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Criminal Strategies and
Institutional Concerns in the Soviet Legal System:
An Analysis of Criminal Appeals
in Moscow Province, 1921-1928

A dissertation submitted in partial satisfaction
of the requirements for the degree Doctor of Philosophy
in History

by

Daniel Asher Newman

2013

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ABSTRACT OF THE DISSERTATION

Criminal Strategies and
Institutional Concerns in the Soviet Legal System:
An Analysis of Criminal Appeals
in Moscow Province, 1921-1928

by

Daniel Asher Newman

Doctor of Philosophy in History

University of California, Los Angeles, 2013

Professor J. Arch Getty, Chair

Questions about the legal system in the Soviet Union during the first twenty years of Soviet power invariably evoke images of tribunals and show trials rigging cases to promote class warfare, persecute phantom enemies, and eliminate Joseph Stalin's political opponents. As sensationalized as they have been, show trials and political tribunals were not the norm and the notion that Soviet justice was inherently corrupt has been overstated. The overwhelming majority of Soviet citizens who were accused of crimes during the 1920s were not hauled before tribunals or publicly denigrated in orchestrated show trials. Instead, they were presented with a tiered court system reliant on minutely worded criminal codes, judicial officials expected to follow procedural norms, and the legacies of Tsarist and French legal practices and institutions.

It is this system of justice which most Soviet citizens accused of crimes encountered, and it is this system of justice which is the focus of this dissertation. Unlike previous scholarly work dealing with the Soviet judiciary during the period of the NEP, this dissertation employs an analytical framework based on close readings of criminal case records. From an institutional standpoint, case files of criminal appeals are examined to determine how different seats of power within the judiciary exerted their influences against each other in disputes over verdicts, and how different institutions challenged the judiciary over questions of jurisdiction and the application of sentences. From a legal standpoint, judicial decisions at both the court of initial instance and appellant instances are cross-referenced with legal codes and legislation to determine how well Soviet judges understood the wording and intent of codified law. From the standpoint of the criminals themselves, the wording of appeals is analyzed to determine how convicts understood the law, their place in Soviet society, and what they thought they needed to say to gain redemption. Ultimately, this dissertation shows how judges, procurators, investigators, and individuals brought before courts understood how Soviet power and justice functioned in the realm of criminal appeals during the infancy of the Soviet Union.

The dissertation of Daniel Asher Newman is approved.

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2013

To Mom, Dad, Mickey, TBT, and ML

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Glossary

Cassational review – first level of Soviet criminal appeals

Cheka - Extraordinary Commission, political police from 1917 to 1922

Commissar - minister

Commissariat - ministry

GPU - State Political Directorate, political police from 1922 to 1923

Guberniia – Russian geographical unit approximately equivalent to a province

Gubsud – provincial court

Kollegiia - collegium or board

Komsomol – Union of Communist Youth

Narkomiust – People’s Commissariat of Justice

Narsled – People’s investigator

Narsud – People’s court

NEP – New Economic Policy, 1921-1928

Obzhalovanie – appeal against a judicial verdict

OGPU – Joint State Political Directorate, political police from 1923 to 1934

Plenum – meeting attended by all members of an agency

Procuracy – agency responsible for prosecutions and supervision of legality

Procurator – legal official responsible for prosecutions and supervising legality

Proshchenie – petition or plea

Pud - obsolete Russian measurement of weight, with each *pud* equal to roughly 16.38 kilograms

RSFSR – Russian Soviet Federated Socialist Republic

Samogon – home-brewed alcohol

Sovnarkom - Council of People's Commissars, cabinet of the Soviet government

Supervisory review – Second level of Soviet criminal appeals

Uezd – Russian geographical unit approximately equivalent to a county

VTsIK - All-Russian Central Executive Committee, highest level of state administration

Wrecking – political crime undermining state industry, trade, or commerce

Zaiavlenie – declaration or statement, often found as the header of appellants' pleas, investigators' reports, and messages sent between legal officials

Zashchitnik – defense attorney

Zhaloba – complaint or grievance

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resource I've turned to time and time again. His clarification of the most obscure facets of Soviet legality has been pivotal to my understanding of the Soviet system of criminal appeals.

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Introduction

Questions about the legal system in the Soviet Union during the first twenty years of Soviet power invariably evoke images of tribunals and show trials rigging cases to promote class warfare, persecute phantom enemies, and eliminate Joseph Stalin's political opponents. Tribunals assembled during the Civil War and collectivization prejudiced against specific classes, show trials devoted to the uncovering of spies and wreckers during the 1920s and early 1930s, and the Great Show Trials of the late 1930s all stand out as the events non-specialists and specialists commonly associate with the Soviet judicial system.¹ As sensationalized as they have been, show trials and political tribunals were not the norm and the notion that Soviet justice was inherently corrupt has been overstated.² The overwhelming majority of Soviet citizens who were accused of crimes during the 1920s were not hauled before tribunals or publicly denigrated in orchestrated show trials. Instead, they were presented with a tiered court system reliant on minutely worded criminal codes, judicial officials expected to follow procedural norms, and the legacies of Tsarist and French legal practices and institutions. The Soviet system of justice in the 1920s represented the most progressive form of Continental Law in existence up until that time. It is this system of justice which most Soviet citizens accused of crimes encountered, and it is this system of justice which is the focus of this dissertation.

Although the historiography of Russia during the Soviet era includes many treatments of criminality, few studies have examined how courts actually functioned, especially during the

¹ Unfortunately, the "totalitarian" school of thought continues to dominate non-specialists' view of the Soviet Union. Emblematic of the totalitarian viewpoint of an atomized society dominated everywhere by an omniscient Stalin who continuously hatched long-term plans to defeat his enemies is Robert Conquest, *The Great Terror: A Reassessment* (Oxford: Oxford University Press, 1991).

² This is not to suggest that corruption in the Soviet judiciary did not occur, or even that in some situations it was not endemic. For example, see James Heinzen, "The Art of the Bribe: Corruption and Everyday Practice in the Late Stalinist USSR," *Slavic Review* 66, no.3 (Fall, 2007): 389-412, for a scholarly treatment of the pervasive nature of bribery of state officials throughout Soviet society (including the judiciary) from 1943 to 1953.

period of the New Economic Policy (NEP) from 1921 to 1928.³ Due to archival restrictions which were not relaxed until recent years, Western scholarship rarely includes actual judicial case records for studies of courts during the NEP, and even those studies which use archival case records mostly do so only sparingly.⁴ This dissertation, on the other hand, is based on a wide variety of court records, many of which are located in sections of archives only recently made available to researchers. My work revises the work of scholars who had little or no access to the archival record, but who made use of available published material: legal journals and

³ The NEP was adopted during the Tenth Congress of the All-Russian Communist party in mid-March 1921 and lasted until the announcement of Stalin's first five-year plan at the end of 1928. In opposition to previous calls for the full nationalization of all industries, the NEP called for the coexistence of private and public sectors in the economy. The specific economic policies of the NEP are omitted from this dissertation as they are not the focus of this study. For more information on economic policies of the NEP Alec Nove, *An Economic History of the USSR, 1917-1991*, 3rd ed. (London: Penguin Books, 1992), chpts. 4-6, and R. W. Davies, Mark Harrison, and S. G. Wheatcroft eds., *The Economic Transformation of the USSR, 1913-1945* (Cambridge, UK: Cambridge University Press, 1994). The lack of Western scholarship on Soviet courts and their relationship to state and society during the 1920s stands in contrast with the wealth of studies focusing on criminals, courts, and the judiciary during the 1930s. Representative studies of this period include David Shearer's analysis of official definitions of criminality and changing characterizations of criminals during the mid-1930s, Gabor Rittersporn's work on the Soviet judiciary and the evolution of criminal penal policy, and Paul Hagenloh's identification of the motive force behind the repression of the Great Purges in the draconian methods employed by local police in response to confused and misunderstood attempts to reform the police force from above, particularly with respect to mass operations undertaken in urban areas. See David Shearer, "Crime and Social Disorder in Stalin's Russia," *Cahiers du Monde Russe* 39, no. 1-2 (January-June, 1998): 119-148, Gabor Rittersporn, "Soviet Officialdom and Political Evolution: Judiciary Apparatus and Penal Policy in the 1930s," *Theory and Society* 13 (1984): 211-237, and Paul Hagenloh, *Stalin's Police: Public Order and Mass Repression in the USSR, 1926-1941* (Washington, DC: Woodrow Wilson Center Press and The Johns Hopkins University Press, 2009). Despite the merits of such studies and their use in studies of criminality and legality during the Soviet period, none of them focus on the actual functioning of the judicial process. Analyses of the judicial process supplement broader arguments concerning the evolving state of police work, definitions of criminality, and changes in penal policy during the 1930s. A study focusing specifically on criminal appeals during the 1930s has not been endeavored. The historiography of studies of Russian law and criminal appeals in the late Imperial period up until the beginning of the NEP is discussed below.

⁴ The July 1993 enactment of the "Basic Legislation of the Russian Federation on the Archival Fond of the Russian Federation and Archives" stipulated that documents including information on the private lives of citizens were inaccessible for a period of seventy-five years from their creation. Since judicial records include information on the private lives of citizens, case records from the NEP era have become available to researchers only recently. While one might expect that court records from the beginning of the NEP (1921) should have been available exactly seventy-five years later (in 1996), Russian archivists frequently group files together by decade, declassifying files by decades rather than by individual years. Consequently, NEP era court records did not become available until seventy-five years after the end of the 1920s in 2005. For more on privacy laws as they pertain to Russian archives see Patricia Kennedy Grimsted, *Archives of Russia Five Years After: 'Purveyors of Sensations' or 'Shadows Cast to the Past'?* (Amsterdam: International Institute of Social History, 1997), 20.

newspapers, the writings of jurists and legal officials, eyewitness accounts of trials, and reproductions of trial transcripts published in Soviet journals and official publications.⁵

Existing arguments presented in such studies serve as points of departure for this dissertation. Their assertions are tested, and new assertions formed, through a rigorous analysis of the archival records of legal personnel, institutions, and structures extant in Moscow province during the 1920s. This analysis focuses on macrohistorical trends and issues affecting criminal courts and tribunals during the 1920s, microhistories of specific courts at different levels (county, province, and republic), and a close reading of a series of case studies of particular types of criminal cases, which provides evidence for a variety of strategies employed by convicted criminals in attempting to negotiate their way through a complicated, but modern, legal system in its infancy. These case studies also discuss factors, both legal and extra-legal, which guided judicial personnel in reaching judicial verdicts. The disputes which arose over such verdicts provided the battleground on which different levels of courts attempted to exert their influence. This battleground allows a glimpse at the internecine squabbles between officials at different levels of the Soviet justice system. Such disputes contributed to the development of the judiciary as an institution over the course of the 1920s.

But before dissecting appeals it is necessary to provide context by reviewing convicts' points of contact with the legal system during their apprehensions and trials. These formative experiences represent the typical interactions between defendants and the legal system up until the initiation of the appellate process.

⁵ The only Western scholars who extensively integrated court records into their analyses of the judicial system during the NEP period have been Tracy McDonald, *Face to the Village: The Riazan Countryside under Soviet Rule, 1921-1930* (Toronto: University of Toronto Press, 2011) and Matthew Rendle, "Revolutionary Tribunals and the Origins of Terror in Early Soviet Russia," *Historical Research* 84, no. 226 (2011): 693-721. Their respective studies of criminal courts in Riazan and revolutionary tribunals around Moscow and Leningrad during the first few years of Soviet power will be described in my historiographical sections in chapter one.

I. Investigation and Trial: Prelude to an Appeal

Criminal cases throughout the Russian Soviet Federated Socialist Republic (RSFSR) began in one of two ways. Most cases began with a report of criminal activity, but without arrests made at the scene of the crime.⁶ The subsequent investigation was handled by at least one, but sometimes by many, people's investigators (*narsledy*) who canvassed the scene of the crime and interviewed witnesses, with careful attention paid to gathering and storing evidence.⁷ When interviewing witnesses, investigators recorded witnesses' personal characteristics, including party membership, social background, and education.⁸ Investigators limited their questions to issues pertinent to the crime and formed preliminary reports based on a collation of witnesses' statements and material evidence.⁹ After accumulating enough evidence and identifying suspects, investigators issued arrest warrants.¹⁰

⁶ Specifically, there were five reasons possible for starting a criminal case: a citizen or public agencies alerted to the authorities that a crime had been committed, government officials uncovered a crime, an individual came forward to admit guilt before an investigation had begun, a procurator became aware of a crime and initiated criminal proceedings, or an investigator had the discretion to begin an investigation if there was reason to believe a crime had been committed. *Ugolovno-Protseessual'nyi Kodeks RSFSR* (Moscow, 1923), *st.* 91. Note that usage of "st." refers to an article of the RSFSR criminal code or criminal code of procedure.

⁷ *Ibid.*, *st.* 66-67, 70-71, 92-93.

⁸ For general regulations guiding investigations see *ibid.*, *st.* 77-78, 107-111. For specific instructions about how to interview witnesses see *ibid.*, *st.* 162-166.

⁹ See the investigation of agents of the Moscow Criminal Investigation Department (MUR) in *Tsentral'nyi gosudarstvennyi arkhiv moskovskoi oblasti* (Central State Archive of Moscow Oblast, hereafter referred to as TsGAMO), f. 5062 (Moscow Province Court), op. 3 (Cases in permanent storage, 1919-1930) d. 181, ll. 14-19, 28-32, 34-40.

¹⁰ If the accused was not already in custody, an order to appear before the court was sent to his last known address. The order had two parts, one which the accused was supposed to keep, and the other was to be returned through the mail so the investigator knew that the accused had received it. A neighbor could mail back the receipt in the accused's place. See *Ugolovno-Protseessual'nyi Kodeks RSFSR* (1923), *st.* 130.

When police apprehended criminals at the scene of the crime, investigators interspersed interviews of witnesses with interrogations of suspects.¹¹ Since interrogations represented the first point of contact between suspects and state officials, the process was formative in constructing suspects' perceptions of the legal system. As with witnesses, investigators recorded suspects' social background before questioning their alleged criminal activities. Upon completing interviews of suspects and witnesses, investigators reviewed the data and wrote a report summarizing their findings.¹² If an investigator found that there was cause for a trial, his report was accompanied by an indictment.¹³ These reports constituted the bases for procurators' presentations to judges during trials.¹⁴

Since procurators typically received no information from sources other than investigators, it is little surprise that their presentations conformed to investigative reports, and in most cases, procurators' copied directly from investigators' conclusions.¹⁵ As a result, investigators' conclusions played a pivot role in determining the outcome of cases, sometimes even more so than procurators' presentations or judicial discretion.

¹¹ See the case of the fight between the Borozdkin brothers, Aleksandr Mokeev, and Boris Chelnokov in TsGAMO, f. 5062, op. 3, d. 595, ll. 5-28. Police immediately arrested Mokeev and Chelnokov after a drunken fight resulting in a fractured skull for one of the Borozdkin brothers. Investigators immediately began questioning witnesses, victims, and suspects alike.

¹² The guidelines for when a case should proceed from investigation to trial are found in *Ugolovno-Protsessual'nyi Kodeks RSFSR* (1923), st. 96.

¹³ *Ibid.*, st. 209-211.

¹⁴ The terms "procuracy" and "procurator" will be used in this dissertation, as the powers vested to Russian "procurators" are distinct from prosecutors in the Common Law system. For a discussion of the different roles ascribed to the procuracy during the NEP see Peter H. Solomon Jr., *Soviet Criminal Justice under Stalin* (Cambridge, UK: Cambridge University Press, 1996), 41-42, and Judah Zelitch, *Soviet Administration of Criminal Law* (Philadelphia: University of Pennsylvania Press, 1931), chpt. 4. Specific powers granted to procurators will be described over the course of this dissertation.

¹⁵ For example, see the case of armed robbery of the cooperative run by Belov. The investigator's conclusions are found in TsGAMO, f. 5062, op. 3, d. 691, ll. 125-127. The procurator's indictment is found in TsGAMO, f. 5062, op. 3, d. 691, ll. 186-188ob.

In the interim between the conclusion of investigative interrogations and the commencement of trial proceedings, accused criminals were permitted to leave on their own recognizance. The exception to this rule was for cases in which the accused was likely to be charged under a section of the criminal code providing for a maximum penalty exceeding one year's detention, in which case the criminal investigator had the discretion to order the convict be detained.¹⁶ The investigation itself could not last longer than a month, at which point the suspect was supposed to be released, though this rule was often ignored.¹⁷

The trial itself was normally conducted in an open court, though not necessarily with a defense counsel present, and sometimes not even with the defendant present.¹⁸ In cases when a defendant committed a less serious crime, one which did not require his detention up until his trial, courts could try a defendant *in absentia*.¹⁹ The decision to try a defendant *in absentia* was not preferred, though the court did reserve the right to do so when a defendant inexplicably refused to appear before the courts, or if some members of a criminal gang remained at large when the gang was tried together as a group.²⁰

¹⁶ *Ugolovno-Protssessual'nyi Kodeks RSFSR* (1923), st. 102. Chapters two and three of this dissertation provide a detailed explanation of different types of crimes, their penalties, and how the severity of a crime dictated which level of court heard a case.

¹⁷ *Ibid.*, st. 105.

¹⁸ See *ibid.*, st. 19, for the guarantee of a public trial.

¹⁹ This was only allowed if the defendant expressly consented to being tried *in absentia* or if the defendant was known to have intentionally evaded the authorities. See *ibid.*, st. 265. If the defendant had good cause for missing the trial date, proceedings could be postponed. See *ibid.*, st. 267.

²⁰ See "Diskussionnaia stranitsa po primeneniuiu Ugolovnogo i Ugol.-Protssess. Kodeksov: Voprosy i otvety," *Ezhenedel'nik Sovetskoi Iustitsii*, no. 9 (1923): 197, which answered to the question of whether and how a defendant could fight against a court's *in absentia* decision by directing the reader to articles 251 and 391 of the criminal code of procedure. Article 251 listed the powers granted to people's courts in such a situation, and article 391 elucidated the court's ability to try a case *in absentia* or grant a defendant a new trial. See *Ugolovno-Protssessual'nyi Kodeks RSFSR* (1922), st. 251, 391. No matter what reason the defendant had for not appearing at the trial, the defendant still reserved the right to send the case to cassation.

Panels of one judge and two lay assessors oversaw trials and rendered verdicts on the basis of available evidence, expert testimony, witness testimony and depositions, the defendant's own words, and the procurator's presentation.²¹ At the beginning of the trial the defendant was told of his right to question all witnesses, experts, and other defendants over the course of judicial proceedings.²² After advising the accused of this right, the trial commenced with a reading of the indictment of the case, after which the accused was asked if he understood the charges against him and whether he wanted to make a statement in response to the charges.²³ Judges proceeded with an interrogation of the defendant, followed by questioning all witnesses and experts.²⁴ The defendants, or representatives of the defendants, could question such parties after judges and procurators had finished with them.²⁵ After all evidence had been presented and all parties questioned, proceedings concluded with remarks from the procurator, the victim of the crime, and then the defendant, after which judges deliberated and rendered a verdict.²⁶ All of the above constituted the totality of interactions between a suspect and the judicial apparatus up until the point of appeal.

The code of criminal procedure ensured that, if a trial proceeded according to regulations, the accused had to be provided with the option for a legal representative, typically in the form of

²¹ The panel of one judge and two lay assessors existed for all courts aside from revolutionary tribunals. Revolutionary tribunals consisted of two judges and one member of the political police. Most often during the period of revolutionary tribunals, neither procurators nor defense was present for the trial. See Solomon, *Soviet Criminal Justice under Stalin*, 22, and Zelitch, *Soviet Administration of Criminal Law*, 40.

²² *Ugolovno-Protsessual'nyi Kodeks RSFSR* (1923), st. 277.

²³ *Ibid.*, st. 279-280.

²⁴ *Ibid.*, st. 283-286.

²⁵ *Ibid.*, st. 287-288. Judges could intervene at any time to ask questions of witnesses, experts, procurators, or defendants. See *ibid.*, st. 289.

²⁶ *Ibid.*, st. 304.

a defense attorney (*zashchitnik*).²⁷ The code of criminal procedure emphasized that the role of defense counsel did not necessarily end with a conviction. After conviction, only a few parties were permitted to write letters on behalf of the convicted during the appellate process, including the convicted, defense counsel, a procurator, family members of the convicted, or representatives from “professional or social organizations of which the convicted was a member.”²⁸ During an appellate review, a defense counsel could represent the convicted, in which case the defense counsel presented the reasons given for the appeal (if the appeal was made by the convicted), answered any questions posed by judges, and presented a concluding statement before judges deliberated and rendered a verdict.²⁹ Appearances by defense counsels during appeals were rare, however, as none of the cases reviewed in this dissertation revealed any indication of their participation.

Having provided the framework for convicts’ initial points of contact with the Soviet legal system, we can turn to the focus of this dissertation: the system of Soviet criminal appeals.

II. The Soviet System of Appeals

Though all aspects of criminal cases are discussed over the course of this dissertation, the primary focus is on the variety of ways in which both convicts and legal officials perceived and

²⁷ For a discussion of the role of defense attorneys in both trials and appeals see M. A. Chel’tsov-Bebutov, “Obzhalovanie prigovora zashchitnikom,” in *Zashchita po Ugolovnym Delam*, ed. I. T. Goliakov (Moscow: Iuridicheskoe Izdaletl’stvo Ministerstva Iustitsii SSSR, 1948), 190-221. Article fifty-one of the criminal code of procedure guaranteed the accused the right of a representative in court: either a defense attorney, a close relative of the accused, a “legal representative,” or an authorized representative from the accused’s trade union or department of labor inspection. See *Ugolovno-Protssessual’nyi Kodeks RSFSR* (1923), *st.* 51. In situations when a defendant was disabled or if the procurator determined that a defendant should have a lawyer even if the defendant did not want one, then the state appointed a defense counsel for the accused. See *ibid.*, *st.* 55, 381.

²⁸ *Ugolovno-Protssessual’nyi Kodeks RSFSR* (1923), *st.* 376.

²⁹ *Ibid.*, *st.* 410.

engaged with criminal appeals. A close study of the appeals process reveals a great deal about the state of the judiciary and official conceptions of socialist justice, along with identifying which characteristics were invoked by convicted criminals who attempted to frame themselves as ideal, sympathetic Soviet subjects. A study of criminal appeals also provides an unique opportunity to assess how criminals and the judiciary understood technical legality and the spirit of the law, how both sides applied (or misapplied) legal codes and legislation, and, in a general sense, how each understood the functions and goals of the newly codified socialist legality. In addition, study of the appeals process allows a researcher to eavesdrop on conversations between courts and appellants. Such conversations provide a rare look at how both judges and appellants defined socialist justice through the argumentation supporting their appeals and verdicts. Ultimately, these conversations represent an untapped source which can help determine how judges and convicts understood basic notions of the early Soviet legal process not in an abstract sense, but in the context of actual cases.

From the perspective of judicial officials, criminal appeals allowed high court judges to assess the quality of judicial decisions rendered by judges at lower courts. The appeal often included specific grievances with lower courts' verdicts. Such grievances ranged from claims of violations of technical legality by judges, procurators, or investigators, to appeals which strayed away from legal argumentation, instead focusing on the character of the appellant and their station in Soviet society. Appellate panels assembled from judges at higher courts had the ability to not only deliberate the merit of such arguments, but they also were provided with a window into the world of lower-level courts.

This window provided high court judges with a view of recurring issues raised by convicts during the course of their appeals. Such issues often addressed general grievances with

how procurators and investigators framed and conducted the judicial process, especially regarding their abrogation of the criminal code of procedure. In other cases criminal appellants cited grievances with specific aspects of judicial decisions. These instances informed high court judges as to how convicts perceived problems with lower court judicial decisions, particularly when convicts explained how they thought the criminal code was misapplied. Regardless of the complaint, the ability to review cases allowed high courts to identify specific mistakes and misconceptions plaguing lower court judges' decisions. More importantly, appellate panels possessed the ability to implement their understandings of legality and the goals of socialist justice on verdicts passed by lower courts, thereby creating conflict between legal officials at different judicial levels.

I argue that the appellate process not only fulfilled the vital function of correcting the mistakes of lower courts, but that it also functioned as a forum in which officials from higher and lower courts sparred over issues relating to definitions of legality, notions of class justice, the applicability of the codified law, and how different levels of the judiciary were able to assert themselves against each other. Ultimately, appeals functioned as a battleground both for legal grievances involving court cases and for power struggles between different levels of the courts.

From the perspective of appellants, the process of criminal appeals not only afforded the opportunity for a reduced sentence, but it also presented an arena in which convicts could express the legal knowledge they had gained since their first trials, along with the chance to represent themselves as individuals deserving of redemption regardless of the crimes for which they had been convicted. In a general sense, appeals allowed the convicted to present their grievances to higher legal authorities who possessed more legal training and a better familiarity with the law than their subordinates. It followed that appellants could expect an appellate panel

to provide a ruling which would correct legal errors made by lower courts, especially because appellate panels did not have to focus on the specific argument posed by the appellant, but could instead review the entirety of the case record for any errors made by judges, procurators, or investigators.³⁰

But beyond the appellants' motivation for redressing legal grievances through the appellate process, the variety of strategies employed by appellants in shaping their appeals reveals how they thought they should represent themselves and what types of arguments they thought were effective in reducing or cancelling their sentences. While some appeals showed appellants' deep knowledge of the legal codes and legislation related to the crimes for which they had been accused of committing, the most common type of appeal ignored legal technicality, instead focusing on a variety of techniques designed to render the appellant as a sympathetic figure who represented the ideal Soviet subject; in the event that it was impossible to construct themselves as ideal subjects, appellants often portrayed themselves as individuals who had the potential to become ideal subjects if given the chance. A close reading of such appeals contributes to an understanding not only of how convicted and accused criminals interacted with the courts, but also how this understudied segment of early Soviet society conceived of Soviet power and what they thought it meant to be a Soviet citizen.

For the purpose of this dissertation, the term "appeal" is understood in a broad sense: as a formally prescribed legal remedy used to dispute the outcome of a case by codified methods of cassation and supervision, as well as the informal type of appeal, in which an individual accused of a crime sent letters of appeal to state and party officials before, during, or after the conclusion

³⁰ Appellant panels' power to review the entirety of a case, especially in cassation, distinguished Soviet appeals from any other type of appeal based on the continental system of law during the 1920s. This point is explored throughout the dissertation.

of a case. These informal letters were sent to officials who were not directly involved with the case, but whom appellants hoped would lobby on their behalf for a more lenient sentence, a review of their cases, or an immediate cessation of legal proceedings. Such informal “appeals,” while not part of the formal legal definitions of appeals available to convicted and accused criminals, were sometimes more effective than appeals through normal channels.

Informal appeals are included in this study because, aside from receiving little attention from scholars of the NEP, letters of appeal funneled through formal and informal pathways were structured according to the same basic framework. Each letter began with a heading titled by one of a few words which roughly translate to “appeal,” followed by a section detailing the history of the case, then a section (ranging from a few sentences to multiple pages) providing strictly legalistic reasons why the appellant deserved a reprieve, and finally a section (usually the longest section) devoted to the personal biography of the appellant.³¹ The structural frameworks, vocabularies, and strategies of formal and informal appeal were indistinguishable.

There were, however, two facets which differentiated informal and formal appeals. First, informal appeals could be, and often were, attempted before a court reached a verdict. These appeals implored high-level officials to exert their influence to either terminate criminal proceedings against the appellant, or to guide the case toward a conclusion favorable for the appellant. In contrast, formal appeals could only be undertaken after a court reached a verdict.

Second, and perhaps ironically, letter writers of informal appeals always knew exactly to whom they were writing, whereas letters of formal appeals were rarely addressed to the judge overseeing the appeal, and often were not even addressed to the correct legal institution in charge

³¹ The four Russian words (*zaiavlenie*, *proshchenie*, *obzhalovanie*, and *zhaloba*) have different literal meanings, but were used interchangeably as titles for letters of appeal. The distinction between the three words will be explored later in this dissertation.

of processing the appeal. Instead, many formal letters of appeal betrayed appellants' startling lack of familiarity with the legal system; they often sent their letters to the wrong courts, judges who had nothing to do with their cases, or to anonymous sets of judges (for example, “dear comrade judge”).

I argue that the similarities of informal and formal appeals far outweigh the differences, especially when considering that the basic structures and goals of each type of appeal were identical. I also explore the differences between these types of appeals, focusing on the infrequency with which formal appellants knew to whom they were making their appeals. The difference between appealing to an institution (as in the case of formal appeals) and an individual (as with informal appeals) is discussed below.

The appeals studied in this dissertation fall into one of three categories: appeals by way of *cassation*, appeals by way of *supervision*, and the informal appeals discussed above. Though the processes of cassation and supervision will be described in great detail in the ensuing pages, it is necessary to provide a short description of each to provide context for the arguments advanced throughout this introduction.

