

**THE ROLE OF DEFENCE COUNSEL IN
POLITICAL TRIALS IN THE U.S.S.R.**

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Of all criminal trials in the U.S.S.R. the ones that attract the most attention in the West are the trials of political dissidents. In legal jargon these trials are called "spetzdel" ("special cases"). This article discusses the role of defence counsel in these cases and the ways defence counsel can be of assistance to the accused.

A special problem in these "special cases" is that only certain lawyers are permitted to act as defence counsel in them. Unless the lawyer retained by the accused can get special admittance to defend he can do nothing in the case. This is hard on the lawyer because it restricts his right to earn a living but it is harder on the accused because it restricts his right to choose his own counsel. Not only may he not get the lawyer he wants to represent him, but the lawyer whom he does get may be constrained in his conduct of the case. The lawyer would not want to lose his privilege to defend "special cases" by incurring official displeasure.

So, in the first part of this article I will consider this barrier to a lawyer acting as defence counsel. In the second part I will consider the ways in which a lawyer may be of assistance to the accused once he is past this barrier.

**I. THE PRIVILEGE TO DEFEND "SPECIAL CASES"
GRANT AND DENIAL**

In the Special Sections ("spetzotdely") of the Presidiums of the Colleges of Advocates¹ for Moscow and Leningrad and each Region are kept *lists* of lawyers who have been granted the privilege to defend "special cases". These lists are not common knowledge, but they have been mentioned several times in official conversations. In Leningrad, such a list holds the names of 17 to 20 lawyers. Nonetheless, on the one hand, cases have been known where lawyers whose names are not included in

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I would like to express my gratitude to Ms. Lee Walker, Ph.D. student of the Political Science Department, University of Toronto.

1. All defence counsel (Advocates) are members of so-called 'Colleges of Advocates', which are established in every Province of each Union Republic (and in the cities of Moscow and Leningrad as well). These Colleges have the official status of Voluntary Social Organizations. The governing body of each College is called its Presidium and consists of nine to eleven members elected by all the Advocates of that College (or by their representatives in a two-stage electoral process).

this list have been granted the privilege to participate in "special cases". On the other hand, the simple fact of having one's name included in such a list does not rid one of the necessity of having to present an official letter granting *special admittance*, every time one is to participate in a concrete case. Let us call this "a nonrenewable licence to defend". These lists, however, are important. For when the accused (or defendant) does not have a lawyer whom he himself or his relatives have invited to defend him, Article 49 of the Criminal Procedure Code of the RSFSR obliges the investigator or the court itself to provide him with a defence lawyer. When they receive orders to appoint a lawyer, the Presidiums of the Colleges of Advocates must appoint for the defence one of those lawyers included in the list.

Sometimes a lawyer who has been invited to participate in a political trial as defence must make a request for a licence to defend for the first time, as he has previously never taken part in such cases. However, there have been instances when the Chairman of the Presidium of the College of Advocates has denied a licence to defend to such a lawyer chosen by the defendants. In Leningrad, for instance, such cases took place in the second half of 1974 in connection with several Jewish lawyers. Recently, Sergei Kovalyov, Andrei Tverdokhlebov (both of whom are members of the Moscow branch of Amnesty International) were deprived of the right to retain lawyers whom they themselves had chosen.²

Now I shall describe the process of the *granting* of such a licence through my personal recollections. In 1962 I decided for the first time to accept the proposal of acting as defence lawyer in a political trial. Previously, in such situations, I had always said that I would not accept, as I did not have the *privilege to defend* "special cases". Having agreed, I told my clients that I would take on their defence *if granted a licence*. I addressed my request to the Chairman of the Presidium of the College of Advocates, who responded positively without the slightest hesitation. All this was contrary to my expectations and without any preliminary discussion. At once, as well as a *warrant for the right to defend*. (a necessary attribute, which gives one the right to participate in any legal case, without which a lawyer could not be admitted to either criminal or civil trials), I was entrusted with the following letter:

"To the Chief of the Investigatory Department of the UKGB LO,

2. See Valeri Chalidze, "The Rights of Man and the Soviet Union" ("Prava cheloveka i Sovetski Soyuz", Khronika Press, 1974, p. 147.)

*Colonel M.M. Syshchikov*³ Lawyer (surname and initials) is granted admittance (the "emphasis" is mine — Y.L.) to the defence of the accused (surname, 'first' name, patronymic, date of birth) by the Investigatory Department of the UKGB LO.

Warrant Enclosed.

