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Federal Probation

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'the Future—Carving Out New Territory for American actions *J. Michael Quinlan*

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This Issue in Brief

ACQUISITIONS

Choosing the Future of American Corrections: Punishment or Reform?—What does the future hold for criminal justice and corrections in this country? Authors James Byrne and Mary Brewster examine the four most important predictions of John DiIulio, Princeton University professor and author of *No Escape—The Future of American Corrections*, and offer some suggestions to those state and local corrections policy-makers who believe the United States is moving in the wrong direction.

The Impact of Critical Incident Stress: Is Your Office Prepared to Respond?—Physical assault of an officer while on duty, unexpected death of a co-worker, a natural disaster—all can be considered critical incidents which affect not only the individuals involved but the organization as a whole. Authors Mark Maggio and Elaine Terenzi define critical incidents, explain the importance of providing stress education before such crises occur, and offer suggestions as to what administrator and managers can do to respond effectively and maintain a healthy and productive workforce.

Probation Officer Safety and Mental Conditioning.—Author Paul W. Brown discusses mental conditioning as a component of officer safety that is all too often overlooked or minimized in training programs. He focuses on five areas of mental conditioning: the color code of awareness, crisis rehearsal, the continuum of force, kinesics, and positive self-talk.

Federal Detention: The United States Marshals Service's Management of a Challenging Program.—Focusing on the detention of Federal prisoners, author Linda S. Caudell-Feagan discusses the work of the United States Marshals Service. She explains how detention beds are acquired, how the Marshals Service administers funds to pay the costs of housing Federal detainees, what the ramifications of increased detention costs are, and what actions the Marshals Service has taken to address detention problems.

Total Quality Management: Can It Work in Federal Probation?—Author Richard W. Janes outlines the principles of total quality management and their

application to Federal probation work. The article is based not only on a review of the literature but also on the author's experience in a Federal probation agency where these concepts are being implemented.

College Education in Prisons: The Inmates' Perspectives.—Author Ahmad Tootoonchi reports on a study to determine the impact of college education on the attitudes of inmates toward life and their future. The results reveal that a significant number of the inmates surveyed believe that their behavior can change for the better through college education.

Visitors to Women's Prisons in California: An Exploratory Study.—Author Lisa G. Fuller describes a study which focuses on visitors to California's three state women's prisons. The study, designed to

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Restructuring Justice in Russia: A New Era of Challenges*

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THE RED flag above the Kremlin was lowered on January 1, 1992, signaling the dissolution of the Central Soviet Government and a formal end to the Soviet Union. It is proposed that the socialist union will be replaced by a commonwealth of independent states. In radical contrast to the Soviet past, the politics of the commonwealth of states are expected to be heavily influenced by democratically elected governments and market-directed economic pursuits. What criminal justice reforms can be expected in this commonwealth of independent states? This paper is based on a criminal justice delegation to the Soviet Union in May of 1990. A description of the dialogue with Soviet Union criminal justice professionals on various criminal justice issues is presented. The paper concludes with a discussion on directions criminal justice is likely to take in the new commonwealth of independent states.

A Brief Historical Overview of Soviet Criminal Justice

When the Bolsheviks seized power in 1917, they dismantled the Tsarist courts and replaced old criminal laws and procedures with new ones more suited to the new socialist structure. Laws and procedures that ultimately protected individual rights were repealed in favor of those supporting an ideology based on the interest of the masses. Jury trials and involvement of defense counsel in pretrial investigation were abolished. Lawyers in general came to be viewed as corrupt vestiges of exploitative bourgeois interest.

On the sixtieth anniversary of the Bolshevik Revolution in 1971, a new constitution went into effect. This constitution, the fourth one, exemplified the gains made during the developmental stage of socialism. Most notably, the constitution included citizens' rights and duties. Among the rights listed were the right to work, to rest, to health care, to material security in old age or in case of illness, to housing, to education, to achievements in culture, to participate in state affairs, and to freedom of speech, press, and assembly. The constitution also lists a number of duties that it expects the citizenry to perform. For example, it is the duty of every citizen to perform useful work, to protect socialist property from theft or waste,

to defend the country, to promote social order, and to be concerned with the raising of children. Article 39 of the constitution suggests that the focus of the Soviet legal culture does not converge on individual rights, but rather on obedience to collective social rights and obligations.