III. A Brief Background of Soviet Appeals

Bolshevik cassation was an offshoot of a system first developed in Revolutionary France, which then spread to various polities in Europe over the course of the nineteenth century, including Tsarist Russia. Though cassational guidelines varied from state to state and changed over time, cassation allowed individuals involved in civil and criminal cases to appeal lower court decisions to cassational panels attached to higher courts (typically a supreme court). The French created cassation as a process primarily meant to determine whether lower courts adhered

to legal procedure and codes in reaching a verdict. I trace how this original intent was adjusted by Tsarist courts to give cassational panels wider responsibilities, culminating in Soviet cassational panels' ability to review the entirety of the case record for anything ranging from procedural malfeasance to any unjust aspect of the case. Though Soviet judges and procurators could use cassation as a way to review cases, cassation was primarily intended to allow convicted criminals an easy way to appeal their cases. They only needed to verbally opt for a cassational appeal when they received a verdict or they could tell the courts within seventy-two hours that they desired a cassational appeal. Convicts were expected to provide a reason for cassation, but cassational panels at higher courts reviewed the full case record and could find in favor of the defendant if any error was detected, even if the defendant's argument for cassation had no merit. In effect, cassation in the Soviet Union functioned as the first layer of appeals available to any individual convicted of a crime, and it was created in a manner to allow for the maximum latitude in adjusting decisions of lower courts.³²

The practice of appeal by way of *supervision* did not exist until the Bolsheviks took power, but its antecedents can be traced as far back as the rule of Peter the Great. His creation of the procuracy in 1722 laid the basis for an institution within the Russian legal system vested with the power to review legal cases (though actual courts did not exist yet as all verdicts were decided upon by the Tsar and his governors). A decree in 1733 marked the first time when procurators had the ability to protest illegal acts of local authorities to regional governors. Catherine the Great's creation of a Senate responsible for hearing court cases included provisions

³² For a summary of cassation's evolution from its origins in Revolutionary France to its adaptation in the Soviet Union see Ger P. van den Berg, "Recourse against Judgments in Civil and Criminal Cases in the Russian Federation," in *International and National Law in Russia and Eastern Europe: Essays in Honor of George Ginsburgs*, eds. Roger Clark, Ferdinand Feldbrugge, and Stanislaw Pomorski, (The Hague: Kluwer Law International, 2001), 23-34.

in acts issued in 1775 and 1780 which allowed regional procurators to lodge complaints (typically pertaining to alleged abuse of power and corruption at local levels) with procurators in Petrograd or with the Tsar or Tsarina. This ability to protest individual cases was redefined by the judicial reforms of 1864 and subsequent amendments in 1885 and 1889, which eliminated the ability of procurators to lodge protests.

Instead, the procuracy was supposed to oversee criminal prosecutions to ensure that they supported charges leveled by the state against defendants. The ability to review cases was granted to the Senate itself by its ability to “supervise” any ruling of a lower court. That is, officials in the Senate had the ability to review any decision made by an inferior court for any error, and could immediately alter sentences. After the Bolsheviks took power, a formalized system of supervisory appeals was instituted which granted appellate powers to the procuracy and the courts. Both procurators and judges of the Supreme Court of the RSFSR could lodge a supervisory protest of any case concluded by a court of initial instance or a cassational panel. Only procurators and judges of the Supreme Court were allowed to initiate supervisory protests, though they were often encouraged to do so by letters of appeal written by parties involved in a case, most often by convicts or representatives of convicts. Supervisory appeals were framed around specific legal arguments and played out only before judges convened by the Supreme Court. As a court of appeal, supervisory appeal represented the second, and final, layer of appeals available in the Soviet criminal justice system.³³

³³ Ibid., 25-29.

IV. Argumentation

The present research evaluates cases involving serious crimes such as murder, armed robbery, embezzlement, and counterrevolutionary activity in Moscow province courts and revolutionary tribunals from 1921 to 1928. These particular crimes are reviewed because only these serious crimes were appealed from Moscow province courts to the RSFSR Supreme Court. Analyzing how the Supreme Court amended the decisions of lower courts not only demonstrates how the highest level of the judiciary applied the law in actual cases, but also highlights issues high-level judges identified as problematic with the decisions of lower courts. Judicial decisions referencing appellant letters and testimony speak to the various ways in which early Soviet judges applied evolving criminal codes and codes of criminal procedure. An examination of such cases also reveals how appellants' understanding of socialist legality shaped their strategies in writing cassational, supervisory, and informal appeals.

Unlike previous scholarly work dealing with the Soviet judiciary during the period of the NEP, this dissertation employs an analytical framework based on close readings of criminal case records. From an institutional standpoint, case files are examined to determine how different seats of power within the judiciary exerted their influences against each other in disputes over verdicts, and how different institutions challenged the judiciary over questions of jurisdiction and the application of sentences. From a legal standpoint, judicial decisions at both the court of initial instance and appellant instances are cross-referenced with legal codes and legislation to determine how well Soviet judges understood the wording and intent of codified law. From the standpoint of the criminals themselves, the wording of appeals is analyzed to determine how convicts understood the law, their place in Soviet society, and what they thought they needed to

say to gain redemption. I show how judges, procurators, investigators, and individuals brought before courts understood how Soviet power and justice functioned in the legal realm.

I make the following arguments:

(1) The Soviet criminal appeals system extant during the NEP, especially the system of cassation, permitted more latitude for altering cases and advanced a more progressive notion of legality than any system based in Continental Law up until the 1920s;

(2) The architects of the Soviet system of appeals intentionally designed it to allow high court judges a maximal ability to overrule lower court decisions, partly as a method of supervising the activities of lower courts, and partly as a way to ensure that convicts had easy access to redress grievances;

(3) Appellate judges considered class background and the applicability of existing legal codes and legislation as the most important factors in deciding to alter sentences during the early 1920s;

(4) The Soviet system of appeals functioned not only as a legal remedy, but also as a forum where different judges, legal officials, and political officials from a variety of institutions exerted their influences in defining legal codes, enforcing sentences, or simply asserting their power against each other, thus obscuring the pursuit of justice in favor of pursuing personal and institutional expressions of power;

(5) Convicts and individuals accused of crimes combined traditional strategies of appealing to Tsarist-era courts with new notions of Soviet legality and power in creating a diverse array of appellate strategies. Such strategies ranged from well-articulated arguments based on deep understandings of legal codes and legislation to completely emotional appeals

indicative of complete ignorance of any of the rules pertaining to what constituted a legitimate argument for appeal;

(6) The ability to review the entire record of a case permitted Soviet judges to find in favor of defendants on the basis of legal reasons even if the defendants themselves did not identify or understand the legal reasons for a legitimate appeal;

(7) Though high court judges varied in their proclivities for reducing sentences or overturning verdicts, judges always adhered to formal legality in explaining how their decisions to adjust sentences fit within the framework of the law;

(8) Despite the potential for success with formal pathways of appeal (cassation and supervision), sending informal appeals directly to important officials sometimes met with more success than a formal appeal;

(9) The appeals process speaks to a court system that may have been chaotic, may have demonstrated repeated instances when judges failed to comprehend or apply legal codes, but which ultimately was in the process of becoming a regularized system of courts fully capable of adjudicating criminal cases.

V. Chapter Summaries

This analysis of the various methods of appeal, their efficacies, and how information travelled through a variety of legal channels extant during the 1920s in the Soviet Union is divided into the following six chapters.

The first chapter, “Historiography and Scholarship Influencing the Arguments and Perceptions of NEP-era courts,” surveys not only the historiography of NEP-era courts, but also discusses scholarly works of legality and justice during the late-Imperial and revolutionary

tribunal periods, which advance arguments directly addressed by this dissertation. Starting with studies of methods of appeal in the late Imperial period, this chapter highlights those works which have been most responsible for creating current understandings of the nature of late-Imperial and early-Soviet legality. Ultimately, this demonstrates how my treatment of the appeals process of criminal cases in the NEP-era fits within the frameworks of both the narrow historiography of courts and legality of the NEP-era and the wider historiography of the judicial process in the late-Imperial and early-Soviet periods.

The second chapter, titled “Avenues of Appeal: The Backgrounds of Soviet Cassation and Supervision,” traces the evolution of different types of Soviet criminal appeals from their antecedents in Imperial Russia and continental Europe. Both cassational and supervisory appeals had their roots in Revolutionary France, evolved to their various forms in continental Europe during the nineteenth century, were altered and employed in Imperial Russia, and were modified further at the outset of Bolshevik power in Russia. Emphasis is placed on how Imperial Russian forms of cassation and supervision compared with their analogues on the continent, and how Soviet legal scholars and officials sought to create Soviet forms of cassation and supervision which contrasted with all other appellate forms of Continental Law, especially in comparison to Imperial law. Despite nuanced differences over the question of the role of law in early Soviet Russia, legal officials’ agreed that the appellate system needed to be more progressive than any of its contemporaries or predecessors.

As a result, Soviet cassation and supervision provided Soviet citizens and judicial officials with more grounds to appeal cases than was ever envisioned by the creators of the original versions of cassation and supervision. In addition, judges attached to cassational and supervisory panels had more power to alter verdicts than ever before; they could remand cases,

alter sentences, or entirely overturn verdicts on the bases of anything from procedural malfeasance, to misapplications of criminal code, to the uniquely Soviet judicial power to decide that the verdict of a case was plainly unjust. In contrast to previous appellate systems, Soviet appeals were designed not only to provide appellants who lacked legal knowledge with the ability to easily lodge appeals, but the system was designed specifically to prejudice certain classes in the pursuit of socialist justice. Having established how this system was designed, the remaining chapters will discuss how it actually functioned and what issues surrounded its application.

The third chapter, “From Above and From Below: The Flow of Information between County, Province, and Russian Republic Courts,” not only assesses how three levels of courts actually understood and applied supervision and cassation, but also determines how higher-level courts used information from cassational and supervisory reviews to assess how well lower-level courts adhered to legal regulations and the criminal code. Although this chapter focuses mostly on how people’s, provincial, and republican courts interpreted reports and directives concerning appeals, the broader goal is to provide a picture of the contestations between the different levels of courts in Moscow province during this early period of the Soviet judiciary. Tracing how different levels of courts communicated with each other, what they emphasized as important, how they cooperated, and most importantly, how they clashed and attempted to assert themselves reveals much about how the courts actually functioned, and how officials at high-level courts regarded the efficacy, achievements, and failures of low-level courts. This depiction of the interaction between different levels of courts provides the stage for which courts actually sparred over individual cases, which is one of the primary topics explored in the next chapter.

The fourth chapter, “Cassation in Courts and Tribunals: Appellant Strategies, Judicial Verdicts, and Cassation as an Expression of Power,” explores how cassational panels attached to the RSFSR Supreme Court and the All-Russian Central Executive Committee (*vserossiiskii tsentral’nyi ispolnitel’nyi komitet*, hereafter referred to by its acronym, VTsIK) Revolutionary Tribunal judged cassational cases appealed from courts and tribunals in Moscow province during the NEP. A series of individual case studies are combined with data surveyed from dozens of cases to assess which factors played the most significance in influencing judicial decisions in cassational instances. Though judges often failed to provide detailed explanations of their cassational verdicts, they usually succinctly identified the factors most responsible for shaping their decisions. In some instances, judges provided detailed explanations, indicating how cassational judges applied criminal codes and legislation, what types of appellant arguments resonated the most in influencing decisions, and what factors not found in the legal codes or legislation shaped final verdicts.

The use of case studies also illustrates several themes which spanned the arguments presented by appellants before cassational panels; such arguments demonstrate new, albeit often flawed, conceptions of Soviet legality combined with old strategies carried over from the Imperial period. Appellant strategies ranged from nuanced applications of legal codes to completely non-legal arguments attempting to portray the appellant as a sympathetic figure deserving of a second chance. A study of criminal appeals and judicial decisions not only explains how criminal appeals addressed the grievances of convicted criminals, it also shows how both judges and criminals understood “socialist” legality during the NEP. This chapter concludes by reviewing situations when cassational panels sparred with lower courts over remanded cases which resulted in lower courts refusing to render judgments in line with

cassational findings. Such cases speak to a wider issue: the tension between different levels of courts. Overall, the archival record illuminates how different levels of the judiciary exerted or resisted power through the cassational process, and how both judges and convicted criminals attempted to claim agency within the framework of this first stage of appeals. Ultimately, however, high-level judges often won out by adhering to rigid legal formalism both in rejecting appellant arguments and in battling against the decisions of low-level courts.

The fifth chapter, “Appeals from Above Spurred from Below: Supervisory Review as a Window into the World of High Court Decisions, Procedural Peculiarities, and Appellate Gridlock,” examines case studies involving the process of supervisory review. In contrast to cassation, only a Supreme Court procurator or judge could directly initiate a supervisory review. Since Supreme Court judges and procurators were also the only ones who presented and judged cases sent to supervisory review, it is no surprise that so many of those cases resulted in drastic alterations to their sentences. Alterations to sentences were supported by Supreme Court judges’ detailed explanations, which provide the best examples of how the highest court judges considered, applied, and reasoned through legal code.

Beyond what such explanations reveal about judicial decisions, this chapter shows how the selection process for supervisory reviews betrayed institutional conflicts and exploitations of the criminal appellate system. What was supposed to function as a second layer of appeals used primarily by high-level judges and procurators as a means to instruct lower courts how to apply legal codes and decrees was instead abused by lower-level officials, who forced the legal system to consider additional appeals for convicts underserving of any additional appeals. In particular, prisons officials concerned with overcrowding flooded procurators with requests to recommend the worst criminals for supervisory reviews. This was not how the supervisory system of review

was supposed to function, but procurators concerned with adhering to formal legality had to consider the requests, deny them, and then waste valuable time processing the denials.

The final chapter, “Informal Appeals: Petitions to Officials and Circumventions of the Judicial Process,” explores instances when a party involved in a criminal case, typically an individual accused of a crime, contacted an official who had no direct connection with the case, but whose lofty position and political influence influenced the course of the case in favor of the appellant. Informal appeals are distinguished from the formal appeals discussed in the previous chapters in that they involved defendants invoking the influence of officials outside the typical boundaries of the legal process. Such appeals were not illegal, but were not codified as legitimate methods of redressing legal grievances. To the appellants themselves there was little difference between formal appeals and informal appeals; all that mattered was whether the appeal resulted in success. Appellants’ informal appeals, though they bypassed the formal system of justice, had the ability to accomplish far more than formal appeals---even to the point of ceasing judicial proceedings mid-case. This chapter identifies what types of officials received informal appeals, why they argued on behalf of appellants, and how officials’ willingness to fight for appellants illustrated a key aspect of the nascent legal system: “justice” was delivered in ways which reinforced the realities of power. Abilities to apply and gain “justice” depended on how well individuals could apply the rules of the system in their favor, and failing that, whether a patron could bend (but not break) the rules in their interests. Ironically, it was the very act of skirting the boundaries of the legal system which guaranteed appellants the best chance at achieving, what they would have considered, a just result.

VI. Archival Methodology

Case files and archival data cited in this dissertation are held at two archives. Most cases are currently stored at the *Tsentral'nyi gosudarstvennyi arkhiv moskovskoi oblasti* (Central State Archive of Moscow Oblast, hereafter referred to as TsGAMO), *fond 5062* (Moscow Guberniia Court, note that hereafter *guberniia* will be rendered by its English translation of “province”), *opis 3* (Cases Kept in Permanent storage, 1919-1930), and *fond 162* (Moscow Province Procuracy), *opis 1* (Files in Permanent Storage, 1918-1925).

Fond 5062, opis 3 includes slightly more than 1,000 cases brought before courts and revolutionary tribunals throughout the 1920s. Files in this *opis* include pretrial investigations, arrest orders, witness depositions, interrogations of defendants, hand-written transcripts of judicial proceedings, expert testimony, verdicts providing explicit reasoning behind judicial decisions, and all appeals subsequent to the conclusion of the case.³⁴ The appeals themselves feature letters written by appellants, receipts of case files transmitted back and forth between relevant courts, requests for case files from the panel overseeing the appeal, and the panel’s final ruling. This dissertation surveys 120 embezzlement, theft, assault, rape, and murder cases drawn from *fond 5062, opis 3*, spanning from 1921 to 1928. These cases have been chosen for meeting a few criteria: they included an appeal, a final resolution, and they have enough documentation to piece together the judicial process from the beginning to the end of a case.³⁵ Such cases are evaluated on the basis of how investigators framed initial inquiries, how procurators pursued the case, why judges ruled as they did in the court of first instance, and how all of these actions conformed to existing legal guidelines and the criminal code and criminal code of procedure.

³⁴ Each file is titled with the names of all defendants and the articles of the criminal code by which they were convicted.

³⁵ Unfortunately, many of the case files in *fond 5062, opis 3* lack one or more documents critical to understanding the course of a case. Those files have been omitted from this dissertation.

Next, cases are evaluated on the basis of the strategies employed by appellants, the effect of those strategies in influencing judicial decisions, and how judges ruled on appeals. This dissertation evaluates the course of actual cases with the goal of determining their characteristics and whether they conformed to formal legality.

Fond 162, opis 1 includes cases which fit the category of informal appeals. Such cases are typically difficult to locate in the archives as they involve individuals appealing directly to officials outside the scope of formal legality. These cases, as opposed to the cases found in *fond 5062*, often focus on individuals accused of political, counterrevolutionary crimes. I analyze these case studies with the goal of determining what types of appeals were attempted, who received appeals, and how the recipients circumvented the typical routes of legality in advancing the causes of informal appellants.

The remainder of cases, especially those cases heard during the period of revolutionary tribunals, are held at the *Gosudarstvennyi arkhiv rossiiskoi federatsii* (State Archive of the Russian Federation, hereafter referred to as GARF), *fond R-1005* (The Supreme Tribunal of the Russian Central Executive Committee, Supreme Court of the RSFSR), in a variety of *opisi*. These files' cases are used to exemplify or augment the points made by the cases found at TsGAMO.

The conclusions reached on the basis of a close reading of cases is compared not only against the works written by historians, political scientists, and legal scholars, but also by testing how these cases reflect trends evident from a reading of a few legal journals contemporaneous to my cases. The journals in question include *Proletarskii sud*, *Rabochii sud*, *Pravo i zhizn'*, and *Ezhenedel'nik sovetskoi iustitsii*, all of which featured articles written by Soviet jurists in the 1920s addressing the major goals and problems facing the Soviet legal system

Chapter 1: Historiography and Scholarship Influencing the Arguments and Perceptions of NEP-era courts

In comparison to the few studies of the 1920s exploring the judicial system in general, and criminal appeals in particular, Russian and Western scholars have written extensively on the judiciary and legality in the late-Imperial period and early Soviet period up until the re-organization of courts in 1922.

I. Historiography of Late-Tsarist Era Courts

As a reference describing the organization of Russian courts, the use of judicial interpretation and the rules governing criminal appeals resulting from the Court Reform of 1864, Brian Lee Levin-Stankevich's dissertation provides an indispensable guide illuminating the corridors of Russian jurisprudence during the latter half of the nineteenth century.¹ His chapters on the structure and procedure of "the private law bureaucracy" are the most concise and accurate presentation of the cassational system of appeals: how individuals opted for cassation, who judged cassational appeals, what guidelines applied to judicial rulings, and the general framework overseeing how cassation functioned.² My work identifies clear links between the Imperial system of cassational appeals and the Bolshevik system of cassational appeals, and such links owe much to Stankevich-Levin's meticulous cataloguing of the evolution and application of the cassational system employed after 1864.³

¹ Brian Lee Levin-Stankevich, "Cassation, Judicial Interpretation and the Development of Civil and Criminal Law in Russia, 1864-1917: The Institutional Consequences of the 1864 Court Reform in Russia" (PhD diss., State University of New York at Buffalo, 1984).

² See *Ibid.*, chpts. 4-5.

³ Levin-Stankevich mentioned the elimination of the Tsarist system of courts by February 1918, only to have the basic structure of courts reintroduced by the end of the Civil War in the early 1920s. Understandably, he only hinted

Despite the value of his work, Stankevich-Levin's dissertation represents only a first attempt by Western scholars to determine the characteristics of an extremely complex system. He admits that his analysis of judicial interpretation and cassational appeals "were only parts of a whole . . . that the reformed judicial system was not itself 'the' Russian legal system."⁴ Consequently, he is unable to determine whether his research reveals trends particular to the realms of judicial interpretation and cassational appeals, or if his work is indicative of how the Russian legal system operated in general. Ultimately, he concludes his study by acknowledging that such issues fall outside the scope of his work, as they "require extensive research into those other legal orders and systems of Imperial Russia."⁵

Gareth Popkins' work on the tension between local custom and written law in courts of appeal during the late-Imperial period provides insight into the deficiencies plaguing rural courts and the methods by which peasants balanced their understandings of justice with customary law before appellant courts. His focus on civil cases involving land tenure, inheritance, and family property finds that Tsarist criminal codes often failed to define a clear body of law capable of addressing peasant grievances. Given the legal lacunae and the inability of judges to rule on the basis of law, peasants displayed ingenuity in arguing for the enforcement of rural customs, in many cases imploring the use of fabricated customs to achieve their goals before judges who were unaware of the relevant laws or unwilling to enforce them.⁶

at possible connections between the Bolshevik and Imperial system as his subject did not extend beyond the late-Imperial period. See *ibid.*, 366-367, 379.

⁴ *Ibid.*, 376.

⁵ *Ibid.*

⁶ Gareth Popkins, "Code versus Custom? Norms and Tactics in Peasant Volost Court Appeals, 1889-1917," *Russian Review* 59, no. 3 (July, 2000): 408-424, and *idem.*, "Peasant Experiences of the Late Tsarist State: District Congresses of Land Captains, Provincial Boards and the Legal Appeals Process, 1891-1917," *The Slavonic and East European Review* 78, no. 1 (Jan., 2000): 99-114.

While Popkins' subjects were rural peasants who voluntarily engaged with courts in civil cases, my subjects were urban workers and peasants in the area surrounding Moscow who were forced to appear before courts to account for criminal activity. In addition, the invocation of customary law in Tsarist courts had no analogue in Bolshevik courts; arguing for the application of customary law or arguing for customary precedent simply was not an option.⁷ But Popkins' peasants were often the very same types of individuals who made their way to Moscow by the 1920s and found themselves hauled before Bolshevik courts. My analysis of court cases appealed before appellant panels in Moscow province frequently involved individuals who were of peasant origin, identified as workers who had started out as peasants, or who had peasant parents. Thus, it is imperative to determine what, if any lessons, such individuals carried over from their Imperial experiences. My work shows that criminal appellants did indeed learn lessons from Tsarist courts, not only with how they represented themselves before judicial bodies, but also with the propensity of some appellants to carefully study and apply those aspects of the law which were most relevant to their cases.⁸

Popkins' scholarship challenges Jane Burbank's description of peasants as active participants in late-Tsarist legal culture.⁹ Burbank argues that peasants typically abstained from

⁷ For the use of customary law in Tsarist courts see Joan Neuberger, "Popular Legal Cultures: The St. Petersburg *Mirovoi Sud*," in *Russia's Great Reforms, 1855-1881*, eds. Ben Eklof, John Bushnell, and Larissa Zahkarova, (Bloomington, IN: Indiana University Press, 1994), 231-246.

⁸ For more on interactions between rural courts and the peasantry see Thomas Pearson, "Russian Law and Rural Justice: Activity and Problems of the Russian Justices of the Peace, 1865-1889," *Jahrbücher für Geschichte Osteuropas* 32, no. 1 (1984): 52-71. For an example of how peasants interacted with, and comprised the juries of, rural courts see Alexander K. Afanas'ev, "Jurors and Jury Trials in Imperial Russia, 1866-1885," in *Russia's Great Reforms*, 214-230.

⁹ Popkins, "Peasant Experiences of the Late Tsarist State," 113.

attempting to impose customary practices on Imperial judges in courtroom situations.¹⁰ She argues that instead, peasants became familiar with Tsarist legal codes and used their newfound knowledge to their advantage in courtroom settings.¹¹ Burbank disagrees with previous interpretations characterizing the peasantry as inherently resistant and hostile to the imposition of Tsarist legality. Instead, she sees the fusion between peasant self-inculcation of legal processes and their alacritous application of legal knowledge in the courtroom as an indication that “rural people at township courts made Russia a law-based state in their lives, for their time.”¹²

Though Cathy Frierson agrees with Burbank’s assertion that peasants employed legal knowledge in successfully traversing the Imperial court system, Frierson cautions that Burbank overextends her argument; peasants were interested in courts only insofar as the courts could help them accomplish what they wanted through civil litigation. As a result they, like any interested party from any social background, only acquired knowledge of laws which pertained to their cases. Frierson claims that peasants did not necessarily gain a wider legal knowledge, and that more serious crimes at local levels were not adjudicated through the courts, but rather with vigilante justice.¹³ Moreover, with the exception of one chapter dealing with minor crimes,

¹⁰ See Jane Burbank, *Russian Peasants Go to Court: Legal Culture in the Countryside, 1905-1917* (Bloomington, IN: Indiana University Press, 2004), and *idem.*, “Legal Culture, Citizenship, and Peasant Jurisprudence: Perspectives from the Early Twentieth Century,” in *Reforming Justice in Russia, 1864-1994: Power, Culture and the Limits of Legal Order*, ed. Peter Solomon (Armonk, NY: M. E. Sharpe, 1997), 82-106.

¹¹ For her discussion of the problems with the simple dichotomy between Tsarist legal culture and rural customary law see Burbank, *Russian Peasants Go to Court*, 5-10.

¹² *Ibid.*, 31.

¹³ Cathy Frierson, “‘I Must Always Answer to the Law’: Rules and Response in the Reformed Volost’ Court,” *Slavonic and East European Review* 75, no. 2 (1997): 308-334. Also see Corinne Gaudin, *Ruling Peasants: Village and State in late Imperial Russia* (DeKalb, IL: Northern Illinois University Press, 2007), for a similar view on the relationship between peasants and the law in late-Imperial Russia. Tracy McDonald points out Frierson’s criticism of Burbank’s work in McDonald, *Face to the Village*, 84.

Burbank's work focused entirely on civil court cases.¹⁴ Claimants in civil courts would have been foolish to raise cases without knowledge of the procedures and codes governing Tsarist courts. That they raised cases in civil courts did not demonstrate their assimilation as subjects of Tsarist courts or that they recognized the primacy of Tsarist legality. Rather, Burbank's peasants' voluntary engagement with civil courts points to their recognition that they could achieve their goals through specific legal knowledge. While it is true that peasant understandings of legality and their interactions with the judiciary contributed to the evolution of the Tsarist legal system and shaped how judges ran their courts on a day-to-day basis, scholars should be cautious not to ignore the pragmatic reality of peasants using the formal legality of courts to achieve their narrow goals.¹⁵

Building on Burbank's analysis of voluntary actors in civil cases in the late-Imperial period, I study how the experience of defendants forced to appear before Bolshevik courts resulted not so much in their transformations into Soviet citizens, but in their new understandings of what Soviet legality meant, what they thought Soviet courts were trying to accomplish, and how they believed they should describe themselves to the courts. An analysis of criminal cases reveals how individuals forced to interact with the judiciary thought they were supposed to present themselves as ideal citizens deserving of a second chance. This interaction with the legal system speaks more to what convicts learned regarding Soviet power and fashioning themselves

¹⁴ Burbank, *Russian Peasants Go to Court*, chpt. 5. In contrast to her chapters on civil cases, Burbank's evidence does not reveal legal knowledge on the part of those accused of misdemeanors, for which the maximum possible penalty was thirty days detention along with a small fine. Most cases resulted only in a fine. This chapter does not demonstrate volunteerism or legal knowledge as much as rural criminal courts' ability to resolve minor disputes. See *ibid.*, 122.

¹⁵ This dissertation approaches Burbank's argument in more depth in ensuing chapters, especially in assessing the application of her arguments concerning legal knowledge of laymen.

as loyal subjects than to their ability to influence judicial decisions through the application of legal knowledge.

The experience of such individuals and the arguments they presented also allows researchers to determine how easily laymen could penetrate what has often been considered to be an interminably confusing set of legal codes and guidelines. Convicts and those accused of serious crimes had every incentive to understand and exploit legal codes in the pursuit of a reduced sentence or acquittal. This dissertation's cases show that some individuals, be it through their own ingenuity or legal aides, were able to effectively apply and interpret existing legality on their behalves. Understanding the often contradictory and shifting codes and laws was the exception rather than the rule. But at the same time, those who endured the legal process came away with new notions of Soviet legality, how the legal system functioned, and what Soviet power meant when wielded by judicial officials.

II. Historiography of Revolutionary Tribunals

Following the overthrow of the Tsar and the ascent of the Bolshevik Party, the old system of Imperial courts was abolished by the Council of People's Commissars' (*sovet narodnikh kommissarov*, hereafter referred to as Sovnarkom) Decree Number One on Courts on November 24, 1917.¹⁶ Aside from eliminating all civil and criminal Tsarist courts, all Imperial judges, procurators, investigating magistrates and attorneys were removed.¹⁷ The Decree established two

¹⁶ See *Sobranie uzakonenii i rasporiazhenii raboche-krestianskogo pravitel'stva, RSFSR, 1917* in Samuel Kucherov, *The Organs of Soviet Administration of Justice: Their History and Operation* (Leiden, Netherlands: E. J. Brill, 1970), 23-24.