Chairman of the Presidium LGKA
(signature, date, round seal)"

Only after I had received this warrant did I conclude my agreement⁴ with my clients for the defence and inform the investigator of the UKGB of my acceptance of the defence. After that all I had left to do was to wait until the investigation was over and I would be able to take on the defence.

As it appears from the letter, the official who grants or denies a licence to defend a "special case" is the Chairman of the Presidium of the College of Advocates. This is the body which governs all professional lawyers. They, in turn, constitute the membership of the College and elect the Presidium. Thus it would appear that the discrimination in denying licences is exercised independently of the government. In fact, the initiator of discrimination is usually the KGB. However, the identity of the initiator and the causes of discrimination are by no means always disclosed because the lawyers are usually informed not by the KGB, but by the Chairman of the Presidium.

There are, however, exceptions: for example, in 1973 lawyer M. Linda took on the defence of the accused Sorokin. The crime Sorokin was accused of was not political. Being the head of the Leningrad State Automobile Inspection (a department of the police), and later the director of the Leningrad Section of Intourist, the official Soviet foreign tourist agency, Sorokin was accused of extensive acceptance of bribes and violation of the rules covering deals involving foreign currency. Mr. Linda sent the KGB his credentials, and soon after he received a phone call from them politely informing him that they had "recommended" to Sorokin that he invite another lawyer to defend him. It is not surprising that Sorokin, who was at that time locked in a KGB prison, agreed to act upon their advice, although he himself had chosen Mr. Linda to defend him.⁵

In cases where a lawyer has previously been granted the privilege to defend "special cases" and is subsequently denied a

3. UKGB LO stands for the Administration of the Committee of State Security for Leningrad and the Leningrad Region.

4. Formally an agreement is concluded between the clients and the Law Office (Yuridicheskaya Konsultatsiya) and the lawyer accepts the commission.

5. In 1960, the General Procurator of the U.S.S.R. published a letter in which was emphasized, among other things, the unacceptability of the investigator's recommending any certain lawyer to the accused. Formally these instructions apply also to investigatory organs of the K.G.B.

licence, he is clearly being penalized for something he has done.

In 1946 the Military Tribunal in Leningrad took up the case of the outstanding scholar and professor Wilhelm Schaak, who was accused of espionage for Nazi Germany. Schaak pleaded guilty. At the moment when this story takes place, the interrogation of one of the former heads of the Department of Espionage of the German Embassy in the U.S.S.R. was being presented as evidence against him. I think the witness's name was Krauser⁶. He had been brought in from a camp where he was serving a sentence; he confidently testified as to how Schaak had been enlisted by the Reconnaissance, what sort of missions he had been assigned, and how meetings with him had been arranged. Nonetheless, Schaak's defence lawyer, Mr. Brill', asked the witness to describe in fuller detail the circumstances of his personal meetings with Schaak, and his first impressions of his physical appearance. Krauser willingly supplied supplementary information concerning Schaak's appearance, which he remembered well, including the fact that he was of average height. Then Schaak's defence lawyer asked his client to rise — and something completely unexpected took place. Looking at Schaak, who had risen to his full height of two metres, Krauser exclaimed: "Gentlemen, this is a mistake! The Schaak that I was telling you about is a completely different person. As for this man, I do not know him and have never seen him before."

The main charge which had been threatening Schaak's life was annulled.⁷ After this case, lawyer Brill' was *deprived of his admittance to defend* at political trials and did not take part in them again until 1968. Lawyer Mazel', who had achieved the acquittal of Doctor Kabanov in 1949, (at present professor Kabanov is the director of the Leningrad Institute of Psychiatry) was later deprived of the privilege to defend, expelled from the party, and dismissed from his job. The situation has not changed. Lawyer Zolotuchin has been disbarred for having actively defended Ginzburg. The deprivation of admittance to defend at political trials as a reaction to activism was inflicted upon lawyers Kalistratova, Kaminskaya, Pozdeev in Moscow, Timofeev and Toporova in Leningrad, Yezhov in Kiev . . . the list is long.

6. It is possible that I did not remember correctly the name of the witness, but, on the other hand, I distinctly recollect the name of Professor W.W. Schaak, the author of a well-known surgical textbook.

7. As a result, Professor Schaak was saved from death, although later, after the case had been reinstated with the purpose of further investigation, he was accused, convicted and sentenced, according to Article 58¹⁰ of the Criminal Code of the R.S.F.S.R. to 8 years of deprivation of freedom.

