the USSR Supreme Soviet equalling 31 per cent of its members. My discussions drew out this basic data and information on Soviet Family Law in general and the present role of women in particular. Women now fill 30 to 45 per cent of such positions right across the board; 49 per cent in student positions, 60 per cent in education establishments, 60 per cent in law and economics. Yet spouses have an obligation to support one another. Following the Revolution there have been many changes in the Family Law in the USSR, the first decree being in December, 1917 which with the 1918 legislation proclaimed equality between men and women in political, social and personal life and deprived the Church of all influence on marital and family relations. Marriages were performed by state agencies. All children, legitimate or illegitimate, were given the same rights with a mother having a right to prove paternity. In New South Wales children born out of wedlock had to wait until 1977 before they were given this right which had existed in the USSR for the previous 60 years.

Lenin wrote:

"One cannot be a democrat and socialist without demanding full freedom of divorce now, because the lack of such

freedom is additional oppression of the oppressed sex—though it should not be difficult to realise that recognition of the freedom to leave one's husband is not an invitation to all wives to do so."

Lenin, whose training as a lawyer would have given him a special insight into legal problems, spoke in some detail on abolishing male privileges in marriage and property matters. Article 35 of the new Constitution restated that men and women have equal rights in the USSR.

Over the past 63 years the Family Law in the USSR has developed and the "Fundamentals of Legislation of the USSR and the Union Republics on Marriage and the Family" coming into effect on 1st October, 1968, was adopted by the 15 Soviet States in 1969 and became effective in 1970.

The new Constitution of October, 1977, Article 53, states:

"The family enjoys the protection of the state. Marriage is based on the free consent of the woman and the man; the spouses are completely equal in their family relations. The state helps the family by providing and developing a broad system of childcare institutions by organising and improving communal services and public catering, by paying grants on the birth of a child, by providing children's allowances and benefits for large families, and other forms of family allowance and assistance."

My investigations on marriage revealed that the only marriage which is valid is a civil marriage that is contracted at the State Registrar's office.

The marriage ceremonies are conducted in traditional form and the visitor to Moscow will see the young newly wed couples, the bride in the traditional white bridal gown carrying the bouquet of flowers, with the bridal party in attendance, all together near the Red Square or outside the walls of the Kremlin, near the Grave of the Unknown Soldier, or on the embankment near the University of Moscow,

high above the Moscow city and the Moskva river, having their traditional wedding photographs taken.

The Law Society of England's Gazette Vol 75 No. 18 of 17/8/78 contained a description of the trip of a group of young English lawyers to Moscow. In part it described a visit to the Palace of Marriages:

"A most interesting feature was a visit to a 'Palace of Marriages'. Weddings in the Soviet Union may take place simply in a registry office but for those who wish for more ceremony, special palaces of marriages are available. A palace contains rooms for the actual ceremony, waiting rooms, reception rooms, and even a small shop for last-minute purchases such as flowers. The ceremony itself is quite brief but very impressive. The bride is attired as for an English church wedding in white. Music was provided by a small group in the style (and dress) of Albert Sandler and Palm Court Orchestra. The Registrar then gives a brief speech by way of exhortation and congratulation and formerly declares the couple married, whereupon an official presses a button producing canned church bells. The couple and guests usually arrive to the strains of Mendelssohn's 'Wedding March' and depart in a specially decorated taxi. The members of the group were actually permitted to attend such a ceremony with the consent of the bride and groom. It was so impressive and emotional that many a damp eye was to be found, some of them masculine. Probably very few foreigners have had this privilege."

The Soviet approach to marriage is clearly that it is a voluntary monogamous union. It is well put by P. Sedugin in this comment on new Soviet Legislation and the Family, 1973: "Marriage is a natural union between man and woman as equal members of society and possesses, above all, mutual personal relations and the desire to bring up children together. Moreover, this union presupposes a spiritual relationship between man and woman as well as a desire to help each other not only in domestic life, but also in work for the benefit of society."

It is recognised that one of the main functions of a family is to bring up children and this then gives

the citizens certain privileges in the labour force, housing, taxation and pensions. Marriage is defined as being registered in the interests of state and society and of safeguarding the personal and property rights and interests of husbands, wives and children.

The statutory marriage age is 18, although some Union Republics can provide a lowering of the age to 16 according to custom.

The definition in the Legislation reads as follows:

FUNDAMENTALS  
Of Legislation of the USSR  
and the Union Republics  
on Marriage and the Family

Ensuring the well-being of the Soviet family, in which the social and personal interests of citizens are harmoniously combined, is one of the most important tasks of the Soviet state.

Most favourable conditions for stable and meaningful family life have been created in the Soviet Union. The people's standard of living is rising; housing, as well as services and cultural facilities affecting family life are improving. Our socialist society pays great attention to protecting and encouraging motherhood, and ensuring a happy childhood for each child.

An important duty of the family is to bring up the younger generation in the spirit of communism and to see to its physical and spiritual development. The state and society help the family in various ways to bring up children. More and more kindergartens, creches, boarding schools and other children's institutions are being built.

Soviet women are provided with all the necessary conditions for combining motherhood with active participation in the country's economic and socio-political life.

Soviet legislation on marriage and the family is designed eventually to rid family relations of purely materialistic factors, eliminate survivals of women's inequality with respect to everyday life and create conditions for family life founded on principles of communist morality, which will make possible the full satisfaction of personal feelings.

The obvious difference in the ideals of marriage in the USSR and the western world is in the "spirit of communism." If the words "the spirit of the Judaic-

Christian ethic" were used, there would be little difference. The marriage and its attendant responsibilities are very similar in both worlds.

As to divorce, I was shown that Article 14, Termination of Marriage, provides for the dissolution of marriage in judicial proceedings with the court taking measures to reconcile the spouses. There are no court counselling services such as we have in our Family Law Act. However, "divorce by post" is practised in the USSR where there are no minor children. Divorce by mutual consent can be achieved by the filing of documents without a court hearing (This procedure is under consideration in Australia at the time of this writing.) When a dispute exists over children or property a court hearing is held with the court hearing evidence to establish that:

"the continued conjugal life of the spouses and the preservation of the family have become impossible."

This is very little different to the law of Australia on the subject S. 48 (1) Family Law Act, 1975-77 which states:

"a decree for dissolution shall be based on the ground that the marriage has broken down irretrievably."

In all cases a husband has no right to petition for divorce without his wife's consent during her pregnancy and in the course of twelve months after the birth of a child.

When it came to the custody of children, I was told that the Soviet law requires that parents should maintain their under-age children or disabled children who need aid.

The court makes orders for custody, decided according to the facts, with accompanying orders for access. It also can order, if required, that the wife can use the name she had before the marriage, with

permission to allow the children to use the same name.

Custody orders on occasions provide for the children to go to relatives. This is when for some reason the court cannot find itself able to give custody to a parent.

The mutual rights and duties of parents and children are based on the parentage of children as certified in a procedure established by law. Deprivation and restoration of parental rights can only be carried out in judicial proceedings with an appropriate court hearing and orders.

On the question of maintenance and alimony I discovered that the court considers all the circumstances, including the culpability of the husband or wife leading up to the dissolution of the marriage in making money orders.

Whichever party has custody receives from the other party or parties a sum fixed approximately on the basis of 1/4 for 1 child, 1/3 for two children and for three or more children 1/2 of the other party's salary.

The pensionable age for women is 55 and for men 60 and in the case of a long marriage the court can order maintenance in addition to the pension.

The duty to support minors, if they have no parents, may be reimposed upon other relatives—brother, sister, grandparents and stepparents, whilst adults unable to work may be reimposed upon their children or even grandchildren.

The knowledge gained from my conference with Judge Almazov and his colleagues covered a wide field. As far as family law is concerned this was complemented by my visit to the Leningrad University Law School and the conference I had with Professor Tamara Fadeyeva who is a family law specialist and author of a book on the subject. She gave

me an autographed copy to bring back to Australia together with a copy of the Family code.

Professor Fadeyeva has very blue eyes, fair skin and blonde hair. She is a grandmother and a veteran of the siege of Leningrad. My long conversation with her convinced me that the breakdown of marriage in both our countries had great similarities. This learned lady lawyer had done a great deal of research and study of her subject. We were able to discuss the probable causes of the breakdown of marriage; reasons for the increase in the incidence of divorce; what are the guiding factors in making orders for custody of children; the amounts to be ordered; the contents of the order including access.

We also discussed juvenile delinquency, the causes and possible cures; punishment; the causes of court delays.

It is impossible for me to state accurately what are the comparable divorce figures in both our countries, nevertheless I have the impression that they are very similar.

In Australia, in family law matters, we have strong complaints made against excessive delays and excessive costs.