¹⁷ Kucherov, *The Organs of Soviet Administration of Justice*, 23-25. The Courts of the Peace were the only judicial institution retained from the Imperial period, though they were suspended until their personnel could be replaced by judges elected by "direct democratic elections." In the interim, Courts of the Peace were staffed by City and Provincial Soviets of Workers', Soldiers' and Peasants' Deputies.

types of judicial institutions: people's courts and revolutionary tribunals. People's courts were given jurisdiction over all non-political crimes, whereas revolutionary tribunals were formed from local soviets to oversee the trials of all criminals charged with counter-revolutionary activity against the state.¹⁸ Though there was supposed to be a strict division between political and non-political crimes, changing definitions of what constituted political crimes and the revolutionary tribunals' propensity to handle non-political cases blurred lines of jurisdiction, a problem discussed in chapters two and three of this dissertation.

Only recently Western scholars have sought to understand revolutionary tribunals on the basis of the archival record. Both Christy Story and Matthew Rendle use cases stored at TsGAMO and GARF to explain how revolutionary tribunals functioned, though their studies' merits reflect varying degrees of analytical rigor. But before assessing the current state of Western works it is necessary to survey the most influential Russian-language studies responsible for some of the earliest perceptions of the key characteristics of the legal system under the revolutionary tribunals.

While Iuri Titov focuses the brunt of his work on the creation and function of local revolutionary tribunals, he also stresses the mechanics of the VTsIK's Revolutionary Tribunal, including its appellate powers. Though he details many important, previously unexplored aspects of the tribunal system, his Soviet-era assessment of the activities of revolutionary tribunals, from the local level to the VTsIK, lack a critical perspective. Despite finding a number of instances when the rulings of local tribunals demonstrated errors which required remediation by the VTsIK

¹⁸ *Dekrety sovetskoi vlasti: Tom I.* (Moscow: Gos. Izdat-vo politicheskoi literatury, 1957), 124-126.

tribunal, he still asserts that the system of tribunals strictly adhered to revolutionary justice.¹⁹ In doing so, the tribunals fully fulfilled their historic mission to protect the gains of the October Revolution and defend the Soviet Union against attacks from both external and internal enemies. Such conclusions seem not only ideologically dogmatic, but also at odds with much of his research. In addition, he bases many of his conclusions on surprisingly few examples involving actual trial records. This is especially surprising when, as this dissertation shows, he could have cited cases which would have supported his vision of the tribunals. Though his work represents a commendable attempt to discern the nuances of a complex system, he strays too often to the realm of the polemical, especially in ignoring some of his own evidence.²⁰

The tribunal system described by V. Portnov and M. Slavin refrains from polemics, instead describing a system which mostly failed to achieve the ideological goals envisioned by Soviet leaders. Portnov and Slavin break new ground in the study of revolutionary tribunals by linking abstract concepts of legality with the archival record.²¹ They trace how different arguments, decrees and proclamations led to the formation of the revolutionary tribunals at their

¹⁹ Those who served on tribunals and commented on their function agreed that “revolutionary justice” involved protecting peasants and workers by actively targeting and convicting those who threatened the October Revolution’s gains, and strengthening the power of the proletariat through the application of a justice system prejudiced in favor of the proletariat dictatorship. “Revolutionary justice,” was supposed to employ the tribunals to target class enemies and protect class interests. See, for example, A. D’iakonov, “Posleoktiabr’skie eskizy,” *Ezhenedel’nik Sovetskoi iustitsii*, no. 44-45 (1922): 10-11, and See P. Lavrov, “Vospominaniia,” *Proletarskii sud*, no. 4-5 (1924): 25-26. Revolutionary justice is explored in more depth in chapter two.

²⁰ For his tripartite study on revolutionary tribunals see Iu. Titov, *Sozdanie sistemy sovetskikh revoliutsionnykh tribunalov* (Moscow: RIO VIuZI, 1983); idem., *Razvitie sistemy sovetskikh revoliutsionnykh tribunalov* (Moscow: RIO VIuZI, 1987); idem., *Sovetskie revoliutsionnye tribunal v mirnye gody stroitel’stva sotsializma*, (Moscow: RIO VIuZI, 1988).

²¹ Portnov and Slavin addressed previous works dealing with the revolutionary tribunals in their introduction. Their review of previous works illustrated how few studies, even Russian-language studies, have treated revolutionary tribunals. The majority of the works listed were written by prominent jurists who were directly involved in the formation of the revolutionary tribunals. Only a handful of works were written by scholars in subsequent periods. Most of those works are addressed in this chapter. See Portnov and Slavin, *Stanovlenie pravosudiia Sovetskoi Rossii (1917-22gg.)*, (Moscow: Nauka, 1990), 3-8.

earliest stages. They cite available archival documents in determining that the revolutionary tribunals failed to act as a legal instrument of violence against class enemies, which, as they describe, was how Soviet leaders initially viewed the role of the tribunals.²² Their work has proven pivotal for subsequent analyses of the tribunal system, as Western scholars explore similar resource bases to arrive at similar conclusions regarding the failure of the tribunal system to achieve the desires of Soviet legal and political officials.

Christy Story's dissertation marks the first attempt by Western scholars to define the characteristics and unforeseen consequences of the system of revolutionary tribunals from 1917 to 1922 on the basis of archival data.²³ She focuses on theoretical debates among Soviet legal scholars on the role of revolutionary tribunals, how the period of revolutionary tribunals compared with the early period of the French Revolution, and the institutional structure of the revolutionary tribunals.²⁴ To her detriment, she refrains from using tribunal case records over the first three quarters of her dissertation.²⁵ Though she admits that her "available sources tantalize by presenting only a small and arbitrary sample," and "because of the activity from the Civil War . . . [her] chapter [only] devotes itself to studying cases from the Moscow tribunal's activities in 1919," she still commits to far-reaching conclusions unsupported by adequate

²² See *ibid.*, 53-88. Portnov and Slavin cited documents stored at the *Tsentral'nyi gosudarstvennyi arkhiv Sovetskoi Armii* (Central State Archive of the Red Army, or TsGASA, now known as the *Rossiiskii gosudarstvennyi voennyi arkhiv*, RGVA, or Russian State War Archive) and the forerunner to GARF: TsGAOR. A discussion of TsGAOR is included below in this dissertation's section detailing the work of M. V. Kozhevnikov.

²³ Christy Story, "In a Court of Law: the Revolutionary Tribunals in the Russian Civil War, 1917-21" (PhD diss., University of California, Santa Cruz, 1998). Though her dissertation only focused on the period of 1917-1921, revolutionary tribunals continued to handle cases until the middle of 1922.

²⁴ *Ibid.*, 1.

²⁵ See *ibid.*, intro and chpts. 1-6. Her remaining two chapters did include tribunal records, but in a slipshod manner, as described in the remainder of my section describing her work.

documentation.²⁶ Her narrow source base includes “discrepancies in the files . . . some are completely haphazard and seem consistent with an illiterate and incompetent judicial system, while others contain language regarding the strength of a new socialist law.”²⁷ Her suggestion of the lack of efficacy and consistency of revolutionary tribunals is unconvincing given the limitations of her sources.

Story also fails to accurately portray the system of appeals, as she claims “to appeal to a cassational court requires no proof on the part of the supplicant. Rather it will literally ‘retry’ the original case.”²⁸ This constitutes the majority of her discussion of cassation, as she limits her focus to a single paragraph. Cassational panels (they were not, as she described them “courts”) had the ability to review the entire case record for errors, but they could not recall witnesses or review evidence, or do anything which resembled a retrial of a case.

Despite the shortcomings of her work, Story gives compelling indications of how Soviet citizens strategized their appeals to tribunals. She claims that she finds only one consistency throughout her cases: “a letter sent by parents or wives on behalf of the prisoners.”²⁹ On the one hand, she finds that letters often represented nothing more than the replication of form letters written by Tsarist clerks on behalf of prisoners; such letters spoke of families torn asunder by imprisonment and invoked military service records as reasons to release a prisoner. She also shows, however, that other letters “are illustrative of a larger moment of transition for the justice

²⁶ See *ibid.*, 146.

²⁷ *Ibid.*, 152.

²⁸ *Ibid.*, 106. Though she failed to accurately portray cassation, Story did provide useful information on the role of the Moscow Soviet in overseeing amnesties. See, for example, *ibid.*, 123-128.

²⁹ *Ibid.*, 151

system,” in how they invoked “Comrade President” in their greetings and attempted “to achieve a working understanding of what the new system of law and order was about.”³⁰

This dissertation shows that by the end of the tribunal period such letters demonstrated more than just a working understanding of the new system of law. In some cases, petition writers demonstrated highly articulated understandings of the codes of law applicable to their cases.³¹ And though Story was correct in identifying the replication of tropes from the Tsarist period in appeals before tribunals in 1919, she did not explore the variety of developing strategies which fused old ideas of legality with new understandings of both legal codes and Soviet power.

Matthew Rendle’s study of the construction of revolutionary tribunals shows how Soviet leaders envisioned their purposes, and how revolutionary tribunals ultimately failed to become effective tools of Soviet justice against class enemies over the course of the first few years of Soviet power. It provides an invaluable analysis of the function (both theoretical and on a day-to-day basis) of revolutionary tribunals, and is the first Western study to combine press accounts with archival data of court cases in determining how tribunals actually dealt with cases.³² Rendle’s work uses press reports and archival records to reconstruct the details of three case studies, which he uses to illustrate how revolutionary tribunals failed to achieve the type of class justice envisioned by such prominent theoreticians as Iuri Martov, Peter Stuchka, and Vladimir Lenin. That Rendle utilizes the archival record to recreate the step-by-step process by which a revolutionary tribunal processed a case set his work apart as innovative, as no previous Western

³⁰ Ibid., 152-153.

³¹ Though, as case studies in chapter four of this dissertation argue, during the early 1920s Supreme Court judges mostly ignored appellants’ arguments in applying a set of criteria based on codified legality and class considerations.

³² Matthew Rendle, “Revolutionary Tribunals and the Origins of Terror in Early Soviet Russia,” 693-721.

studies of the judiciary for this period include close readings of court records in assessing the actual functioning of revolutionary tribunals.

Rendle's arguments regarding revolutionary tribunals in particular and the state of the Soviet judiciary in general influence some of the central issues discussed in this dissertation. He finds that revolutionary tribunals struggled to maintain jurisdiction and control over their cases against the encroachment of the political police, then known as the Extraordinary Commission (*chrezvychaynaia komissia*, hereafter referred to as the *Cheka*).³³ The inability of the courts to assert themselves against the political police is a phenomenon which, this dissertation demonstrates, was replicated by struggles between the *Cheka*'s successor, the Joint State Political Directorate (*Ob''edinonnoe gosudarstvennoe politicheskoe upravlenie pri SNK SSSR*, hereafter referred to as the OGPU), and courts during the NEP era.³⁴ And while I agree with his assertion that the failure of the tribunals to become an effective instrument of legal terror against class enemies helped lead to their discontinuation, I go a step further in showing that their failure laid the groundwork for the development of a regularized system of courts, one whose seeds of development can be identified in the very "failures" associated with the revolutionary tribunals.

³³ Ibid., 716-721. The *Cheka* was originally established as the All-Russian Extraordinary Commission for Combating Counter-Revolution and Sabotage (*vserossiiskaia chrezvychaynaia komissia po bor'be s kontrrevoliutsiei i sabotazhem*, the name was later shortened to simply "the Extraordinary Commission," or *Cheka*) by a protocol of the Sovnarkom on December 7, 1917. It existed under a number of different names and with a plethora of committees and until it was replaced by the GPU (discussed in the following footnote) on February 6, 1922 after the Ninth All-Russian Soviet Congress by a VTsIK decree.

³⁴ Ibid. The OGPU was originally the GPU (*gosudarstvennoe politicheskoe upravlenie*) until the formation of the Soviet Union necessitated the creation of a single directorate in charge of all political police across the different republics comprising the Soviet Union. The result was a decision on November 15, 1923, by the Central Executive Committee (TsIK) to grant an all-union directorate (the OGPU) the right to investigate cases of sabotage, arson, explosion, wrecking, with the ability to apply all measures of repression against offenders. See Kucherov, *The Organs of Soviet Administration of Justice*, 74.

I contend that these were hardly failures at all, but rather the first steps of a nascent judicial system struggling to adhere to normative values of justice. Rendle extends his argument by showing how many saw the revolutionary tribunals as too lenient, especially when dispensing justice to class enemies.³⁵ Though Rendle is convincing in his assessment of the lenience attributed to revolutionary tribunals, I argue it is this very lenience and the propensity of the subsequent courts during the NEP period to lessen sentences during appeals which made the court system a viable arbiter of justice for class enemies and Soviet citizens alike.

His arguments explaining why revolutionary tribunals' failed to write transcripts of judicial proceedings are only partially convincing. While it was true that stenographers were scarce, Rendle also argues that tribunals failed to keep transcripts because many cases were cancelled due to poor investigative work, insufficient evidence, or VTsIK decrees granting amnesties which ended judicial proceedings.³⁶ This dissertation confirms that transcripts would not have been kept when cases ended before a court of first instance could reach a decision, but transcripts were kept when poor investigative work or insufficient evidence failed to stop a case, the case subsequently resulted in a conviction, and then the convicted party filed an appeal on the basis of procedural malfeasance on the part of investigators or the claim that there was insufficient evidence to merit a conviction. In addition, the archival record identifies many cases when convicted criminals successfully invoked amnesties as reasons for the reductions or cancellations of their sentences, and such cases sometimes included court transcripts. Thus, Rendle is right in asserting that the cessation of judicial proceedings before the rendering of a verdict resulted in the disposal of a transcript. But there were many cases when revolutionary

³⁵ Ibid., 707-708.

³⁶ Ibid., 703-704.

tribunals convicted a defendant, retained the transcript, and the case was later overturned by the appellate process due to insufficient evidence, investigative errors, or the invocation of an amnesty.

Rendle speculates that transcripts may not have been kept because “the Bolsheviks saw many of the trials as unsuccessful.”³⁷ While it may have been true that in the first few years after the Bolsheviks took power that tribunals disposed of transcripts which might have hinted at weakness in the Bolshevik judiciary, this dissertation demonstrates that this was certainly not so by the end of the period of revolutionary tribunals. Certainly, by the time legal officials decided to restructure the courts in 1922, they saw the necessity of producing full transcripts of trial proceedings, especially so that appellate panels could review the proceedings of the original trial. This recognition, like many of the adjustments to the legal system analyzed in this dissertation, provides evidence of institution building; the legal system evolved through trial and error, discovering what processes worked, and which processes did not.

Full transcripts were included in cases which resulted in successful appeals; many successful appeals showed that low-level courts frequently reached convictions on the basis of shoddy investigative, prosecutorial, or judicial work---all of which pointed to weaknesses in Soviet power. If the Bolsheviks were concerned with trial transcripts revealing specious legality which could lead to doubts of Bolshevik power, then why did they retain so many transcripts indicative of shoddy casework by low-level court officials during the 1920s? These minor issues aside, Rendle’s work represents the first successful attempt by Western scholars to utilize the archival record in exploring how revolutionary tribunals judged cases, and how revolutionary

³⁷ Ibid., 704.

tribunals failed to fulfill the vision of Soviet leaders during the first few years after the October Revolution. I depart from where his work ends.

III. Historiography of NEP-era Courts

In contrast to the historiography of Imperial courts and revolutionary tribunals, historians have still only barely broached the topic of courts during the NEP period. Most studies include it as a chapter or sub-section in an expansive study of courts covering a wider period. In addition, study of the Soviet legal system during the NEP has remained almost entirely the domain of legal scholars and political scientists, despite the fact that historians have addressed the period both before and after the NEP in some depth. With the exception of Tracy McDonald's exploration of NEP-era courts in Riazan, scholars have failed to link abstract characterizations of courts with hard evidence from the archival record describing how judicial trials actually functioned.

Judah Zelitch's work is the first attempt by Western scholars to describe the Soviet criminal justice system from the October Revolution until the end of the NEP.³⁸ He describes the evolution from a dual system of courts and revolutionary tribunals to a unified system of courts, all personnel involved at every level of the judicial system, the different ways which courts were structured over the course of the 1920s, and the applicable rules of procedure at every step of a case, from the initial investigation to the final appeal. His work, however, relies entirely upon Soviet published sources, Soviet newspapers, legal journals, and descriptions of trials personally attended by the author. Most importantly, he focuses almost completely on an intense description of the characteristics of courts, often at the expense of developing a structured argument evaluating the actual functioning of the courts on a day-to-day basis. While Zelitch often cites

³⁸ Zelitch, *Soviet Administration of Criminal Law*.

anecdotal examples from trials he personally attended, he never gained access to full transcripts of any trials, and he routinely cites his personal experiences in positing wide-ranging generalizations. For example, when summarizing his attendance of court cases he focuses overwhelmingly on the physical appearance of the courtroom and its participants at the expense of describing actual court proceedings. He manages to reach the unsubstantiated conclusion “that the people as a whole took a very positive attitude towards the courts, the dispensers of justice,” without providing any evidence aside from his personal observations.³⁹

While his lack of evidence does not mean that his observations are all incorrect, it does mean that his work must be approached cautiously, especially when knowing he advances some of his arguments on the basis of anecdotal evidence. Both as a reference and as the first attempt by Western scholars to map out the Soviet system of criminal justice of the 1920s, Zelitch’s work marks a valuable step forward. At the same time, Zelitch leaves behind more questions than answers for Western scholars of the Soviet judicial system.

John Hazard’s indispensable study of the Soviet judicial system from 1917 to 1925 describes and analyzes the structure of the judicial system, evaluates debates between Soviet jurists and officials concerning the construction and functioning of the judiciary, and convincingly portrays the various ways in which individuals negotiated with the Soviet legal system to resolve disputes, both civil and criminal.⁴⁰ His use of official publications, legal journals and newspapers, along with a meticulous review of a host of legal statutes and

³⁹ See Ibid, Chpt. 12 for his accounts of trials he personally witnessed. For his conclusion regarding the public’s view of the court see *ibid*, 359. For an example of Zelitch citing details from his personal attendance of a trial without citing the names of the defendants, year of the case, or any details which would allow a reader to know which case he was discussing, see footnote 84 on *ibid*, 218.

⁴⁰ John N. Hazard, *Settling Disputes in Soviet Society: The Formative Years of Legal Institutions* (New York: Columbia University Press, 1960), Chpts. I-IV.

amendments to legal statutes constitutes a well-supported account of how Soviet legal officials envisioned the court system, how they worked to improve it, and how courts functioned in practice. He supports his work with citations from summaries of sixty-five civil and criminal court cases collected from a variety of legal journals and official publications, but without full transcripts of court proceedings.⁴¹ More often than not, hundreds of pages of court records were condensed to no more than a few columns summarizing certain aspects of a case.⁴² While such materials provide some insight into the Soviet legal system, they fail to paint a full picture of any individual court case. Hazard himself comments on the brevity of such summaries, and his work would have benefited from an analysis of full court records, which, to his dismay, were not at his disposal.⁴³

Samuel Kucherov's *The Organs of Soviet Administration of Justice: Their History and Operation*, while primarily a study devoted to explaining the state of the Soviet judiciary during the late 1960s, also follows the evolution of all aspects of the Soviet judiciary from 1917 to

⁴¹ For a list of cases included in his book see *ibid.*, 517-518.

⁴² Soviet legal journals often included brief segments of transcripts from court cases, but such segments represented only small sections excerpted from far larger transcripts, and they were often only included to illustrate an author's broad argument; they rarely focused on the cases themselves. Such sources will be evaluated in the chapters to follow. Full transcripts of notable court cases have been published in book form, both in Russian and in foreign languages, and in the Soviet press (though the press did not have space to include full transcripts, it did include long sections of testimony). Such cases, however, were exclusively of political crimes involving charges of espionage, intentionally wrecking state economic facilities to damage the state, and attempts to subvert state power. For example, the Moscow Show Trials of the late 1930s were published in the press and in book forms, though it is important to note that in these cases the transcripts were not identical to one another. There were numerous sections when the Soviet press, Russian language version of the court transcript, and English language version of the court transcripts reported different versions of the same exchanges between defendants and State procurator Andrei Vyshinskii. The range of differences included alterations to, or omissions of, a single word, single questions from Vyshinskii and answers from defendants omitted or expressed using dissimilar vocabulary, and in the most extreme examples, different versions expurgated entire pages of questions and testimony. Thus, the reliability of the press and of official publications must be called into question when it comes to reproductions of court transcripts. For example, see *Report of Court Proceedings: The Case of the Anti-Soviet Trotskyite Centre* (Moscow: People's Commissariat of Justice of the USSR, 1937), *Sudebnyi otchet po delu Antisovetskogo Trotskiskogo Tsentra* (Moscow: Izdanie narodnogo komissariata iustitsii SSSR, 1937), and excerpts of transcripts of the trial found on the first two pages of each issue of *Izvestia* from January 23 to January 30, 1937.

⁴³ For an example of Hazard's lamentation of the brevity of the cases summaries at his disposal see Hazard, *Settling Disputes in Soviet Society*, 166-167.

1970. In drawing on a close reading of legal codes, amendments to legal codes, works written by Soviet leaders and judicial officials, and Soviet legal journals and newspapers, Kucherov argues that the interference of Soviet officials in the judicial process betrayed the undemocratic nature of the Soviet regime.⁴⁴ Regardless of any general conclusions concerning the state of the Soviet judiciary by the late 1960s, Kucherov concisely explains the intricacies of how the Soviet judiciary functioned during its earliest years, and he develops a critical analysis of the criminal appeals process.⁴⁵ Most importantly for this dissertation, he convincingly explains how “the cassation instance was *de facto* converted into a court of appeal,” “the Soviet cassation court was charged from the beginning with the duty to watch over the operation of justice,” “the cassation court . . . provided the necessity to re-examine the entire case with regard to possible violation of law,” and that the cassational process was intentionally codified to bring “the cassation court unescapably to the review of the case on its merits.”⁴⁶ Though he could not test his assertions with actual cases, I employ the case record to confirm that cassational judges did evaluate cases along the standards he described. My work identifies judges who scoured the case record for details of appellants’ social backgrounds and expressions of believable contrition. Such considerations go beyond what Kucherov thought would interest cassational judges who engaged in a thorough “review of the case on its merits.”

As an analysis of the criminal justice system as a whole, Peter Solomon’s work explores many characteristics previously unknown to Western scholarship.⁴⁷ His work represents Western

⁴⁴ Kucherov, *The Organs of Soviet Administration of Justice*, 702-715.

⁴⁵ *Ibid.*, 3-100, 621-642.

⁴⁶ *Ibid.*, 640-641.

scholars' first and only attempt to comprehensively analyze the Soviet criminal justice system specifically from the October Revolution until the end of Stalin's rule. His chapter on Soviet criminal justice during the NEP, while only briefly covering an analysis of criminal appeals, provides the basis for a number of formative questions addressed by this dissertation, especially concerning the general functions of the cassational and supervisory systems.⁴⁸

Solomon's analysis of the cassational system shows a level of appeals regarded by legal officials as a crucial indicator of judicial competence and an arena utilized by thousands of convicts to appeal every aspect of their cases from pre-trial investigations to final verdicts. Solomon finds that "the principal indicator of quality in the work of trial judges, one favored by Soviet scrutineers in the 1920s and later on, was the record of verdicts and sentences appealed to higher courts."⁴⁹ In revealing that roughly twenty percent of all criminal cases heard before people's courts and over thirty percent of more serious cases held at provincial courts were sent to cassational appeal, Solomon highlights the importance of appeals in terms of the prodigious percentage of cases resulting in appeals.⁵⁰

Despite the obvious importance of the cassational process both to Soviet legal officials and criminals, Solomon sees cassational courts' decisions as confused, their application of correct procedure inconsistent, the competency of cassational judges to vary widely, and the

⁴⁷ Solomon, *Soviet Criminal Justice under Stalin*. Also see Peter H. Solomon Jr., "Local Political Power and Soviet Criminal Justice 1922-1941," *Soviet Studies* 37, no. 3 (July, 1985): 305-329, and idem., "Criminalization and Decriminalization in Soviet Criminal Policy, 1917-1941," *Law and Society Review* 16, no. 1 (1981-1982): 9-44.

⁴⁸ See "Criminal Justice under NEP," Chpt. 2, in Solomon, *Soviet Criminal Justice under Stalin*. Also see *ibid.*, chpts. 1, 3, for Solomon's discussions of criminal appeals during the periods of the revolutionary tribunals and collectivization. Relevant sections of all three chapters will be referenced below.

⁴⁹ *Ibid.*, 52.

⁵⁰ *Ibid.*, 53. The statistics cited apply to 1926. As I describe below, these percentages varied throughout the 1920s.

actual functioning of the system mostly unknown.⁵¹ The cassational system seemed chaotic and unreliable, but paradoxically, it was invoked frequently by criminal appellants and regarded by Soviet officials as one of the best ways of discerning the efficacy of the legal system as a whole. His depiction of the cassational system, albeit not one of the foci of his work, provoked the questions at the root of this dissertation.

In his sections on criminal appeals, Solomon's documentation relies on articles written by Soviet jurists and legal officials in Soviet legal journals and newspapers.⁵² Such sources indicate the concerns and opinions of leading Soviet jurists and legal officials, but provide only a glimpse of a much larger picture. Statistics collated by the courts, judicial directives sent from higher courts and state organs, anecdotal evidence from exceptional cases reported to the editorial boards responsible for publishing legal journals, and actual case records were important sources available to legal officials during the 1920s and helped form their perceptions of Soviet legality. Unfortunately, Solomon could not include such sources, as they were inaccessible until years after his study. The newspaper and journal articles cited by Solomon rarely invoked the archival record or mention the events of individual cases. Often, they were short pieces based on access to contemporary sources, both personal and official. Accordingly, the conclusions reached by the authors of such articles are reflective of ideas held by important legal scholars of the 1920s, but

⁵¹ Ibid, 22, 51-54, 100, 104-105, 109-110.

⁵² The only exceptions to the above are two instances when Solomon cited Judah Zelitch, one instance when he cited Eugene Huskey, *Russian Lawyers and the Soviet State: The Origins and Development of the Soviet Bar, 1917-1939* (Princeton: Princeton University Press, 1986), and one instance when Solomon cited Portnov and Slavin, *Stanovlenie pravosudiia Sovetskoi Rossii*. Zelitch was cited first for his general description of the process of criminal appeals in his chapter on "Judicial Review of Criminal Case," and second for a statistic describing the rate of successful appeal in lower courts in 1914 (it should be noted that Zelitch cited this statistic from an article written by E. Tarnovskii in a Soviet legal journal published in 1928). Eugene Huskey was cited in a general manner for his description of the absence of defense attorneys in trials held before revolutionary tribunals. Portnov and Slavin were cited for their statistics collected from archives regarding the successful rate of appeals heard by the Cassational Tribunal of the VTsIK.

they provide only a piece of the puzzle. In analyzing the period through the lens of sources unavailable to Solomon and to many of the Soviet authors of the 1920s, I test long-held assumptions about the Soviet legal system in general and the efficacy and characteristics of the appeals system in particular.

In building on the work of previous scholars, a close analysis of case files provides clues to a number of facets of the Soviet judiciary which have heretofore been understudied. I use cases to determine how existing legal codes and legislation were applied and understood by judges, investigators, procurators, and appellants, ranging from the well-educated to the illiterate. Through a close reading of legal documents describing the appellate process, I show how such participants' understandings of nebulous and shifting definitions of socialist justice were reflected in the legal knowledge they exhibited during the judicial process. Legal scholars of the NEP-era have culled together a host of arguments and theories as to how the courts functioned, but the only way to test the validity of any of these ideas is through close reading of actual cases to see how these ideas actually applied in judicial settings. From the seeds planted by Solomon regarding the potential importance of appellate reviews by way of cassation, the brunt of this dissertation focuses on how appeals functioned in both a general sense and in specific case studies.

On the topic of supervisory review Solomon provides tantalizing evidence of its efficacy, but only briefly addresses its place in the hierarchy of Soviet criminal appeals. Solomon noted that a discussion of supervisory review is needed "to complete the picture of the systems of appeal," but unfortunately only a single paragraph describes supervisory review during the NEP. This paragraph, however, hinted at the existence of an important, yet understudied, facet of the criminal justice system. Solomon finds that the RSFSR Supreme Court altered verdicts in the

majority of the approximately 2,000 cases it heard in supervisory reviews.⁵³ He believes that it was to be expected that supervisory review often resulted in alterations of sentences, since the only way a case could reach supervision was if a member of the Supreme Court or a senior procurator had already found such fault with a verdict that it needed to be redressed by supervisory review.⁵⁴ If a high court justice or procurator found fault in a verdict, it was likely that his colleagues also would during a supervisory review.

In taking this idea a step further, Solomon later argues that because nearly all cassational verdicts brought to supervision before the RSFSR Supreme Court during collectivization resulted in altered sentences, “the quality of some of these [cassational] changes was open to question.”⁵⁵ Accordingly, throughout the history of the Soviet Union, and not just during collectivization, one would expect supervisory review to result in the frequent alteration of verdicts. That supervisory reviews overturned cassational decisions during collectivization did not mean that cassational decisions were weak during collectivization. Rather, it speaks to the efficacy of supervisory reviews: an efficacy which existed before, during, and after collectivization. It is this efficacy which is explored in this dissertation.