During the Stalinist regime, "*licences to defend*" were demanded only in political cases and cases involving state secrets. The fact alone that a certain matter was being investigated by organs of the Ministry of State Security was not basis enough for necessitating the grant of a *licence to defend*. For instance, in 1951 I had the opportunity to defend a senior employee (in this case a captain of the Leningrad police), who was accused of homosexual assaults and various crimes involving his work. The preliminary investigation was conducted by a *special inspection committee* of the Ministry of State Security (which could be called "KGB within the KGB") and the defendant was convicted by the Military Tribunal of this same ministry. Nevertheless, a licence to defend was not necessary.

Today, a licence to defend is necessary for *all* legal cases which are investigated by organs of the Committee for State Security. Thus, it is now compulsory in all matters concerning significant crimes involving foreign currency, and those concerning the acceptance of bribes by senior employees (including judges). Investigations of this type of case are entrusted to the KGB by an unpublished law.

Evidently, the special significance of a certain case can lead to demanding not only a warrant, but also a licence to defend. In March 1973 in Minsk, the capital of Byelorussia, the television case shop of a television factory exploded. Neither the production of television parts, nor the reason for the explosion were in any way connected with state secrets. The central newspapers printed a write-up of the accident. The media announced that, following the instructions of the Political Bureau (Politburo) of the Central Committee of the Communist Party of the Soviet Union, investigation of the matter was being conducted by the staff of the Procurator of the U.S.S.R. Yuri Alexandrovich Zverev, the "Senior Investigator of Especially Important Cases" of the Procurator of the U.S.S.R., led a brigade of twenty investigators. [Evidently Y.A. Zverev was indeed entrusted with "especially important matters". In A. Solzhenitsyn's latest book "The Calf Butted the Oak" (Bodalsia Telyonok s Dubom), we learn that none other than Y.A. Zverev composed and signed the decision to hold Solzhenitsyn criminally responsible for "treason" before the authorities deported Solzhenitsyn from the U.S.S.R.]. The number of those who perished in the explosion was not published anywhere. Even in the indictment and sentence of the Supreme Court of the U.S.S.R. only "a large number" of dead was admitted. Nonetheless, all of Minsk knew how many

people had died. This number did not and could not remain a secret. The matter was discussed at an open court meeting. And yet I had to present the investigator Zverev not only with a warrant but also with an official licence to defend.

The significance of this is that it is becoming more and more important to lawyers not to be denied licences to defend "special cases" as more and more cases are being considered "special cases". A lawyer is not likely to sacrifice his career for his client.

II. OPPORTUNITIES TO ASSIST THE ACCUSED

Now let us consider what *actual* assistance the accused can get from his defence counsel. I stress *actual* because Soviet laws exhibit an interesting characteristic: they do not give an accurate reflection of the actual Soviet legal process. In the Soviet Union we have an anecdote, which is used with some success in this regard: At the zoo in front of the elephant's cage there is a sign on which is written: "The diet for the Elephant: Bananas — two hundred pounds; pineapples — 300 pounds; cottage cheese — 300 pounds; and so on for fifty items. An astonished visitor, having read the sign, asked the attendant: "Does he really eat all of that?" "Sure he does", he answered, "but who is going to give it to him?" This anecdote inevitably comes to mind whenever I think about the peculiarities of the Soviet law.

I would therefore like to discuss here the question of the real situation and real opportunities of the Soviet lawyer in the Soviet courts. I have in mind his objective possibilities independent of his individual talent and artistry.

These objective opportunities of the Soviet defense lawyer in Soviet political cases are markedly distinguished from those opportunities in common criminal cases and moreover in civil cases. We will speak about the opportunities of the Soviet defense lawyer in the political cases only. I have in mind, of course, not the entire period of the existence of Soviet power, but, let us say, only that of the last twenty years.

I draw this distinction for two reasons. Firstly, during the period of Stalin's reign millions of people were exposed to repression for crimes which actually were never committed. Now people are prosecuted only for actions which really were committed.

In this way, for example, a Leningrad engineer Valery Ronkin actually wrote and distributed his work "From the Dictatorship of the Proletariat to the Dictatorship of the Bureau-

cracy"; actually published the underground magazine, "Kolo-kol" (The Bell); actually created an organization of like-minded people. The aim of this organization actually was to raise the consciousness and activity of the people to the point where some day it would be possible at the elections to defeat the Politburo and the Government. It happened in 1965. Since then, Mr. Ronkin has served seven years imprisonment.

A Leningrad historian, Michail Kheifetz, actually wrote the foreward (preface) to the collection of essays by Josef Brodsky and actually gave two acquaintances a copy of Amalrik's futurological essay to read. Mr. Michail Kheifetz was sentenced to four years imprisonment. It happened in 1974. The number of such examples can be multiplied.