In the USSR the granting of simple divorces occurs without court hearings. There is an absence of long bitter property feuds. Free legal aid is universal. Custody suits are simplified because both parents invariably work, making custody decisions much easier to determine. There is also an absence of the use of children to blackmail the other party in property settlements. All these factors assist in removing the delay and excessive cost complaint.

Family problems prior to divorce including maintenance and custody, restraining orders and the like are very similar in both countries.

The errant husband who tries to avoid obeying court orders or weekly payments to his wife, children or former wife is much more quickly and positively dealt with than in Australia. I was told that some try to travel to distant places but to no avail. The money is deducted from the person's wages at his place of work. Often the comradely courts are used to conciliate in these pre or post divorce matters including any problems involving children.

6

### SOVIET LAWYERS comparisons... and citizens' rights

Leningrad is a most beautiful city. Formerly the capital of Russia it was specially built by Peter the Great and it is a city of islands and canals reclaimed from the swamps and lakes. Everywhere are masterpieces of architectural magnificence.

Once St. Petersburg and now Leningrad it saw the young lawyer Lenin practising in the Samara District Court. Born Vladimir Ilyich Ulyanov in 1870, he attended the law school at Kazan University but was arrested and expelled for revolutionary activities. Later he obtained an honours diploma on graduation in law from the University of St. Petersburg. And now this heroic city which for 900 days withstood the Nazi seige is named after the father of the Revolution. Described as the leader and teacher of the working people, the genius of the socialist revolution, the founder of the Soviet state, Lenin has been described as a warm-hearted and unassuming man with a genius for making complicated problems simple.

During my stay in Leningrad I made sure that I could walk through the famous archway into the square in front of the Winter Palace and follow the steps of the revolutionaries across the square towards the Palace. The shot fired from the naval ship "Aurora", which is still tied up in the same place as a memorial, had triggered off the uprising. The shot was heard across the city and the revolution began. Across the square, through the gates of the Palace up to the door giving access to the steps leading to the room where the Kerensky government was meeting. I followed the path up into the very room and lived a moment of history.

That part of Lenin's life in which he was engaged in legal studies and later in legal practice escapes almost unnoticed in the west. Similarly the law of the USSR, its history and the lives of the lawyers who engage in the day-to-day practice of the law, servicing the legal needs of the 265 million citizens, receives almost no recognition outside its own domain.

This is understandable because lawyers and their work in Australia are not widely understood by the people and the legal groups are now promoting publicity campaigns to lead to an improvement in this situation.

During my discussions in the Soviet Union, surprise was expressed when I told of a small number of newly graduated lawyers being unable to find employment. Judge Almazov informed me that they did not have enough lawyers and that with their programme of educating the people in law more and more lawyers were needed not only to practice law but also to take up positions generally throughout society.

My own experience leads me to believe that in family law in Australia the lack of specialised train-

ing of lawyers leads practitioners generally to seek finalisation in the adversary method of a contested court hearing rather than in conciliation and compromise. The present Special Federal Parliamentary Enquiry into Family Law will no doubt reflect on similar propositions.

A favourite quotation of mine, made by one of history's great men, is:

"Lawyers will as a rule advance quarrels rather than repress them." **Mahatma Gandhi**

The late Mr. Gandhi, a lawyer himself, like Lenin, gave up the practice of Law for the vital role of being a political activist.

In the USA Chief Justice Warren Burger has said:

"We may well be on our way to a society overrun by hordes of lawyers, hungry as locusts, and brigades of Judges in numbers never before contemplated."

A public opinion poll in 1978 put lawyers, advertising agents, politicians and trade union officials in the USA as the lowest social categories in public opinion.

On 5th May, 1978, President Carter spoke at the 100th anniversary lunch of the Los Angeles Bar Association. He referred to the "interminable delay," "excessive litigation," "legal featherbedding," "the heaviest concentration of lawyers on earth—one for every 500 Americans," "90 per cent of lawyers serving 10 per cent of the people," "the rich can always get good legal advice, the poor can sometimes get it but the middle classes just cannot afford it."

In England the legal profession is subject to a Royal Commission. In Australia the Government of New South Wales has an inquiry proceeding into

the legal profession where it is said some 15 lawyers are awaiting trial for the shortage of some 19 million dollars in their Trust Accounts. The present inquiry into the profession will no doubt publish full details of the present and past acts of dishonesty and stealing by lawyers in New South Wales. Widespread institutionalised featherbedding proliferates and dishonest practices cause concern whilst feeble legal aid services slowly perish from the want of support, understanding and commitment.

My interview with the Chairman of the Moscow Bar Association was a most happy event. He was awaiting the result of the election for office, an office which he had held for some years. I was able to inform him that I had spent some 10 years as an elected representative of the legal profession in Australia on various legal bodies including a term as vice president of the Law Council of Australia. During our conversation I became aware of the similarity of some of the problems facing the profession in both our countries. The misunderstandings with academic lawyers, Legal Aid and the corrupting influence of the desire for easy riches. They do not have Trust Accounts as we do and obviously do not have defalcations. On legal aid matters the Chairman assured me that everyone was entitled to free legal aid and in fact where, on occasions, the citizens appeared before the Court unrepresented, the Court would adjourn the matter until an advocate could be arranged.

Lawyers in the Soviet Union are trained at the Universities and then made serve a probationary period of six months, then two years with a patron. For the first six months they have no right of audience in Court and thereafter for two years their patron supervises their work.

The Barristers have a self-governing social and legal institution which is called upon to defend the rights and legal interests of the citizens. They also appear for organisations such as trade unions, enterprises and institutions. They have special rules determining their status and rules of conduct. The College of Lawyers is founded upon territorial areas or cities or regions.

During my interview with Mr. K. N. Apraksin, the Chairman of the Presidium of the Municipal College of Barristers of Moscow, I discovered that the number of Barristers in Moscow was slightly less than 1,000 and they all had to apply to be admitted as barristers in a way similar to that in English-speaking countries. The problems of the practising lawyers are similar to our own. They have small groups of barristers organising with a clerk, to have their chambers run in a manner similar to that in Melbourne rather than the English manner used in Sydney. I was told this practice is followed right throughout the whole of the USSR.

Whilst they have a general right to practise as we do in our system, some do specialise in areas such as family law or crime as indeed we do. Large organisations such as the banks, the insurance group, trade unions, institutions and state enterprises have their own house lawyers. In answer to my question I was told that legal aid is universally available in the various work areas and courts. As previously mentioned I believe Soviet lawyers would have about 10 per cent of the work that is available to lawyers in Australia.

The Lawyers College's executive are elected by secret ballot as in Australia. As already mentioned there was a ballot being conducted whilst I was in Moscow for the position of chairman which my host

had held for some years. He was again standing for office.

The citizen firstly goes to the Legal Advice Bureau where he is helped with drawing up claims, complaints and declarations and given legal advice. The citizen is referred to a lawyer where necessary and pays fees at a rate fixed by the College of Lawyers. Free legal aid is available for those who cannot afford to pay the lawyer's fees.

Twenty per cent of a general collegiate fund made up of contribution from lawyers' fees goes towards the expenses of the legal advice bureau and lawyers' incidental expenses so as to make the Bar financially independent. In addition, the Bar claims the right to be independent in presenting the client's case.

Where the procurator is involved in a case then the defence must be conducted by a barrister. If it happens that the defendant appears without representation, then the Court assigns counsel. It is pointed out by the barrister that legal aid and assistance is freely available either through the legal aid bureau or the assignment of the Court so as to guarantee the protection of the citizens' rights.

The lawyers can appear at every level of the five Judicial Stages but may specialise in the appellate work and higher court according to their experience.

My inquiries lead me to believe that the law of the USSR is of considerable complexity and that the organisation needed to service the delivery of the legal service must be immense. The uniqueness of this family of nations with its multilingual, multinational people of some 265 million obviously calls for such a service. I believe it reasonable to conclude that the legal profession of the USSR must be

of some considerable size and constituted in such a way so as to be able to deal with the multilingual demands made upon it as well as a deep knowledge of local laws and customs.

Indeed both my reading and first-hand experiences support this conclusion.

## 7

### GENERAL LAW personal property—dwelling inheritance banking insurance

During a car journey into the countryside on the outskirts of Moscow I remarked to my interpreter, Sergei Buranov (a capable young Soviet journalist), at the seemingly large number of privately owned motor cars out on what appeared to be a Sunday family outing.

He told me the story of the famous Soviet violinist, David Oistrakh, who was asked by the foreign press on one of his international tours, whether the Stradivarius he played on belonged to the state. The violin was Oistrakh's personal property and the story, apparently a popular one, illustrates the illusion among people not sufficiently acquainted with the political and economic system of the USSR that the ownership of all property is in the state.

My attention was drawn to the Constitution which provides that earned income forms the basis of the personal property of Soviet citizens.