While supervision’s importance in altering cases as a criminal’s final chance for an appeal within the judicial system seemed self-evident, Solomon was able to provide no other information on the activities of supervisory review aside from mentioning that the practice also existed on the provincial level, but that he had “no data on their frequency or results.”⁵⁶ Though

⁵³ Solomon, *Soviet Criminal Justice under Stalin*, 54.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*, 135-136.

⁵⁶ *Ibid.*, 54. Archival access to cases which resulted in supervisory review was entirely unavailable at the time of Solomon’s work during the mid-1990s.

one could argue that supervisory review only handled a fraction of the cases heard by cassation and therefore paled in comparison and in overall importance, I argue that an analysis of supervisory cases including measured explanations of judicial decisions provides the best opportunity to see how the highest court judges rendered verdicts. In addition, extended explanations of judicial decisions reveals not only what factors most affected decisions, but also the factors considered important in fixing the deficiencies of lower courts and cassational decisions. More so than with the explanations given for cassational decisions, the detailed explanations included in supervisory reviews provide a unique window into how high court officials applied their understandings of Soviet legality to actual cases.

Like other Western scholars, Solomon includes court summaries culled from official sources and legal journals. But unfortunately, he could not gain access to full court records. Nevertheless, his work analyzes a number of aspects of Soviet legality which had been largely unexplored, and his portrayal of a judicial system riddled with power struggles between a variety of legal officials and institutions associated with the courts helps frame how this dissertation will discuss the power struggles between officials different levels of the courts, and between officials in different agencies involved in disputes over individual cases.

Unlike all previous Western scholars who study courts during the NEP, Tracy McDonald's exploration of how peasants in Riazan understood rural courts and state power relies heavily upon local archival records.⁵⁷ Her periodization of the NEP into eras assessing the

⁵⁷ In particular, the director of TsGAMO cited a law protecting the privacy of individuals involved in legal matters to disallow McDonald from seeing any archival records of court cases. This would prove harmful to her work, especially since all cases appealed in Riazan courts were stored at the Moscow Oblast Archive. More recently, however, such cases have been declassified, including some cassational cases which had been appealed from Riazan. See Tracy McDonald, *Face to the Village*. For her inability to gain access to court records at the Moscow Oblast Archive see Tracy McDonald, "Face to Face with the Peasant, Village and State in Riazan , 1921-1930" (PhD diss., University of Toronto, 2003), xii-xiii, 288.

damages of the civil war (1921-1924), the negotiation between peasant and state over the nature of the NEP (1924-1925), and the failure of negotiations characterized by the unraveling of the NEP (1926-1928) is based on her analysis of how peasants interacted with the police and judiciary in Riazan during the 1920s.⁵⁸ Her work combines peasant letters written to local newspapers, police reports, summaries of judicial activities across Riazan, and readings of a few case records to depict the “previously unexplored and complex workings of local politics and the active role many villagers played in relations with power.”⁵⁹

Although she stands alone as the only Western scholar to treat NEP-era courts with a close reading of judicial archives, only a small part of McDonald’s work is based on records of actual court cases.⁶⁰ Her ninth chapter, “Rough Justice: The Village Disciplines its Own,” is the only chapter to look at court records, include close readings of cases, and cross-reference court proceedings with the statutes found in criminal codes and relevant legislation. And there, she only includes five cases cited from the annals of Riazan province’s court case files.⁶¹

Of perhaps more concern, her bibliographical section listing her archival sources integrates citations from a series of judicial files which are not actually used in her work.⁶² This

⁵⁸ McDonald, *Face to the Village*, 301-302.

⁵⁹ *Ibid.*, 9.

⁶⁰ By my count, McDonald’s introduction, first eight chapters, and her tenth chapter included a total of eight citations from nine different *dela* from the State Archive of Riazan Oblast (*Gosudarstvennyi arkhiv Riazanskoi Oblasti*, or GARO) including from *fond* R-2461 (*Riazan gubsud*), *fond* R-2462 (*Riazan gubsud*) and *fond* R-2541 (*Narsud 10-go uchastka Riazanskogo uezda*). Specifically, she included one citation in her introduction, one in chapter two, three in chapter three, one in chapter five, one in chapter six, and one in chapter eight. In cross-referencing her footnotes against her text, it appears as if the *dela* she cited were not from court records for any of the above citations, though a final determination would require an examination of the *dela* in question. See her notes in *ibid.*, 315-380 and her listing of archival sources in *ibid.*, 381-382.

⁶¹ See *ibid.*, 226-258, 365-371.

⁶² McDonald claimed to include sources from people’s courts, including GARO *fond* R-2526 (*Narsud 8-go uchastka Riaznskogo uezda*), *fond* R-2534 (*Narsud 3-go uchastka Riazanskogo uezda*) and *fond* R-2535 (*Narsud 4-go*

lack of evidence from NEP-era court trials means that there is yet to be a scholarly treatment of NEP-era courts based primarily on how actual cases functioned. Though I do not intend to address McDonald's larger points concerning the relationship between peasants and state power during the NEP-era, I will address how peasants actually represented themselves before the judiciary in the context of appellate cases. McDonald's work includes a novel foray into an analysis of courts in the NEP-era on the basis of archival holdings of court records, and her work stands on the rigor of its scholarship. I intend to build on her initial steps, and in doing so, include a more rigorous application of judicial records and legal guidelines in determining how convicts and judges viewed Soviet legality through the lens of appellate cases.

M. V. Kozhevnikov's general history of the Soviet judiciary from the October Revolution until the end of the World War II is a referential and theoretical point of departure for all of the scholars cited above (with the exception of Zelitch, who was active prior to Kozhevnikov).⁶³ As a general reference describing the evolution of tribunals and courts, the different agencies involved in the judicial process, the educational levels of judicial officials at various points and times, and the efficacies and responsibilities of different levels of the courts, Kozhevnikov's study stands out as a monumental work which any scholar of the Soviet judiciary must acknowledge as seminal in its ability to tie together the different parts of the Soviet legal system into a coherent study with a clear chronology. His access to archival data and reliance on legal journals, legal codes, and legislation affecting the judiciary comprise a source base entirely

uchastka Riazanskogo uezda). A careful reading of her footnotes reveals that she did not material from any of those *fonds*. The only people's court fond she did cite from was GARO f. R-2541 (*Narsud 10-go Riazanskogo uezda*). See McDonald, *Face to the Village*, 315-382.

⁶³ M. V. Kozhevnikov, *Istoriia sovetskogo suda, 1917-1956* (Moscow: Moskovskii gosudarstvenyi universitet imeni M.V. Lomonosova, 1957).

unavailable to Western scholars until decades after he published his work in the late 1950s.

A close reading of Kozhevnikov's text reveals two major problems: his limited use of archives does not extend beyond the period of revolutionary tribunals, and he often makes assertions on the basis of data for which he provides no sources. Almost the entirety of his archival evidence was drawn from one archive: the *Tsentral'nyi Arkhiv Oktiabr'skoi Revoliutsii* (Central Archive of the October Revolution, TsGAOR, which later became GARF).⁶⁴

Kozhevnikov cites materials from four *fonds*, from which almost all of the files cited only covered the years of the revolutionary tribunals despite the fact that his work is supposed to cover the period from the October Revolution until after the death of Stalin.⁶⁵ He neglects to employ the archival record to support assertions made about courts from 1922 to 1929. Even for the period of revolutionary tribunals, the sources he uses are actually more limited than those used by later scholars such as Matthew Rendle. In addition, Kozhevnikov does not use the archives to look at cases. Rather, he uses archives mostly to cite statistical data and decrees, the vast majority of which were replicated in Soviet legal journals published during the early 1920s. Thus, though Kozhevnikov does use the archival record, his source base is not nearly as widely as one might think from a glance at his footnotes.

Of more consequence, Kozhevnikov frequently supports his assertions using data from unknown sources. Kucherov explicitly mentions this problem with Kozhevnikov's work when

⁶⁴ The only exception was his use of the "NKIu Archive of the RSFSR," from which he cited sparingly to support points made about the People's Commissariat of Justice (*Narodnyi Kommissariat Iustitsii*, hereafter referred to as Narkomiust) during the 1930s and early 1940s. This archive is thought to currently be included in GARF, though it is not entirely certain what types of files this archive held. Kozhevnikov did not use this archive extensively, and he did not cite any file older than 1929. See Kozhevnikov, *Istoriia sovetskogo suda*, 257.

⁶⁵ Kozhevnikov used four *fonds*: 130, 353, 1005, and 1235. *Fond* 130 is the *fond* of Sovnarkom. *Fond* 353 is the *fond* of Narkomiust. *Fond* 1005 is the *fond* of the Revolutionary Tribunal attached to the VTsIK. *Fond* 1235 is the *fond* for VTsIK. Though all four *fonds* include files covering years past 1922, Kozhevnikov only cited a couple such files, including none past 1924.

discussing the new organization of courts resulting from the Statute on Court Structure in the RSFSR in October 31, 1922: “Kozhevnikov, speaking of the competence of the province court as court of the first instance, is of the opinion that in this capacity the province court decided the most important civil and criminal cases . . . a source for his opinion is not quoted by Kozhevnikov.”⁶⁶ That Kucherov is aware of Kozhevnikov’s propensity to posit assertions without providing evidence makes it all the more mystifying that Kucherov relies upon Kozhevnikov’s data mostly without hesitation. This creates problems for both scholars’ works.

For example, Kucherov uses Kozhevnikov’s data in pointing out the deficiencies of education of legal personnel during the early 1920s. Kucherov cited a section of Kozhevnikov’s work in which “Kozhevnikov reports that only ten percent of the people’s judges had a higher education (8.1 percent - a legal one); one to five percent graduated from secondary school and 72.5 percent from primary schools as of the beginning of 1923.”⁶⁷ At a glance, the data appears compelling. Kucherov’s footnotes for the above quotation cite page 130 of Kozhevnikov’s 1948 edition of his work on the history of the Soviet courts (this dissertation cites Kozhevnikov’s later 1957 edition, which includes a new section covering 1948-1956). A careful reading of page 130 of Kozhevnikov’s book does include the statistical data cited above, but Kozhevnikov’s source for these statistics is a mystery. The paragraph listing the education statistics quoted above includes no citation.⁶⁸ Though it is possible that Kozhevnikov’s data detailing the educational backgrounds of judges in 1923 is accurate, there is no way of knowing where he got the data.

⁶⁶ Kucherov, *The Organs of Soviet Administration of Justice*, 80.

⁶⁷ *Ibid.*, 315. The data cited in this dissertation finds that Kozhevnikov understated the calamitous state of people’s court judges’ education. See Table 13 in chapter three.

⁶⁸ M. V. Kozhevnikov, *Istoriia sovetskogo suda, 1917-1947* (Moscow: Iuridicheskoe izd-vo Ministerstva Iustitsii SSSR, 1948), 130. Note that all other references to Kozhevnikov in this dissertation are from the 1957 version of his book.

This is but one of many examples when Kozhevnikov includes statistical information without providing a source.

What is particularly troubling is that scholars cite Kozhevnikov's data as fact, even when they know that Kozhevnikov had the propensity to extend assertions without providing requisite citations. Thus, even with the acknowledgment of Kozhevnikov's work and its value in limning the characteristics of the Soviet judicial system, this dissertation regards his statistical data and assertions warily when unaccompanied by citations. When possible this dissertation will default to citing data from the archival record, as it is clear that previous works' sources must be questioned at the least, and considered as unusable in the most extreme cases.

M. M. Grodzinskii's book describing the construction and functioning of cassation and supervision from their beginnings until the end of the 1940s provides a comprehensive account of the different guidelines and legislation responsible for shaping Soviet appeals by the end of the 1940s, but his work mostly ignores how either functioned during the 1920s.⁶⁹ Though his work is useful as the best source for condensing the myriad of rules describing how cassation and supervision was supposed to function, he mostly shied away from delving further than the codified guidelines in assessing how appeals worked, and he provides only a passing mention of the development of cassation and supervision during the 1920s in creating his picture of both during the latter part of the 1940s.⁷⁰ He only superficially describes the impact of the initial

⁶⁹ M. M. Grodzinskii, *Kassatsionnoe i nadzornoe proizvodstvo v sovetskom ugolovnom protsesse* (Moscow: Gosiurizdat, 1949). Grodzinskii published a subsequent edition by the same title in 1953. His sections on cassational and supervisory courts before the 1940s were nearly identical in both editions, as the latter edition focused on updating the reader on changes to cassation and supervision from 1949 to 1952. The earlier edition is used in this dissertation because libraries refused to loan the later edition for more than a few weeks at a time.

⁷⁰ See *ibid.*, 5-20, for Grodzinskii's description of the general structure of cassation and supervision. He briefly reviewed a few of the most important decrees and guidelines responsible for the construction of the earliest forms of cassation and supervision, but he did so only as a bridge to his analysis of both during the 1940s.

formations of cassation and supervision on how each later functioned during the 1940s, leaving the reader to mostly guess about the legacy of the early periods of cassation and supervision.

This dissertation not only reviews the evolution of each during the 1920s, it also describes how they functioned in actual court cases, along with providing a view of the historical trajectory which preceded the type of appeals system described by Grodzinskii in the 1940s: a comprehensive appeals process, which, as I demonstrate, based itself in pre-Soviet legal practices and the testing grounds of the earliest periods of Soviet courts and tribunals.

IV. Petitions in the Soviet Union

The literature of appeals to higher authorities in the Soviet Union extends beyond the realm of criminals and the judiciary. I find similarities with the appellate strategies identified by Golfo Alexopoulos' analysis of the *lishentsy*: individuals disenfranchised for being considered part of the bourgeoisie during the early period of the Soviet Union. These individuals, upon being identified as *lishentsy*, forfeited their status as Soviet citizens and lost the ability to partake in military and civil service, could not receive public assistance, and were denied the ability to vote. Alexopoulos' work analyzes the various discursive strategies used by the *lishentsy* in their appeals to try and regain their status as Soviet citizens. She finds that appeals which demonstrated Soviet-oriented personal transformations or demonstrated loyalty and productive employment sometimes met with success.⁷¹ Such appellate strategies were not just used by the *lishentsy*, but were also used by appellants in criminal cases.

⁷¹ Golfo Alexopoulos, *Stalin's Outcasts: Aliens, Citizens, and the Soviet State, 1926-1936* (Ithaca, NY: Cornell University Press, 2003), and idem, "The Ritual Lament: A Narrative of Appeal in the 1920s and 1930s," *Russian History/Histoire Russe* 24, no. 1-2 (1997): 117-129.

Of particular use for this dissertation, Alexopoulos' work highlights the recurrence of the Russian *plach*---a ritual lament common to the pre-Soviet period in which a petitioner decries their fate while imploring the reader to take pity. This ritual lament included a number of elements: expressing sorrow over one's fate, describing a cycle of misfortune, portraying oneself as a weak subject capable of supporting the greater good if given a chance and accentuating roles as the providers for needy children.⁷² The cases studies reviewed by this dissertation relate similar examples of criminals employing the *plach* in their appellate strategies, thereby demonstrating an example of pre-Soviet appellant strategies appearing in Soviet-era criminal appeals.

V. Legal Knowledge and Courts

Marc Galanter's influential article, "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change," is one of the most-cited articles in legal literature.⁷³ His contention that resource-rich parties engage the legal system more successfully than those who have fewer resources has framed scholarly legal debates extending far beyond his subject: the United States legal system during the 1970s.⁷⁴ After presenting a wealth of empirical evidence demonstrating that the rich repeatedly fared better than the poor in the courtroom, both in civil and criminal cases, Galanter advanced an explanatory theory; all actors involved in court cases fall into one of

⁷² Alexopoulos, *Stalin's Outcasts*, 115-122.

⁷³ Marc Galanter, "Why the 'Haves' Come out Ahead: Speculations on the Limits of Legal Change," *Law & Society Review* 9, no. 1, (1974): 95-160.

⁷⁴ For examples of the resonance of Galanter's work see Bert M. Kritzer and Susan Silbey, eds., *In Litigation: Do the 'Haves' Still Come Out Ahead?* (Stanford: Stanford University Press, 2003).

two categories: “one-shotters” and “repeat players.”⁷⁵ The category of “repeat players” refers to individuals who possess the resources to gain knowledge (and, consequently, power) about the legal system, and thereafter apply it to their advantage, often repeatedly. “One-shotters,” on the other hand, often do not expect to find themselves brought before the courts, and therefore do not develop the knowledge necessary to successfully engaged the legal system. Key to this dissertation, Galanter’s category of “one-shotters” distinguishes them from “repeat players” by their lack of financial or social resources restraining them from gaining the legal knowledge necessary to influence the courts in any direction.⁷⁶ Put simply, those who possess legal knowledge and access to legal resources are successful in courtrooms, and those who do not possess legal knowledge and resources are not successful.⁷⁷

I challenge Galanter’s theory by applying it to the Soviet legal system during the 1920s. As the case studies of chapter four demonstrate, during the early 1920s, defendant’s legal knowledge did not influence the outcome of judicial decisions for cases appealed to the highest levels of the Soviet judiciary.⁷⁸ Whether a convict possessed the legal knowledge of a “have” or “have-not” did not matter. On the other hand, this dissertation does include examples of individuals who employed legal knowledge to their advantage during the late 1920s. Thus, I refine Galanter’s argument: whether an individual is a “have” or “have-not” can influence judicial decisions, but not always. The historical context of a legal system dictates the applicability of his theory, and in the Soviet case, his theory is not applicable to the early 1920s.

⁷⁵ Galanter, “Why the ‘Haves’ Come out Ahead,” 97-98.

⁷⁶ *Ibid.*, 116-117.

⁷⁷ Galanter argues that lawyers only provide meaningful legal knowledge and power when they maintain long-term relationship with their clients. Lawyers have little incentive to effectively argue defendants’ or litigants’ cases if there is no expectation of repeated interaction. See *ibid.*, 117.

⁷⁸ See the comparison of Zaitsev and Basharin in Chapter four.

The ensuing chapters test previous scholars' assertions, in some cases supporting their work, and in other cases challenging it. Ultimately, this dissertation contributes to a better understanding of the evolution of the Soviet legal process in general, and how Soviet systems of criminal appeal functioned in the 1920s in particular.

Chapter 2: Avenues of Appeal: The Backgrounds of Soviet Cassation and Supervision

Before turning to an analysis of how Soviet appeals actually functioned during the 1920s, this chapter establishes what types of appeals were available, what rules governed them, and what precedents contributed to their development. To understand the forms of cassation and supervision during the early Soviet era, this chapter traces the evolution of each type of appeal from its earliest roots, reaching as far back as Peter the Great's establishment of his procuracy as an institution designed to ensure that government agencies adhered to Peter's vision of legality. Foreign influences, from the French Revolution's creation of the cassational appeal, to the Swedish Ombudsman's role as a supervisor of legality in the Swedish legal system in the early seventeenth century, to the French procuracy's impact on Peter the Great, contributed to Imperial Russia's earliest systems of cassation and supervision. This chapter emphasizes how Imperial Russian rulers and their advisors implemented a series of reforms, especially the Great Reforms of 1864, to create distinctly Russian forms of both types of appeals. After the overthrow of Tsar Nicholas II, Soviet leaders did not discard the Imperial system of appeals wholesale, instead adopting cassation and supervision as a two-tiered system of appeals within the nascent Soviet legal system.

Rather than simply emulate the Imperial forms of cassation and supervision, the Soviet system implemented new guidelines designed to distinguish the Soviet system of appeals from its predecessors. In doing so, it established itself as a progressive appeals system explicitly intended to provide widespread and equal access to justice, especially for those who were unfamiliar with legal codes and practices. Soviet cassation was designed to allow convicts such easy access to remedy grievances that initiating an appeal required no legal knowledge whatsoever. Not even literacy was required on the part of the appellant. In addition, the

appellants did not need to have a legitimate legal reason for an appeal; all a convict had to do was verbally opt for cassation at the conclusion of a trial. Cassational panels were required to review the entirety of the case record regardless of an appellant's argument, and if the panel found a legitimate cause for overturning a lower court's decision, it had to do so.

Along with providing easy access to remedy grievances, the appellate system allowed higher courts to monitor the activities of lower courts, both through cassation and supervision. Though cassation functioned as a way for higher courts to check the activities of lower courts, it was supervisory review which allowed high court judges and procurators the ability to review cases chosen for specific transgressions of legality. Rulings on such cases were intended to teach lower courts how to properly conduct trials. The didactic nature of supervisory reviews grounded itself in the Russian tradition of supervision as a means to teach lower courts how to properly apply the law, with Soviet supervision specifically geared toward imparting notions of socialist justice to lower levels of the legal system. Accordingly, model supervisory reviews were exhibited in the pages of legal journals such as *Rabochii sud* and *Proletarskii sud*, which included sections devoted to descriptions of important supervisory cases, and how judges' application of legal codes was meant to serve as an example to lower court judges how they should interpret and apply the law.

Thus, the Soviet legal system's two-tiered system of appeals was designed to allow convicts with easy access to legal remedy through cassation and grant high courts the ability to review specific cases for legal errors made by lower courts through supervision. This combination of supervision from above and cassational appeals from below distinguished this system of appeals as something uniquely Soviet, even though many of its forms were borrowed from foreign influences and the Imperial regime.

I: Cassation from the French Revolution to the end of the Russian Empire

The guidelines governing early Soviet cassational appeals differed greatly from those shaping the first version of cassation created in Revolutionary France. Whereas the French saw cassation as a type of appeal designed specifically to review cases for transgressions of legal code and procedure, the Soviets designed cassation to permit judges the ability to review the entirety of the case record for any aspect of the case which judges decided was unjust. In effect, Soviet cassation functioned as a full appeal of the case record, one which provided cassational judges with far more latitude to alter sentences than Revolutionary French jurists ever intended. What follows is an overview of how cassation developed from Revolutionary France to Revolutionary Russia, and the rules which governed how Soviet cassational judges were supposed to rule on cases.

Cassation developed during the French Revolution as a solution to a practical problem; how could a legislature retain the ability to interpret law without having to review every question of interpretation arising in the courts? Legislatures did not have the resources to deal with every possible question of interpretation, but at the same time, they refused to allow courts the ability to decide how to interpret the law independent of the legislature. As a result, the French Tribunal of Cassation was created in 1790 as a legislative organ charged with quashing all judicial decisions based on incorrect interpretations of statutes. The Tribunal of Cassation was not originally intended to act as an interpretive power or as a judicial body. Rather, it was only supposed to decide whether a decision had contravened existing legislative interpretation of law.

Upon finding an incorrect interpretation of statute, the Tribunal sent the case back to the judiciary for a new trial.¹

Over the ensuing decades, French cassational tribunals exceeded their original charge. Not only did they decide whether the judiciary incorrectly interpreted statute, but they informed the judiciary what statutes should apply and how to interpret them. During this period it became clear that the Tribunal of Cassation performed a distinctly judicial function, and accordingly it took its place atop the judiciary as the Supreme Court of Cassation.² In the French judicial system, as in much of continental Europe, the Supreme Court of Cassation represented the highest court of appeal. Despite its place atop the judiciary, cassational courts following the French model were not supposed to base their decisions on any factors beyond the question of whether lower courts correctly interpreted and applied statute.³

Established by Alexander II's Judicial Reform of 1864, cassational courts in Imperial Russia functioned similarly to the French model by attending to questions of the correct application of procedure and interpretation. The Russian cassational courts which began operation on April 17, 1866, however, had more latitude in deciding whether to remand a case.⁴ In addition to resolving cases which disputed the correct interpretation of existing statutes,

¹ John Merryman, *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America* (Stanford: Stanford University Press, 1961), 40-41.

² *Ibid.*, 41-42.

³ The German legal system stands out as a notable exception to the French model. During the nineteenth century Germany developed a supreme court responsible for reviewing the decisions of lower courts for errors in applying statute, and if an error was found, the court would then quash the decision, provide the correct interpretation of statute, and render a binding final verdict. Such authority exceeded the powers of the French Supreme Court of Cassation, which could send cases back to lower courts for new trials, but it could not alter verdicts. See Merryman, *The Civil Law Tradition*, 42.

⁴ Levin-Stankevich, "Cassation, Judicial Interpretation and the Development of Civil and Criminal Law in Russia," 304.

Russian cassational courts also addressed instances when a lower court was accused of violating procedural guidelines.⁵ Cassational proceedings were initiated by the request of a litigant, defendant, or state procurator for an annulment of a lower court ruling.⁶ Cassation could occur only after a court of first instance rendered a verdict, which was then appealed to the Chamber of Justice.⁷ After being heard by the Chamber of Justice, a case could then be passed up to the Criminal Cassation Department of the Ruling Senate (also known as the Criminal Court of Cassation). That department included a chief justice, judges (senators), a chief procurator, assistant chief procurators, a chief secretary, and assistant secretaries. A cassational appeal included a copy of the original decision, documentation of all court proceedings, a statement by the appellant elucidating the legal basis for cassation, and personal information of all parties involved in the original trial. The case was then presented to a chief justice and three judges who ruled *only* on the legal arguments raised in the appellant's statement.⁸ All parties involved in the original case had the right to appear before the cassational court, but they were not required to do so. In fact, they could only do so at their own expense. After receiving all relevant materials, one of the cassational judges started the hearing by presenting a report recounting the original

⁵ A cassational appeal could also be presented when a judge exceeded his authority while presiding over a case. Although such a situation could be argued to fall under the category of a violation of a procedure, article 174 of the code of criminal procedure specifically mentioned this as a viable reason for a cassational appeal. See *ibid.*, 120.

⁶ A procurator was not permitted to raise a cassational appeal based on the original criminal charges against a defendant if the defendant had agreed to a plea bargain on lesser charges for the same crime. Procurators could, however, submit cassational appeals on the bases described above even if a jury trial had found the defendant guilty. This created the possibility for double jeopardy, but only in a situation when a cassational court found that the court of first instance violated statute, procedure, or was overseen by a judge of overstepped his authority. See *ibid.*, 122-123.

⁷ The Chamber of Justice primarily functioned as an appellate court for cases appealed from the Circuit Court. However, the Chamber of Justice could also function as the court of first instance for the most serious crimes, especially for those of a political nature. In either situation, a case had to be brought before the Chamber of Justice before it could be passed along for cassation. See *ibid.*, 91-92.

⁸ While originally consisting of only a Chief Justice and three additional judges, the pool of justices who dealt with cassational cases increased over time as caseloads became unmanageable. See *ibid.*, 98-99.

verdict, the legal argument offered by the appellant for cassation, all aspects of the case pertinent to the appeal, and all previous decisions made by cassational courts in analogous cases. The chief justice would then summarize the statutes applicable to the case, after which any procurator, defendant, or litigant present at the court could then voice their arguments in support or in opposition to the appeal. The judges would then deliberate and reach a decision. Upon reaching a majority decision, the cassational court either ruled against the appellant or, if the cause for appeal was determined to have merit, remanded the case to a lower court for a new trial. In the event that the new trial resulted in another cassational appeal, the cassational court could offer a final verdict without having to remand the case to a lower court once again.⁹

Although Imperial cassational criminal courts did not render final decisions altering verdicts or sentencing, they specifically instructed how courts of remand should rule on cases. In practice, courts of remand were obligated to follow the instructions of cassational courts. This meant that, in effect, the instructions given by a cassational court often provided courts of remand with such little latitude in reaching a final verdict that the cassational court's instructions amounted to a final verdict in and of themselves. When a court of remand's decision resulted in a new cassational protest, the cassational court's subsequent decision was absolutely binding on the court of remand.¹⁰ Thus, even though cassational courts were not granted the nominal power

⁹ Ibid., 88-102. It was not out of the ordinary for European cassational courts to render a final, binding verdict if, after returning a case to the lower courts, the subsequent ruling of a lower court resulted in a case returning to cassation. It should be noted, however, that this was the only instance in which a cassational court could render a final verdict. In all other situations a cassational court had to reject the basis for appeal or remand the case to a lower court. See Martin Shapiro, *Courts: A Comparative and Political Analysis* (Chicago: University of Chicago Press, 1981), 149.

¹⁰ Following a court of remand's verdict, the Imperial Russian judicial system did not allow any party to raise a second cassational protest for the same reasons given for the original cassational protest. This was not permitted because the court of remand had to apply the cassational court's instructions in reaching a final verdict. This was a departure from the French system, in which a court of remand possessed the ability to ignore the instructions ordered by a court of cassation. In such a situation, an appellant could protest the court of remand's decision on the exact

to render final verdicts, their instructions to courts of remand effectively functioned as final verdicts.¹¹ The power of cassational courts to render final verdicts, while not formally institutionalized under the Russian Imperial judicial system, would lay the historical precedent for the powers granted to later Soviet cassational courts to alter sentences themselves.

II. Cassation in the Soviet System

Following the overthrow of the Tsar and the ascent of the Bolshevik Party, the old system of Imperial courts was abolished by the Sovnarkom's passage of Decree Number One on Courts on November 24, 1917.¹² Aside from eliminating all civil and criminal Tsarist courts, all Imperial judges, procurators, investigating magistrates and attorneys had their positions abolished.¹³ Article six of the Decree retained cassation as the only means of appeal. All other possibilities of appeal to higher courts were abolished.¹⁴ The Decree established two types of judicial institutions: local courts and revolutionary tribunals. Local courts only dealt with non-

same basis of the original cassational appeal. The protest would be brought back to the French court of cassation, which would then make a final decision.