It is irrelevant that in all democratic countries these activities are not considered crimes, but only realizations of human rights. Both under Stalin and now many such activities are considered political crimes. However, now apparently only activities which really happen are prosecuted, or so it seemed until recently.⁸

The second reason for distinction is that during the Stalinist epoch the majority of people charged with political crimes were sent to camps, or were shot, not as a result of judicial proceedings but by order of "Troika".⁹ Today all political cases go through the courts.

The Independence of the Courts in the Political Trials in the Soviet Union

The basic unit of the Soviet judicial system is the District People's Court (Rayonny Narodny Sud). But political cases are only heard at the level of Republic and Province Courts.¹⁰ There are several reasons for this: Firstly, there is a more reliable staff of judges; secondly there is a more reliable staff of peoples' assessors (I mean the non-professional judges who sit with the professional judges), who are selected for this reason. The selection of People's Assessors is actually done by the K.G.B. and the Party Committee, although formally they are

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8. It seems that the situation in 1977 is becoming worse. The recent arrests of Soviet dissidents, A. Ginsburg, Y. Orlov and A. Shcharansky, and their tentative charges are ominous indications of a return to Stalinist times.
 9. Troika, that is, a three-man commission consisting of the first secretary of a local communist party committee, the representative of NKVD (Ministry of Internal Affairs) and of the local Procurator. This institution convicted and sentenced millions of innocent people without trial.
 10. The province Courts are the next tier above the District People's Courts in the court hierarchy. They serve simultaneously as courts of second instance hearing appeals from decisions of People's Courts, and as courts of first instance hearing more significant cases. Moscow and Leningrad city courts are equivalent to Province Courts and are also entitled to hear political cases.

elected by the Supreme Soviet or the Province Soviet. Thirdly, there are more reliable conditions of secrecy than in the People's Courts. There are special secret departments for these political cases, and special counsellors. The secrecy which surrounds the political trial is distinct from that which surrounds certain industrial cases which are heard by a Special Court (which is called in Russian, Spetsud). This secrecy which surrounds the political trial is designed to prevent word of the case from reaching the West. Fourthly, only these Supreme and Province Courts are empowered to administer the death penalty.

But under all of these conditions the actual decision in a political case is not made by the court which considers the case — but at the highest Party levels and in the K.G.B.

I would like to describe here one case which occurred in Estonia in 1962. It is possible that some of you have already read or heard of it.¹¹ It occurred in this way. In Estonia the K.G.B. had completed its preliminary investigation of the case of Yureiste, Linnas and Viks. They were accused of multiple murders of prisoners in a concentration camp during the German occupation of Estonia. It was confirmed that Yureiste had been the Superintendent of the Camp, Linnas was the officer on duty at this camp, and Viks was the Superintendent of a Special Section within the camp. (This last title has a very familiar ring for the Soviet citizen.) All three were tried — but two in absentia. By Soviet report, Linnas lives in new York; Viks, somewhere in Australia. As a result, only Yureiste stood before the court. To all external appearances the procedure was completely above board. Each defendant was assigned a Defence Attorney. The trial took five days, from the 16th to the 20th of January. All three were sentenced to the death penalty. The magazine "Socialist Legality" — an organ of the Procurator's Office of the U.S.S.R. discussed this case in its January, 1962 issue. Among the details in the article were discussions of the speeches of the accuser, the decision to invoke the death penalty; and the unanimous approval of this decision. But there is one very interesting point: the sentence was pronounced in that case on the 20th of January, 1962. But the Moscow Journal announced it, informed its readers of it, before the sentence. This magazine had been printed in December, 1961, and was in the hands of its subscribers, including me, by not later than the 10th to 12th of January. How could this have happened? The Editor of the Journal was informed by the leadership of the Procurator General of the

11. This case is mentioned in an interesting book, "The Russians" by Leonid Vladimirov ("Rossia bez prikras i umolchaniï") published by Frederick A. Praeger Inc., U.S.A., 1968.

U.S.S.R. of the decision to implement the death penalty in this case in November of 1961. In November, 1961 as a result of this information, the Editor sent members of his staff to interview the Procurator of Estonia. The trial was originally supposed to begin on January 2nd and to end on January 8th. And the magazine was supposed to be in the hands of its subscribers by the 10th or 12th of January. However, the defendant Yureiste became unexpectedly ill, and the trial was postponed from 2nd January to the 16th. In Tallinn everyone had forgotten about the interview; and in Moscow no one was aware of the postponement. The magazine had gone to press in December. This ironic story is important to us only as evidence, that all decisions in political cases about guilt and innocence, about the form of punishment, are made outside the Court.