There are many houses and apartments which are owned by the people inhabiting them. The land they stand upon is state land but the personal ownership of the dwelling allows the owner to either live in it or sell it or let it. But there is no sale of land or plants or factories. The carpet bagger land developer is unknown.

The four assets expressed to be the exclusive property of the state are land, minerals, waters and forests. However they can be assigned pursuant to the Constitution. Real property itself has no market value although dwellings do.

On more than one occasion it was pointed out to me that the citizens of the Soviet Union have personal property and that the only limitation on this personal property is that it must not be used to derive unearned income illegally. Rents are fixed and no "exploitation of the means of production" is tolerated.

It appears that personal property may be formed in addition to earned income, from pensions, allowances, grants, sale, contracts of purchase, of gift, of hire, or of barter. Also from receiving a legacy from a deceased estate or from primary pursuits such as farming small holdings as secondary to collective or state farm activities. The law provides for such activities in the Constitution.

The citizen's wealth then can vary considerably with a dwelling, summer cottage (dacha), jewellery, car, boat, furniture, works of art, paintings and other personal possessions.

Similarly professional people or tradesmen own their own instruments and tools.

There are no restrictions on the size of personal property. However one is allowed to own only one house, one summer cottage and one car. It is of interest to note that the right to personal property can

be enjoyed by two or more people creating an estate in severalty, joint ownership by several people.

Where a husband and wife live separately they may each own a separate house. If a house is left to a citizen in a will and that person already owns a house, one house has to be sold within 12 months or gifted to another.

I was told that 85 per cent of all housing is rented at a low rent and steps are taken to see that no family has a house too small for its needs. Because of strict planning, immigration is controlled particularly in Moscow where Mayor Vladimir Promyslov has indicated that the City Fathers do not wish to have an uncontrolled growth with the attendant problems of overstraining transport, housing, schools, hospitals and other services.

This practical planning causes a further misunderstanding in the West. The rapid growth of Moscow is subject to a master plan to achieve a model urban community by the year 2000 with the 1980 Olympics interposed. To live in Moscow a resident permit is needed which requires having a job waiting. I was told there is a shortage of perhaps 180,000 working hands and to stop the population rising, priority is given to modernising of plants with technological changes.

In answer to my questions I was given details of people forming co-operatives to erect apartments which vary in requirements in the various republics including the overall size as well as the number of rooms.

With the development and planning of Moscow as elsewhere in the Soviet Union provision is made for people to be paid and if necessary given other accommodation when their property is demolished. This includes small holdings that are built upon.

Children under 15 can own personal property which is subject to their parents' control. Between the years of 15 and 18 the property can only be sold with the parents' permission or otherwise dealt with. After 18 years the person is of full legal standing to contract as he or she chooses.

Where a citizen owns more than one dwelling contrary to the law, or uses the property to make a profit, then the property is liable to be confiscated without compensation.

During my stay in Moscow I was fortunate enough to be invited to dinner and late lunch by two separate families at their homes in apartment houses in different parts of the city. For this warm hospitality, which I believe is indicative of the Russian friendly nature, I felt greatly honoured. It not only allowed me to relax from my work but also allowed me to discuss a wide range of subjects.

One of these subjects was the right to inheritance and the right to testamentary disposition. This part of the law which in Australia is difficult enough even at student level to cause a well-known law officer to fail his first examination attempt in this subject, is a simple part of the law in the USSR.

The new Constitution, Chapter 2, The Economic System should be read as a whole to understand the propositions of personal property. It says, in part:

"The state exercises control over the measure of labour and of consumption in accordance with the principle of socialism: From each according to his ability, to each according to his work.

"It fixes the rate of taxation on taxable income. Socially useful work and its results determine a person's status in society. By combining material and moral incentives and encouraging innovation and a creative attitude to work, the state helps transform labour into the prime vital need of every Soviet citizen."

Article 13 provides in part:

"The personal property of citizens and the right to inherit it are protected by the state."

Personal property then may be bequeathed by will or in the case of a person dying without a will, be transferred by way of law. Citizens have the right to leave their property as they wish. The Will must be in writing and signed by the testator at a notary's office and duly certified. Provision is made for people who are unable to attend a notary's office for any reason including illness to sign the Will at a place where the notary has been invited to attend. This can be either the home, a hospital or a convalescent home or sanitarium. Specialised provisions are made for military personnel.

However the testator must provide for dependent children and regardless of the provisions of the Will minors or children unable to work including adopted children, a spouse unable to work, parents (adopters) and dependents of the deceased may not be disinherited. They receive no less than 2/3 of what they would have been entitled to had no Will been made and the deceased died intestate.

Generally speaking this part of the law is similar to the law in Australia although less complicated.

However, as in our law a person cannot benefit from his crime and neither can persons who have perpetrated unlawful actions against the deceased or the heirs, including murder. They are excluded from the benefits of the estates. The law in the USSR also extends to unworthy parents or children who have in the past avoided their legal obligations.

The estate also accepts the liabilities the deceased had in his lifetime including debts as it does in Australia.

Savings accounts in banks can be part of the estate of a deceased person.

One million cars are sold annually, twelve million TV sets and numerous other goods all of which form part of personal property and can become part of a deceased person's estate.

My hosts when discussing personal property informed me that almost 100 million rural dwellers also possessed small individual holdings which they worked part time with their own tools; they sold the produce and kept the profit. I saw some of these holdings. Some are very small and others quite sizeable.

I was told that in the USSR insurance is administered by an organisation known as Gosstrakh. Property insurance is required on all government-owned property and certain property of collective farms. Voluntary property insurance is available for non-state-owned livestock, crops, household goods, automotive equipment, freight and various other objects.

Personal insurance for accidents, whole of life policies and retirement payments are common. Policies covering accidental death and disability income protection are common.

Insurance against negligence is not allowed as it is regarded as not proper to allow a negligent citizen to escape from the financial responsibility for his or her act.

Ingosstrakh is the organisation which handles the re-insurance from foreign countries and is said to be one of the largest, if not the largest, insurance groups in the world. Banking is also widespread.

Apparently banking in the USSR is highly developed to meet the needs of the state and the citizens. The State Bank has branches throughout the whole country with the number of branches probably in the

vicinity of 100,000. The Bank has a Board and President, appointed by the Supreme Soviet, and in addition to extensive financing of projects, also controls the circulation of money and advises generally as to financial matters.

The All-Union Bank for Investment Financing has no dealing with cash transactions but engages in financing areas not covered by the State Bank, including co-operative and private house building.

The Bank of Foreign Trade deals with international finances, and the financing inside and outside the USSR is an area of immense operations.

Lenin defined Soviet banking in these terms:

"A single State Bank, the biggest of the big, with branches in every rural district, in every factory, will constitute as much as nine tenths of the socialist apparatus. This will be country-wide book keeping, country-wide accounting of the production and distribution of goods, this will be, so to speak, something in the nature of the skeleton of socialist society."

Marx and Engels in their "Communist Manifesto" called for:

"Centralisation of credit in the hands of the State, by means of a national bank with State capital and an exclusive monopoly."

The history of banking in the USSR from the barter economy in the early years to a money economy and short-term lending being almost the prerogative of the State Bank while other financial institutions were encouraged and used until the banking evolved into the three remaining banks, the State Bank, the Investment Bank and the Bank for Foreign Trade is a subject for another day. However, it is authoritatively stated that the main task of the Soviet Banks is, not only to assist in the planned distribution of national income but also to supervise the economic process in order to ensure fulfilment of

the economic and financial plans and to recover reserves for increasing productivity.

There are many large and voluminous books of reference available on insurance and banking in the USSR. Their number convinces me at least of the size of private savings accounts and personal property in the USSR.

As a matter of general law I have not researched cases arising out of the ownership of personal property although the law and courts amply allow for such cases as they do for appeals in a manner very similar to that in Australia.

## 8

### THE PROCURATOR-GENERAL wide powers of Soviet Ombudsman the notary

The Kremlin, I suppose, would be the best-known building to tourists in Moscow. Next must come the Bolshoi Theatre or maybe the fancifully domed St. Basil's Cathedral. I made a point of seeing as much of the city as I could including the famous GUM store, the Tretyakov Art Gallery, the incredible riches included in the Kremlin Armoury and its diamond exhibition, and walking around inside and outside the Kremlin trying to picture what would be the life of a lawyer in Moscow.

I spent several nights at the Palace of Congresses inside the Kremlin walls attending the ballet, as well as attending the Bulgarian Opera Company's performance at the Bolshoi celebrating the centenary of Bulgaria's liberation. At the Bolshoi we had a bottle of dark Moscow ale and a black caviar open sandwich at the intervals. At the Palace of Congresses it was champagne and Russian biscuits. The famous fast escalators carried the audience from the concert hall level to the top floor at a dizzy speed.