The Delegation

People to People¹ has been conducting delegations on an ongoing basis to increase friendship, understanding, and goodwill between countries. The interest expressed by the Soviet counterparts visited suggested that the Soviets were interested in criminal justice developments in the West, particularly with respect to crime associated with the so-called market economy. The delegation consisted of 15 criminal justice professionals, including attorneys, probation and parole officers, criminal justice administrators, and criminal justice professors. Visits were made to St. Petersburg, Kharkov, Rostov, and Moscow. During the visits we participated in prearranged meetings with various criminal justice counterparts, including the head of the law department of the executive committee of the Leningrad City Soviet, professors of criminal justice, the Chief Procurator of Kharkov, several public administrators, representatives from the Supreme Court of U.S.S.R., and representatives from correctional institutions. In Moscow we met with members of the Institute of U.S.-Canadian Relations, receiving a special briefing from the head of the Criminal Justice Department, Institute of State and Law, and prominent defense attorneys from the Moscow City Collegium of Advocates.

The Soviet Law System

A useful way for understanding the different systems of law is to divide the legal systems in the developed world into families of law. A conventional division is among four families: Common, Civil, Islamic, and Socialist.

An example of common law is our own legal system in the United States. Our common law is characterized by an emphasis on solving present cases rather than on setting precedence for the future. Thus our "judge-made law" is developed from decisions made in individual cases that becomes precedent for the resolution of future cases. The adversarial nature of our courts, in the medieval jousting-like combat between the

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prosecutor and the accused, is sometimes blamed for inconsistencies in court decisions.

The civil law system, also known as the continental law, was developed in Europe and primarily centered there. Examples of this system are in Sweden, Japan, and the Federal Republic of Germany. This system is characterized by its employment of some form of the so-called inquisitorial criminal justice method. The inquisition or fact-finding focus is based on the premise that justice is better served by an inquiry rather than by judicial-style combat in a courtroom arena.

In contrast to the western separation of church and state, Islamic law derives its principle from the holy Koran. This legal system is more a way of life, integrating principles of human and social values. Middle-eastern (Arabic) countries are examples of this system.

Socialist law systems reflect Marxist-Leninist ideology. It is difficult to grasp the full understanding of socialist law without a full discussion of the basic philosophical ideas of Marxist-Leninist thought. However, briefly, Socialist law tends to regard law as a teacher and a parent. The educational role of law presupposes a new conception of man. The individual is perceived to be a member of a growing, unfinished society that is moving toward a higher phase of development. The judge plays the part of a parent or guardian, reflecting a legal system that is parental. It should be understood that the parental and educational context reflects the role of a parent or guardian who may be cruel or benevolent, angry or calm, and one who may punish the child severely for the good of the child. Thus, the socialist state seeks to use law as a means of training its people to fulfill the responsibilities that the state imposes on them. The educational role of law can be seen from the effort to make law a part of the general education of the average citizen.

Pre Independent Justice

Soviet criminal justice has been undergoing unprecedented changes. These changes range from announcements by the Soviet leaders that more rubles will be spent on consumer goods than on defense to the holding of the most open elections since 1917. In criminal justice the legislature modified the number of offenses subjected to the death penalty from 17 to 6. The six crimes are: high treason, espionage, terrorist act, sabotage, the rape of a juvenile, and predetermined killing (with aggravating conditions). Conspicuously missing from this list are economic-related crimes. Using the jury in trials is a concept that is currently being debated. The law allowing jury participation exists, but the mechanism for the actual use of the jury has not been in place.

The Role of the Procurator

The term "procurator" comes from the Latin word, "procuria," meaning to supervise. In their proctorial functions, we have an agency that combines three functions. They have to see that their own investigators perform investigations properly, but they are prosecutors at the same time. The conflict of interest is intriguing and interesting. There is conflict of interest within the same agency. The investigator from the procurator's office investigates the crime. He does all preliminary investigations as a prosecutor, while at the same time he is a representative from the same agency playing the role of the supervising procurator. When a procurator goes to court to prosecute, he is there both in the capacity of a prosecutor and a procurator, to oversee that the court is handling the case in accordance with the law.

The Soviets are currently reexamining the role of the procurator in their justice system. There is growing concern for the procurator's presence in all parts of the process, as depicted in the chart below. The procurator is charged with overseeing the critical preliminary investigation in serious cases, including the issuance of search and seizure warrants, the selection and interrogation of witnesses, the decision whether an accused should be detained, and the determination whether an indictment should be sought, against whom, and for what charges.