¹¹ Levin-Stankevich, "Cassation, Judicial Interpretation and the Development of Civil and Criminal Law in Russia," 124-128.

¹² See *Sobranie zakonov i rasporyazhenii raboche-krestianskogo pravitel'stva, RSFSR, 1917* in Kucherov, *The Organs of Soviet Administration of Justice*, 23-24.

¹³ Kucherov, *The Organs of Soviet Administration of Justice*, 23-25. The Courts of the Peace were the only judicial institution retained from the Imperial period, though they were suspended until their personnel could be replaced by judges elected by "direct democratic elections." In the interim, Courts of the Peace were staffed by City and Provincial Soviets of Workers', Soldiers' and Peasants' Deputies.

¹⁴ *Ibid.*, 621.

political criminal offenses, whereas revolutionary tribunals dealt with crimes of a political nature.¹⁵

The subsequent publications of Decree Number Two on Courts on May 7, 1918, Decree Number Three on Courts on July 20, 1918, and the Statute on the One and Single People's Court on November 30, 1918, solidified a court system whereby a series of local people's courts sent cassational instances to the Council of People's Judges, which could only review judgments resulting in fines of more than one hundred rubles or imprisonment over six months.

More serious crimes were dealt with by the system of revolutionary tribunals. According to the Instruction to the Revolutionary Tribunals of December 17, 1917, decisions of the revolutionary tribunals were final, except for cases which included obviously unjust sentences or violations of procedure, for which cassation would be rendered by the Cassational Department of the People's Commissariat of Justice (*Narodnyi Kommissariat Iustitsii*, hereafter referred to as Narkomiust).¹⁶ Subsequently, cassation became the domain of the Special Department of Cassation of the Central Executive Committee (TsIK), which was codified by the Decree of June 11, 1918.

In September 1918, the Revolutionary Military Council established a Military Revolutionary Tribunal, which only dealt with judicial matters involving members of the military. The Statute of February 4, 1919, unified all revolutionary judicial, military, military-transportation, and province branches of the tribunal under the auspices of the Supreme Revolutionary Tribunal. The Statute on Revolutionary Tribunals of March 20, 1920, however, amended the Statute of February 4, 1919, on Revolutionary Military Tribunals by creating a

¹⁵ The confusion over what constituted a political crime was never resolved by judicial officials, and the resulting battles over jurisdiction between local courts and revolutionary tribunals resulted in the creation of a single, streamlined system of courts in 1922. This is discussed in detail throughout this chapter and the next.

¹⁶ Kucherov, *The Organs of Soviet Administration of Justice*, 45-46.

Supreme Tribunal of Cassation attached to the VTsIK. The Decree of June 23, 1921, unified the entire system of tribunals under the Supreme Tribunal attached to the VTsIK. The Supreme Tribunal attached to the VTsIK had four divisions: military, military transportation, cassation, and judicial. Subsequent to the Decree of June 23, 1921, the Cassational Tribunal attached to the VTsIK became responsible for all cassation in the tribunal system.¹⁷

A lack of uniformity in applying the law and a general inability of the courts and tribunals to determine where their jurisdiction lay combined with the advent of the NEP to create a call for a single, streamlined system of courts overseen by a new criminal code.¹⁸ The result was the enactment of a new code of criminal procedure on May 25, 1922, and a new criminal code on June 1, 1922.¹⁹ The new codes were accompanied by a single judicial system, whose hierarchy was defined geographically and passed by the Statute on Court Structure adopted by the VTsIK on October 31, 1922, and put into effect on November 11, 1922.²⁰ The new system of

¹⁷ Ibid., 50-54.

¹⁸ Hazard, *Settling Disputes in Soviet Society*, 150-151. Portnov and Slavin, *Stanovlenie pravosudiia Sovetskoi Rossii*, 147.

¹⁹ The criminal code was overhauled in 1926, but the reforms had little impact on the cassational process or how cassational courts were supposed to reach decisions. For a discussion of the effect of the 1926 criminal code on cassation see A. S. Tager, "Novye kassatsionnie zadachi v sviazi s vvedeniem ugolovnogo kodeksa 1926 g," *Pravo i zhizn'*, no. 2 (1927): 63-76.

²⁰ Portnov and Slavin argued that the VTsIK's Statute on Court Structure, which was intended to create a unified judicial system with clearly defined rules, actually caused more confusion than the dual system of courts and tribunals in place during the Civil War. Though they did find some merit in the elimination of territorial tribunals, they found that the creation of a hierarchical system of courts was "significantly more complicated." Specifically, they argued that complications arose in questions of jurisdiction. Whereas previously there was only a single people's court which would hear cases, now there were three levels of courts, and it was unclear which levels had jurisdiction over which cases. While Portnov and Slavin's general description of the tribunal and court systems was accurate, they approached this issue from a perspective which was concerned primarily with the role of tribunals from 1917 to 1922. They saw the Statute on Court Structure as an impediment to the function and scope afforded to tribunals, especially when compared to a regularized court system. They did not see the merit in an organized, hierarchical court system which had an expanded role and the ability to handle many of the crimes previously allotted to tribunals. They also saw merit in the tribunals' ability to render decisions quickly and without the formalism inherent to the new system of courts. See Portnov and Slavin, *Stanovlenie pravosudiia Sovetskoi Rossii* 148-150.

courts initially had three levels; the lowest courts were the people's courts (*narsud*), above which were the provincial courts (*gubsud*), and at the highest level were the republican courts.²¹ A few years later in 1924, the highest level of the judicial system, and the last chance for appeal, was the USSR Supreme Court.²² The Statute on Court Structure did not clearly delineate which courts were responsible for which cases, though subsequent amendments to the criminal code of procedure specified which crimes went to which courts.²³ Legal historian M. V. Kozhevnikov posited that in the early days of the system, before jurisdiction between different levels of courts was clearly established, provincial courts were the courts of first instance for the most important criminal cases previously handled by people's courts of the old system and for all cases previously assigned to the provincial revolutionary tribunals. In accordance, all cases of lesser importance were assigned to people's courts by the determination of the pre-trial investigator.²⁴

In this new system of courts, cassation could only take place one level higher than the court which passed the original sentence.²⁵ This meant, for example, a verdict of a people's court had to be appealed before a provincial court, and a verdict of a provincial court had to be appealed before a republican court.²⁶ Some legal scholars bemoaned the reformed system of

²¹ For a discussion of the different levels of courts and their responsibilities see Kozhevnikov, *Istoriia sovetskogo suda*, 134-167. For a streamlined depiction of the courts see Portnov and Slavin, *Stanovlenie pravosudiia Sovetskoi Rossii*, 148-149, which argued that there were actually four levels of courts: the Supreme Court of the RSFSR and its boards, provincial courts, and two levels of people's courts, one of which consisted only of lay judges (for the least severe crimes), and the other, which consisted of courts run by a single people's court judge and two lay assessors (for more severe crimes handled by people's courts).

²² Solomon, *Soviet Criminal Justice under Stalin*, 41. Initially, the USSR Supreme Court's appellate power did not stretch beyond military judicial matters.

²³ Kucherov, *The Organs of Soviet Administration of Justice*, 80.

²⁴ Kozhevnikov, *Istoriia sovetskogo suda*, 135.

²⁵ *Ibid.*, 52. Portnov and Slavin, *Stanovlenie pravosudiia Sovetskoi Rossii*, 149-150.

²⁶ *Ugolovno-Protsessual'nyi Kodeks RSFSR (1923)*, st. 344.

cassation, specifically the RSFSR Supreme Court's inability to review cases originally heard in people's courts by way of cassation. Since the majority of criminal cases occurred in people's courts, it seemed unfair that the highest court with the best-trained judges did not have the ability to review by way of cassation the vast majority of cases. The system's detractors claimed that the system of cassation contradicted the spirit of democratization and the program of the communist party by creating a stratified system of courts designed to keep most cases from ever reaching the Supreme Court.²⁷ Such detractors failed to acknowledge the logistical and pragmatic impossibility of charging a single court with the responsibility for the cassational caseload of all cases heard within a given republic. As will be made clear in the next chapter, provincial courts struggled to keep up with the deluge of cassational cases arriving on their dockets on a monthly basis. It was unreasonable to expect a single Supreme Court to handle all of the cases which dozens of provincial courts struggled to process. Moreover, the Supreme Court did possess the ability to review people's court cases through supervisory review, the mechanism of which is detailed later in this chapter.

Upon reaching a guilty verdict in the initial instance, Soviet courts permitted convicts to opt for a cassational appeal either verbally at the conclusion of the case, or in writing within seventy-two hours of the verdict.²⁸ A cassational panel of three judges received the written

²⁷ Portnov and Slavin, *Stanovlenie pravosudiia Sovetskoi Rossii*, 150. Portnov and Slavin did admit that the system's structure made sense when considering the lack of trained legal personnel capable of rendering adequate verdicts at the people's court level. They understood that people's court judges needed supervision from above through cassation at the provincial level to ensure rigorous verdicts. They still saw the cassational disconnect between the people's court and republic court as harmful to the interests of democratic socialism and the party. They saw further issues regarding the withering of democracy in the courts in the fact that cases previously heard in the people's courts by a judge and six lay assessors were, after the introduction of the Statute, the domain of a panel of judges at the provincial level. Aside from the fact that fewer individuals judged the cases, it is questionable why a case heard by judges with better legal training at the provincial level would be considered less democratic than a worse trained judge and six lay assessors (who had no training at all) judging cases at the people's court level.

²⁸ *Ugolovno-Protsessual'nyi Kodeks RSFSR* (1923), st. 400.

record of the case and, usually, a written complaint from the convicted party (written by the convict, a family member, or a legal counsel) explaining why the sentence merited cassational review. In many cases, after receiving a sentence, convicts simply scribbled down a few garbled sentences demanding a cassational review upon being told by the courts that they should write something for the cassational panel.²⁹

Cassational proceedings began when the presiding judge presented his report on the basis of the written record of the initial case. The party which filed the appeal, whether procurator, a defendant, a family member of the defendant, or a defendant's lawyer, then commented on the reasons for cassation, which was responded to by the opposite party (if cassation was raised by a procurator, the procurator would speak first and then the defendant or defendant's lawyer, and *vice versa* for the opposite). The defendant did not have to be, and often was not, present for cassation to occur.³⁰ The procurator would then make his conclusions, after which the defense had the last chance to argue its case, during which it could raise points not included in the original arguments for cassation.³¹

In form, this differed little from the cassational process in place during the Imperial period. The primary differences between the Imperial cassational courts and the post-1922 Soviet cassational panels lay in the degree of discretion available to Soviet cassational judges (to be discussed below), the new hierarchy of Soviet courts, and, starting in 1924, cassational panels' ability to reduce sentences or overturn them entirely.³² In addition, the Soviets

²⁹ This point is demonstrated by the archival material reviewed in chapter four of this dissertation.

³⁰ *Ugolovno-Protsessual'nyi Kodeks RSFSR* (1923), st. 409.

³¹ *Ugolovno-Protsessual'nyi Kodeks RSFSR* (Moscow, 1922), st. 355-356.

³² Tager, "Osnovnye problemy kassatsii," 67-68,71.

consciously chose to create a unique form of cassation, as opposed to any other option of appeal which might have been available.

Using the terminology established by the Second Decree on the Courts of February 1918, the new Soviet codes spoke of “cassation” and not of “appeal.” By adopting the term “cassation” the authors of the codes intended to convey the meaning of a review of the record without rehearing witnesses or examining material evidence.³³ Though the framers of the codes and statutes could have included the imperial *appelatsiia*, this option was never seriously considered because the *appelatsiia*, was seen as a tool used by the propertied minority in a bourgeois state to legally manipulate the law to retain their capital and statuses.³⁴

P. I. Stuchka, the People’s Commissar of Justice for the RSFSR (1917-1918), Chairman of the Supreme Court of the RSFSR (1923-1932), and primary author of Decree Number One on Courts, successfully argued for a revolutionary socialist legality which rejected all old laws and institutions that contradicted the revolutionary conscience and class interests of the proletariat.³⁵ This did not mean that all vestiges of the Imperial legal order had to be destroyed. In fact, several articles of the 1922 criminal code were identical or nearly identical to articles found in “The Code of Capital and Correctional Punishments” of August 15, 1845, “The Statue on Punishments to be Imposed by the Justices of Peace” of November 20, 1864, and the draft of the Russian penal code approved by the Tsar on March 22, 1903.³⁶ Pragmatically, it was not possible for the

³³ Hazard, *Settling Disputes in Soviet Society*, 329.

³⁴ Grodzinskii, *Kassatsionnoe i nadzornoe proizvodstvo v sovetskom ugovnom protsesse*, 11-12.

³⁵ P. I. Stuchka, *Selected Writings on Soviet Law and Marxism*, eds., intro and trans. Robert Sharlet, Peter B. Maggs, and Piers Beirne (Armonk, NY: M. E. Sharpe, 1988), 9-21. Also see Chel’tsov-Bebutov, “Obzhalovanie prigovora zashchitnikom,” 190-191.

³⁶ N. S. Timasheff, “The Impact of the Penal Law of Imperial Russia on Soviet Penal Law,” *American Slavic and East European Review* 10, no. 4 (1953): 441-462.

framers of the new socialist order to create a legal code and judicial structure completely divorced from previous bourgeois codes and structures. Instead of starting completely anew, they created a system based on Continental Law in general, and the Imperial system in particular. Old laws and structures could be included if they fit the spirit of revolutionary conscience, helped protect the interests of the proletariat, and did not countermand edicts of the VTsIK.³⁷ It is for these reasons why cassation was retained by the authors of the earliest Soviet legal codes.

In a more general sense, an analysis of the mechanics of Soviet cassational courts complicates notions of continuity between the Imperial Russian and Soviet legal systems. In his seminal article evaluating the influence of Imperial Russian penal codes on Soviet penal codes, N. S. Timasheff argued that many sections of the Soviet Russian penal codes of 1922 and 1926 were little more than duplications of promulgated Imperial Russian penal codes and drafts of Imperial penal codes, in some cases including entire articles copied verbatim. He identified several articles in the 1922 criminal code which were identical or nearly identical to articles found in “The Code of Capital and Correctional Punishments” of August 15, 1845, “The Statue on Punishments to be Imposed by the Justices of Peace” of November 20, 1864, and the Russian penal code approved (though never actually ratified) by the Emperor on March 22, 1903.³⁸ Timasheff showed that the drafters of the Soviet codes ensured that many definitions of crimes and their modalities carried over from the Imperial period to the Soviet period. He concluded that in many respects, there was nothing to distinguish Imperial criminal codes from Soviet criminal

³⁷ Stuchka, *Selected Writings on Soviet Law and Marxism*, 15-16.

³⁸ For example, Timasheff showed how the wording of article ten of the 1922 RSFSR criminal code and article 145 of “The Code of Capital and Correctional Punishments” defined the application of analogy (applying a similar, or analogous, part of the criminal code to a crime which does not completely fit any single article of the criminal code) with nearly identical terminology. See Timasheff, “The Impact of the Penal Law of Imperial Russia on Soviet Penal Law,” 448-450.

codes. He did, however, admit that Soviet codes included unique provisions about the penal system, and that the procedural rules regarding application of the penal code did represent a discontinuity from the Imperial period.³⁹ In addition, he readily admitted that articles in Soviet criminal codes regarding a host of social crimes were distinctive to the Soviet period. But more importantly, Timasheff's analysis did not extend beyond a comparative analysis of the texts of Soviet and Imperial criminal codes. Even if the codes included the same language, he did not attempt to prove that jurists from each era understood or applied the codes in the same ways.⁴⁰ This dissertation's depiction of the Soviet system of appeals, particularly with cassation, demonstrates that even if Timasheff is correct in identifying instances when the Soviets copied sections from Imperial law texts, the inclusion of several new guidelines and the actual way in which appeals functioned clearly set it apart from the Imperial system. Analogies between the Imperial system and the Soviet system certainly do exist, but scholars should be cautioned about overstating the linkage between the two based on the wording of similar sets of legal codes and drafts of legal codes.

In contrast to previous forms of cassation, Soviet cassation was designed to allow judges the latitude to evaluate cases beyond questions of statute raised by appellants. Rather than simply

³⁹ For example, Timasheff claimed that the Soviet inclusion of counterrevolutionary crimes in article fifty-seven of the 1922 criminal code and article fifty-eight of the 1926 criminal code had no counterpart in any Imperial legal code. See *ibid.*, 460.

⁴⁰ Timasheff was a Russian jurist whose legal career spanned the end of the Imperial era to the beginning of Soviet rule. As the son of Tsar Nicholas II's Minister of Industry and Trade, Timasheff received his L.L.D from St. Petersburg State University in 1914. In 1915, the Imperial Ministry of Justice appointed him to a committee tasked with drafting legislation to enact the criminal code of 1903 in its entirety. He was later appointed by the Provisional Government to another committee charged with accomplishing the same task as its predecessor, but both committees were interrupted by revolution. Timasheff eventually was forced to flee the Soviet Union in 1921 upon accusations of his involvement in the Tagantsev Conspiracy. After fleeing to the West, Timasheff enjoyed a long academic career, during which he published extensively on Russian law and sociology, often arguing that the totality of Russian history pointed toward a democratic twentieth century, and that the Bolshevik Revolution was an interruption of this historical arc. See Timasheff, "The Impact of the Penal Law of Imperial Russia on Soviet Penal Law," 444, and Roman Goul, "N.S. Timasheff 1886-1970," *Russian Review* 29, no. 3 (1970): 363-365.

examine a trial record for abrogation of procedure or a misapplication of the criminal code, Soviet cassational panels reviewed the entire case record for obvious injustices. In effect, Soviet cassational panels were permitted to remand cases on the merits of the case. This meant that the grounds available to review cases for Soviet cassational panels were more reminiscent of appeals in a Common Law system than of all previous forms of cassation.⁴¹ In addition, cassational panels were required to review the full record of the trial and provide a ruling both on the specific complaints raised by the convicted and on absolutely any aspect of the trial which qualified as a viable reason to set aside a sentence. This allowed members of the proletariat a better chance at gaining a reduction in sentence, especially since many of them did not understand most aspects of technical legality. All they had to do to guarantee a full review was opt for cassation, after which point a cassational panel had to review the case.⁴²

Not only was this intended to provide justice to workers, it also allowed an easy way for higher court justices to correct the mistakes and excesses of lower court justices. However, this also provided the opportunity for higher court judges to exercise their authority as they saw fit, affording lower-level judges no recourse if high court judges abused their authority.

The criminal code of procedure allowed Soviet cassational panels to set aside a sentence if they found:

- (1) the insufficiency or inaccuracy of the investigation;
- (2) material violations of the code of criminal procedure;
- (3) a violation or an incorrect interpretation of the criminal code;
- (4) the sentence rendered was clearly unjust.⁴³

⁴¹ Kucherov, *The Organs of Soviet Administration of Justice*, 623-624.

⁴² Grodzinskii, *Kassatsionnoe i nadzornoe proizvodstvo v sovetskom ugovnom protsesse*, 14.

The specific meaning of each of the four guidelines allowing a cassational adjustment to a decision was explained by subsequent sections of the criminal code of procedure. The first guideline was invoked when an investigation was considered insufficient or inaccurate; this meant that the investigator's explanation of the facts of the case was so unclear or incorrect that its inaccuracy or incompleteness affected the final verdict.⁴⁴

The second guideline applied when there were material violations of the code of criminal procedure. This included a series of transgressions expressed in article 415 of the criminal code of procedure, which permitted a cassational panel to cancel a decision:

- (1) if the court consisted of any members (judges, procurators, or investigators) who should not have been a part of the court;
- (2) if court proceedings had not been terminated pursuant to article 4 of the criminal code of procedure;⁴⁵
- (3) if a defendant was absent for the duration of a trial in a situation when the defendant had to be present for the trial to proceed;
- (4) if a defense lawyer did not participate in a case which required his participation.⁴⁶

⁴³ *Ugolovno-Protsessual'nyi Kodeks RSFSR* (1923), *st.* 413.

⁴⁴ *Ibid.*, *st.* 414.

⁴⁵ Article four of the criminal code of procedure provided for the termination of a trial if a defendant died (unless a case involved intimidation of judges, perjury, or if expert witnesses give factually incorrect testimony), the statute of limitations had expired, if the trial included no complaints from victims of the crime in question when there was no other basis for a trial outside of victims' testimony, or if the victim of a crime had reconciled with the defendant for cases in which a reconciliation should end the trial. See *ibid.*, *st.* 4, 10, 11, 375. As the next chapter of this dissertation discusses, the Moscow province judiciary had trouble teaching people's courts how to properly apply article four in the mid-1920s.

⁴⁶ *Ibid.*, *st.* 415. A defense lawyer had to be present when the defendant was dumb, deaf, or incapable of functioning in court due to infirmity. See *ibid.*, *st.* 55.

The combination of each of the four sections of article 415 of the criminal code of procedure comprised all of the reasons available to a cassational panel for altering a sentence according to the second guideline.

The third guideline was invoked when a court had misapplied the criminal code. This included any decision in which judges did not apply the article of the code which best fit the crime committed, if judges applied an article of the criminal code which did not apply to the case, if judges misinterpreted the wording of the criminal code, or if judges applied the criminal code in a manner which violated legislation.⁴⁷ Though judges were not expected to misapply the criminal code in a way which violated existing legislation, laws were passed so frequently that it was not uncommon for judges to apply the criminal code in a manner which violated either the wording or the spirit of recently passed legislation. This eventuality was considered and expected to be remedied through the cassational process.

The fourth guideline, more so than any of the other guidelines, provided cassational panels with the most discretion when evaluating cases. A verdict could be determined as clearly unjust if the penalty imposed did not match the crime committed.⁴⁸ This meant that cassational panels could alter sentences in situations when it agreed with the original court's determination that the appellant was guilty of a crime, but it disagreed with the severity of the penalty. Unlike with the elucidation of the other three guidelines, this guideline included nothing beyond the open-ended permission for a cassational panel to alter sentence for any case in which it decided that the sentence was too harsh.

⁴⁷ *Ibid.*, *st.* 416.

⁴⁸ *Ibid.*, *st.* 417.

The second and third guidelines harken back to French and Tsarist notions of cassational focus on the applicability of statutes. However, Soviet cassational panels included a novel aspect; violations of the code of criminal procedure or the criminal code did not necessitate a new trial if the cassational panel found that the appellant committed a crime under a statute which the court of first instance did not consider, but if it had done so, would have resulted in an identical sentence. That is, if the cassational panel determined that the appellant should have been prosecuted under a different statute which would have resulted in a conviction and identical verdict, then the cassational panel would not call for a new trial even if the court determined there had been a violation of the criminal code or code of criminal procedure.⁴⁹ This marked a departure from the powers traditionally ascribed to cassational bodies. No longer did they simply determine whether a case should be returned to lower courts due to an incorrect interpretation of statutes. Soviet cassational panels also possessed the ability, in practice, to render a final verdict if they determined that remanding a case to a lower court would eventually result in a sentence identical to that of the original court's decision.⁵⁰

The inclusion of the first and fourth guidelines allowed Soviet cassational panels more latitude in reviewing a case than any previous cassational body. With the first guideline, finding errors with the pre-trial and trial investigations of the case did not necessarily have to be based on a violation of statute. The fourth guideline permitted cassational panels to set aside a sentence upon finding any aspect of the trial which could be considered a "clear injustice": defined by the criminal code of procedure as any sentence unwarranted by the facts of a case or any sentence

⁴⁹ *Ugolovno-Protsessual'nyi Kodeks RSFSR (1922)*, st. 362.

⁵⁰ Hazard, *Settling Disputes in Soviet Society*, 331-332.

which seemed excessive given the specific circumstances of a case.⁵¹ Since the definition provided by the criminal code of procedure left it up to cassational panels to determine what constituted a sentence unwarranted by the facts of a case or how a sentence could be excessive, cassational panels had a great deal of interpretive power in deciding whether to alter sentences. In practice, this meant cassational panels reviewed all aspects of a case regardless of the reason why an appellant initiated cassational proceedings.⁵² Soviet jurists considered this as an improvement over the French system of cassation. Rather than force a cassational panel to dwell only on questions of statute, the Soviet cassational system implored judges to review cases in their entirety.⁵³ In short, the Soviet cassational panel possessed more power to alter sentences than its predecessors in the Imperial Russian or French judicial systems.

Although cassation allowed Soviet judges a wide range of options in altering sentences of lower courts, defendants were protected from receiving sentences more severe than the sentence they received in their original courts of jurisdiction in some instances, even if a cassational panel thought the original sentence was too lenient. Soviet legal officials wanted to encourage convicts to make use of cassation, both as a means of providing justice to the convicted and as a way for higher level judges to check on the decisions rendered by lower courts. At the same time, Soviet legal officials also wanted to use cassation to ensure correct verdicts, even if it meant passing harsher sentences than originally imposed. A question and answer section of *Ezhenedel'nik sovetskoi iustitsii* addressed the most likely situation in which a defendant would have been

⁵¹ *Ugolovno-Protsessual'nyi Kodeks RSFSR* (1922), st. 363.

⁵² A. S. Tager, "Osnovnye problemy kassatsii v sovetskom ugolovnom protsesse," *Problemy ugolovnoi politiki*, no. 4 (1937): 67-86.

⁵³ *Ibid.*, 70-71.

afraid that cassation could have resulted in a more severe sentence: when a cassational panel found that a court had sentenced a convict on the basis of an article which did not apply to the crime, and in its place, a more severe article should have been applied. Article 424 of the criminal code of procedure guaranteed that “if the original conviction was overturned on the grounds specified by the complaint of the convicted, then . . . a heavier penalty than the one that was elected at the first trial in the case [could not be applied].”⁵⁴ If a convict’s cassational appeal argued for a reduced sentence on the basis of the original court’s application of an incorrect statute of the criminal code, then the convict could not receive a more severe sentence even if the cassational panel found that the court did apply the incorrect statute, and that, in fact, a more severe statute (and penalty) should have been applied. However, this did not mean that cassational panels were disallowed from imposing harsher sentences. “In cases where the conviction was overturned on other grounds . . . regardless of the fact that it came in this instance on the appeal of the accused (and not by the procurator or in supervision) a new sentence may be imposed with a more severe punishment.”⁵⁵ In other words, if a convict’s reason for cassation was found to be spurious, but the cassational panel’s review of the case revealed reasons why the convict should have received a more severe sentence, and those reasons were not included in the convict’s argument for cassation, then the cassational panel could demand a harsher sentence. Thus, the criminal code and codes of procedure were codified in such a manner as to encourage the use of cassation, while at the same time emphasizing the primacy of attaining the correct ruling for a criminal case.

⁵⁴ *Ugolovno-Protsessual’nyi Kodeks RSFSR* (1923), *st.* 424.

⁵⁵ “Diskussionnaia stranitsa po primeneniuiu Ugolovnogo i Ugol.-Protsess. Kodeksov: Voprosy i otvety,” *Ezhenedel’nik Sovetskoi Iustitsii*, no. 11 (1923): 246.

Cassation was codified by the Soviets specifically to allow cassational panels the ability to protect the interests of the proletariat by providing a review requiring no legal knowledge on the part of appellants whatsoever, checked lower courts for contravention of technical aspects of legality or excesses in sentences, and guaranteed a full review of all aspects of the trial record. The intent was to allow the proletariat easy access to justice. In the event, however, that the cassational process failed to remedy appellants' grievances, the process of supervision offered a second chance at appeal.

III. The Supervisory Appeal from Peter the Great's Procuracy to the end of the Tsars

Once a cassational panel had rendered a verdict, or if both convicts and procurators declined to opt for cassation, there remained only one avenue of appeal within the normal channels of the Soviet justice system: an appeal by way of supervision. In contrast to cassation, convicts could not opt for a supervisory appeal themselves; only a procurator or judge from a superior court could initiate a supervisory review. This is not to suggest that convicts, family members, or other parties connected to the convict could not write to a procurator or judge from a superior court requesting a supervisory review of a case which had already been concluded. Convicts, family members, and both party and state officials did write to superior court judges and procurators requesting reviews, and if a procurator or judge saw reason to review a case, a supervisory review was undertaken. Nevertheless, one of the most glaring differences between supervision and cassation was the question of agency; convicts could not appeal a case through supervision themselves, they needed a superior court judge or procurator to initiate proceedings.

In cases when the RSFSR Supreme Court had already rendered a cassational verdict, a supervisory panel could still be convened from Supreme Court judges who were part of the

cassational division but who had not been a part of the cassational panel. Due to the fact that only a superior court judge or procurator could initiate a supervisory appeal, there were not only far fewer supervisory appeals than cassational appeals, but the likelihood of a supervisory appeal resulting in an alteration to a sentence was higher than for a cassational appeal. In addition, it was simple for a convict to opt for cassation, having only to verbally opt for it at the conclusion of a case. In contrast, a supervisory review could only be undertaken after a superior court judge or procurator agreed to review a case.