Several tourists from the USA including a lady lawyer expressed their surprise at the fact that even late at night or in the early mornings there was no risk of mugging. I was told the story of Mr. Nixon, prior to his election to the Presidency of the USA, wandering through the streets of Moscow late at night and looking for signs of crime and, of course, not finding any.

The office of the Procurator-General was one that I had particular interest in because I had read that Lenin had to overcome strong opposition to continue this office which apparently had been introduced by Peter the Great in his Europeanising of Russia.

Article 164 of the Constitution, reads:

"Supreme power of supervision over the strict and uniform observance of laws by all ministries, state committees and departments, enterprises, institutions and organisations, executive-administrative bodies of local Soviets of People's Deputies, collective farms, co-operatives and other public organisations, officials and citizens is vested in the Procurator-General of the USSR and procurators subordinate to him."

The following four articles provide that the Procurator-General is appointed by the Supreme Soviet of the USSR, is responsible and accountable to it, appoints the procurators of Union Republics, Autonomous Republics, Territories, Regions and Autonomous Regions. The procurators of Autonomous Areas and district and city procurators are appointed by the procurators of Union Republics, subject to the Procurator-General's confirmation, all being appointed for five years.

This appointment is made by the country's highest legislative body. Procurator offices, like courts, are established on a territorial basis in every city and rural district, in regions, and in national Autonomous and Union Republics.

I was told that it is the procurator's duty to protest to a higher body of any action of any government board or official that runs counter to law. He does not interfere in any economic activity, but sees to it that laws are applied correctly and uniformly. Further he supervises the strict observance of laws by preliminary investigation agencies whilst having the right to institute criminal proceedings. He holds a watching brief on all investigations; can sanction arrest, endorse an indictment and bring a case before a court.

During trials he watches over the interest of the state and the rights of citizens. When guilt is proved he sees that measures are taken to protect society from the wrongdoer, according to the severity of the crime but where, during a trial, he becomes convinced that the judicial investigation does not support the charges made, he is duty bound to withdraw the charge.

It was pointed out to me when I inquired about sentencing procedures and places of detention that the procurator also exercises supervision over places of detention and sees that prisoners' rights are not infringed upon and that the object of the law to correct and re-educate prisoners is not departed from.

This office of Procurator-General with its wide powers and rights to supervise, to investigate and to act give it great attraction to the legal planner. The independence of the office and its power make it a much more effective office than that of our Ombudsman.

The offices of State Notary are separate from that of the procurators and are wider than the powers of our notaries. The notary seems to use his certification of contracts, leases and agreements plus the making of Wills and other documents pursuant to

the legal power and these give the same legal recognition.

It was drawn to my attention more than once that in old Russia the Czar insisted on the Russian language as being the official language and that all civil servants had to speak Russian otherwise they would not be appointed. Now the situation has changed in this multilingual multinational land. I was told that the areas were serviced throughout the state apparatus in their own language or dialect.

## 9

### CRIMINAL LAW

protection of children

crimes common to capitalism and socialism

categories of punishment

psychiatric examinations

Pushkin Square sits where Gorky Street meets the Boulevard Ring Road in Moscow and an attractive statue to Alexander Pushkin stands in the small park on this busy corner of the city. Pushkin, famous Russian poet, born in Moscow in 1799, was killed in a provoked duel at the age of 37. His Abyssinian forebears have made him a poet acclaimed not only in the USSR but also Abyssinia.

Maxim Gorky, beloved writer of the Russian people, was born in 1868. It is interesting to note that Australia's Henry Lawson, also a man close to the people, has been referred to as the "Maxim Gorky of Australia."

Nearby to the square is the Uzbekistan Restaurant and the Aragvi, Georgian restaurant. It was at the latter restaurant during a Georgian lunch of lunches that my host introduced me to the wondrous appeal of the Georgian brandy. After I had expressed my wholehearted approval of this product I

was told that at a recent Brandy and Wine Festival in Moscow the Georgians had taken the first prizes in the five different groups. "Yes", he added, "differently labelled and shaped bottles. But all from the same cask."

I was sitting on a bench waiting for my host and his friends who had invited me to lunch with them. This lawyer had lost an arm in war service and he told me that one-eyed lawyers were much more prevalent than one-armed ones. I informed him we had some one-eyed judges in Australia.

Whilst waiting I watched the children playing in the park and mused to myself, children are children the whole world over. "Suffer little children to come unto me." As a child and now as a man I had loved the beautiful painting and philosophy which accompanies that well-known Sunday School text. Yet we were moving into the International Year of the Child in such a fear torn and widely divided world.

Crime especially crime against children knows no political or economic boundary. Whilst I was assured that there was no pornography in the Soviet Union and people showed what appeared to me, genuine horror at the mention of children being used in pornography, there nevertheless are sex crimes against children. Prostitution is almost non-existent and is said to be confined around foreign hotels. Prostitution involving children, I was assured, did not exist in this country and would be very harshly treated if cases did arise.

The drug problem that plagues the capitalist world, involving children both as addicts and as pushers at schools and elsewhere, does not exist in the USSR, although Judge Almazov informed me that he had several cases of foreign students who were intercepted at Moscow Airport using Aeroflot's cheap air fares to assist in drug running activities.

He told me that lawyers there did not follow precedents as we did in the West and judges did not make the law, the legislature did. This was indicating the practice of Common Law judges in interpreting legislation to mean what they think it means and having recourse to the rules of evidence in refusing to allow lawyers to refer to parliamentary debate in attempting to indicate what legislation really means. There are many cases of judges refusing to interpret the law to mean what the parliament says it means.

Judge-made law and the rule of law in Common Law oriented England caused employers to be able to resist an action for damages for negligence brought against them by an employee if the employer could show that the injury was caused by the fault of another employee. The doctrine of "common employment" as this defence was called existed in England from 1823 when a judge introduced or invented it.

It endured until approximately 1948. NSW abolished it in 1926.

The judge informed me that he decided all cases on the facts. The prosecutor had to prove the accused guilty and the sentence would vary in each case according to the facts. One drug running case involving a Swedish boy who could show that he was coerced into the sad mess because of economic reasons involved a light sentence whilst another case of USA citizens involved a heavy penalty because of the professionalism involved.

It is difficult to speak with accuracy, however I did not think that smoking and the alcohol habit were as widespread amongst young people in the Soviet Union as in Australia. Nevertheless I was told that a very vigorous campaign is being launched to combat the health hazards.

Crime and the definition of crime, and the method used to punish people found guilty of a crime differ from country to country as well as from one period in history to another. Examples can be quoted from our own country.

In Australia, on December 6, 1978 in the Legislative Council of NSW, a prominent member of the conservative party (Country Party) Mr. L. A. Solomons (a well-known and widely respected lawyer) in speaking to the cognate Prisons Bill, said, **Hansard No. 14, page 1487:**

"In earlier years in Great Britain the only answer was to execute a prisoner or put him away. Some 170 crimes were punishable by the death sentence. On most Mondays at Tyburn some 30 public executions were carried out. They provided the public amusement of the day. Notwithstanding that great number, because of the huge spectrum of crimes punishable by death, juries became exceedingly reluctant to convict.

"After the American Revolution tremendous overcrowding of prisons occurred. The only thought that the majority of the establishment had in those days to solve the problem was to get rid of the prisoners out of the jurisdiction completely. They considered it was far better to have them 12,000 miles away than at Brixton or Reading or any of the other established British goals. If I may say so with respect, penology has advanced little since those days. Notwithstanding the study of some learned academics and the work of some of our social engineers we still have a situation where, in Australia as a whole, the prison system has advanced little from that which exported the earliest colonists to Australia. This measure (the Bill before the parliament) may well be the commencement of a true sociological step forward. I hope that is so because there can be no doubt that in the concept of treatment of prisoners, in the provision of really adequate facilities for prisoners, in the concept of dealing with prisoners as human beings who may have made a mistake, in endeavouring to separate those who are a real danger to the community from those who may have fallen to temptation once or even twice, we have advanced but a short way along the line."

There can be no doubt that actions which were once deemed criminal in England and Australia are

no longer so regarded. Capital punishment is no longer used and has been almost abolished as a law. Criminal law in its application and definition has become much more humane, but as stated in parliament in the foregoing quote, the community has, up to this day, continued to accept the conditions in prisons and treatment of prisoners basically unchanged in over a hundred years.

We read almost daily of some proposal to alter the law to make it more effective. One lobby aims for more humane law whilst the other calls for re-introduction of capital punishment and instant imprisonment for drivers of motor vehicles who have been guilty of excessive drinking of alcohol. The lobbyists ignored the prisoners who themselves by way of riot and demonstrations in prisons forced the holding of a Royal Commission into Prisons in NSW and the subsequent damning indictment of the system by Mr. Justice Nagle, the Royal Commissioner.

The method the citizen uses to complain about what he thinks is wrong differs tremendously in our respective countries. This right to dissent exists in both communities. But the method of dissent is quite different. Dissenters in the USSR who do not choose to dissent in the way provided by law may be guilty of an offence. However some have decided to dissent in a way which causes them to come into a conflict with the law.