And here inevitably the question arises: for what purpose does a lawyer in this situation agree to participate in political trials? If political trials are in fact decided not by the court, but by organs above the court, if the entire judicial procedure is a fiction, a farce, does not the participation of the trial lawyer in this spectacle bring the defendant more harm than good? What kind of opportunities does the lawyer have to defend the accused in political trials? Does the lawyer have the moral right to take upon himself the defence in a political trial, and to consider himself not to be a participant in a farce? May he in fact provide the defendant with real legal help?

The Opportunities of Soviet Lawyers in Various Political Cases

There is no doubt that the opportunities presented to the Soviet Defence Attorney are very few. They are incomparably smaller than are those of the Defence Attorney in democratic Western countries. The extent of these opportunities are greater or smaller depending on the character of the political trial, and depending upon the level at which the decision is made. In order to properly define and evaluate the whole complex of opportunities, we will divide all political cases into two groups, according to the level at which the decision was made.

In the first group we will place those cases where the decision is made at a level not lower than the Chief of the Department of Administrative Organs of the Central Committee of the Communist Party, or his Deputy. This decision is made with the participation of representatives from the leadership of the K.G.B. of the U.S.S.R. Sometimes members of the Politburo will participate in decisions which are made at this level. And sometimes the decision is made directly within the Politburo

itself. It is important to mention that the Courts do not receive these decisions directly from this level, but "third hand". As a result, the decisions in these political cases are not subject to any kind of revision. No judge would dare to ask for further clarification of this decision; no one would dare to cast doubt on it; and no one would dare to request a reconsideration of the directives. Such decisions are final. They can be changed only at the same or higher levels on the influence of some special circumstances. Under group one we should include such cases as those of Kuznetsov and Dimshitz, and others accused in the Leningrad Hijacking case, the case of Sinyavsky and Daniel,¹² and the Estonian case I have just mentioned, because two of the accused were American and Australian citizens. The opportunities for the lawyer in the cases of this group are minimal. Let us look at them in the following Diagram.

*The Opportunities of the Soviet
Defence Lawyer in Political Trials*

<i>Relations of the defence lawyer with:</i>	<i>Functions</i>	<i>Group one cases</i>	<i>Group two cases</i>	
Court & Government	{	(1) Influence on decision	—	+
		(2) Lobby	—	+
		(3) Plea-bargaining	—	+
Defendant	{	(1) Provision of legal help	+	+
		(2) Provision of necessary information	+	+
		(3) Preparation of case for future possible reconsideration	+	+
		(4) Communication link with relatives and friends	+	+
		(5) Provision of legal help in prison	+	+
Public	{	(1) Provision of information about the essentials of the accusation	+	+
		(2) Provision of information about the real value of the case	+	+

The First Group of Political Cases

Under the first category, relations of the lawyer with the court and government, there are three ways of influencing the decision of the court, the guilt of the accused; "qualification", (defining) what type of crime was committed; and the punishment meted out to the accused. For cases in group one, this influence is entirely absent. For instance, in the hijacking case of Kuznetsov and Dymshitz, their lives were preserved not

12. This trial was discussed in detail in the book, "The White Book of Sinyavsky and Daniel" by Alexander Gimsburg ("Belaia Kniga po delu A. Siniavskogo; i J. Danielia"), published in the West by Possev-Verlag, Frankfurt, Germany.

as a result of the advice of a lawyer, but as a result of the vociferous indignation of large parts of the world. At the same time in Spain several Basque miners were sentenced to death. The date set for the execution was the same date that the Supreme Court met to consider the appeal in the Kuznetsov and Dymshitz case. The Soviet authorities did not want to appear before public opinion as unwilling to pardon Kuznetsov and Dymshitz in the event that Franco in Spain would pardon his miners. The decision on the appeal was postponed from the 30th to the 31st of December in order to discuss the decision of the Spanish government. Because Franco commuted the death sentence of the miners, the lives of Kuznetsov and Dymshitz were saved. This decision could only have been made at the highest level of the Soviet government and not by the particular court involved, regardless of anything the lawyer did in court.

The second function of the lawyer in this category is to act as a "lobby". But neither this function nor the next — plea bargaining — are possible in group one cases.

In the second category, relations between lawyer and the defendant, we have five headings:

1. *Provision of legal help to the defendant.* This includes not only the provision of legal counsel concerning the rights of the defendant, but also analysis of accusation, aid in explaining procedural requests during the trials, and aid in the writing of documents or procedures and other legal documents (appeals of cassation and requests for pardons).
2. *Provision of necessary information to the defendant.* This can be of many different varieties. This information can be of different kinds of which the defendant has been deprived since the moment of his arrest and which only can be provided to him through his defence attorney. This information enables the defendant to orient himself to the situation and to correctly reach decisions on a number of questions concerning not only himself but those close to him.

