

## REVIEWS

JUSTICE IN MOSCOW. By George Feifer. New York: Simon & Schuster, 1964.  
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COURTHOUSES of Soviet towns are shabbier and less impressive than the buildings that house their agencies of education and control — Communist Party committees, Palaces of the Young Pioneers, pedagogical institutions, and provincial headquarters of the security police. Architecture thus mirrors life. Soviet Russia has given priority to moulding and mobilizing its citizens to work willingly and efficiently at building up Soviet power and “the Society of the future.” Adjudication, legal protection of particularistic rights, must take second place.

Experts such as Professors Leon Lipson,<sup>1</sup> John Hazard<sup>2</sup> and Harold Berman,<sup>3</sup> have pointed up the harsh penalties for economic crimes, the extrajudicial and administrative sanctions that were introduced under Khrushchev. The experts tell us also, however, that Soviet politicians from Lenin to Khrushchev's successors have been compelled to tolerate, even to insist upon, a long-run increase in the impartiality, complexity, and professionalization of Soviet Justice, to match the increased maturity and complexity of Soviet society.<sup>4</sup> In John Hazard's words, “The lesson taught by the utilitarians had been learned that legally enforced order economizes the material cost of power.”<sup>5</sup> The Soviets, then, espouse both judicial objectivity and judicial expediency. How do they reconcile the two principles in practice?

George Feifer gives us some of the answers in his remarkable book. He decided it was time to leave for a while the “recipes” about Soviet justice absorbed during his Russian-area training at Columbia University, in order to sample the “pudding” on the spot in Soviet courts. To this exciting task he devoted much of his year of post-graduate research at Moscow University under the Soviet-U.S. cultural exchange agreement. Feifer went to Russia believing above all in the reformist, westernizing, professionalizing side of Soviet

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1. Lipson, *The Future Belongs To . . . Parasites?*, 3 PROBLEMS OF COMMUNISM 1 (1963) and *Execution: Hallmark of Socialist Legality*, 5 PROBLEMS OF COMMUNISM 21 (1962); Willets, *The Wages of Economic Sin*, 5 PROBLEMS OF COMMUNISM 26 (1962). See also the detailed study: *Economic Crimes in the Soviet Union*, 5 J. INT'L COMM'N JURISTS 3 (1964), and O'Connor, *Soviet People's Guards: An Experiment with Civic Police*, 39 N.Y.U.L. Rev. 579 (1964).

2. HAZARD & SCHAPIRO, *THE SOVIET LEGAL SYSTEM: POST-STALIN DOCUMENTATION AND HISTORICAL COMMENTARY*, pt. 1, at 58-161 (1962).

3. BERMAN, *JUSTICE IN THE U.S.S.R.: AN INTERPRETATION OF SOVIET LAW* 285-98 (rev. ed. 1963).

4. Berman, *The Dilemma of Soviet Law Reform*, 76 HARV. L. REV. 929 (1963); Feldbrugge, *Soviet Criminal Law — The Last Six Years*, 54 J. CRIM. L., C. & P.S. 249 (1963).

5. HAZARD, *SETTLING DISPUTES IN SOVIET SOCIETY: THE FORMATIVE YEARS OF LEGAL INSTITUTIONS* 490 (1960).

legal change. "[T]he rule of law is not always the same as justice, and it was the latter that I was looking for."<sup>6</sup>

Feifer conducted a quest, then, and not an expose. He wanted to know whether Ivan receives a fair trial in "the daily cases that deal with common crimes and disputes,"<sup>7</sup> not with political crimes, or with the disputes between state enterprises heard in special economic Courts of Arbitration. The result is an unique and vivid piece of reporting.

Law comes alive from the moment Feifer takes us past the unpretentious facades of the courthouses into their dingy corridors, telescoping a year's impressions.