The Soviet approach to this question is summed up in this way:

"It is the primary duty of every citizen of the USSR to abide by the Constitution and observe the laws. Soviet working people consider it their duty not only to obey the laws and other government acts but to spare no effort in promoting their implementation and to fight every violation of socialism." **The State and the Socialist System in the USSR, I. Chekarin, 1974.**



It must be remembered that this socialist society functions in some ways quite differently to ours. There is a participation and committed communication at the grass root level in factories, state enterprises, collective farms, apartments, villages and at the groupings that form the comradesly courts to consider the problems confronting the citizen. Criticisms and suggestions can be put forward through the trade unions, area councils, the procurator's office, through the Soviets or by writing to "Pravda", the newspaper. This latter method is a very popular and widely used method of protest.

Then again, with the punishment of accused persons in the Soviet Union by the deprivation of freedom the area is divided into 13 categories. I was informed that there was no organised crime nor professional criminals in the Soviet Union. The crime czars, racing rackets, illegal casinos, illegal gambling, prostitution, massage parlours, pornography, exploitation of homosexuals, large drug racketeers, gangsters, organised murders, car rackets, bank robbery, and the large white collar criminals' organised corruption were all welcome absentees from the socialist scene, so I was told.

So that the 13 categories of punishment whereby the rights of the citizen found guilty of a crime are restricted by taking away some of his or her rights, apply to a restricted class of crimes when considered together with the range of criminal offences in the West.

Generally speaking the actions of the citizens which are considered to be criminal acts when examined alongside one another are very similar. Murder, rape, assault, stealing, illegal entry or trespassing, crimes of intent, are found in both codes. So are the minor offences of abusive language, shop lifting, and those offences which in the Soviet

Union are lumped together under the offence of hooliganism.

However the **organized** professional crimes and sex exploitation crimes do not exist and as previously stated, the bank robbers or hold-up men are almost unknown. There were a few such robberies but the offenders were soon caught.

Whilst these crimes are missing they have offences which are unknown in Australia although we have offences rarely used which could be said to be related.

According to the USSR Deputy Procurator-General these are the economic and political crimes wherein the accused are charged with offences of "fabrication of deliberate lies and slanders vilifying the achievements of the Soviet people and undermining the authority of the state, their circulation in printed form with the help of foreign organisations and special services, speculations involving foreign currencies and so on and so forth."

Recurring throughout all my discussions on crime was the theme of re-education and the people's active role in crime prevention and suppression. The law provides for sentences of deprivation of freedom, exile, banishment and corrective labour, together with educational programmes and vocational training. Then again on release the former prisoner is assisted in finding a job.

The punishment of collecting fines direct from the wages of the guilty person or confiscating 20 per cent of the wage earned together with part-time correctional labour is only fully available in a society where there is no unemployment.

Short-term detention up to 72 hours of suspected criminals is unknown in NSW but it in fact happens in some other states.

There are 13 categories of imprisonment which include work release programmes and periodic detention and part-time sentences but I was told that whilst everything possible was done to ensure the moral rehabilitation of criminals and of their return to society the use of exile and banishment were considered reasonable as was capital punishment.

The All-Union Fundamentals of the Criminal Codes and Penal Legislation is universally adopted by the constituent republics and the 12 chapters define criminal responsibility and punishment. Three of the chapters deal with state crimes, military crimes and crimes against socialist property. The law on state crimes is said to be directed to the preservation of peace and defeating the propaganda of war and to promoting the security of the people.

The special labour colonies, with varying degrees of surveillance and release into defined work projects near the person's home, were specially drawn to my attention and compared to other countries where people were held for years without trial and subjected to torture and brutal assault including sexual assaults.

On "Settling Disputes in Soviet Society," Professor John Hazard states that:

"The emergence of a complex judicial system applying formal rules worried many Soviet jurists, so they sought to differentiate the system they had created from that of other lands, to claim that it was unique in all the world."

Whether this is so or not I cannot say; however it does seem to me that many features of the law and the procedure in the USSR are unique.

With offences by juveniles I found it significant that in a society where there is no unemployment, no discrimination because of colour or sex, race or religion, where outstanding educational opportunities are free and widely available, where the health

services are also free, where there is freedom from want and where the population is encouraged at all levels to work towards controlling the state and make it work and to progressively improve its working—that nevertheless there is crime and juvenile crime.

The proposition that the state is controlled by the few to exploit the many is accepted social theory in the West. The control of the state by the workers to reach the egalitarian society obviously has problems common to both.

My talks established that there was no such thing as vagrancy. People worked or were given a pension. Alcoholism existed and was subject to urgent studies which have claimed to be successful. But why do young people commit serious anti-social acts in a socialist community?

In answer, I was told that study showed that children with an unstable outlook or social approach could be traced either to a deficiency in their family backgrounds and experience or to a physical or mental health problem. Further that there is a relationship between low educational achievement and crimes. I suggested that this seemed to accord with research in the West.

Making juvenile crime a priority problem and using youth organisations and trade unions to assist in a campaign of re-education for problem teenagers being invited to holiday camp activities and health education courses, I was informed that it was confidently expected to minimise the problem. Apparently most juveniles are given suspended sentences and are placed under the responsibility of the parents, or the family and fellow workmates or fellow students.

On February 15, 1977 the Presidium of the Supreme Soviet of the USSR passed a decree on the

basic duties and rights of governmental institutions responsible for detecting and correcting the neglect of children and juvenile crime; for ensuring the necessary educational influence on problem children and for providing proper conditions for their education.

I have looked at the various Codes that are applicable to juveniles and read reported cases. It seems to me reasonable to say that we share many common problems. The problem of juvenile delinquents is one in which we obviously have a common urgent interest. The methods of depriving citizens of their freedom when found guilty of criminal offences is another.

The use of specialist psychiatrists to examine citizens charged with criminal offences and to then give reports to the court which makes the necessary order, brings a reaction from a minority in the west.

Here is an extract from the Sydney Morning Herald (August 25, 1978): "A mounting backlog of untreated psychiatric cases at Long Bay jail has been cited as a big factor in the jail's problems in the months preceding Tuesday's riot—the incidence of mental illness is higher among jail inmates than in the community. Many suffer anxiety and depression from the shock of entering the jail environment. But many also have more serious problems—including psychotics and very anti-social people."

Again, full discussion on the problems raised is beyond a booklet of this length. Suffice it to say that I am most impressed by what is being done in the Soviet Union in the treating of social offences as a total problem and not isolating the person, the cause, the motive, the crime, the investigations, the court hearing, the punishment and the form of sentence each as separate problems to be dealt with in

isolation. The need for all the agencies involved at all levels to appreciate what the other agency is doing and what its duties are, I was informed is essential in meaningfully attacking the disease of anti-social behaviour.

Following on from the previous statement taken from the NSW Parliamentary Hansard, at page 1490 Mr. Solomons said:

"I am mindful of the statement of Samuel Butler, that great reformer of late Victorian England, who wrote a satire on British society that he called "Erehwon"—derived from the word nowhere spelt backwards. In Erehwon persons who committed a crime were sent straight to hospital. The reason for this topsy-turvy thinking, adopted in principle from Jonathan Swift's famous satire 'Gulliver's Travels', was to underline the bulking together of all criminals for all crimes, whereby the young first offender could come into contact with the hardened homosexual recidivist; and the young woman accidentally commits a serious crime, perhaps whilst driving a motor vehicle, finds herself in prison with women of notorious ill fame.

"This sort of thing can occur basically because in the past we have not had the appropriate facilities or advice or funds available to do the necessary building to provide the institutions or to have psychiatric and psychological facilities available, or indeed have the time to have more than a cursory glance at the problem of where a particular prisoner could best go during incarceration. So much needs to be done in this field, in all common justice and humanity, in order that these people might at least remain human beings. The system has many faults. We have inherited that system but we have maintained it because it has been the easy way out. With prisoners behind bars, and thus outside our purview, we have not had to worry about them."

The theory of punishment and the methods of imprisonment have occupied the attention of society for as long as there have been societies. The study of penology in the sense of the examination of prison administration and of necessary prison reforms aimed at making prisons more humane institutions is a highly specialised subject.

Criminologists in capitalist countries offer different views on what reform is required. Some support theories like that of the great American lawyer Clarence Darrow who declared that "there should be no jails," that "they are a blot upon any civilisation." Others support prison reform but retaining the existing structures. The literature is endless. Gordon Hawkins, Associate Professor in Criminology in the University of Sydney, in his chapter, "The New Penology" in the combined work "Law and Society", 1978, examines the different theories and points out broadly what they mean.

One cannot escape the conclusion that there are many crimes common to both capitalist countries and the USSR.