A small example: Edward Kuznetsov, during his preliminary investigation, testified regarding one book which was prohibited in the U.S.S.R. He testified that he had given this book to his friend M. This threatened M. with unpleasant results. He had already spent six years in a camp on a charge of antisoviet agitation. It was necessary to rectify this error.

In a room in which the accused met with his defence attorney, there was present not only a hidden microphone, but hidden television cameras. As you may have surmised, this building is within the precincts of the K.G.B. In any case, the *Defender* used this method. He found in one of the volumes of the proceedings of the trial the family name of M. and silently underscored with his finger several times the name, catching his attention. Edward Kuznetsov immediately understood his point. Five minutes later he called on the investigator, who was present in the room with us, and told him there was a mistake in the record of the investigation which must be corrected. Kuznetsov stated that the prohibited book had not been given to M., but to Abraham Shiphryn who had already emigrated from the U.S.S.R. It is permissible for me to speak about this because M. is now a professor of Physics at the University of Tel-Aviv.

By the way, my suspicion of the hidden television cameras was quickly confirmed. My colleague lawyer Theodor Rozhdestvensky gave his client Lassal Kaminsky a letter from his relatives. In this letter they called upon him to be brave, to persevere and not to give up. Kaminsky immediately placed the letter in his pocket. Within one minute the supervisor of the prison entered the room with the following words: "Give me the letter which you have just hidden." This occurred four and a half years ago. Recently Kaminsky emigrated to Israel. Mr. Rozhdestvensky was fired from his post as a lawyer as a result of this incident with the letter.

3. *The preparation of the case for possible future reconsideration.* In spite of the fact that the lawyer is aware of all the difficulties of the case he is involved in, he takes care in the preparation of his briefs to present all the facts, which may be of use in the possible future reconsideration. In this manner the advocate takes care to register all documents or statements of witnesses, which may be of possible use to the defendant at a future time, when circumstances may have changed and opportunities for a fair consideration of his defendant will be broader.

This is particularly important in the Soviet court procedures in light of the fact that the only transcript of the proceedings is that which is taken down by an unskilled secretary who records in her own writing only those statements and facts that she deems are important. No tape recordings or shorthand notes are made available in any

Soviet court procedure.

This is, of course, a highly conditional kind of opportunity of defense, but nonetheless it should not be overlooked and neglected, especially under current conditions of preparing the Records of Court Proceedings as these were described above.

4. *The defence lawyer's role as a communications link between the defendant and his relatives and friends.* Up until the moment of the pronouncement of sentence the lawyer is the only channel available between the defendant and his friends and relatives. Only through this channel can information be transferred in either direction. This information does not merely include that about the help, but also about the situation of the case and many different instructions and pieces of advice concerning not only the affairs of the case, but sometimes questions about daily life.
5. *The provision of legal help to the defendant after he has been sentenced and is in prison.* This consists of help in the writing of appeals, complaints, requests and other legal documents. This help consists of consultations concerning incidents which may have occurred in the camp. Similarly, the lawyer may be of use in alleviating the conditions of the client's life in the camp.

One day I received a letter from Valery Ronkin, the former leader of the group "Communard". He wrote in conjunction with his friend Daniel, that they intended to refuse to work in the camp because it was impossible for them to fulfil their "norms". I advised Ronkin not to reject the work if this was the only reason. I advised them to send the report to the Supervisor of the camp with the explanation of why they were unable to fulfil their norms. I further advised him to send me a copy of this report and to describe in detail his conditions of work. After receiving these letters, I made many copies of them and sent several to the Central Committee of the Communist Party and to the Office of the Procurator General of the U.S.S.R. Simultaneously, I made an appointment and went to speak to the "Head of Gulag" of the Ministry of the Internal Affairs of the U.S.S.R. Of course, I was unable to achieve any radical changes, but nevertheless an ad hoc investigating committee was created and in Russia everyone respects the work of the committees. Very shortly thereafter there were some not inconsiderable improvements. For a short time there was some relief in their conditions.

The third category relates to relations of the defence attorney with the public.