A crowd, made up of quiet couples waiting their turns, bunches outside the room in which suits for divorce are being heard. Police lead defendants, heads bowed and hands clasped always behind their backs, to and from their trials. Inquisitive time-wasters open doors, peek in, search for a good case. Witnesses pass around cigarettes and the morning's *Pravda*. Relatives, mostly older, black-clothed, wrinkled relatives — wait out the writing of verdicts. Lawyers between cases prepare their next speech, or answer queries of prospective clients. A queue forms haphazardly to see the judge, who is giving consultations about alimony, the necessary papers, the procedure for appeal, the insults of a neighbor or foreman.<sup>8</sup>

Feifer covers cases from petty hooliganism, alimony, and eviction, to robbery and murder, including a rape case behind closed doors.

I have trudged in and out of many of the same courts, interviewed possibly the same judges and lawyers as did Feifer, studied at the same Moscow University Law Faculty. His accounts ring true to me: the cracked plaster around the nail holding up Lenin's portrait in a people's courtroom, the simplicity and unceremonial informality of proceedings in all cases; the two year sentence of a "hooligan," a mammoth, marathon six-weeks' trial, not without its comic moments, of 31 persons working in the eating places of the Yaroslavskii Railroad Station who — from restaurant director down to counter girls at the buffet — conspired to defraud the state of huge sums by selling coffee and cocoa at half regulation strength and pocketing the savings. Feifer takes us places usually not penetrated by the visitor in Russia: to an outlying village with a defense lawyer to see a trial of a shop manager and her saleswomen, to a police station where a lady friend is politely questioned after her handbag was stolen as they danced in Moscow's Prague Restaurant, to a meeting of the Moscow Lawyers' Association. There four lawyers recounted the case of the rape-murder of a girl student found dead at a country railroad station twelve miles outside Moscow. The lawyers told the meeting how they had been able on appeal to expose the fabrications and duress of the pre-trial investigators and to get freed the framed suspects.

*Does Feifer find Justice?* Yes, but tempered with a sort of expediency about which the Western experts have warned us. For example, when a Soviet judge opens a criminal trial, he has before him a thick dossier of evidence

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6. P. 15.

7. *Ibid.*

8. P. 48.

compiled by the pre-trial investigator who signs the indictment before it is confirmed by the prosecutor, but which has never been subject to cross-examination. In spite of reformers' requests to the contrary in the debates of 1957-58, defense counsel is usually not admitted to pre-trial investigation.

A criminal investigation in any system combines two elements: opportunity for the investigative organ to get the facts and make an accurate indictment, and safeguards for the accused against unethical coercion. To a certain extent, these are like the characteristics of a warship: to strengthen armament or armor, speed must be sacrificed, and vice versa. The presence of a lawyer at the investigation would probably increase the guilty accused's chances of getting away with something — and that is what Soviet legislators fear. But it would also build up the armor against foul play and human error.<sup>9</sup>

Feifer was sobered also by an "anti-parasite" proceeding which he witnessed. However repulsive the drunken idler on trial, and however many chances he may have been given to mend his ways, Feifer cannot but share the unease of Western, and indeed many Soviet jurists at the essentially administrative proceeding in which a person accused of no statutory crime, guilty only of "idleness" or of some other conduct displeasing to the regime, can be banished from his dwelling place to some distant location for up to five years of enforced labor.

Feifer conveys well what Professor Harold Berman in *Justice in the U.S.S.R.* called the "parental and educational role of law"<sup>10</sup> in Soviet Russia. Feifer accounts for instance, the dressing-down given a witness by a judge in a regular court case involving rowdiness in a bar:

Aren't you ashamed of yourself? . . . You, the single Communist present — what did you do to stop the nonsense? Paid no attention, just like the others. And only a year after the Twenty-Second Party Congress and the new Party Program! What do *they* require of a Communist in keeping our Soviet moral order?<sup>11</sup>

With typical resourcefulness Feifer also gained admission to a show trial, a "travelling session" of a Moscow people's court sitting at the printing plant of the Ministry of Communications, where, in front of his vociferous fellow workers, a printer received five years imprisonment for knifing two comrades in a drunken argument. He also attended, after much searching, sessions of "comradely courts" from which, for example, he vividly reports a dispute between five formidable housewives whose attempts to share a crowded communal apartment have produced rows over such as cleanup duty and a 28-kopek share of a utilities bill.