As far as I am aware there has been no study made examining the prison systems of capitalist countries alongside those of the USSR. I strongly suspect that an objective study in this area as well as in the area of crime would be a study resulting in mutual advantages and a mutual recognition of how many of our social problems are if not the same then at least similar.

### THE SOVIET CONSTITUTION - and better understanding

The Tretyakov Gallery in Moscow has been described as a treasure house of Russian art. It was founded in the mid-1850s by P. M. Tretyakov at a time when Russia was undergoing a period of high revolutionary and democratic activity. The founder donated his magnificent collection to the city of Moscow in 1892. I managed to wander around the gallery during a space between interviews, and on my return to Australia, was some months later able to see some of the collection again when it was shown in the National Art Gallery in Sydney.

Whereas the Tretyakov Gallery is situated near the Kremlin, where the Moskva River makes a great loop through the city, the Art Gallery in Sydney is situated at the edge of the city overlooking Woolloomooloo Bay on the one side and the Sydney Domain on the other.

The Sydney Domain has always been a place where, on Sundays, interested citizens would gather to listen to speakers who take up various positions

around the parkland and air their views on matters mainly political. It is an area rich in memories of political struggles.

Some months prior to the Tretyakov Exhibition in Sydney the NSW Art Gallery had staged the Chinese Exhibition which included magnificent art pieces, some of a great age, which had been generously sent to Australia for exhibition throughout Australia by the Government of the People's Republic of China.

On my return to Australia, when walking across the Domain to the Gallery, to keep a weekday luncheon appointment, I reflected that prior to the Whitlam Government being elected in Australia, exhibitions of art from Red China or the USSR in Sydney would have been impossible. Further that the many Marxists, who for so many years filled the Sydney Domain on Sunday afternoons, would never have believed that it would transpire that China and the USSR would develop the ideological differences which are now apparent. Furthermore that friendly relations between Australia and both these major communist nations would develop to the stage whereby we would be trusted with the loan of priceless art pieces to exhibit in our galleries.

It is widely reported that the Government of the USSR has, on a number of occasions, offered to discuss normalisation of relations with China. It would obviously be a major contribution to the stability and peace of the world if this offer was accepted.

The recognition of Red China by the Whitlam Government brought with it a broadside of abuse from the conservative elements in our society. Later they were to jump on the bandwagon and not only look for ways to increase trading relations with China but also to take sides with China against the USSR in

the Vietnam crisis rising from the invasion of Vietnam by China on February 18, 1979.

Similarly, the advancement by the Whitlam Labor Government of the date of independence for Papua New Guinea was opposed by the conservative forces as was the de-colonisation of the Cocos Islands, the recognition of the German Democratic Republic and Cuba. The extension of a foreign policy based on an independent Australia developing progressive ideas of mutuality in recognition of other nations, and the expressing of a wish to strengthen friendly ties and to support peaceful coexistence, similarly is to the credit of the Whitlam Government. This, too, met opposition. This independent foreign policy opened up wider understanding with many nations.

I had the delightful duty of meeting a Supreme Court Judge from Nigeria and escorting him to his place when he was leaving Sydney. Educated in England he was a giant of a man with an Oxford accent and a commanding presence. As well as being an outstanding lawyer he was a great ambassador for his country. He expressed to me the view that he knew of no white man who knew as much of the problems of the blacks in Africa as Mr. Whitlam and who could sympathetically discuss their problems with them.

Asian leaders were to remark that Mr. Whitlam was the first Australian Prime Minister to treat them as equals and Mr. Marcos, the President of the Philippines, remarked that Mr. Whitlam had fought at Leyte Gulf, and if ever he wanted to return to the battlefield, the Government of the Philippines would make a plane available to him for that special purpose.

It does appear to me that this balanced and independent form of statesmanship, exhibited by the late Dr. H. V. Evatt and Mr. Whitlam, has won for Aus-



**TRADE UNIONS AND HOSPITALS**  
 free legal and medical services  
 legal aid project in Australia  
 so-called abuse of psychiatry  
 general hospitals  
 medical specialists  
 mental hospitals

Gorky Park with its 275 acres spread along the Moskva River is just over one mile from the Kremlin. My interest in this beautiful area had to be satisfied by a cursory glance from the car window as I made my way to Lenin Prospekt and my appointment with the Deputy Head of the International Department of the All-Union Central Council of Trade Unions, Mr. Georgi Kanayev. With him were Natalia Vorobieva, the International Secretary of the Central Committee of the Medical Workers' Union, and Mr. Yury Korchunov, a distinguished lawyer and advisor to the Central Council of Trade Unions, and the secretary of the Metal Union's Central Committee, Mr. I. Novikov. Two other prominent Metal Workers' Union officials were present plus Mr. Vladimir Kirilov who assisted in translations.

Our discussions covered industrial injuries and industrial safety and rehabilitation. The Unions' branches play an active consultancy and research role in accident prevention. I was told that the metal workers and 500 inspectors in factories and 100,000 social workers actively provide a day-by-day service for the union members.

In family law I was informed that the local trade union committees and women's committees look after family welfare including the welfare of children.

It was explained to me that cultural committees and health committees made up the 20 to 30 workers who joined together in work areas to service the need for social security programmes, sport and other areas of need. They also help to combat crime and to study the nature of offences especially when brought before the comradesly courts. These committees are considered very effective. The main goal apparently is to deal with the matter at "the enterprise" (the place of work) and to use fellow workers' censure and re-education to overcome or diminish further anti-social behaviour.

My legal colleague informed me that lawyers working in "the enterprise" played an active part in providing legal aid services and legal education of the workers. The area of rehabilitation and health services for union members was of a sort that we can only envy. Whilst lawyers are fewer in this socialist country on a pro-rata population basis, the medical workers are seemingly more numerous. In the absence of the role of private property and the acquisitive syndrome of capitalism with its profit motive philosophy, both legal and medical services seem to be much more readily available to the citizen—and at no cost. The free legal and health services are challenging concepts.

In answer to questions put to me I indicated that a metal worker would be paid probably \$10,000 per annum whilst doctors would be paid \$40,000 as a low income and \$100,000 to \$200,000 per annum as high income earners. Lawyers would be paid \$25,000 per annum on the low scale to \$100,000 and above amongst the high income earners.

This information caused surprise to my hosts. It is difficult to justify the fact that some medical practitioners in our society who receive a free education which has been estimated to cost the public between \$100,000 to \$150,000, earn 10 to 20 times more than the tradesmen in industry. Lawyers face a criticism of a similar nature in our community.

Our discussion was conducted in a mutually rewarding way. However the difference between the socialist society and the capitalist society brings into focus sharp differences of many kinds.

Mr. Yury Korchunov was most helpful in specific as well as general advice and Mr. Kanayev presented me with a wealth of literature on the subject of Trade Unions in the USSR.

My lawyer friend referred to Engels' book, "The Origin of the Family, Private Property and the State". It is many years since I have read this work. My friend pointed out that Lenin, commenting on it, said:

"This book says that every state in which private ownership of the land and means of production exists, in which capital dominates, however democratic it may be, is a capitalist state, a machine used by the capitalists to keep the working class and the poor peasants in subjection: while universal suffrage, a constituent assembly, a parliament are merely a form, a sort of promissory note, which does not change the real state of affairs."

The question of the state and society really lies at the root of the differences of our respective so-

cieties, the absence of private property and the merging of rights with duties. Work is a right but also a duty in the USSR. There is a right and a duty to finish ten years at school. The high honour to defend the country is a right and a duty. Mr. Brezhnev at the 25th CPSU Congress referred to:

"The strength of our system derives from the consciousness of the masses".

There are no rights without duties, and there are no duties without rights, the rights and duties complementing each other as a single whole.

It was drawn to my attention that there are no closed shops of the Western type in the USSR and that perhaps 97-98 per cent of more than 76 million workers are members of trade unions. My hosts explained that the workers were encouraged to join trade unions from their own "awareness."

Some of our time was spent discussing a pilot project which I am part of, currently being conducted into the provision of legal aid service by an Australian trade union to its members. I am of the opinion that the largest legal aid services in Australia are those services which the trade unions deliver to their members. The service, however, for reasons of law and opportunity, is largely restricted to personal injury cases. My interest in the services the trade unions deliver to their members in the USSR was furthered by a wish to introduce into the pilot study in Australia the question of whether an extension of services here is either possible or desirable.

Again I refrain from developing this theme in detail other than to say that it appears to me and others working on the project that there is a need to greatly widen the services that are now provided to trade union members in Australia and that the



experience in the Soviet Union in this regard is a most valuable example to consider.

During the "Whitlam years" two reports on legal aid were tabled in the Parliament and my own modest part in those reports and the several years' research that went into them leads me to believe that the extension of legal aid services to workers is a priority problem which the legal profession has, as a whole, found itself unable to answer.