1. *The provision of information about the essential of the accusation to the broad public.* Of course in the conditions of the Soviet Union, direct and open connections between the defence lawyer and the public do not exist. Although such connections are severely punished, the opportunity does exist indirectly through connections with the relatives of the defendant. Firstly, through the relatives, the defence lawyer is able to inform the public of the trial, of the essentials of the accusation, about his own position and so on. This is very important as official propaganda, with the aid of numerous lecturers and specialists, is able to falsify, twist, distort, and misrepresent the essence of the case and all its circumstances. For example, at many special meetings and conferences dealing with this case in Leningrad, it was reported that Kuznetsov and his friends had attempted to steal an aeroplane and a huge number of diamonds when in fact they were without so much as a change of clothes.
2. *Provision of information about the real value of the case.* The defence lawyer may through the accused's relatives report to the public the actual meaning of the case which he himself is unable to demonstrate before the court without being deprived of his right to defend, his right to work. These instances occur sufficiently often. As a rule, the leadership of the College of Advocates invite the lawyers, who were involved in political trials to a consultation in which they advise the defence lawyer of the difficulties and dangers of attempting too strong a defence of the particular defendant. This problem of informing the public of the actual value of the political trial is especially important in those cases in which the relatives and friends of the defendant are not allowed in the court, or are unable to appreciate the significance of the case.

The Second Group of Political Cases.

This group contains those political cases where decisions are made at levels below those of group one. This group contains all remaining political cases where the significance is less than those of group one. The decisions in these cases are reached at the level of the Central Committee of the Communist Party of the Republic or of the OBLAST', that is to say, Region (or Province) Committee of the Party, with the participation afterward of the

local organ of the K.G.B. I will not repeat my descriptions of the functions of the lawyer in the past two categories, as this is the same as we discovered in group one. Under this topic, I will confine myself to discussion of the first category, that of the relationship between the defence lawyer and the court and the government, in this second group of political cases.

This category in the second group of cases does contain the opportunity for the defence lawyer to have a weak influence on the decision of the court. As we have already said, the political trials are only heard in the Supreme Courts of the Republic and in the OBLAST' (Regional) Courts. The making of a decision of these cases occurs in the Party Office and K.G.B. Office, which are located at a similar level in the hierarchy as the courts which hear the case. This gives the opportunity for daily contacts. These contacts often occur in a form of daily reports of the case by the Judge and the Prosecutor to the Party Committee of the state. At times, these contacts consist of a visit by a Party Committee and the K.G.B. to the courtroom itself.

Because of the lesser authority and the fear of responsibility on the part of these organs of Party and K.G.B., in practice they are unwilling to make decisions in cases until the trial had been completed. They prefer to do it after the detailed report about the results of the trial. These reports are compiled by both the Judge and the Prosecutor.

The defence lawyer has the opportunity to some extent to influence the contents of the reports of both the Judge and Prosecutor, which they personally deliver to the leadership of the Party Committee in order to receive the final decision on the sentence.

Besides this, in the cases of the second group, the decisions about the sentence are not of an absolute nature, e.g. Ivanov — 6 years, Petvov — 5 years, but are relative, e.g., no less than three or two to four years. It is precisely within these limits that the defence lawyer can influence the decision of the court. This is all. To hope to gain an acquittal is unreasonable. One example: in 1967 during the fiftieth anniversary of Soviet authority; the portrait of Stalin again appeared. This called forth active protest from the young. The portraits of Stalin were torn down, were cut, coloured over, or defaced. After this, in Leningrad, by each portrait of Stalin was placed a policeman. A number of trials were instituted. Although the accusations were of hooliganism, in fact they were tried for a political crime. In Leningrad, the typical sentence for hooliganism in these cases was under Section 206, part 2 of the Criminal Code, viz two to four

years. These incidents were not confined to Leningrad. In Moscow they were tried under another part of Section 206 with punishment of not more than one year's imprisonment. As a result of our efforts in Leningrad to bring this fact to the attention of the authorities we were able to influence the sentences in our trials. We attempted to disprove the charge of hooliganism in these cases, but in this regard we were not successful.

The second heading of the category dealing with group two cases is that of the lawyer functioning as a lobby with the court and government. In principle the lawyer is to plead his client's case to the court and not to the government. He is not entitled to make representations directly to the local leadership who will actually decide the case. However, there is an indirect way of pleading the accused's case to them because they make their decision only at the completion of the trial process after taking into account the reports of what occurred during the trial. Frequently they will sit in on the trial and listen to the speech of the defence lawyer. In this way defence counsel has an opportunity to influence their decision by direct personal persuasion. Of course, this is direct only in the sense that they hear his argument at first hand. The argument must still be directed to the court in the hope that the local leadership will be listening. Thus the opportunity to carry out what I have termed the "lobbying function" is a very qualified one but it is a not insignificant function for all that.