The author came away with the impression that "travelling sessions" and "comradely courts" were less pernicious than he had imagined them to be. Feifer attended one much-heralded comradely court session which was held in

9. P. 97.

10. BERMAN, *op. cit. supra* note 3, at 299-311.

11. P. 73.

the auditorium of a book bindery's club so that all who so wished could attend. Seven hundred local folk came to hear the case, which involved five teen-age boys who were accused of teasing an apartment play-yard attendant, and of disrupting her attempts to organize games for younger children. The case had been carefully prepared beforehand in the local party committee as one of paramount educational importance. Even the newsreel photographers brought their cameras and floodlights — only to record an hilarious farce which completely discredited the court. The clever boys, their defiant mothers, the noisy audience hugely enjoying itself, and a stream of irrelevant witnesses made a shambles of the case in Feifer's delicious account. Feifer's conclusion was that

from the few sessions I saw, it seemed that Americans who became angry over the ideological menace of the comradely courts are more doctrinaire than the Russians who take part in them. I found not much to admire in this whole massive movement involving *obshchestvennost* [the public], but not much, so far, about which to be self-righteously indignant.<sup>12</sup>

I should suggest, nevertheless, that it can be quite unpalatable, at least for an American, to see a man accused of beating his wife or drunkenness in his own home tried in front of his "collective" at his place of work.

Soviet commentators themselves find shortcomings in comradely court procedures. Their quarrels are usually with the ineffectiveness of these courts or with their violations of prescribed procedures. I. Raichmen, Deputy President of the Board of the Leningrad Lawyers Association, wrote recently complaining about the irregularities of some comradely courts.<sup>13</sup> Such courts may hear only a limited list of disputes; they may try certain misdemeanors, and may apply various forms of censure, and on occasion, levy small fines up to ten rubles. Raichman cites cases where apartment house comradely courts have exceeded their competence.

Comradely court of housing office No. 13 of the Moscow district decided to annul the residence permit of Lisunov and to recommend to the people's court that he be expelled from Leningrad for violation of the rules of socialist living.<sup>14</sup>

Sometimes comradely courts apply measures of social influence that they have no right to use. One flagrant example of this was the decision of comradely court under housing office No. 7 of the Kuibyshev District in the case of Belov who had been accused of petty hooliganism. The court decided to "obligate Belov to divorce his first wife within two months."<sup>15</sup>

Raichman also wrote of courts hearing cases outside of their jurisdiction, and of courts violating their rules of procedure to the extent of failing to keep a record or a hearing, or holding a hearing closed to the public.

On the other hand, some negative aspects of Soviet trials, even those in the regular courts, can be appreciated only after having attended many of them in

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12. P. 129.

13. 20 SOVETSKAYA IUSTITSIYA 19 (1964).

14. *Id.* at 20.

15. *Id.*

person, and Feifer alludes to some of these defects: the passivity of the two lay judges whose decisions count equally with that of the professional judge whom they flank during the trial; the anti-climactic nature of trials, based as they are on dossiers of evidence prepared in the pre-trial investigation; the apparent frequent failure of courts to get to the bottom of a criminal's motivation. And the harsh sentences shocked Feifer as they had shocked me on many occasions.

Four youths stole three rolls of tar paper from their factory: three years each. A drunk sneaked a mirror from a grammar school on Election Day: two years. [Drunkenness is not extenuation; if anything, it makes the offense worse. Theft of state property entails heavier penalties than theft of personal property.] A sober man took the windshield wipers and mirror from a parked car: one year. . . . A waitress had been pouring each glass of wine a few drops short and taking home a bottle a fortnight for herself, two years. . . . The punishments are astonishingly severe.<sup>16</sup>