Whilst the conference finished on a happy note with mutual expressions of good wishes and a desire for lasting peace, Natalia Vorobieva, International Secretary of the Central Committee of the Medical Workers' Union, spoke quite strongly on what she referred to as the "abuse of psychiatry" assertions. Dubious information was being used, she said, in a sensational way to whip up anti-Soviet feeling by featuring stories about so-called abuse of psychiatry in the Western press.

She pointed out that her union had almost 100 per cent coverage of all workers including doctors, nurses, psychiatrists and the tradesmen and labourers in the health services. She branded as a wicked lie the story that convicted criminals were used to act as brutal nurses in order to bash so-called dissidents and human rightists in Soviet mental institutions. Indeed, she stated, all of their nursing profession were specially trained as were their doctors and she could produce endless testimonials as to their expert standards from professionals from capitalist countries who had examined the health services, both general and mental in the USSR. The "abuse of psychiatry" in socialism she stated was a capitalist red herring, a trick attempting to sow confusion amongst people seeking a way of life that capitalism is unable to provide.

A great deal of information on this subject was given to me and I have since begun to look at the matter in more detail. I visited the Central Clinical Hospital of Moscow as well as three mental hospitals, namely the Bekhterev Institute in Leningrad, the Serbsky Institute in Moscow and the Children's Psychiatric Clinic in Moscow.

Most interesting and valuable source material on Soviet hospitals can be found in a comprehensive report on a visit to the Soviet Union by Mr. Keith Clarke, National Secretary of the Health and Research Employees' Association of Australia. The report which I have personally discussed with the author, appeared in the union's magazine, "Health Standard", October, 1978. It ranges across various aspects of hospital work in the Soviet Union. Interesting points include the fact that while membership of a union is voluntary, the Soviet Medical Workers' Union has 98.6 per cent of employees in hospitals on its books.

Mr. Clarke's report deals with conditions of employment, hours of work, compensation, pensions, amenities at the Doctor Botkin Clinic, Moscow. This hospital, like the Central Clinical Hospital, Moscow, is an extremely large institution with a capacity to accommodate in excess of 2,500 bed patients. This makes them almost 1,000 beds larger than any comparable hospital in Australia. The hospitals are controlled by a council of 19 who are appointed by the Chief Doctor (Director) and includes Professors, Heads of Departments and hospital staff. The Central Clinical Hospital seems to be surrounded by 300 to 500 acres of parkland, with paths wandering through the birch forests around the lake. The patients are allowed to use the benches and tables which are situated throughout the park and around

the lake to talk with their visitors. The buildings were six stories high and about 400 metres long.

I don't think it necessary to say any more than that it is universally accepted that the standard of health care in the USSR is outstanding. There is an immense research programme and I have not encountered anything but praise for this area of medical and nursing practice.

Whereas in our society most of the top medical specialists are in private practice, where the big money is to be made, in the USSR the outstanding leaders in the various fields are to be found not in private practice. They are the directors of the various institutes. This system is beginning to spread in Australia where more and more professors are keeping their teaching positions in the Universities and becoming staff specialists at the general hospitals. This ensures that the skill and expertise of these men or women is not lost to the poor patients, the hospital and the students. However it must be admitted that our health service is discriminatory against the poor patients. The luxury of the private wards in a few hospitals is in contrast to the poor, who in some instances have their hospital beds in corridors or on verandahs.

My Soviet trade union hosts explained that they operate on the basis of a "rights and obligations" concept for citizens as set out in the Constitution. The social insurance commission in each plant is headed by the chairman of the plant's trade union committee which controls grants, free and reduced accommodation rates to health resorts. It also works with the labour protection committee in cutting down accidents and checking each plant's therapeutic establishment and the building and repair of hospitals, polyclinics, medical units and sanatoriums. In the industrial enterprises priority is said to be

given to health education and preventive medicine, rest and recreation, dietary services, regular examinations including dental care and over-night clinics where people can stay when they need specially graded treatment.

The Presidium of the All-Union Central Council of Trade Unions plays an active part in giving approval to the Social Insurance Budget. They have health educational programmes centred around physical fitness and sport with special sport festivals featuring slogans such as "Vitality and Health," "Work and Longevity."

My friends informed me that the health of the Soviet citizen was improving and the mortality rate was dropping. However, I was unable to get details during my short visit to illustrate this claim. Nor did I look at the training of the medical and paramedical profession in the USSR.

Mental health and mental patients have a lot in common with citizens who following criminal conviction become inmates of some prison. I personally think that mental hospitals in NSW at least, are all round more humane institutions than our prisons, even our maximum security wards for the criminally insane seems to me less soul destroying than our maximum security prisons. The wards for the chronic mentally retarded children, sad as they are, shine with the compassion exhibited by the nurses and doctors who care for these unfortunate young people.

But as the politicians are wont to say "There are no votes in prisons or mental hospitals". Perhaps the success of the prisoners' lobby will give heart to the mental patients' lobby. My first job to undertake after the completion of this booklet is a paper on the plight of the voluntary patients who live in

converted boarding houses in a peripheral area around our mental hospitals.

On August 25, 1978 the medical superintendent of our Sydney's Long Bay gaol was reported in the "Sydney Morning Herald" as saying:

"30 of the Central Industrial Prison's 430 inmates were receiving psychiatric treatment and about 20 were awaiting assessment and diagnosis by psychiatrists before treatment—the small clinic burnt out in the riot was—shockingly small, antiquated and out of date—the jail's 1,200 inmates had to wait 4 weeks before they could be escorted to nearby hospitals for medical tests and investigations".

Dr. Tony Vinson, the Chairman of the Corrective Services Commission of NSW, was reported in the "Sydney Morning Herald" on 23/3/79 as saying that the Commission would recommend to the NSW Government that prisons incorporating psychiatric hospitals be built for the benefit of the prisoners concerned and other inmates.

"At present these people tend to distort the rest of the people in the institutions. The provision of proper psychiatric care for them is an urgent need.

"New buildings will have to be built because in our existing institutions we can't do without using up valuable maximum security space.

"Relatively few prisoners would need to be housed in such institutions but prisons which had to cater for them were placed under extra strain.

"We have to bring the prisons out of the nineteenth century and into the twentieth century."

I interviewed some 10 psychiatrists at the three Soviet mental hospitals.

At the Leningrad, V. M. Bekhterev Psychoneurological Research Institute, I met Professor M. M. Kabanov, Director, together with Professor A. E. Lichko, the Deputy Director, and Chief of the Department of Adolescent Psychiatry and Dr. V. P. Belyayev, the former Chief Specialist in Psychiatry at the Institute.

This hospital, formed in 1901, is world famous. Over 200 medical men from other nations each year are said to visit it and examine treatment and research at the centre and to exchange views.

In Moscow Professor George V. Morozov and five other specialists at the Serbsky Institute were my hosts. Professor Morozov, who is the Director of this Central Research Institute of Forensic Psychiatry, is a world figure in this field and has been a target for much abuse in the Western press when "abuse of psychiatry" stories are published.

Also in Moscow, at the Children's Psychiatric Hospital No. 2, Dr. Tamara Stepanova was my host.

The anti-Soviet lobby had obviously been successful in creating a loss of respect for the medical profession in the capitalist nations in the minds of the profession in the USSR.

To help relieve the obvious tenseness created by Western "abuse of psychiatry" stories, I related an old anecdote (slightly altered) for my Russian friends.

What, I asked them, is the difference in a capitalist society, between, a neurotic, a psychotic and a psychiatrist? Answer?

The neurotic builds castles in the air.

The psychotic lives in them.

And the capitalist psychiatrist calls around to collect the rent.

It didn't solve the problem but it did create some laughter . . . and relaxation all round.

I was most impressed by what I considered to be the genuine humane and professional involvement of the doctors I interviewed. They were, despite their sense of outrage at being attacked in what they considered to be a most unfair and deceitful way, most friendly and helpful.

I mentioned a wise as well as an ancient friend of mine who once advised me that a few hotheads and a little loose logic can destroy in a short time the goodwill built up over many years.

My first hand observations of Soviet psychiatry and my talks with leading Soviet psychiatrists subsequently led me to considerable reading and research in this field.

I found "Soviet Psychiatry" by Professor Joseph Wortis, MD published in 1950 to be particularly valuable. Professor Wortis was then Assistant Clinical Professor of Psychiatry at New York University College of Medicine.

However, because Professor Wortis' book was written 28 years ago I prefer to draw some references from the more recent writings of Professor J. K. Wing, MD, Professor of Social Psychiatry at the Institute of Psychiatry, London.

In the "British Medical Journal" of March 9, 1974 Professor Wing published an article entitled "Psychiatry in the Soviet Union". It is in my opinion a masterpiece in objectivity. Constructive with praise mixed with criticism. It is not possible to deal with the whole article but I would like to quote what I consider to be pertinent remarks of this eminently qualified practising specialist who at that time had visited the USSR on four occasions.