The issue of the prosecutor's issuance of search and seizure warrants is particularly troublesome, since the issuance of these warrants is performed by an interested party. Yet, historically, the judiciary has not expressed an interest in assuming this role. It was reported that judges and magistrates generally resist the idea of being responsible for issuing warrants. They want to remain neutral and detached. Surprisingly, they claim they do not want to have anything to do with the preliminary investigation. As one Soviet legal scholar remarked, "They (judges) don't want to do the dirty work, they do not want to get their hands dirty."

During the preliminary hearing, the prosecutor is also present as a prosecutor and as a procurator. Typically, the prosecutor presents the charges while someone from the same agency is present in a supervisory capacity to insure that all the evidence relating to the case is presented and to guarantee that the state's and defendant's interests are served.

At the trial stage the procurator's office is present playing the dual role of prosecutor and procurator. Similarly, at the sentencing and correction stages the procurator's office is present. At sentencing, the procurator addresses the issue of aggravation as well as oversees that the process is conducted within the parameters of the law. Corrections fall under the Min-

istry of Interior, comparable to the U.S. Department of Justice's Bureau of Prisons. Under this ministry, the procurator's office supervises the appropriateness of the designations for offenders sentenced to confinement and the specific correctional program that will be available to the respective offenders.

Understandably, in an era of reform, the conflict of interest argument is now being revisited. No longer are the Soviets willing to minimize the possible negative impact of this conflict. The argument that the procurator is simply there to insure that all parties abide by the law, and that in final analysis, the goal of the state and the defendant toward truth and justice nullifies the possible conflict of interest threat, is weakening.

The Police

Soviet (regular) police are confronted with most of the problems U.S. police have. For the average citizen, police brutality and overzealousness is the most important problem. For professionals, the most serious problem is the lack of proper logistics: the lack of proper equipment, the lack of gas in their cars, and the shortage of cars. Cops, of course, complain that they do not have enough powers to deal with crime. Interestingly enough, western police have similar complaints. Most of the Soviet officials who participated in our meetings suggested that apart from the cases of police brutality and police lawlessness, the most serious problem is being underpaid and underequipped. Police departments are concerned about the lack of capacity to develop information to deal with sophisticated and organized crime.

The KGB

The KGB's greatest problem is the cloak of secrecy. Traditionally, they do not like to reveal their operations. As one Soviet official noted:

If I am here, being a Soviet official [I] can subscribe to the FBI magazine and get such guidelines of the Attorney general as how I should deal with an informant. This is unthinkable here. When I report this to my superiors and describe the guidelines on undercover operations of the FBI agents and domestic security, organized crime, and terrorism investigations, they don't believe me. So the cloak of secrecy, and of course the past abuser of power, is a problem. We still do not know how large the KGB is, whether they are real fat or normal. While I can tell you that there are 8,942 agents in the FBI, plus some 12,000 technical personnel.

Soviet participants in our delegation meetings agreed that a positive development in the KGB is that they now devote more and more of their resources to organized crime, which takes them away from their traditional oppressive domestic operations.

The Courts

A troublesome element of the court is that the court continues to be perceived and referred to in the context of the criminal justice system as one of the organs of criminal justice. There is a concerted effort under way to change the psychological approach to the judiciary. Although criminal justice professionals may not view the courts as one of the organs of criminal justice, there is a strong belief that the masses and the media continue to perceive and refer to the courts as the organ of criminal justice. The court is perceived as one of the mechanisms to fight crime. There is a strong move to raise the status of the judiciary from crime fighters to an institution having the power to legiti-

THE ROLE OF THE PROCURATOR

Criminal Justice Process	Roles	Functions
Criminal Investigation	1. Judicial	Issuance of warrants for search or seizure.
	2. Primary Investigator	Agent performing official investigating function.
	3. Procurator	Supervisory function to insure that their own investigation is done properly.
Prosecution	1. Prosecutor	Prosecution of criminal cases.
	2. Procurator	Supervisory function to insure that the prosecution of the case is done in accordance with the standards of social justice.
Sentencing	1. Prosecutor	Presenting issues in aggravation.
Corrections	1. Prosecutor 2. Procurator	Designations to correctional institutions.