As with cassation, Soviet supervisory reviews included a three judge panel, and supervision could only take place at a level higher than the court (or cassational panel) which had rendered a final verdict. Though the guidelines governing supervisory judges granted more leeway in altering sentences than the guidelines for cassational reviews, both types of appellate panels had the ability to adjust sentences if a full review of the court record revealed anything from procedural malfeasance to obviously unjust verdicts. It was unusual, however, for supervisory reviews to overturn sentences for procedural malfeasance or misapplication of the criminal code, as these were relegated to the domain of cassational reviews. Even so, cassational reviews did not always catch procedural issues, as supervisory appeals were sometimes based specifically on lower courts' transgressions of legal procedure.

In comparison to Soviet cassation, Soviet supervision has an extensive history, one which finds its origins in Peter the Great's reforms aimed at creating an office which projected his will through legal means: the office of the procuracy. Peter's establishment of the procuracy marks the first attempts by a Russian ruler to create a legal institution designed to supervise the legality of government agencies, and it is this which set the benchmark for what would later become Soviet supervision.

The Russian word for supervision, *nadzor*, has a few meanings. The meaning employed most often is the ability to appeal a decision by way of supervision through *sudebnyi nadzor*: judicial supervision. This refers specifically to the process of a supervisory appeal in which a Soviet judge or procurator appeals a decision of a lower court after a sentence has been passed and cassation exhausted. This power did not exist in Russia until the restructuring of the judicial system in 1922. What did exist for centuries, however, was the procuracy's general power of *nadzor*, or supervision, over a variety of agencies. This power of supervision allowed the procuracy to audit or inspect agencies for evidence of corruption or transgressions of legality, in which case the procuracy reported its findings to a superior agency, or in some cases the procuracy could invoke its power of supervision to intervene directly and force a subordinate agency to alter a specific decision or a general policy.⁵⁶ This power to supervise the activities of other agencies laid the groundwork not only for the Soviet procuracy's ability to supervise courts, but it also included facets which were the forerunners to what would eventually become the Soviet practice of appeals through supervision.

Our story of supervision begins with Peter the Great's creation of the procuracy. The procuracy's power to oversee or, using Peter's terminology, "supervise," government agencies paved the way for the procuracy's ability to appeal decisions by way of supervision in the Soviet era. It wasn't until long after Peter's reforms that both judges and procurators gained the ability to initiate supervisory appeals, and therefore, it is with Peter's reforms establishing the procuracy and its earliest forms of supervision that this section begins.

⁵⁶ Van den Berg, "Recourse against Judgments in Civil and Criminal Cases in the Russian Federation," 23-24. Also see Hazard, *Settling Disputes in Soviet Society*, 363 for more on the terminology associated with *nadzor*.

Peter the Great created the procuracy in 1722 as an institution headquartered in the capital, but with representatives in each province capable of supervising the legality of various government agencies, primarily the Senate.⁵⁷ Though reliant on French and Swedish examples, Peter also used Russian examples of individuals who supervised legality on behalf of the Tsar in developing the procuracy.⁵⁸ Though some historians and legal scholars claim that Peter's procuracy owed more to Russian precedents (specifically the Department of Secret Affairs) than to European influences, the historian S. M. Kazantsev convincingly argues that the major influences in the formulation of the Russian procuracy came from Peter's personal interactions with the French procuracy and his knowledge of the Swedish Ombudsman's position in the Swedish Senate as the King's representative charged with executing edicts and uncovering violations of law by government officials.⁵⁹ Peter emulated the Swedish system as early as March 2, 1711, in an edict creating the Office of the Fiscal: an institution borrowed from the Fiscal System of Sweden which was responsible for declaring legal transgressions of state officials before the Senate. The success of the Russian Fiscal in uncovering corruption by state officials was such that Peter planned to appoint a "state fiscal," who not only would have headed the Office of the Fiscal, but also would have supervised the Senate itself. Before he could do so, however, two events convinced him that a state fiscal would not provide the comprehensive oversight over the Senate that he desired. First, Peter's visit to Paris in 1717 resulted in a meeting with a Parisian procurator who explained the French procuracy to Peter in a manner which

⁵⁷ Harold J. Berman, *Justice in the USSR: An Interpretation of Soviet Law* (New York: Vintage Books, 1963), 202-203.

⁵⁸ S. M. Kazantsev, *Istoriia tsarskoi prokuratury* (St. Petersburg: Izdatel'stvo Sankt Peterburgskogo universiteta, 1993), 37.

⁵⁹ Kazantsev, "The Judicial Reform of 1864 and the Procuracy in Russia," in *Reforming Justice in Russia, 1864-1994: Power, Culture and the Limits of Legal Order*, ed. Peter H. Solomon Jr., (Armonk, NY: M. E. Sharpe, 1997), 44-59.

convinced him that the French model deserved emulation. Second, the conviction of the Ober-Fiscal Nesterov for accepting bribes showed Peter that the State Fiscal was excessively liable to corruption and not to be trusted with oversight of the Senate.⁶⁰

Peter's January 18, 1722, edict on the reform of the Senate included, for the first time in Russian history, reference to a Procurator General. Not long after the January 18 edict, Peter clarified the role of the Procurator General in a special edict on "The Duties of the Procurator General," on April 27, 1722.⁶¹ The Procurator General and his assistant, the Chief Procurator, supervised the work of all state agencies, both judicial and non-judicial, to maintain order in their affairs, protect individuals from illegal activities of state officials, and to prosecute all individuals guilty of violating existing laws and imperial edicts. Extensive attention was given to the procuracy's role in supervising all individuals involved with the Tsar's fiscal interests, specifically regarding anyone connected with levying taxes or collecting dues.⁶² Procurators performed supervisory functions by acting as the Tsar's representative in reminding officials of existing laws and edicts, appealing any unlawful decisions, and reviewing denunciations made by the Office of the Fiscal before deciding whether to initiate criminal proceedings.⁶³

Though Peter's procuracy was based on the French procuracy and the Swedish Ombudsman, the Russian procuracy had powers which distinguished it from either. French procurators were servants of law first, and protectors of the crown second. Russian procurators, on the other hand, were servants of the crown first, and protectors of the law second. That is, Russian procurators, through their ability to supervise agencies' compliance with existing laws,

⁶⁰ Ibid., 46-47.

⁶¹ Ibid., 47. Also see Kucherov, *The Organs of Soviet Administration of Justice*, 404.

⁶² Kucherov, *The Organs of Soviet Administration of Justice*, 404.

⁶³ Kazantsev, "The Judicial Reform of 1864 and the Procuracy in Russia," 47.

were supposed to prejudice the interests of the Tsar above any codified law, whereas this was not the case in France. Similarly, the Russian Procurator General possessed more supervisory powers than the Swedish Ombudsman, primarily in the former's ability to oversee all agencies, not only judicial ones, to ensure that Senators did not exceed their powers, and to place the primacy of safeguarding the Tsar's property and collection of taxes above all other concerns.⁶⁴

Peter's determination to create a body which supervised state agencies through the application of the law created the kernel for the type of supervisory power accorded to the procuracy during the early Soviet period. Richard Wortman described eighteenth century Imperial Russia's attempt to use legal reforms and the creation of new legal bodies as a way to order society and impose the power of the Tsar through impersonal legality. Wortman saw the primary influence for this direction in the development of Russian legality as an attempt to emulate absolutist police states of eighteenth century Continental Europe, such as Sweden, Prussia, or Napoleonic France.⁶⁵ While not questioning Wortman's analysis of the development of the Absolutist state through the application of legal reforms, the true roots for this movement are found in the early seventeenth century under Peter's rule. Though Wortman acknowledges Peter's role in the development of Russian legality, Wortman only mentions in passing his influence in identifying the motive force behind the evolution of Russian legality in foreign conceptions of power and law developed during the eighteenth century.⁶⁶ Peter's notions of legality were primarily shaped by foreign influences, but the basis for the creation of legal

⁶⁴ Ibid., 47-48.

⁶⁵ Richard S. Wortman, *The Development of a Russian Legal Consciousness* (Chicago: University of Chicago Press, 1976), 9-10.

⁶⁶ Ibid., 9.

institutions as dispassionate bodies tasked with extending the influence of the state into affairs at all levels of society, and the roots of the Soviet procuracy, find themselves in the early seventeenth century with Peter the Great's establishment of Russia's first procuracy.

Peter created the procuracy as an institution capable of wielding legal power in the interests of protecting the state, which, for the Imperial period, was synonymous with the Tsar. Similarly, one of the guiding concepts behind supervision in the Soviet period, as we will see, was enabling the procuracy to wield legal power to protecting the interests of the state, which for early Soviet legality meant ensuring the proper application of class-based justice. The purpose of Peter's supervision remained basically the same in the Soviet period; the difference being that the definition of "the state" had shifted from the person of the Tsar to the interests of class-based justice, as defined by Soviet leaders. Chairman of the VTsIK (and later, the Commissar of Justice and Procurator General of the RSFSR) Nikolai Krylenko put it best when noting that the procuracy had to function as the upholder of legality in its supervisory capabilities.⁶⁷ Specifically, the procuracy had to be an institution "to which every person can go with a statement that his rights have been infringed from his point of view, and consequently this agency must have enough authority to set the matter right . . . and further, it must have the right to act not only on the initiative of another but on its own initiative . . . to prevent a violation of law."⁶⁸

⁶⁷ "IV Vserossiiskii s'ezd deiatelei sovetskoi iustitsii doklad tov. Krylenko o prokurature," *Ezhenedel'nik Sovetskoi Iustitsii*, no. 5 (1922): 11-12. For more on Krylenko's views on the role of the procuracy in aiding the development of the legal system during the 1920s see N. V. Krylenko, *Sud i pravo v SSSR, chast' pervaiia. Osnovy sudoustroistvo* (Moscow: Gosizurizdat, 1927).

⁶⁸ Ia. L. Berman, *Ocherki po istorii sudoustroistva RSFSR s predisloviem N. V. Krylenko* (Moscow, 1924), 45, quoted in Hazard, *Settling Disputes in Soviet Society*, 157. That any citizen could approach a procurator with the request to review a case by supervision did not mean that a procurator had to review the case. The right to initiate supervisory proceedings still was reserved only for procurators and judges, as will be made clear later in this chapter.

Though Peter's death led to a decrease in the powers accorded to his fledgling procuracy, a series of reforms throughout the mid-eighteenth century, culminating in Catherine the Great's reorganizations of the administrative system in 1775 and 1780, not only defined the procuracy as a distinctly legal agency, but also clarified its ability to use supervision as a means to combat corruption in lower courts. The brief reign of Catherine I (1725-1727) after Peter's death saw the nobility successfully eliminate many of Peter's centralizing agencies, including the Office of the Fiscals, lower-level procurators, and procurators attached to the Senate.⁶⁹ Procurators of province-sized regions continued to exist, however, and under Anne's rule (1730-1740) a decree announced in 1733 explicitly allowed such procurators to submit protests against illegal acts of local authorities and courts; thus re-establishing their supervisory capabilities over agencies through the use of protests of abrogation of legality to provincial governors.⁷⁰ Under Elizabeth I (1740-1761) the role of the procuracy expanded far beyond what Peter imagined, to the point where procurators were briefly charged with supervising prisons. Kazantsev cautions, however, that the actual powers of supervision granted to procurators were minimal during this period, especially when compared to the periods of Peter and Catherine the Great.⁷¹

Catherine the Great's reforms granted many new powers to the procuracy in her quest to create a legal body capable of combating corruption along with protecting the interests of the state, which, as with Peter's reign, was analogous with protecting Catherine's interests. Her reform of 1775 eliminated a number of ministries responsible for processing a variety of cases. The cases which would have been sent to such ministries were thereafter the domain of the

⁶⁹ Kazantsev, "The Judicial Reform of 1864 and the Procuracy in Russia," 48.

⁷⁰ Van den Berg, "Recourse against Judgments in Civil and Criminal Cases in the Russian Federation," 25.

⁷¹ Kazantsev, "The Judicial Reform of 1864 and the Procuracy in Russia," 49.

Senate, with the Procurator General made responsible for sending cases to the appropriate departments within the Senate.⁷² Thus, all cases initially passed by the purview of the Procurator General who, after the Senate ruled on cases, had the ability to review cases and lodge protests for demonstrated violations of legality or corruption.⁷³ In addition, the provincial reform of 1775 changed the structure of the procuracy by creating procurators' offices at both the provincial and district levels (analogous to the provincial and people's courts levels extant during the early Soviet period) which were tasked with, for the first time in Russia, managing prosecutions on behalf of the state.⁷⁴ The administrative reorganization of 1775 redefined the procuracy not only as the general watchdog of legality, but also as the legal organ responsible for state prosecution. Catherine's faith in the procuracy as the projection of her power through legality is perhaps exemplified best when she appointed the Procurator General as her sole representative at the commission for the creation of the new criminal code; the Empress informed only him of what she wanted included in the new criminal code, and he was the only person in the commission permitted to represent her vision of the new legality.⁷⁵

Subsequent Tsars' expansions of the powers of the Procurator General had less to do with enforcing legality and more to do with creating a post dedicated to projecting the will of the Tsar. Paul I (1796-1801) granted the Procurator General the ability to decide issues involving recruitment of soldiers, how to ensure logistical supply lines supporting both the army and navy, and the responsibility of handling a number of financial matters. Paul extended the Procurator General's power by making him responsible for coordinating central and peripheral authorities in

⁷² Kazantsev, "The Judicial Reform of 1864 and the Procuracy in Russia," 49.

⁷³ Van den Berg, "Recourse against Judgments in Civil and Criminal Cases in the Russian Federation," 25.

⁷⁴ Kazantsev, "The Judicial Reform of 1864 and the Procuracy in Russia," 50.

⁷⁵ Kucherov, *The Organs of Soviet Administration of Justice*, 404-405.

the fight against crime, hunger, and natural disasters. The Procurator General remained involved in the identification and prosecution of bribe takers, but under Paul the procuracy functioned less as a legal apparatus and more as a ministry charged with troubleshooting a host of issues Paul did not entrust to any of his other ministers. He saw the Procurator General as something of a Prime Minister, someone who could be relied upon to handle affairs as the Tsar desired. Supervision became only one amongst many of the procuracy's duties, and accordingly, supervision's importance waned during this period. This laid the groundwork for the elimination of the supervisory function of the Procuracy with the Judicial Reforms of 1864.⁷⁶

The Judicial Reforms of 1864 greatly reduced the powers of general supervision previously granted to the procuracy while at the same time creating a system similar (though not perfectly analogous) to what would become the Soviet system of supervisory appeals. The reforms left the procuracy with the powers to supervise criminal prosecutions and support the charges leveled by the state in all criminal cases.⁷⁷ Though procurators were tasked with defending the interests of the state, they were also supposed to speak on behalf of individuals who lacked the means to defend themselves in court, represent the general interests of the public and social good, and that above all else, seek the truth.⁷⁸ The reforms converted the procuracy from an agency tasked with overseeing the legality of a number of agencies to an institution concerned with prosecution in courts. The procuracy's previous power to supervise the courts was passed on to the Ruling Senate (which functioned as the highest court in Imperial Russia).

⁷⁶ Kazantsev, "The Judicial Reform of 1864 and the Procuracy in Russia," 50-51, and van den Berg, "Recourse against Judgments in Civil and Criminal Cases in the Russian Federation," 25-26.

⁷⁷ Van den Berg, "Recourse against Judgments in Civil and Criminal Cases in the Russian Federation," 25-26.

⁷⁸ Kazantsev, *Istoriia tsarskoi prokuratury*, 163-164.

From the beginning this included the ability to review any case with the goal of protecting the public order and ensuring the proper administration of justice, though this power was invoked only in exceptional circumstances.⁷⁹ Not long after the Judicial Reforms, the procuracy attempted to protest a case to the Senate in a non-cassational instance, but the Senate refused to review the case, as it decided that the procuracy did not have the power to initiate protests outside of cassation.⁸⁰ Thus, at this point, the only avenue of appeal available outside of cassation was vested in the Senate's ability to review a case for the nebulous purpose of upholding the administration of justice.

The Senate's power to intervene in cases was clarified and extended in a reform announced in 1885. Alteration to article 250 of the Judicial Acts of 1864 permitted the Senate to set aside sentences for cases when a court did not have the right to convict an individual, even if cassation had not been attempted. The 1885 reform reiterated that the Senate should set aside cases in which a sentence mitigated the public interest, and that above all else the Senate should be concerned with finding the truth in any given case. The procuracy could submit requests to the Senate to review cases aside from cassational review, though the Senate could choose to ignore its requests.⁸¹

By this point no single practice fully resembling Soviet supervision existed in the Imperial Russian justice system. Yet, elements of what would eventually become the Soviet

⁷⁹ The Minister of Justice also had the ability to request the review of any case, though the review had no ability to alter the outcome of the case, and thus in no way resembled the supervisory review in Soviet times. See van den Berg, "Recourse against Judgments in Civil and Criminal Cases in the Russian Federation," 26-27.

⁸⁰ M. Fincke, "Die aufsichtliche Überprüfung rechtskräftiger Strafurteile im Sovetrecht," *Studien des Instituts für Ostrecht* 17, (München: Erdmann Herrenalb, 1966), 23-24, cited in van den Berg, "Recourse against Judgments in Civil and Criminal Cases in the Russian Federation," 27. Note that van den Berg mistakenly cites Fincke's publication as the eighteenth volume of *Studien des Instituts für Ostrecht*.

⁸¹ Van den Berg, "Recourse against Judgments in Civil and Criminal Cases in the Russian Federation," 27.

supervisory appeal are identifiable in the powers Peter the Great granted to his procuracy to protest legal issues, the general powers of supervision exercised by the procuracy up until the 1864 reforms, and the power vested in the Ruling Senate to intervene in cases with the intent of delivering justice and protecting the common good. All of these contributed to what would eventually become the supervisory power to appeal cases granted to high court judges and procurators in the Soviet system. Similar to the reasons motivating the granting of powers enjoyed by the procuracy and Senate during various periods of the Imperial era, the power to exercise supervisory review in the Soviet system was established with the stated intent to both deliver justice and to create a legal body capable of imposing the state's notion of legality through direct intervention in any case.

IV. The Supervisory Appeal in the Soviet System

Most legal historians attribute the birth of the idea of the supervisory appeal in the Soviet system to Decree Number Two on the courts of March 7, 1918.⁸² Article six of the Decree not only called for a Supreme Judicial Control based in Petrograd to identify “contradictions in the interpretation of laws by various cassational instances,” but that it should clarify the proper application of law by issuing guiding decisions altering cassational decisions.⁸³ In addition, when it became clear that cassational judges were ruling inconsistently because of contradictory or confusing laws, the Supreme Judicial Control was to bring this to the attention of the VTsIK to pass new laws rectifying the contradictions.⁸⁴ Though this article of the decree was never

⁸² For example, see *ibid.*, 30, in which van den Berg agrees with V. B. Alekseev and E. A. Mironova's assertion that Decree Number Two provided the impetus for Soviet supervision.

⁸³ For article six of Decree Number Two see *Dekrety sovetskoi vlasti*, 468.

⁸⁴ *Ibid.*

implemented, it is the first time Soviet legislators considered creating a method of appeal within the judicial system beyond cassation. In addition, this method of appeal expressly dealt with cases in which the wording of the law created confusion among lower court judges. The Supreme Judicial Control was envisioned as a legal body capable of clarifying disputes over the correct application of the law raised in cassation, and that the Control's resolution of these disputes would act as a guide for all future courts. This combination of an additional layer of legal remedy and a legal body responsible for providing definitive interpretations of the law provided the wellspring for what would become the supervisory appeal.

Further legislation during the late 1910s and early 1920s built on the ideas found in the Decree Number Two. In October 1918, Narkomiust began cancelling clearly unjust decisions made by people's courts. Narkomiust's powers to annul decisions were regulated by a December 11, 1918 directive which, for the first time, specifically referred to supervision as the ability to alter court sentences.⁸⁵ Further legislation was passed on November 20, 1919, in Ukraine, providing for a special review of revolutionary tribunals through supervision.⁸⁶ A general RSFSR Decree on October 21, 1920, created a special department within Narkomiust tasked with reconsidering certain sentences through supervisory appeal, along with the ability to reopen cases in situations when the uncovering of new evidence had the potential to alter court decisions.⁸⁷ Finally, a decree announced on March 10, 1921, established a "Statue on Highest

⁸⁵ Van den Berg, "Recourse against Judgments in Civil and Criminal Cases in the Russian Federation," 32.

⁸⁶ *Sobranie zakonov i rasporyazhenii Rabochego i Krest'ianskogo pravitel'stva RSFSR* 1919, no. 58, st. 549.

⁸⁷ *Sobranie zakonov i rasporyazhenii Rabochego i Krest'ianskogo pravitel'stva RSFSR* 1920, no. 83, st. 112 and no. 90, st. 115.

Judicial Control,” which gave the Ministry of Justice the power to supervise all courts in the pursuit of creating a uniform legality.⁸⁸

During the period between the October Revolution and the reforms of the judiciary in 1922, the VTsIK decrees enumerated various aspects of supervisory powers, though such powers were reserved for Narkomiust. The type of supervisory appeal discussed here, however, did not fully take shape until after the court reforms of 1922 combined the Soviets’ early notions of supervision with historical precedents from the Imperial era to create a unique power of supervisory appeal accorded to high court judges and procurators.

On May 28, 1922, the VTsIK’s decree on “The Statute of Procuratorial Supervision” established the procuracy within Narkomiust as an agency capable of supervising courts not only in the Petrine tradition, but also with the power to order the review of any case through supervision. From the beginning of the October Revolution up until this decree, the office of the procuracy did not exist; it had been eliminated, along with the vestiges of the Imperial court structure, with the overthrow of the Tsar.⁸⁹ After a few years without procurators, it became clear that the justice system required a professional core of prosecutors capable of presenting the state’s case; as a result, Lenin called for the reestablishment of the procuracy.⁹⁰

Lenin faced heavy opposition from prominent party members Lev Kamenev, Aleksei Rykov, and Grigorii Zinoviev, all of whom agreed that the reintroduction of the procuracy amounted to the reintroduction of bourgeois legality, and that the procuracy threatened to create

⁸⁸ *Sobranie uzakoneni i raspriazhenii Rabochego i Krest’ianskogo pravitel’stva RSFSR* 1921, no. 15, st. 97 and no. 49, st. 262.

⁸⁹ Decree Number One on the Courts eliminated the Imperial procuracy. See Kucherov, *The Organs of Soviet Administration of Justice*, 408.

⁹⁰ Van den Berg, “Recourse against Judgments in Civil and Criminal Cases in the Russian Federation,” 32.

a dual power structure within the Soviet Union: executive committees on the one hand and procuracies on the other.⁹¹ The reconciliation between the two factions combined Lenin's desire for general supervision and supervisory review with the Rykov group's request that the procuracy not be able to protest the legality of decisions made by local state and party authorities.⁹² In Samuel Kucherov's view, "Lenin thought that the prosecutor has the right and the duty to do one thing: to watch for the establishment of a real uniform comprehension of legality in the entire Republic unencumbered by any local differences and in spite of any, whatsoever, local influences."⁹³ Accordingly, the VTsIK decree reviving the procuracy specifically provided for "supervision . . . by initiating criminal prosecution of the guilty and protesting decrees which violate the law," along with handling all prosecutions in criminal courts.⁹⁴ The decree effectively created the power of supervisory review whereby procurators could protest any judicial verdict to a superior court. The promulgation of the first RSFSR criminal code of procedure on May 25, 1922 specifically allowed procurators and the president of regional courts the right to demand the record of any case to review it by way of supervision.⁹⁵ Such powers were carried through the rewriting of the criminal code of procedure on February

⁹¹ Kamenev was elected a full member of the first politburo in 1919, and from 1922 to 1924 he served as deputy chairman of the Sovnarkom. He was followed as chairman by Rykov, who served in the same capacity from 1924 to 1930. Rykov was elected to the Communist Party Central Committee in 1920. Zinoviev was the chairman of the Executive Committee of the Communist International from 1919 to 1926, during which he was one of the party's leading theoreticians. He was elected to the politburo in 1921. All three were influential members of the party whose opinions held great sway. For brief descriptions of all three, see J. Arch Getty and Oleg V. Naumov, *The Road to Terror: Stalin and the Self-Destruction of the Bolsheviks, 1932-1939* (New Haven: Yale University Press, 1999), 600-614.

⁹² Kucherov, *The Organs of Soviet Administration of Justice*, 410-412.

⁹³ *Ibid.*, 412. See Jane Burbank, "Lenin and the Law in Revolutionary Russia," *Slavic Review* 54, no. 1 (Spring, 1995): 23-44, for a discussion of the evolution of Lenin's view of law over the course of his life, especially regarding the role of law during the revolutionary period.

⁹⁴ *Sobranie zakonov i rasporyazhenii Rabochego i Krest'ianskogo pravitel'stva RSFSR 1922*, no. 36, st. 424.

⁹⁵ *Ugolovno-Protsessual'nyi Kodeks RSFSR (1922)*, st. 44, 208, 354, 373-374.

15, 1923, and throughout the NEP era both procurators and president judges of superior courts had the ability to request the review of any case from an inferior court, with the ability to alter sentences for any instance in which a case did not conform to codified legality.

Initially, only the Procurator General of the USSR and his deputies, republic procurators and their deputies, the chairman of the USSR Supreme Court and his deputies, and the chairmen of republican Supreme Courts and their deputies could order supervisory reviews of cases.⁹⁶ Starting in 1924, regional courts and procurators could also request supervisory reviews of people's courts' decisions, though republic and USSR procurators and judges retained the right to call for supervisory reviews of decisions at all subordinate courts, including people's courts.⁹⁷ Though the option for supervisory reviews was limited to the domain of procurators and judges, their decision to initiate a supervisory appeal could be spurred by a number of different sources: an appeal addressed to a judge or procurator by a convicted criminal, an appeal written by the lawyer or relatives of a convict, requests from officials from almost any party or state agency, press reports pointing to the injustice of a given sentence, audits performed by the Ministry of Justice, an appeal by the Ministry of Justice to a Supreme Court, or appeals sent by procurators or judges from lower levels of the judiciary. As chapter five will show, requests for supervisory reviews often had little to do with the best interests of the convicted. Instead, all too often, institutional conflicts and rigid applications of legal formalism resulted in procurators and judges considering cases which exhibited no legitimate reasons for supervisory review. In some situations, it is questionable that the convicted had any idea that his case had been submitted for

⁹⁶ *Ugolovno-Protsessual'nyi Kodeks RSFSR* (1923), st. 440.

⁹⁷ Van den Berg, "Recourse against Judgments in Civil and Criminal Cases in the Russian Federation," 35.

supervisory consideration. Nevertheless, once set in motion, supervisory reviews could uphold a sentence, alter it, cancel it entirely, or remand the case for a new trial at a lower court.⁹⁸

Supervisory reviews not only remedied specific grievances, but also served a didactic purpose for lower courts. Legal journals devoted pages reporting the proceedings of important supervisory reviews, even for cases appealed by supervision to regional courts.⁹⁹ Such reports in legal journals emphasized specific points of law remedied by supervisory review and included specific instructions to lower courts advising them how to avoid similar mistakes in future cases. At the highest level of supervision, the USSR Supreme Court heard supervisory appeals of the most serious cases appealed from republican Supreme Courts.¹⁰⁰

The supervisory review comprised the second half of the two-tiered system of appeals in the Soviet justice system. Though convicts could not initiate a supervisory appeal as they could with a cassational appeal, they could convince an official from a higher court to do so. Of course, convicts had to have the legal knowledge to know that they had the ability to petition a court official to start a supervisory appeal. Convicts' legal knowledge, who advised them and how they functioned within the rules of the appellate system, will be answered by the case studies of appeals in the final three chapters of this dissertation.

⁹⁸ *Ibid.*, st. 441. Though this right was codified by the criminal code of procedure in 1923, it wasn't put into practice until 1924.

⁹⁹ See for example "Praktika sudebnogo nadzora," *Rabochii sud*, no. 35-36 (1925): 1365-1368, which discussed how the Leningrad Province court's supervisory review of citizen A. K.'s conviction for hooliganism found that a people's court conviction should have been overturned by an alteration to article 176 of the criminal code of procedure, which dealt with the requirement for any citizen to produce documentation of identification upon request by an investigator.

¹⁰⁰ See Kozhevnikov, *Istoriia sovetskogo suda*, 175-176, and van den Berg, "Recourse against Judgments in Civil and Criminal Cases in the Russian Federation," 35.

Conclusions

Though the two-tiered Soviet appeals system of cassation and supervision was designed as an alternative to, what Soviet leaders considered, previous systems underscored by bourgeois legality, many elements of Soviet appeals were based in foreign influences and the Tsarist legal system. Soviet cassation drew heavily from the French system of cassation and the system of Imperial Russian cassation created by the judicial reforms of 1864. At the same time, the latitude accorded to Soviet cassational panels in rendering judgments meant that Soviet cassation functioned as a full review of the entire case record, which far exceeded the powers granted to cassational judges in either the Imperial Russian or French systems. The ease with which convicts had access to cassational appeals captures one of the main goals of Soviet cassation: to allow convicts, regardless of legal knowledge or class background, the opportunity for a full review of their cases by a superior court. This, in itself, was truly revolutionary.