He wrote:

"It would require a deeper knowledge of Russian life and custom than I possess to assess how far a certain gentle but insistent paternalism and over-protectiveness is characteristic throughout the whole society.

"There are three main conceptual differences to take into account. In the first place, there is nothing in our criminal law equivalent to the Soviet category of crimes against the state—the seriousness with which such actions are viewed is quite outside our experience but it is a fact of life in the Soviet Union.

"In the second place—the concept of mental illness, particularly of schizophrenia is a good deal wider than in the UK, including a lot of what we would call personality disorder.

"The third conceptual problem concerns responsibility."

Should a person who is not severely mentally ill by our standards be regarded as responsible for an action which we would not regard as a crime? Assuming for the moment that the Soviet psychiatrists have made their diagnosis in good faith, the question looks quite different to them: is a person who is suffering from a slowly developing form of schizophrenia responsible for an action which is likely to land him, at the very least, in a labour camp for three years? The Soviet doctor claims that he is acting more humanely and that, in essence, the part he plays is no different from that of the American psychiatrists who saved Ezra Pound from execution.

Professor Wing's reference to the way American psychiatrists were brought into the Ezra Pound case is interesting.

It might be remembered that Dr. Ezra Pound was an American poet of world renown whose broadcasting over Radio Rome during the Second World War caused him to be indicted for treason and transported back to the USA to be charged with, amongst other things, "knowingly intentionally, wilfully, unlawfully, feloniously, traitorously and treasonably adhering to the enemies of the USA."

After being medically examined by several panels of medical experts he was declared insane and kept for 12 years in a prison for the criminally insane. The charges against him were dropped in 1958 and he then returned to Italy where he had lived from 1924 until 1945.

The way that psychiatry in the Soviet Union is

presented in the West is, of course, part of the so-called "human rights" issue.

The "human rights" campaign in relation to the Soviet Union is presented from one standpoint by the Australian media. But other sections of the Australian community have presented a different view. This has found little or no reflection in the media. For instance, among trade unions in Australia which have expressed opinions, the Seamen's Union of Australia has carried a particularly strong resolution, declaiming the so-called "human rights" campaign as a "fraud." (See "Seamen's Union of Australia Journal" September, 1978 reporting unanimous decision of Committee of Management meeting on the resolution which was subsequently endorsed at mass meetings of SUA members in ports around Australia.)

In a well-reasoned declaration, the SUA resolution quotes from the transcript of the trial of Sharansky and states that the facts of the case would lead to prosecution in every country of the world—including the USA. The union calls for greater effort for peace and an end to the arms race in place of misunderstanding that "could spark off a world war."

Another source of comment in this area is the report on the Filatov trial in the American journal "Newsweek" (July 31). Filatov, like Sharansky was charged with an espionage-type offence. "Newsweek" confirms that Filatov admitted the offence and claimed that he was blackmailed into becoming an agent by a foreign power; that he was photographed with a lady in a compromising situation.

The "Newsweek" report, in part, states:

"His American handlers gave him sums of money—including 24 Czarist gold pieces and fitted him out with code pads, invisible writing paraphernalia, a radio receiver and minia-

ture camera disguised as a butane cigarette lighter. The Soviet account just falls short of saying it was the CIA, but no one in Washington bothers to pretend anything else."

For those who wish to follow up the question of psychiatry in the Soviet Union, an interesting reference is the article "Soviet Psychiatry and the Struggle for Peace" by A. Bakaya, published in the "African Communist", No. 73, 1978, p. 40. This is a well-researched article which, inter alia, claims that psychiatry practised in the USSR is as advanced as anywhere in the world and because of its socialist environment in fact gives better service to the people.

"Soviet psychiatry has much to teach Western psychiatry. Soviet psychiatrists learn from the West." (p. 52)

My own impressions are that there seems to be a fair body of anti-Soviet people who are well organised and supported and who flog the "abuse of psychiatry" and "human rights" issues at every possible moment. The reporting of the issues is, in my opinion, not fair comment and shows heavy bias.

It is to be hoped that learned and objective comment like that offered by Professor Wing will prevail in place of such tendencies.

Certainly rational dialogue in place of emotive propaganda offers a better path to the mutual understanding so essential to better international relations in these nuclear times.

## HOMeward BOUND

### - and homeward thoughts

At 22:25 hours Tuesday, May 23, 1978, Aeroflot Flight SU554 to New Delhi and Singapore climbed away from Moscow leaving the lights of the city behind and headed SSE through the night. I had a window seat on the port side looking towards the dawn. Stretching out I reflected on the crowded last two weeks.

The beauty of Moscow and Leningrad were fresh in my memory. The weather had been soft and the people kind. I had completed a tight programme and had burnt the midnight oil, so that I was relaxed and happy. My client was going to be more than satisfied with my good fortune and I had managed to look at the legal scene and partly satisfy my long-standing desire to know more of how the law worked in the USSR.

The dawn began to break. The magnificent scenery slowly emerged from the darkness. Crossing the wild and fierce-looking mountains somewhere near the North West Frontier into Pakistan and then In-

dia, landing at New Delhi... across India and the Bay of Bengal to Singapore... then onward and at last over the vast wide Australian plains. At my farewell meal in the USSR before leaving for home, my friend Sergei Buranov told me of an old saying in Russia, "To travel is good but home is always better." How true that is.

It was a clear sunny late May morning, and as we crossed the Blue Mountains the plains of Sydney came into view. I recalled the words of that great Australian poet, Dorothea Mackellar:

"I love a sunburnt country,  
a land of sweeping plains..."

Once home, and having time to reflect upon my experiences and the result of my studies, I consider that in any analysis of law in the USSR comment and comparison can be endless. Conclusions can be widely varied.

One approach could proceed from the view that the system known as capitalism is the acme of human social ascent and will endure eternally. Or one could proceed from the socialist standpoint first advanced incidentally by a German law student named Marx and subsequently developed by a Russian lawyer named Lenin.

Here my brief is to act as the advocate of neither. My brief is to plead the cause and need for greater tolerance and open-mindedness in the search for better mutual understanding.

While I do not expect every reader to share my views, comments, comparisons and conclusions, I do venture the hope that this booklet will, at least, make some modest contribution to a more informed approach to the processes of law operative in our two countries—Australia and the Soviet Union.

On the wider plane, I sincerely hope that it may also make some modest contribution to the truly urgent need in this nuclear age for greater international understanding and accord in the quest for peace and social progress, towards a world of economic security, higher cultural attainment together with advancement towards a universal system assuring human justice to all.

## ABOUT THE AUTHOR

ROY TURNER, a well-known Sydney solicitor, visited the Soviet Union in May, 1978 on legal business. On return to Australia he wrote the foregoing outline of his experiences and his impressions of law in the USSR. His wide range of academic, legal, social and political qualifications and activities are listed below.

## CURRICULUM VITAE

ROY F. TURNER, born Sydney, Australia—September 7, 1922. Law Graduate University of Sydney 1951.

Senior Partner TURNER FREEMAN, Solicitors, specialising in Trade Union activities.

"The Co-Operative for Aboriginals"—Foundation Director 1956.

"The foundation for Aboriginal Affairs"—Foundation Director.

"The Aboriginal Legal Aid Service"—Foundation Director.

Mental Health Tribunal—Chairman 1958-1978.

"The St. George Hospital"—Director 1963.

1977. "The Microsearch Foundation of Australia"—Director

1977. "The Royal Prince Alfred Hospital"—Director 1978.

**Law Society of New South Wales—1964-74**

10 years member of Council of the Society and a member of the Executive Committee and Chairman of various Committees.

**The Law Council of Australia**

Former Vice-President of the Law Council, Chairman of the Divorce Committee, which brought forward the new Family Law Bill. Consultant on the AG's first committee preparing draft of Family Law Bill, Witness before the Senate Select Committee.

**Australian Legal Aid Review Committee**

First and only Chairman appointed by the Australian Attorney-General to advise of the delivery of Legal Aid Services in Australia. Two reports tabled in the Australian Parliament. Consultant on drafting of the Legal Aid Bill.

Asian Workshop on Legal Services to the Poor.

Representative at University of California. Earl Warren. Legal Institute, proposed by the Australian Government July, 1974.

**Macquarie University**

Member of the Convocation. Joint author with Professor Peter Nygh, Dean of the Faculty of Law at Macquarie University of "The Family Law" practice book, Nygh, Turner.

**The Family Law Council**

Member of 12-person Council appointed by the Australian Government to advise the Australia Attorney-General on the working of the Family Law Act.

**New South Wales Parliament**

Labor and Government Member of the Upper House of New South Wales since 1976.

Flying Officer RAAF, Air Crew, England—1942-45.

Roy Turner  
*Law in the USSR*

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