



1-1-1984

Book Review [Final Judgment: My Life As a Soviet Defense Attorney]

Santa Clara Law Review

Follow this and additional works at: <http://digitalcommons.law.scu.edu/lawreview>



Part of the [Law Commons](#)

Recommended Citation

Santa Clara Law Review, Book Review, *Book Review [Final Judgment: My Life As a Soviet Defense Attorney]*, 24 SANTA CLARA L. REV. 271 (1984).

Available at: <http://digitalcommons.law.scu.edu/lawreview/vol24/iss1/10>

This Book Review is brought to you for free and open access by the Journals at Santa Clara Law Digital Commons. It has been accepted for inclusion in Santa Clara Law Review by an authorized administrator of Santa Clara Law Digital Commons. For more information, please contact sculawlibrarian@gmail.com.

BOOK REVIEW

FINAL JUDGMENT: MY LIFE AS A SOVIET DEFENSE ATTORNEY.
By Dina Kaminskaya. New York, NY: Simon and Schuster, Inc.
1982. (Translated from Russian by Michael Glenny). Pp. 364.
Hardcover. \$18.95.

*Reviewed by Jeffrey Kroeber**

Dina Kaminskaya, a leading Soviet defense attorney for thirty-seven years until her expulsion from the Soviet Union in 1977, has written an insightful book reflecting one participant's view of the Soviet legal system. Ms. Kaminskaya is a trial attorney of rare abilities. More importantly, she possesses the empathy to critique, in a balanced manner, a people and a profession caught in the fundamental ethical dilemmas of a totalitarian society.

To be a successful trial advocate, one must acquire the ability to judge character. The author's beautiful, incisive depiction of her parents' characters gives the reader the feeling that she is not only a tireless professional, but also a no-nonsense person skilled in assessing personal strengths and weaknesses. Her parents, who had advanced from poor rural beginnings, instilled in her the faith of a skeptical thinker. Thus, once Kaminskaya chose to become a defense advocate, it was inevitable that she ultimately would challenge the judicial representatives of the controlled society in which she lived. Her personal and professional journey is chronicled in this book. The work is highly readable and comprises a useful primer for those seeking to understand the critical differences between an open, law-based judicial system and a closed system subject to ideological control.

Ms. Kaminskaya describes the Soviet legal system, both its organizational structure and its actual operation. Criminal investigations are initiated by the procuracy (regional investigative offices), the police, the Ministry of Internal Affairs, or, in the most serious "political" cases, the K.G.B. All relevant material in an investigation must, by law, be recorded in writing in the case file. After several months of investigation, the prosecutor transmits the indictment to

© 1984 by Jeffrey Kroeber.

* B.A., 1968, Williams College; J.D., 1975, Hastings College of Law. Member, California State Bar; Senior Trial Attorney, Santa Clara County Public Defender's Office.

court, which begins the judicial process. Pre-trial detainees are typically held for the entire period in isolation, without family visits and without access to a lawyer until the investigation is complete. Thus, in the Soviet Union a suspect held for trial is subject to any abuses of confinement and attempts at inducing confessions that the investigating authorities choose to use.

All criminal cases are tried by courts, consisting of three judges: one professional jurist and two citizens, or "People's assessors." In practice the People's assessors merely follow the lead of the professional judge. There is no jury trial in the Soviet Union. All judges are elected for five-year terms, the Communist Party effectively controlling them by closely monitoring their performance. Local party officials report on the work of each judge. Kaminskaya sadly notes: "[i]n all my years as a practicing lawyer I never encountered a truly independent judge."¹

In 1967 the parents of Sasha, a sixteen-year-old boy, retained Ms. Kaminskaya to defend him against charges that he and a friend had brutally raped and murdered a local village girl. The case featured an unethical district procurator (prosecution investigator) who falsified evidence and illegally held the two minor suspects in isolation in an adult prison in order to coerce their confessions. The boys, held without access to a lawyer and fearful for themselves and their families, soon confessed to the crimes which they had not committed. The prosecution's key witness at trial was an old woman who claimed to have heard the girl cry out, "Alik! Leave me alone! Sasha, let me go!"

At trial, the defense established that the old woman was deaf and could not have been home on the day the crimes occurred to have heard the claimed conversation. Kaminskaya and her fellow defense attorney visited the crime scene and painstakingly brought out the unnoticed contradictions in physical evidence underlying the prosecution's case.

The case was tried three separate times—the last time before the Supreme Court of the Russian Republic. Sasha Kabanov and Alik Burov were ultimately found not guilty.

The judicial system was ultimately able to break free of the hypnotic influence of a confession, to thrust aside the heavy weight of popular indignation, and to forget that the case was being followed with special attention by the Central Committee

1. D. KAMINSKAYA, *FINAL JUDGMENT: MY LIFE AS A SOVIET DEFENSE ATTORNEY* 56 (1982).

of the Communist Party of the Soviet Union.²

Also in 1967, Ms. Kaminskaya's career took a decisive turn when she accepted representation of Vladimir Bukovsky, the first of her "political cases." Bukovsky had been involved in an innocuous, peaceful demonstration at Pushkin Square in Moscow protesting the earlier arrest of four writers. He was charged, however, with gross violation of public order under a 1966 decree whose language directly conflicted with peaceful assembly guarantees of the 1936 Soviet Constitution.

Ms. Kaminskaya made an eloquent plea before the court based upon the absence of any *corpus delicti*. Although admitting the actual commission of the acts charged, she pointed out that, in truth, they had violated no Soviet law. In a system where no court is empowered to declare a law unconstitutional, as in Russia, such a defense was of course unsuccessful.

She went on in the following years to defend other prominent Soviet dissidents, such as Yuri Galanskov and Ilya Gabay. Several of these persons suffered enforced labor imprisonment and were subjected to psychiatric examinations and treatments for illnesses they did not have. In her political cases Ms. Kaminskaya was, to use a Quaker phrase, "speaking truth to power." Ultimately, this truth and her activities on behalf of her clients became too much for the Soviet authorities to tolerate. As a highly respected and renowned member of the Moscow bar, she had become far too effective. In 1977 after she and her husband, also an attorney, were forcibly expelled from the Soviet Union, they made their way to the United States.

This commentary on freedom and law should receive a wide audience, not just a readership among lawyers. Since the current wave of law and order sentiment arose several years ago, there has been an ever-present danger in the United States that our delicate balance between free expression, civil liberties, and the countervailing needs of law enforcement might be tipped too far toward the supposed needs of public order. The current loud criticisms of the defenses of diminished capacity and insanity should be seen for what they are—the periodic adjusting of a fundamental tension between necessarily opposing views regarding criminal culpability and responsibility under the law. It is the saving feature of our system that such conflicts can be resolved through the legislatures and courts, rather than by the infliction of extreme punishment upon those who

2. *Id.* at 157.

dare to challenge, in any society, the constituted law enforcers.

Ms. Kaminskaya's personal account of her career in the Soviet criminal courts is much more than one lawyer's recitation of her finest cases. It stands as a reminder to those of us in the West of our constant need to assure that Constitutional guarantees are not forgotten in a momentary push toward court efficiency and public order. If her book can remind us of this fact, its publication will have served a worthwhile purpose.