Civil disputes are, of course, less sensational. They make up approximately eighty-five per cent of all court cases; support, divorce, housing, and labor cases lead the list, Soviet authorities tell us.<sup>17</sup> To such cases, and to examples of civil suits for damages, Feifer devotes only one of his seventeen chapters. Housing cases, reflecting cramped Soviet living, take the prominent place in Soviet courts that automobile negligence cases, reflecting our cramped roads, take in our courts. In one fascinating eviction case Feifer showed how counsel for the prospective evictee, Timofeyev, was able to discredit a vicious attack upon him in *Moskovskaya Pravda* that pretended to expose Timofeyev's mistreatment of his wife, the engineer Valya, who was trying to evict him. A friend of hers had written the article as a letter to the editor, and the paper had reprinted it, correcting it only for style, without checking the facts. Quite correctly, it seems to me, Feifer concluded:

Evidently, a zealous press sometimes diminishes the chances of an impartial hearing even in Moscow. Nevertheless, most of the civil cases I watched were handled with dispatch and a kind of rough reason, and without the complicated legal maneuvering that sours good citizens on the value of the courts as an arbiter of their private conflicts.<sup>18</sup>

If I suggest a few corrections here, this should not in any way discredit the book as a whole, for I have never read a truer *journalistic* account of how Soviet courts actually work. Feifer places the first divorce hearing, the usually unsuccessful reconciliation hearing, before publication of divorce notice in the press,<sup>19</sup> whereas it in fact follows the notice, which causes delays of several months in Moscow, not weeks, as Feifer implies.<sup>20</sup> It is true that fathers of illegitimate children cannot be legally compelled to support them. But if a

16. P. 68.

17. 2 BIULLETEN' VERKHOVNOGO SUDA SSSR 7 (1963).

18. P. 162.

19. Pp. 165-67.

20. P. 164.

father once undertakes voluntarily to help support his illegitimate child, he can be made to continue such support under Article 42, Section 3 of the Russian Republic Family Code, and is thus not immune from suit if the mother is needy, as Feifer implies.<sup>21</sup> Anti-parasite laws first appeared in some Soviet republics in 1957, not in 1959.<sup>22</sup> Vyshinsky's role in law should hardly be identified as that of "an important early Marxist legal theoretician."<sup>23</sup> He was not "early," and, as Prosecutor-General during the purge trials in the late thirties, he was something more (and less!) than a theoretician. Many American courts may still be far from American ideals of justice. Yet one must question Feifer's sweeping generalizations; *e.g.*, that the Soviet cases he presents are "the kinds of cases that American courts . . . handle so badly when there are no constitutional principles to fight for."<sup>24</sup>

As Feifer was about to leave Russia, he had a last talk with an old acquaintance, a president of a people's court. "Nikolai Nikolaevich" told him that the courts help in the making of the Soviet great society of the future by educating people, by making justice inevitable, swift, and severe so as to mold the faultless man, ". . . a conscious, responsible citizen. The kind for whom crime is unthinkable, and not only for himself; it is unthinkable that he would permit his neighbor to practice it."<sup>25</sup> Feifer could only question whether Communist goals justified the apparent departures from justice that he had come upon.

He found no clear answer. Certainly there are many encouraging signs along with the deficiencies — Feifer discovered a justice that is swift, inexpensive, accessible, with procedures in ordinary cases easily understood by laymen. He found conscientious and fair judges along with the inept and harsh ones, and lawyers with high legal culture. Also, he rightly discerns signs of improvement in new attempts at scientific investigation of the causes of crime. As for popular attitudes toward the vast bureaucracy of which the courts are a part, "One is beginning to hear 'You've no *right* to do that to me in this country.'"<sup>26</sup>

One can only agree with Feifer that, with all the contradictory impressions one can bring away, "If one leaves Russia not confused, he has only confused himself."<sup>27</sup>

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21. P. 149. On Soviet divorce procedures, see my *Marriage and Divorce*, 48 SURVEY 104 (1963).

22. P. 188.

23. P. 20.

24. P. 15.

25. P. 331.

26. P. 102.

27. P. 345.

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