Soviet supervisory appeals, on the other hand, were intended primarily as a way for superior courts to supervise the activities of lower courts, expressly through the ability to receive cases for review only from judges and procurators. Supervisory panels remedied specific legal grievances, but their primary role was to ensure the provision of justice by examining cases and transmitting guiding decisions to lower courts. These guiding decisions performed the wider purpose of teaching lower courts how to properly apply the law, both in terms of practical application of specific facets of legal codes, and in the more abstract sense of understanding the goals of socialist justice. This didactic purpose was augmented by the directive to perform the role of general supervision of legality of all lower courts: a role which found its roots as far back as Peter the Great's creation of the procuracy. What distinguished Soviet supervision, however, was that legality was supervised through the appeals process, not just through the procuracy's

ability to review the actions of government agencies to ensure that they adhered to codified legality.

Taken together, the Soviet system of appeals was unique. Appellants had easy access to legal remedy, while high court officials could monitor the activities of lower courts through appellate review. This was the first such system to exist up until the period of the Soviet criminal justice system.

Having laid out “the rules of the game,” the remainder of this dissertation explores how such rules were put into effect in case studies, how appellants and judges understood and applied the rules, and the importance ascribed to appeals at all levels of the Soviet legal system.

Chapter 3: From Above and From Below: The Flow of Information between County, Province, and Russian Republic Courts

On paper, the appellate system described in the last chapter provided Soviet convicts with the guaranteed right to redress grievances through the judicial process. The system, however, did not run as smoothly as its designers envisioned due to one factor for which they could not fully account: the people involved in the judicial process. Individuals involved in cases, both criminals and members of the court, represented a vast array of experiences and divergent interests, and when their interests clashed during the judicial process the results often indicated anything but the desire for a proper dispensation of justice.

To understand what framed these interests and who these individuals were, this chapter employs a tripartite analysis. First, this chapter explains how the courts described in the last chapter were assigned cases and what major considerations were supposed to guide judicial decisions. Key pieces of legislation passed by Narkomiust and the VTsIK in the forms of guiding principles, amnesties, and criminal codes instructed judges on the considerations that should have shaped their decisions. Though all levels of the judiciary received the same orders pertaining to class and legality, personnel at different levels of courts adopted a range of views of the goals of the legal system and the nature of class-based justice, in no small part due to the nature of the different types of cases assigned to different levels of courts.

Second, this chapter surveys the types of individuals involved in criminal cases during the 1920s in the RSFSR, exploring the backgrounds of both criminals and legal personnel. Differences in backgrounds contributed to the different ways in which disparate levels of courts adjudicated cases. Understanding the different types of crimes prevalent at different levels of the courts, how outcomes at different levels of courts differed, and the educational differences

between personnel at different levels of courts all contribute to determining why legal personnel at different levels of courts clashed.

Third, I will examine points of departure for analyzing the nature of the flow of information between officials at different levels of the justice system. Conflicts between different levels of the judiciary owed much to the differences among legal personnel at different levels. How they understood legal codes, what informed their notions of class, and the differences in the types of crimes brought before different levels of courts all contributed to tensions. By looking at information channels in Moscow province in general, and *Zvenigorod uezd* (hereafter referred to by its English translation of “county”) in particular, this chapter identifies the nature of those tensions. Arguments between different levels of the judiciary, though couched in debates over the proper administration and delivery of justice, often devolved into little more than personal squabbles over who could impose power. Such examples indicate that the power dynamic between the top and bottom rungs of the judiciary drove demands for changes in policy rather than the nebulous, albeit altruistic, desire to improve the machinery of justice. Throughout, an emphasis on importance of appeals is noted, both as a bridge between this chapter and other chapters, and also to demonstrate how legal officials used appeals to study the efficacy of lower courts.

I. Important Legal Decrees Shaping Judicial Considerations and Jurisdiction over Crimes

This chapter’s first section begins by covering key points of legislation delineating the different types of crimes assigned to different levels of tribunals and courts, with the least severe assigned to the lower levels and the most severe to the higher levels. Key VTsIK and Narkomiust directives in the early 1920s informed judges how to rule on cases, especially in prejudicing

certain classes over others regardless of the crime. The emphasis on class is best understood with an analysis of the 1922 and 1926 criminal codes, especially when comparing the former's emphasis on leniency for the proletariat with the removal of such wording from revisions to the 1926 criminal code; the decision to rescind many of the privileges accorded to peasants and workers changed the outcomes of many cases, particularly when appellate panels declined to exercise clemency for cases which would have resulted in reduced sentences for peasants and workers under the previous wording of the criminal code.

The VTsIK's Decree Number Three on the Courts, announced on July 18, 1918, established a bifurcated judicial system divided into people's courts and revolutionary tribunals. People's courts oversaw non-political cases dealing with misdemeanors and felonies, while tribunals were supposed to adjudicate cases of a political nature involving bribery, forgery, possession of illegally received or produced Soviet documents, hooliganism, and speculation.¹ The pre-trial investigation determined jurisdiction between courts and tribunals on the basis of whether or not the crime was of a political nature. When there were questions about whether a crime was politically motivated, and such questions were the norm rather than the exception, jurisdictional issues became muddled. It quickly became unclear whether tribunals or courts were supposed to handle cases of bribery, counterfeiting, robbery (which could be defined as hooliganism), and speculation, which could be considered criminal or political. This was further complicated by the deluge of proclamations (covered in the previous chapter) explaining the different divisions and responsibilities of courts and tribunals. Both court and tribunal judges were guided by a few unifying principles, most clearly defined in the "Guiding Principles of

¹ "O sude (Dekret No. 3)," Dekret SNK 20 Iiulia 1918 g., in *Sbornik dokumentov po istorii ugovnogo zakonodatel'stva SSSR i RSFSR: 1917-1952 gg.*, ed. I. T. Goliakov (Moscow: Gosizdat, 1953), 28. Also see Story, "In a Court of Law," 100.

Criminal Law of the RSFSR,” published by Narkomiust on December 12, 1919.²

Drafted by Commissar of Justice Peter Stuchka and formally announced by his successor, Dmitrii Kurskii, the “Guiding Principles” explained to judges what considerations should factor into their decisions, both in determining guilt and in rendering sentences.³ The preamble to the Principles made it clear that “the proletariat should establish rules to curb their class enemies . . . [with] criminal law, which has the task of fighting against violators of the emerging new environment of the collective during this transition period of the dictatorship of the proletariat.”⁴ The preamble continued by stating that law should “break the resistance of the nearly annihilated bourgeois,” and that to achieve this end Narkomiust announced simple principles meant to “help Soviet agencies of justice to fulfill the historic mission of struggle against class enemies of the proletariat.”⁵ The third article of the Principles instructed all legal personnel that “Soviet criminal law has the task of protecting . . . the interests of the working masses.”⁶ To accomplish this, judges and investigators should identify a crime as a “violation of the order of social relations,” guilt should be found “to protect the public from future criminal activity of a person who has committed a crime,” and verdicts should “distinguish between [whether] the offense was committed by a person belonging to the propertied class . . . or the poor, in a state of hunger or need, [whether] the act was committed in the interests of restoring the authority of the oppressive

² *Sobranie zakononii i rasporiazhenii Rabochego i Krest'ianskogo pravitel'stva RSFSR* 1919, no. 66, st. 590.

³ Stuchka was RSFSR People’s Commissar of Justice from March 18 to September 14, 1918. Kurskii held the position from September 14, 1918 to July 6, 1923.

⁴ Introduction to *Sobranie zakononii i rasporiazhenii Rabochego i Krest'ianskogo pravitel'stva RSFSR* 1919, no.66, st. 590. For more on the Bolsheviks’ conception of law as a tool of class warfare see Sheila Fitzpatrick, *The Russian Revolution*, 2nd ed. (Oxford: Oxford University Press, 1994), 90-91.

⁵ Introduction to *Sobranie zakononii i rasporiazhenii Rabochego i Krest'ianskogo pravitel'stva RSFSR* 1919, no.66, st. 590.

⁶ *Ibid.*, article 3.

class . . . [and whether] the act was committed by a professional offender (recidivist) or first time offender.”⁷ In enumerating the fifteen punishments available to judges who found a defendant guilty, article twenty-five of the Principles cautioned that punishment should consider “each individual case and the personality of the offender.”⁸

Among the points highlighted by the Guiding Principles, one issue stands out as key in determining the influence of notions of class on the judiciary: how social background should affect sentencing. Many of the articles of the Principles informed judges’ considerations of class interests in rendering judgments concerning guilt of individuals, but such notions were nebulous, open to interpretation, and failed to provide any specific instructions aside from generally imputing class interests in judicial proceedings. Also, the Principles expressed that those guilty of crimes should be found guilty, regardless of class background. Class considerations were supposed to inform judges only during the decision over the severity of the sentence. The Principles were specific in instructing judges to extend leniency to members of the proletariat, especially in situations when a crime was committed out of need.⁹ Thus, though the Guiding Principles did not instruct judges to use class background as a reason to acquit a defendant, the Principles did instruct judges to impose minimal sentences on members of the proletariat who had no criminal backgrounds.¹⁰ As will be seen through an analysis of subsequent VTsIK decrees and promulgations of criminal codes during the 1920s, the influence of the Guiding

⁷ Ibid., articles 5, 9, 12.

⁸ Ibid., article 25.

⁹ Unfortunately, the issue of need was left open-ended by the Guiding Principles. It was up to individual judges to determine what constituted need, and if that need warranted a lenient sentence.

¹⁰ As the case studies in subsequent chapters of this dissertation demonstrate, individuals represented social dangers when they showed “recidivist” criminal tendencies; such tendencies were mostly determined by a convict’s criminal background.

Principles extended far beyond 1919 in framing how judges were instructed to sentence members of the proletariat.¹¹

The case studies reviewed in the following three chapters of this dissertation confirm that the Soviet system of appeals did, in fact, render decisions prejudiced in favor of such individuals. One of the primary factors resulting in successful appeals was the identification of a convict as a member of the proletariat who possessed the type of background which should have resulted in a lenient sentence in the court of original jurisdiction. This meant that the original courts, both people's courts and provincial courts, all too often failed to apply class considerations during sentencing. One of the ways in which Soviet leaders tried to combat this was through a series of amnesties in the early 1920s designed to reaffirm the primacy of class considerations in the judicial process.

VTsIK general amnesties declared on November 4, 1921, and November 2, 1922, in honor of the four and five year anniversaries of the October Revolution called for wide-ranging reductions in sentences for a variety of types of prisoners and crimes.¹² Though the wording of each amnesty indicated that the motivation for the decrees was “to mark the . . . anniversary of workers' power and because of the end of the civil war and transition to peaceful construction”

¹¹ Perhaps the best example of the influence of the Guiding Principles is seen in the wording of the Fundamental Principles of the Criminal Legislation, announced in October 1924. As Peter Solomon points out, the Fundamental Principles were the clearest expression of class bias in Soviet criminal law during the 1920s. See Solomon, *Soviet Criminal Justice under Stalin*, 33. For more on the relationship between class bias and revolutionary justice during the 1920s see A. Solts and S. Fainblit, *Revoliutsionnaia zakonnost' i nasha karatel'naia politika* (Moscow: Moskovskii rabochii, 1925).

¹² See “Ob Amnistii,” Dekret VTsIK 4 Noiabria 1921 g., in *Sbornik dokumentov po istorii ugovnogo zakonodatel'stva SSSR i RSFSR: 1917-1952 gg.*, ed. I. T. Goliakov (Moscow: Gosizdat, 1953), 109-111, and “Ob amnistii k piatoi godovshchine oktiabr'skoi revoliutsii,” Dekret VTsIK 2 Noiabria 1922 g., in *Sbornik dokumentov po istorii ugovnogo zakonodatel'stva SSSR i RSFSR: 1917-1952 gg.*, ed. I. T. Goliakov (Moscow: Gosizdat, 1953), 149-150.

of the state, there were other motivations at play.¹³ As Mathew Rendle has pointed out, it was clear to the VTsIK that neither the courts nor the tribunals were capable of promoting the type of revolutionary justice implored by the original decrees on courts or the Guiding Principles.¹⁴ When combined with the endemic overcrowding of prisons described in the next section of this chapter, it made sense to relieve some of the pressure on the judicial system by releasing or reducing the sentences of selected inmates.

The Guiding Principles' emphasis on considering class background in sentencing was reinforced by sections of the amnesties. For example, the four year anniversary amnesty applied to those who sympathized or participated in the Kronstadt rebellion, those who deserted during the Civil War, and most individuals convicted of stealing food during periods of famine.¹⁵ The amnesty specifically did not apply to individuals who were convicted as members of criminal gangs, those who conspired with White Guards during the Civil War or anybody who engaged in armed actions against Soviet power.¹⁶ The amnesty provided for the release of convicts sentenced to under one year imprisonment, all of those sentenced to between one to three years could have their sentences cut in half, and all of those between three and five years were eligible to have their sentences reduced by a third.¹⁷ The amnesty called for panels reviewing death sentences to review the merits of the case in deciding whether to reduce the death sentence to a term of imprisonment of five years.¹⁸ Though this amnesty did not call specifically for members

¹³ See, for example, the preamble to "Ob Amnistii," Dekret VTsIK 4 Noiabria 1921 g.

¹⁴ Matthew Rendle, "Revolutionary Tribunals and the Origins of Terror in Early Soviet Russia," 693-721.

¹⁵ See article 4 of "Ob Amnistii," Dekret VTsIK 4 Noiabria 1921 g.

¹⁶ See article 5 of *ibid.*

¹⁷ See article 2 of *ibid.*

¹⁸ See article 3 of *ibid.*

of a preferred class background to receive reductions in sentences, a few categories were mentioned as deserving of prejudicial treatment, and a few categories were specifically mentioned as undeserving.

The influence of the Guiding Principles' emphasis on class was far clearer in the amnesty of the ensuing year.¹⁹ Class considerations played a prime factor in deciding which prisoners were eligible for reprieve under the VTsIK amnesty in honor of the five year anniversary of the October Revolution. Specifically, this amnesty "alleviated the plight of . . . workers and peasants . . . who had turned to crime mostly out of necessity, accident, or [who committed a crime] for the first time and had not committed acts aimed to undermine the gains of the proletarian revolution."²⁰ This passage invoked elements of the Guiding Principles in calling for appellate judges to consider class backgrounds. As the case studies of chapter four will demonstrate, at the highest levels this exhortation was reflected by appellate panels' attention to determining the social background of appellants, even in cases when the appellants themselves made no attempt to identify themselves as workers or peasants. This above all else determined the likelihood for successful appeals during the early 1920s; and this consideration traced its roots directly to the Guiding Principles.

The impact of prejudicing sentences for convicts of certain backgrounds extended to the formulation of the first comprehensive criminal code in the Soviet Union: the RSFSR criminal code of 1922 passed by the VTsIK. The preamble to the code made it clear that the foremost

¹⁹ It should be noted that article 12 of *ibid.*, stated that the amnesty was to be communicated to subordinate legal bodies via telegram, but since the cassational tribunal attached to the VTsIK was responsible for reviewing many of the cases resulting in more severe sentences, the judges in such cases were the same individuals who had helped draft the amnesty. This point is explored in two of the case studies in chapter four.

²⁰ See preamble of "Ob Amnistii," Dekret VTsIK 2 Noiabria 1922 g.

concern of all legal personnel was “to protect the worker-peasant state and its revolutionary rule of law from violators of the law and socially-dangerous elements.”²¹ Article five clarified this position by stating that “the criminal code of the RSFSR has the task of the legal protection of workers from criminals and socially-dangerous elements.”²² “Socially dangerous elements” were defined as anybody who committed acts “that threaten the foundations of the Soviet system and the rule of law established by worker-peasant power.”²³ In clearly referencing previous legislation, the code made it clear that “sentencing is done by judicial authorities according to their socialist sense of justice in compliance with guiding principles and the articles of this code.”²⁴ The Guiding Principles’ formulation of class identity as a consideration in rendering sentences was reaffirmed. The criminal code expounded on the importance of class in determining sentences by “distinguishing between two categories of crimes: a) against the established worker-peasant power base . . . and b) all other crimes.”²⁵

Though the class-based legality promoted by the 1922 criminal code was reaffirmed by the promulgation of the 1926 criminal code, changes to the criminal code in 1927 removed class-based discrimination in favor of peasants and workers. The 1926 code reiterated the 1922 code’s focus on identifying “socially dangerous elements” as a specific set of individuals who committed crimes inimical to the retention of the revolution and the worker-peasant state.²⁶ The

²¹ See intro of *Ugolovnyi Kodeks RSFSR* (Moscow, 1922).

²² *Ibid.*, st. 5.

²³ *Ibid.*, st. 6.

²⁴ *Ibid.*, st. 9.

²⁵ *Ibid.*, st. 27

²⁶ *Ugolovnyi Kodeks RSFSR* (Moscow, 1926), st. 6, 9, 10, 19, defined the nature of socially dangerous criminals. Penalties for those criminals deemed socially dangerous were enumerated in *Ugolovnyi Kodeks RSFSR* (1926), st. 20. Criminals were deemed socially dangerous when convicted by article 58 of the criminal code: the article

VTsIK's decree of June 6, 1927, excised a few key aspects of articles forty-seven and forty-eight of the criminal code. First, the decree removed the second subsection from article forty-seven, which called for judges to consider "the commission of a crime by a person in one way or another related to belonging to the class of people who exploit labor, either in the past or present," as a key factor in deciding whether an individual's crime represented a social danger.²⁷ Second, it removed the second subsection from article forty-eight, which stated that whether an individual was a "worker or peasant worker" was "recognized as a mitigating factor in determining whether social protection measures" were needed.²⁸ Judges were no longer supposed to consider a criminal's class background as a reason for a lenient sentence.²⁹

One of the primary reasons for the removal of the class component was the inclusion of class-based considerations had not achieved the intended results of its proponents. When Soviet officials rallied for class considerations in sentencing, they imagined it would result in a reduction of convictions of peasants and laborers for petty crimes, such as for the production of home-brewed alcohol (*samogon*).³⁰ The data reviewed later in this chapter shows that the emphasis on class did not lower crime rates for petty crimes, especially in the rural areas

covering counter-revolutionary activity. A discussion of this article is included in this dissertation's review of case studies in subsequent chapters. Criminals also were often deemed socially dangerous when convicted under article fifty-nine: a crime against the public order.

²⁷ See *Ugolovnyi Kodeks RSFSR* (1926), st. 47 and "Ob izmenenii ugolovnogo kodeksa RSFSR redaktsii 1926 goda," Postanovlenie VTsIK i SNK 6 iunia 1927 g. (SU no. 49), no. 271, st. 47, in *Sbornik dokumentov po istorii ugolovnogo zakonodatel'stva SSSR i RSFSR: 1917-1952 gg.*, ed. I. T. Goliakov (Moscow: Gosizurzd, 1953), 294.

²⁸ See *Ugolovnyi Kodeks RSFSR* (1926), st. 48 and "Ob izmenenii ugolovnogo kodeksa RSFSR redaktsii 1926 goda," Postanovlenie VTsIK i SNK 6 iunia 1927 g. (SU no. 49), no. 271, st. 48, in *Sbornik dokumentov po istorii ugolovnogo zakonodatel'stva SSSR i RSFSR: 1917-1952 gg.*, ed. I. T. Goliakov (Moscow: Gosizurzd, 1953), 294.

²⁹ All other factors mentioned previously, especially whether an individual had a criminal record, were retained as guiding judges in rendering sentences. See *ibid.*

³⁰ Aaron Solts was a Soviet politician notable for his advocacy of class-based legality during the early 1920s. He changed his outlook by the mid-1920s upon learning that class-based legality did not function as he foresaw. See Solomon, *Soviet Criminal Justice under Stalin*, 33.

surrounding Moscow. Even though lower-level judges received instructions to be lenient on the basis of class, they did not necessarily understand the meaning of those instructions, and they certainly did not apply them according to the vision of higher-level officials.

The last factor to consider before moving on to analysis of the types of crimes and criminals common to courts in the Moscow area is to determine what types of crimes were assigned to different levels of courts. That different levels of courts were assigned crimes of different severities helps account for why legal officials at different levels considered crimes in different ways. The 1922 criminal code of procedure designated the people's court as the initial venue for all trials except for those specifically relegated to provincial courts. The criminal code of procedure designated the following to provincial courts;

- a) all counterrevolutionary crimes;³¹
- b) all crimes against the public order except for
 - a. non-payment of taxes;
 - b. evasion of military service (which was sent to the war tribunal);
 - c. desecration of the national flag;
 - d. insulting government officials for performing their official duties;

³¹ Assigning counterrevolutionary crimes to provincial courts in the 1922 criminal code of procedure specifically addressed the confusion caused by revolutionary tribunals' and people's courts' failure to understand the nature of counterrevolutionary crime. Though only revolutionary tribunals were supposed to deal with counterrevolutionary crimes assigned to the judiciary from 1917 to 1922, people's courts often tried such cases as well, in large part because most legal personnel did not know how to differentiate between counterrevolutionary crimes and non-counterrevolutionary crimes. This inability to determine jurisdiction from 1917 to 1922 helped drive the demand for a new criminal code which clearly defined counterrevolutionary crimes and the courts responsible for overseeing counterrevolutionary cases. Thus, the 1922 criminal code of procedure shifted the responsibility for trying counterrevolutionary crimes from revolutionary tribunals to provincial courts. The two exceptions to provincial courts' domain over counterrevolutionary crimes were special instances when the RSFSR Supreme Court tried cases normally assigned to provincial courts when high-ranking party members or legal personnel were accused of counterrevolutionary crimes (this exception is discussed in detail over the next few pages), and instances when the OGPU possessed the ability to detain individuals, adjudicate their cases, and punish them. The OGPU briefly lost this ability when the codes passed in 1922, but regained it in 1924, gradually gaining control over a wider variety of crimes over time. See Solomon, *Soviet Criminal Justice under Stalin*, 26, and Kucherov, *The Organs of Soviet Administration of Justice*, 71-77.

- e. deliberately falsifying information on a state report;
 - f. manufacturing or acquiring explosives without criminal intent;
 - g. releasing a prisoner from prison or aiding in an escape;
 - h. deliberately hiding documentation of a marriage;
 - i. traveling abroad without a passport;
 - j. violating forestry laws;
 - k. destroying official seals designated to demark an object as under state protection;
 - l. intellectual property crimes;
 - m. concealing property which should be turned over to the state (collections, monuments, art);
 - n. unauthorized invocation of the law against another person;
 - o. participation in elections of individuals who have no right to stand for election;
- c) all crimes committed by officials in which the crime had a particularly severe result or if the official committed the crime for personal gain;
 - d) especially serious instances of economic crimes involving wasteful conduct, squandering of assets, or egregious non-fulfillment of a government production plan by a government official;
 - e) premeditated murder, not including assisted suicide;
 - f) manslaughter;
 - g) assisting in the suicide of a minor;
 - h) kidnap;

- i) intentionally incarcerating a mentally healthy person in a mental hospital;
- j) corrupting minors (individual under the age of puberty) or copulating with them;
- k) sexually abusing minors;
- l) rape;
- m) pimping;
- n) theft from a state institution or warehouse when entrusted with responsibility for that institution;
- o) qualified (egregious) theft from state institutions or warehouses;
- p) embezzlement from state institutions or warehouses;
- q) violent robbery;
- r) deliberate destruction of property via any generally dangerous method (such as arson).³²

All other crimes were determined during the pre-trial investigation to be the domain of people's courts. The Supreme Court of the RSFSR was never the court of first instance except in cases:

- a) determined to be of exceptional importance by the presidium of the VTsIK or the plenum of the Supreme Court. The plenum of the Supreme Court could also consider instances brought to its attention by the RSFSR procuracy or the chief of the GPU;
- b) of crimes by members of the VTsIK, one of the People's Commissars, members of the *kollegiia* (hereafter referred to as a "board") of People's Commissars, members of the presidium of the Supreme Economic Council, members of the Revolutionary War Councils of the Republic, members of the board of the Supreme Court, the RSFSR

³² *Ugolovno-Protsessual'nyi Kodeks RSFSR* (1923), st. 26. This article describes crimes numerically according to the criminal code. The above is a simplified version, and the first time any study has actually described how courts determined jurisdiction over different types of crimes.

- procurator or any of his assistants, member of the GPU, and foreign government officials;
- c) alleging crimes by provincial procurators and their assistants, member of provincial executive committees, heads of state departments, or chairmen and vice-chairmen of provincial courts.³³

The allocation of different crimes to different levels of courts explains why judges understood the nature of crime in different ways. People's court judges only heard cases in which the maximum penalty could not exceed three years imprisonment. To them, ruling on cases with a view of identifying "socially dangerous" individuals did not mean the same thing as it did to higher level judges who not only were involved in cases of far more serious crimes, but many of whom (at the RSFSR level) directly participated in drafting criminal codes and legal decrees. This disconnect resulted in many judges at lower levels imprisoning workers and peasants for committing crimes judged to be "socially dangerous," especially for minor offenses such as the production of *samogon*. This opposed the intentions of those who saw the codification of class prejudice in law as a progressive measure meant to underscore the very ethos of the Soviet project.

Having established the principles guiding judges at all levels, and explained which crimes were brought before different levels of the judiciary, I turn to an analysis of the individuals responsible for running the legal system, the frequency of the different types of crimes they adjudicated, and the types of criminals brought before them.

³³ *Ibid.*, *st.* 449.

II. Characteristics of Judicial Personnel, Convicts, and Crimes

Statistical data culled from archives and legal journals describes a host of information about the cases tried by the RSFSR Supreme Court, Moscow province courts, Moscow city people's courts, and people's courts in Zvenigorod county. These particular courts are chosen for analysis for the following reasons: the RSFSR Supreme Court was the highest court in the republic and the court which reviewed the cassational appeals covered in the next chapter of this dissertation. The Moscow province court appealed cases to the RSFSR Supreme Court, and the Moscow city and Zvenigorod county people's courts represent urban and rural examples of people's courts. Zvenigorod in particular is an example of a rural court because it has been used by scholars who have studied the activities of courts during the late Imperial period.³⁴

This section ties together data gathered by legal personnel who examined the social backgrounds of criminals, the frequency of different types of crimes brought to trial, and the backgrounds of the legal personnel responsible for overseeing cases. Officials at the province and republic levels used this information to identify what types of crimes required the immediate attention of the judiciary and what issues were most divisive for lower levels of the courts. Campaigns against specific types of crimes, according to internal reports, mostly resulted in positive outcomes. Attempts to reign in the activities of lower-level legal officials, however, were less successful.

³⁴ For example, see Burbank, *Russian Peasants Go to Court*, 19-20, for her explanation of why she chose Zvenigorod county as part of her study.

The Transition from Tribunals to Courts

One of the first issues key to determining the center's ability to exert influence on lower levels of the judiciary was in its ability to expediently actualize the transition from the dual system of tribunals and courts (1917-1922) to the unified court system created after the 1922 judicial reforms. In examining statistical reports detailing the effects of the 1922 criminal code, Iakov Brandenburgskii found that both before and after the introduction of the 1922 criminal code, people's courts and revolutionary tribunals convicted defendants at the same rates.³⁵ Both legal bodies convicted roughly three out of every four defendants during 1922 both before and after the enactment of the code, even though people's courts dealt with cases involving less severe crimes and were staffed by individuals "with less than a high competence" in legal knowledge. Although conviction rates did not change, revolutionary tribunals and courts across the RSFSR dealt with significantly fewer cases during the second half of the year (after the introduction of the criminal code) than the first half: from 418,642 to 357,368, a decrease of fifteen percent. This drop was credited to the clarification and streamlining of laws attendant to the new legal code, though Brandenburgskii cautioned that it was far too early to accurately forecast how the code would change the Soviet legal system. He did, however, conclude that the continued gathering of statistics was essential to the understanding of the impact of the code because "no matter how useful the [legal] theory, it [was] only a theory, which could only be supported by practical experiences . . . in the hands of the working class as a powerful instrument to strengthen government *soviets*."³⁶

³⁵ Iakov Natanovich Brandenburgskii had been a member of the Bolshevik Party since 1903 and was a member of Narkomiust's board and the Legislative Commission of the Sovnarkom from 1922 to 1929.

³⁶ Ia. Brandenburgskii, "O nashei ugolovnoi repressii," *Ezhenedel'nik Sovetskoi Iustitsii*, no. 15 (1923): 337-339.

Such practical experiences are illustrated by the level of control exerted by the Moscow province's judiciary over people's courts during the transitional period after the 1922 court reforms. A report submitted during a June 16, 1923, plenum of Moscow province courts reviewed how its division of Criminal Cassation processed cases from February 1, 1923, to June 1, 1923.³⁷ Upon the establishment of the new system of courts, Moscow province's criminal cassation division immediately received 2,169 cases which had been tried under the old system of people's courts and revolutionary tribunals, but which had not been heard by cassational panels before the old system was converted.³⁸ In addition to those cases carried over from the old system, provincial courts reviewed 1,105 new cases which were tried under the new court system. Despite the deluge of cases, both new and old, the report glossed over the repercussions of overburdening the cassational system with cases, instead focusing on the kinds of crimes reviewed and the reasons given for ordering alterations to sentences.³⁹

The report revealed that 1,376 convictions dealing with the production of *samogon*, by far the most common crime reviewed by Moscow provincial appellate panels, were sent to

³⁷ "Iz zhizni gubsuda: iz doklada ugovovno-kassatsionnogo otdeleniia plenuma mosgubsuda," *Proletarskii sud*, no. 4 (1923): 13.