Our final topic is that of plea-bargaining between the defence attorney and the court, or government. Formally in the Soviet Union, plea bargaining does not exist. It cannot formally exist because punishment is not dependent on the decision of one judge, but on the decision of a panel of judges. Plea bargaining is the affair only of professionals. Nevertheless, the function of plea bargaining does occur with us. I will speak about two examples of this.

The first was not long ago, and concerns the case of the Soviet writer Vladimir Maramzin. Before his sentencing he was very strongly against the sentencing of his friend Michael Kheifetz. He had written numerous articles and letters in many foreign magazines including the Paris newspaper "Le Monde". Not long before his sentencing and after he had already been arrested, he stated that his letter in the Parisian journal "Le Monde" was mistaken and he cancelled all of his former statements on the subject and expressed his regret about his

previous behaviour. In distinction from Michael Kheifetz, he was sentenced to five years imprisonment conditionally (similar to probation), and was allowed to remain at liberty. He is at present residing in Paris, and cooperates successfully in the magazine "Continent". I shall try to explain the cause of this unexpected behaviour in terms of plea bargaining.

At first, the K.G.B. had known there was no case to make in the trial in spite of his arrest. Secondly, the arrest attracted a great deal of public opinion in the West. It was therefore decided by the K.G.B. and the Party Office to initiate plea bargaining; as a result of which Marmazin received his freedom in return for the letter to "Le Monde", denouncing his former views. During the process of plea bargaining, Maramzin's defence attorney was obviously actively involved.

One amusing incident of plea bargaining I can relate from my own experience as a lawyer for the young student George. He and his friend had printed numerous leaflets and on the 1st of May had hung the black flag from their Institute. This action was sufficient to come under Article 70 of the Criminal Code, and they were arrested. At the time of their arrest, George and his friend were still two months shy of eighteen years of age. They were offered the opportunity to admit their mistakes, and to express their remorse for their actions, in return for being freed before trial. George's friend agreed and was freed. George refused in spite of my admonitions. He agreed to the minimum condition of admitting his mistake but refused to comply with the further K.G.B. request to make a public declaration of error in front of his fellow students. In court, George acknowledged his errors and admitted remorse. Before making his concluding speech, the Prosecutor in that case went to the Party Committee and K.G.B. officials concerned and reported George's behaviour. The decision reached by these authorities was to grant George a conditional sentence. A difficulty in the case arose half an hour before the concluding remarks by the prosecutor in the trial. The supervisor of the convoy in charge of George came to the Prosecutor and informed him that George had made anti-Soviet speeches to the soldiers of the convoy and had stated that he in fact felt no remorse and would under no circumstances change his opinions or views concerning the Soviet State. The Prosecutor was placed in an exceptionally difficult position. He could not change the decision of the higher authorities on his own initiative. He was similarly unwilling to return to these authorities with the report which contradicted his initial estimation of the case. Understandably, however, he was afraid that some-

thing of this would come to their attention anyway. Almost in terror he came to me and begged me to intercede with George and convince him to be silent. George kept silent when the court reconvened and in return received a conditional sentence. So there was a happy ending.

I have enumerated here all of the opportunities which the Soviet defence attorney has regarding political cases. It is clear to you that the most important are missing. The Soviet lawyer defenders have no opportunity to seriously influence the nature of the decision. In the second group of cases there is an opportunity to influence the decision, but it cannot be said to be significant. Frequently the defence attorney is in the position of a doctor, dealing with a patient who is incurable and beyond the reach of any operation. Can one say that the hopeless patient does not need help? In spite of the admitted hopelessness of this situation doctors in fact have halted at times the progress of such a disease. Can the relatives in such incurable cases really allow him to remain without care? In spite of the fact that the aid which the Soviet defence lawyer can offer in political cases is inadequate his aid is needed by the accused. The accused themselves consider it better to have some help than none at all. Let us look at some recent examples. Sergei Kovalyov and Andrei Tverdokhlebov, members of Amnesty International, and both widely educated people, understood perfectly well that a defence lawyer could do little to help them; nevertheless, they insisted on their right to retain a defence lawyer — and not just any lawyer, but a lawyer whose skill, conscientiousness and honour they had faith in.

It is these considerations which make the participation of a lawyer in political trials understandable and necessary — in spite of the fact that it is frequently a hopeless process.

These are my personal conclusions for an examination of the Soviet political trial process and the role of the defence lawyer. They are based on long experience in that field which has covered several decades. Even in those cases in which the defence lawyer does not have the slightest possibility of influencing the determination of the case, the entire complex of his other opportunities has to be considered sufficiently important ground for his participation in political trials in the U.S.S.R.