(Chart showing the procurator in all parts of the process)

mize social structure, decide conflicting contentions of law and disputed issues of fact, and to formulate sanctions and remedial orders. The Soviet masses still do not realize the law is there to protect the individual. They do not realize that disputes with respect to criminal and civil law should be channeled through the courts—furthermore, that the court is not solely a crime-fighting mechanism, but an agency vested with the power to channel all the disputes of law and having the authority and power of judicial review.

Providing judicial independence seems to have its supporters and detractors. While most are in favor of providing tenure for judges, there is concern as to whether current judges should be afforded such tenure. Some believe the system needs to upgrade judges first before tenure is provided.

It was brought to our attention that in Russia, not all disputes of civil nature are resolved in regular courts. They have a very strong arbitration system to deal with disputes between corporations. When there is a dispute between an individual and the state entity, an individual and the corporation, that is a matter for the courts. But when two corporations, two enterprises quarrel, that is handled by arbitration. Based on the discussion with Soviet officials, it appears that some would rather transfer the arbitration mechanism to the jurisdiction of the court.

Criminal Defense

During our discussion with members of the Soviet Defense Bar, they pointed out that with 27,000 lawyers in a country that then had nearly 300 million people, they felt that with an average one and one-half million annually being charged, the need is too great for the demand for legal representation. A prominent defense attorney claimed that real defense work is performed for 10 percent of those who are brought to court. It was felt that in the other cases, the defendants were deprived of the ability to have a defense attorney represent them. There appears to be some apprehension and caution in expanding the role of attorneys in the system. The specter of the "Plague of Lawyers" (Auerbach, 1976) in the west provides some discomfort. The need to develop a cadre of lawyers for international and business law practice appears critical and will receive more emphasis than criminal defense lawyers' training.

Corrections

Our delegation completed the two-week tour of Russia without a single visit to a correctional facility. Each scheduled tour was cancelled at the last moment for explained and unexplained reasons. Finally, in Moscow we were told, unofficially, that the existing correctional facilities were too embarrassing to be shown to

visitors. In the words of one official: "Incarceration in Russia means a cold, unheated room. A person is put into that cold, unheated room cell with the clothing he or she has for heat, wintertime or summertime, with bread and water." The same official compared Russian prison with what he observed when he visited the U.S.'s Marion Federal Penitentiary:

In Marion, a disciplinary institution, they didn't have color TV, they had black and white TV! I brought their lunch back home to Moscow and I showed it to the Ambassador, the Soviet Minister of Foreign Affairs, who was going First Class. I brought the two plastic lunch boxes to the official and told him it was from Marion. He inspected it and remarked that, "Except for the free caviar and vodka, they have everything we have."

Changing for a New Society

Will Russia adopt a western-style justice system? More than likely, it will not. As the delegation met with various criminal justice personnel and discussed the virtues of various western criminal justice institutions such as the jury system, due process, and absolute presumption of innocence, we were politely reminded of a legal system in the West that is in chaos. The growing lawlessness in America, the need to redefine civil, criminal, and juvenile services to promote justice and respect for the law. The awareness that although there are 780,000 lawyers in America, many have concluded that lawyers are more interested with personal profit. Also, that the western legal system is more like an assembly line than a vehicle for justice (Weisberg, 1992).

Although Russia is expected to be influenced by more democratically elected governments and market-directed economics, it is unlikely that the criminal justice reform will be a dramatic shift from the socialist law principles. The necessary reforms to respond to new types of crimes are expected. However, the need for a crime control-based justice system appears fairly well established. The idea of tolerance levels (Adler, 1983) suggests that all societies appear to have a tolerance limit that, politically, they are unwilling to exceed. Historically, Russia has displayed a low tolerance level for serious crimes. It is expected that as crime increases in Russia, as recent reports indicate, that the criminal justice apparatus, in whatever form it may be, will impose restraints upon the system for purposes of crime control. It is therefore more likely that the Soviets will lean toward incorporating a more continental crime reduction ideology instead of western common law that emphasizes legal process rather than crime reduction. In sum, the Soviets have no appetite for crime levels that sometimes accompany market economies. In any case, what they should adopt is a criminal justice system that is capable of responding to the needs of the new Soviet federation: that is, balancing individual rights with community rights.

NOTE

¹A delegation of United States crime prevention, correction, and legal professionals was invited to visit Russia in 1990 under the auspices of People to People International. This delegation presented the various aspects of the judicial system in technical and professional exchanges with Soviet counterparts.

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