³⁸ Even though the RSFSR criminal code was enacted on February 1, 1922, and the RSFSR code of criminal procedure was enacted on August 1, 1922, the Statute on Court Structure in the RSFSR was not adopted until October 31, 1922. In addition to streamlining the judicial system under one common system of courts, the Statute's abrogation of the VTsIK's Supreme Tribunal and its local tribunals meant that cassational cases which would have been heard by the tribunals under the old system had to be withdrawn from the docket and re-allocated to the correct level of court under the new system. Unsurprisingly, it took some time to take stock of all cassational cases, determine where each one should be sent, and then to actually send the case to the correct location. As a result, cassational courts were overloaded with cases at the beginning of 1923, just as the Statute on Court Structure was finally being fully implemented. For more on the Statute on Court Structure in the RSFSR and the restructuring of the judicial system from late 1922 to early 1923 see Kozhevnikov, *Istoriia sovetskogo suda*, 128-134, and Kucherov, *The Organs of Soviet Administration of Justice*, 78-84.

³⁹ "Iz zhizni gubsuda," 13.

cassation.⁴⁰ Crimes against personal property (such as theft) lagged far behind, with a total of 637 cases. No other crime registered more than 300 cassational instances during this period.

For the results of cassation, the plenum found that the overall rates of amendments to sentences varied from thirty-five to forty-five percent on a monthly basis from the beginning of February until the end of May. The report identified “uninvestigated” cases (*nerassledovannost’ del*) as the leading cause for successful cassational appeal. The report explained that “uninvestigated” cases were those cases in which investigators made critical errors during their investigations. The errors were such that the evidence presented should not have been considered sufficient to bring a case to trial, much less result in a conviction. The report did not place most of the blame on trial judges for convicting defendants on the basis of weak or improperly arrayed evidence, but rather faulted investigators for sloppy work. However, the report did blame trial judges, especially those at the people’s court level, for failure to adhere to procedure in conducting their trials, not only for improperly applying the rules governing evidentiary procedure, but also for generally ignoring proper procedure in all phases of cases. Moscow province’s judiciary thereafter embarked on a mission to instruct people’s court judges as to how to properly run trials, an effort that proved mostly futile throughout the 1920s.⁴¹

A report authored by Moscow province’s procuracy analyzed the types of crimes investigated by Moscow city investigators during 1923. The report began by pointing out that the distribution of crimes in the city of Moscow differed from that in surrounding districts due to

⁴⁰ During the early 1920s, Moscow courts were overloaded with *samogon* cases. For example, during the first three months of 1922, 20.9 percent of all criminal cases brought before Moscow judicial organs dealt with *samogon*. This percentage increased to 25.1 percent of cases during the following three month period. An investigation of *samogon* convictions during the first half of 1922 revealed that everyone from housewives (9.1 percent of all *samogon* convictions), to service workers (18.8 percent), to the unemployed (26.2 percent) were convicted for the illegal production of *samogon*. Of most concern to the regime, workers represented 29.9 percent of all total convictions for *samogon* production. See Table 4 in *Proletarskii sud*, no. 1 (1922): 13-14.

⁴¹ “Iz zhizni gubsuda,” 13.

Moscow's status as the "economic center of the largest metropolitan city" in the Soviet Union. The report listed a total of nine categories of criminal actions brought before Moscow city investigators over the first half of 1923: The categories listed included counterrevolutionary crimes (twenty-one cases), crimes against the public order (5,833 cases), official crimes committed by government officials (224 cases), church crimes (forty-seven cases), household economic crimes aside from the production of *samogon* (158 cases), production of *samogon* (6,339 cases), crimes committed against individuals (5,478 cases), property crimes (16,148 cases), and military crimes (thirty-nine cases). After enumerating the different categories of crimes, the report noted how property crimes accounted for nearly half of all crimes (47.1 percent), with the production of *samogon* (18.08 percent), crimes against the public order (17 percent), and crimes committed against individuals (16.1 percent), accounting for nearly all of the remainder.⁴²

Campaigns, Concerns, and the Characteristics of Crimes and Criminals in the mid-1920s

The overwhelming focus on combating the production of *samogon* resulted in a reduction in the number of cases investigated, purportedly because of the successful campaign undertaken after attention had been drawn to the issue:

⁴² TsGAMO, f. 162 (Moscow Province Procuracy), op. 2 (Files in Permanent Storage, 1920-1927), d. 18 (Crime Statistics, 1923-1924), l. 63.

Table 1: *Samogon* Cases Investigated by Moscow City Investigators from 1923 to 1924⁴³

	<u>Total Cases Investigated</u>
October-December, 1923	5,420
January-March, 1924	3,557
April-June, 1924	2,782
July-September, 1924	1,613
October-November, 1924	680

Over the last quarter of 1923 *samogon* cases investigated spiked at 5,420 instances. That number declined steadily throughout 1924, eventually reaching a low during October and November of only 680 cases investigated by Moscow city investigators. Calculated proportionally, this represented a reduction of roughly two-thirds in the number of cases investigated during the first half of 1923. As the author of the report put it, the statistics “show that in the city of Moscow *samogon* crimes . . . over the course of 1924 have completely lost their characterization as a mass phenomenon.”⁴⁴

His conclusion, however, might have been an overstatement, as indicated by an article written in late 1925. In his article in *Proletarskii sud*, the president of Moscow province’s judiciary, B. Zagor’e, identified the major crimes concerning Moscow province’s legal officials in 1924-1925, and how such cases fared when appealed via cassation from people’s courts to panels attached to Moscow province’s judiciary from the second quarter of 1924 until the third quarter of 1925.⁴⁵ Out of all cases altered during this period, 32.9 percent were due to breaches

⁴³ TsGAMO, f. 162, op. 2, d. 33 (Moscow Province Procuracy Reports for 1924), l. 116.

⁴⁴ Ibid.

⁴⁵ As president of Moscow province’s judiciary, Zagor’e presided over many appellate cases. For example, see his decision to absolve Ivan Zolkin of any wrongdoing for a series of rapes which took place at the manufactory where Zolkin worked in 1924. Zagor’e believed Zolkin’s claim that he knew nothing of the rapes. See TsGAMO, f. 5062, op. 3, d. 164, l. 269.

of procedure, 22.4 percent were due to defective investigations, 14.8 percent were due to incorrect applications of the law, 6.8 percent were due to obviously unjust verdicts, and the remaining 23.1 percent of cases were completely terminated due to a lack of evidence.⁴⁶

Although the limited scope of the “report did not permit comprehensive statistics for alterations of sentences for all types of crimes,” Zagor’e identified “only the most representative examples” in determining how frequently sentences were altered in cassation.⁴⁷ In choosing to discuss certain crimes over others, Zagor’e signaled which types of crimes captured the attention of the Moscow province legal officials. First, Zagor’e focused on crimes prosecuted under article 140 of the criminal code: the article concerned with the production of *samogon*.⁴⁸ Starting with the subsection focused on the production of alcohol for personal use (subsection four of article 140), Zagor’e explained that almost fifty percent of convictions for such crimes were later overturned for lack of evidence, not because the investigators had failed to gather requisite evidence for prosecution under article 140 subsection four, but because of a series of changes to the wording of article 140. In the years after the publication of the criminal code in 1922, the VTsIK amended article 140 multiple times, most notably in a decree from January 9, 1924. It divided article 140 into one main section (article 140) and four subsections, each dealing with different aspects of the production of *samogon*.⁴⁹ The changes to the *samogon* law were so

⁴⁶ B. Zagor’e, “Obzhalovanie, otmena, i izmenenie prigovorov,” *Proletarskii sud*, no. 10-11 (1925): 32-34. “Breaches of procedure” included a few categories. The majority of cases falling under “breaches of procedure” involved decisions which did not match the actual circumstances of cases

⁴⁷ *Ibid.*, 33.

⁴⁸ The original wording of article 140 stated that “cooking with the intent to sell wine, spirits and all alcoholic beverages and alcohol substances without authorization or in excess of the established strength by law, as well as unlawful possession with intent to sell such beverages and substances shall be punished by hard labor for a term of one year with the confiscation of property.” See *Ugolovnyi Kodeks RSFSR (1922) st. 140*.

confusing and rapid that it was deemed inexpedient to repeatedly restart cases to fit the new wording of the law, but rather to send the cases for review by cassation. Once reviewed, convictions were frequently overturned because the investigations and evidence fit the definition of the old, but not the new, laws and procedures.

Zagor'e continued his analysis of altered sentences of *samogon* convictions by focusing on Article 140 subsection two: the subsection dealing with the sale of *samogon*. He claimed that cassational reviews altered few verdicts because the facts of such cases were often simple and the guilt of the accused obvious. Instead of cancelling verdicts, cassational panels routinely lowered sentences. The convicted were guilty by the letter of the law (even with the frequent changes in the wording of article 140), but they received lowered sentences if a cassational panel found that the duration of the sentence exceeded the severity of the crime.⁵⁰ Thus, cassational panels fulfilled both the letter of the law and the spirit of the law: just sentences which reflected new concepts of social justice along with rigorous adherence to extant legal codes.

From here Zagor'e moved on to other, more serious crimes. Zagor'e found that cases involving official embezzlement rarely ended with cassational alterations. But, of the few embezzlement cases resulting in a cassational change to the original verdict, Zagor'e saw examples of the proper application of article four of the criminal code of procedure in particular, and the efficacy of the cassational process in general. Moscow province's cassational panels altered only (Zagor'e included "only", as it struck him that the percentage was low) 14.7 percent

⁴⁹ See "Ob Izmenenii statei 140, 140-a 140-b ugolovnogo kodeksa," Dekret VTsIK i SNK 9 Ianvaria 1924 g., in *Sbornik dokumentov po istorii ugolovnogo zakonodatel'stva SSSR i RSFSR: 1917-1952 gg.*, ed. I. T. Goliakov (Moscow: Gosizdat, 1953), 169-170.

⁵⁰ Ibid.

of embezzlement cases sent to cassation during the third quarter of 1925.⁵¹ Zagor'e highlighted that of the 14.7 percent, 0.7 percent of cases were cancelled because they were "inexpedient" (*netselesoobraznostye*), which meant that there was some characteristic of the case requiring its immediate cancellation under article four subsection one of the criminal code of procedure. This subsection stipulated that "no prosecution may be instituted or continued and shall be terminated at any stage of the process [in the event of] the death of the defendant."⁵² Thus, Zagor'e championed that the courts had finally progressed to the point where they understood that they should cease criminal proceedings when the defendant had died. This was, at best, a dubious example of the efficacy of the judicial process.

Aside from the fact that subsection one of article four of the criminal code of procedure was meant to apply to cases *in progress* and not to cases which had already rendered verdicts, Zagor'e's revelation revealed a major problem: an alarming percentage of embezzlement cases resulted in convictions of dead defendants. The wording of the subsection applied specifically to cases which were still being prosecuted. This meant that applying the subsection to cases which had already passed verdicts exceeded the formal wording of the criminal code of procedure, even if the application of the subsection captured the spirit of the code. While one may argue that it was possible that the subsection was applied to convicts who had filed cassational protests while they were alive, but had died before their cases reached a cassational panel, it was highly unlikely that so many convicts died before cassational panels processed their appeals. What was

⁵¹ The criminal code defined embezzlement by officials as the "appropriation by an official of money or other valuables in his custody by virtue of his official position shall be punished by imprisonment for a term not less than one year and his dismissal from office." See *Ugolovnyi Kodeks RSFSR* (1922) *st.* 113.

⁵² See *Ugolovno-Protsessual'nyi Kodeks RSFSR* (1923), *st.* 4. Article 375 of the criminal code of procedure provided an exception to this rule for cases in which "criminal abuse of the judiciary, as well as perjury and giving false expert opinion or other false evidence" tainted judicial proceedings. In such situations, especially for embezzlement cases the death of a defendant did not mean a case had to be discontinued.

far more likely was that people's courts passed sentences on individuals who were already dead. Thus, Zagor'e should not have been applauding the correct application of the code of procedure to cease cases involving dead defendants. Instead, he should have admonished lower courts for clogging the judicial system with cases involving dead defendants.

Zagor'e continued by noting that of the remaining embezzlement cases altered by cassation, 1.7 percent were terminated due to a lack of evidence, and that all remaining cases were remanded to lower courts for new trials, though he failed to provide any reason as to why. This meant that for embezzlement cases sent to cassation, the only reasons Zagor'e found for immediate cancellation of sentences were instances when the case focused on a dead defendant or if the defendant had been convicted with an obvious lack of evidence.⁵³

In the attempt to remedy the issues identified by Zagor'e, Moscow province's procuracy exercised its power of supervision to record meticulous data about crimes, criminals, and the courts over the course of 1924-1925. In doing so, it determined the types of individual most likely to receive convictions, both at the provincial and people's court levels:

Table 2: Statistics for Individuals Convicted in Courts at the Moscow Province Level from January 1 to July 1, 1924⁵⁴

<u>Profession of Convicts</u>	<u>Convicted</u>	<u>Percentage</u>
Office Workers	292	19%
Unemployed	252	16.8%
Peasants	223	14.5%
Unskilled Workers	164	10.9%
Traders	127	8.3%
Speculators, Currency Traders, and Similar	159	10.8%

⁵³ Zagor'e, "Obzhalovanie, otmena, i izmenenie prigovorov," 33.

⁵⁴ TsGAMO, f. 162, op. 2, d. 18, l. 117.

Professions		
Managers	97	6.1%
Artisans	94	6.4%
Skilled Workers	84	5.7%
Self-Employed Professionals	15	1.2%
Dependents	2	0.3%
Totals	1509	100%

Though at first glance it appears that the directive to give preference to peasants and workers was effective during this period, a closer look reveals a different story. Peasants (14.5 percent) and unskilled workers (10.9 percent) comprised only 25.4 percent of all convicts. However, the unemployed (16.8 percent) all too often were peasants and workers driven to crime by an inability to find steady work or enough pay. These were exactly the types of individuals who were supposed to receive preference from the judicial system. Aggregating the unemployed with peasants and unskilled workers pushes the percentage to over forty percent. This should have come as no surprise, however, to the Moscow province procuracy, as directives instructed judges to preference class only when it came to sentencing and not when deciding on the guilt of the accused. The situation, however, was not uniform throughout Moscow province.

In aggregating data from Moscow province courts and people's courts in Moscow province, the procuracy discovered that peasants were rarely convicted of crimes at the people's court level:

Table 3: Statistics for Individuals Convicted in Moscow People's and Province Courts from July 1 to October 1, 1924⁵⁵

<u>Profession of Convicts</u>	<u>Total Convicted</u>	<u>Percentage of Total Convicted</u>
Skilled Workers	1,266	5.2%
Unskilled Workers	3,713	15.3%
Office Workers (i.e. typists, stenographers)	3,402	14.1%
Managers	223	0.9%
Unemployed	4,922	20.4%
Peasants	555	2.3%
Artisans	1,563	6.5%
Self-Employed Professionals (i.e. lawyers, doctors)	228	0.9%
Dependents	896	3.7%
Traders	2,075	8.6%
Speculators, Currency Traders, and Similar Professions	5,333	22.1%
Totals	24,176	100%

Three major points stand out from a comparison of the two data sets above. Firstly, whereas peasants represented 14.5 percent of all convicts at the provincial court level, they only represented 2.3 percent of all convicts at the provincial and people's courts levels. Clearly, people's courts did not convict peasants at nearly the same rate as provincial courts. Instead, people's court judges heavily prejudiced class background in favor of peasants. This indicates that the directives from above were being taken to an extreme, and that people's court judges misunderstood how they were supposed to factor class in rendering decisions.

Secondly, the percentage of unskilled workers convicted by people's courts was significantly higher than at the provincial courts. This concerned Moscow province procurators: the working class was supposed to be the class most protected by legality. The data indicated that people's courts were protecting peasants rather than workers. This was compounded by a third

⁵⁵ Ibid., ll. 116.-117.

point: the number of unemployed convicted of crimes by people's courts was alarmingly high.

This indicated not only a failure of the justice system, but a failure of the system as a whole.

Unemployed workers were supposed to be protected by the system, not imprisoned by it.

The same report continued by detailing the ages and genders of those convicted of crimes:

Table 4: Statistics for Ages of Convicts in Moscow City People's and Regional Courts from July 1 to October 1, 1924⁵⁶

<u>Age of Convicts</u>	<u>Total Convicted</u>	<u>Percentage of Total Convicted</u>
Up to 18 years old	1,984	8.2%
18-25 years old	7,481	30.9%
25-35 years old	8,040	33.4%
36-50 years old	5,259	21.9%
Older than 50 years old	1,412	5.6%
Totals	24,176	100%

Table 5: Statistics for Ages and Sex of Individuals Convicted in Courts at the Moscow Province Level from January 1 to July 1, 1924⁵⁷

<u>Age of Convicts</u>	<u>Men</u>	<u>Women</u>	<u>Total</u>	<u>Percentages</u>
Up to 18 years old	98	9	107	7.1%
18-25 years old	515	41	556	36.9%
25-35 years old	436	38	474	31.4%
36-50 years old	276	26	302	20%
Older than 50 years old	58	12	70	4.6%
Totals	1,383	126	1,509	100%

⁵⁶ Ibid., 1. 117.

⁵⁷ Ibid. Note that the raw data is copied directly from the source, but the percentages are my calculations.

That the data showed that the likeliest offenders convicted by courts at both the provincial and people's levels were males between the ages of eighteen and thirty-five did not surprise the procuracy. The procuracy was interested, however, by the rather sizable percentages of those over the age of thirty-five convicted by the courts. Overall, however, the data confirmed what the procuracy already knew; most criminals were young males.

The procuracy was more interested in the precise nature of the types of crimes committed. It finally managed to collect the requisite data for a comprehensive report on all crimes committed in Moscow city and Moscow province during the first halves of 1924 and 1925. This is the first report filed detailing the nature of different types of crimes in this region during the 1920s:

Table 6: Types of Crimes Committed in Moscow City during the First Halves of 1924 and 1925⁵⁸

<u>Types of Crimes</u>	<u>First Half of 1924</u>	<u>First Half of 1925</u>
Counter-Revolution	21	6
Crimes Against Public Order	5,833	4,904
Crimes by Officials	224	604
Religious Crimes	47	2
Economic Crimes	6,497	1,343
Violent Crimes	5,473	5,353
Property Crimes	16,148	15,283
Crimes Involving the Military	39	39
Harming Public Health or Safety	Uninvestigated	1,011
Totals	34,282	28,545

Before analyzing the data in the table above it is necessary to explain each criminal category. Articles 57-73 of the 1922 criminal code covered the gamut of revolutionary crimes.

⁵⁸ TsGAMO, f. 162, op. 1 (Files in Permanent Storage, 1918-1925), d. 257 (Summary of the details of the Moscow Province Procuracy for the First Half of 1925), l. 10. The author of the report defined the first half of each year as the period of time between January first and July first. The same division of dates is used in subsequent tables differentiating between the first and second halves of years.

Articles 74-103 included any “crime against the public order.” Article seventy-four explained that a crime against the public order included “any act intended to violate the proper functioning of subordinate authorities or the economy, combined with the resistance or disobedience to the laws of the Soviet regime, with the obstruction of the activities of its organs and other actions that cause weakening of the strength and authority of the government.”⁵⁹

Articles 105-118 described the types of crimes covered by officials, mostly covering instances of official malfeasance.

Articles 119-125 elucidated the types of crimes involving religion, the most serious of which focused on individuals who used religion as a tool against state power.

The economic crimes listed in article 126-141 ranged from labor desertion, to charging excessive rents, to currency speculation, to illegal trade practices, to the production of *samogon*.

Violent crimes against individuals described in articles 141-179 were divided into five categories: murder, injury caused by violence, failure of a government official or doctor to aid an individual who required help, sex crimes, and a general category mostly involving slander or knowingly giving false testimony leading to an innocent’s imprisonment.

Property crimes described by articles 180-199 included instances of various types of theft from both private individuals and state institutions.

Crimes committed by members of the military ranged from desertion, to looting, espionage for foreign armies, all of which were explained by articles 200-214.

The final category included articles 215-227: crimes involving minor violations of public health and safety. These crimes differed from the “crimes against the public order” described in

⁵⁹ *Ugolovnyi Kodeks RSFSR (1922)*, st. 74.

articles 74-103 in that these crimes did not involve violent acts and did not suggest that the offender meant to harm the public order or harm Soviet power.

The Moscow procurator's collation of data included emphases on those categories considered most important in determining the overall functioning of the judicial system. First, the procurator extolled the drastic reduction in the number of economic crimes, noting that the eighty percent reduction was due in large part to the successful campaign of the previous year against the production of *samogon*. Second, the procurator noted that the eight percent decrease in property crimes was negligible, and that more work was needed to further reduce such crimes over the ensuing year. Finally, within the category of violent crimes, the report celebrated the fact that murders had dropped from 172 during the first half of 1923 to 104 in the first half of 1924.⁶⁰ These three types of crimes were the key categories which the procuracy had tried to target in Moscow city over the reporting period, and it was clear that such categories were to be emphasized once again for the ensuing year.⁶¹

Compare this with what the Moscow provincial procuracy emphasized for the same statistics in Moscow province for crimes committed outside of Moscow city.

Table 7: Types of Crimes in Moscow Province outside the City of Moscow during the First Halves of 1924 and 1925⁶²

<u>Types of Crimes</u>	<u>First Half of 1924</u>	<u>First Half of 1925</u>
Counter-Revolution	8	7
Crimes Against Public Order	1,788	1,790
Crimes by Officials	325	652
Religious Crimes	13	11

⁶⁰ TsGAMO, f. 162, op. 1, d. 257, ll. 10-11.

⁶¹ The report also noted the drastic increase in official crimes, though it was noted that this had more to do with a change to the wording of the criminal code than anything else. See *ibid.*, l. 10.

⁶² *Ibid.*, l. 11.

Economic Crimes	11,387	13,149
Violent Crimes	2,234	3,976
Property Crimes	6,254	5,927
Crimes Involving the Military	32	61
Harming Public Health or Safety	Uninvestigated	633
Totals	22,041	26,206

The procurator immediately noted that the data showed that past procuratorial campaigns had failed to achieve the desired results outside the city. Foremost among these failures was the rise in economic crimes, attributed entirely to the inability of officials to reign in the production of *samogon* in rural areas surrounding the city of Moscow. At the same time, violent crimes spiked over the same period, though the procurator’s office neglected to mention which types of violent crimes were most responsible for the jump of over seventy percent. Finally, it was tersely noted that property crimes, though emphasized, had only been reduced by five percent.⁶³ Overall it seemed clear to the procuracy that the statistics indicated an inability by the province to impose its will on people’s courts outside of the city of Moscow.

A Comparison of Caseloads at the Beginning and End of the 1920s

It was difficult to impose any sort of order or will on people’s courts because of unrelenting and often insurmountable caseloads. Almost immediately after the judicial reforms of 1922, it was clear that people’s courts were overworked.⁶⁴ During the first quarter of 1923, Moscow city people’s courts were so overloaded with cases that they ended the quarter with more cases than they had at the beginning:

⁶³ Ibid.

⁶⁴ For an example of people’s courts inability to deal with massive caseloads in 1923, see McDonald, “Face to Face with the Peasant, Village and State in Riazan,” 69.

Table 8: Caseloads of People's Courts in Moscow City from January 1 to March 15, 1923⁶⁵

Unresolved Cases From the Previous Period	5,188
New Cases Received from January 1 to March 15	10,700
Cases Concluded by March 15	7,848
Total Cases Remaining on March 15	8,040

The situation was so dire that of the 15,888 cases carried over from 1922 and brought to the dockets over the first quarter of 1923, over half (8,040) still remained by the end of the quarter. Clearly, people's courts were incapable of dealing with the number of cases brought before its judges. In such a situation it is no wonder that province courts struggled to affect any kind of change with legal personnel of the people's courts; people's courts were so overburdened with cases that their priority was to clear cases, not to listen to instructions from above about how they should properly apply legality. Pragmatically, they simply could not do so. Over the course of the 1920s, however, as the judiciary established itself, caseloads in some areas did become more manageable.

Data provided by people's courts in Zvenigorod county from April 1 to June 30, 1927, provides an example of people's courts successfully managing caseloads by the latter half of the 1920s:

⁶⁵ TsGAMO, f. 162, op. 1, d. 122 (Report of the Work of the Moscow Province Procuracy from January 1 to April 1, 1923), l. 59.

Table 9: Caseloads of the First District of Zvenigorod County Courts from April to June, 1927⁶⁶

<u>Month</u>	<u>New Cases Received</u>	<u>Cases from Previous Month</u>	<u>Total Cases on Docket</u>	<u>Cases Processed</u>
April 1-30	57	39	96	40
May 1-31	107	56	163	120
June 1-30	31	43	74	no data

In April, the first district of Zvenigorod county people’s courts managed to process only 41.7 percent of its cases (forty out of ninety-six). Though this is a low percentage, data from the following month prove that the courts were fully capable of managing their caseloads. In May, even though the courts received far more cases than in April, 73.6 percent of all cases were processed (120 out of 163). Thus, although there were more cases on the dockets, people’s courts actually processed cases at almost double the rate in May when compared with April. By June, the number of cases on the courts’ dockets had been reduced to seventy-four, which was below the number of cases in either April or May. The statistics demonstrate that people’s courts of Zvenigorod district were capable of handling their caseloads during this period of 1927. At the very least, they were capable of processing cases at a rate exceeding the number of new cases brought before them on a monthly basis; this is in contrast to data related above for people’s courts in Moscow city in 1923.⁶⁷

⁶⁶ TsGAMO, f. 3765 (Moscow Province Court, Zvenigorod County), op. 1 (Files in permanent storage, 1923-1927), d. 44 (Information about the movement of criminal and civil cases of the People's Court of the first district, Zvenigorod County, Moscow Province Courts, December 1926-August 1927), ll. 12, 16, 18.

⁶⁷ Though this data is specific to one district in Zvenigorod county, it does confirm data reviewed from a number of different districts during this period. Unfortunately, comprehensive data spanning the duration of the 1920s for any specific area has proven difficult to locate. Rather than overstep the data in positing that all courts were capable of managing their caseloads by 1927, the evidence above is only meant to demonstrate that some people’s courts could process their cases expediently by the latter half of the 1920s.

Though this increased ability to process cases indicates the improvement of courts over the 1920s, this data does not mean that courts provided more rigorous decisions. That educational levels of people's court judges remained alarmingly low throughout the 1920s indicates that even if people's courts were capable of managing their caseloads by the latter half of the 1920s, the rigor of their decisions likely did not improve. Only intervention from above, often in the form of cassational alterations to sentences, instructed lower-level judges how to improve the quality of their decisions.

Education and Social Backgrounds of Judges

The differences in education and social backgrounds between people's court judges and provincial court judges serves as an explanatory factor in the differences behind their views of the criminal justice system and their abilities to apply the law according to code.⁶⁸

Table 10: RSFSR Provincial Court Judges' Social Status from 1923 to 1929⁶⁹

<u>Social Status</u>	<u>1923</u>	<u>1924</u>	<u>1925</u>	<u>1926</u>	<u>1927</u>	<u>1928</u>	<u>1929</u>
Workers	34%	34.7%	30.1%	37.2%	34.9%	41.2%	46%
Peasants	36%	36.3%	34.2%	35.2%	24.7%	11.6%	12%
Clerks, Intellectuals, etc.	30%	29%	35.7%	27.6%	40.4%	47.2%	42%

⁶⁸ Comparing either with judges at the RSFSR republic level is fruitless, as the judges at that level were all well-educated, acquainted with the law, and responsible for much of the legal legislation passed during the 1920s. Put simply, judges at the RSFSR republic level were of a completely different background than judges at either the provincial or people's levels.

⁶⁹ Zelitch, *Soviet Administration of Criminal Law*, 330.

Table 11: RSFSR People’s Court Judges’ Social Status from 1923 to 1927⁷⁰

<u>Social Status</u>	<u>1923</u>	<u>1924</u>	<u>1925</u>	<u>1926</u>	<u>1927</u>
Workers	26.5%	29.5%	33.9%	32.8%	32.8%
Peasants	49.5%	56%	54.5%	52.2%	38.2%
Clerks, Intellectuals, etc.	24%	14.5%	11.6%	15%	29%

Tables 10 and 11 demonstrate important differences in the social backgrounds of judges at the people’s and provincial court levels. Though the percentages of workers at both levels were comparable throughout the 1920s, peasants always constituted a far great percentage of judges at the people’s courts than at the provincial courts. This helps explain why so few peasants were convicted by people’s courts. As Tracy McDonald argues, peasant people’s court judges applied their own understanding of revolutionary justice “based on a traditional peasant attitude toward crime,” in being “extremely lenient with peasants, and especially peasant officials.”⁷¹

On the other hand, provincial courts convicted a higher percentage of clerks and intellectuals, especially toward the end of the decade. The abundance of intellectuals at the provincial level highlights a key difference between people’s and provincial courts: whereas the people’s courts clearly were the courts of peasants, provincial courts struck a balance between workers, peasants, and intellectuals amongst their ranks. This was further illustrated by the difference in education levels between people’s and provincial judges:

⁷⁰ Ibid.

⁷¹ McDonald, “Face to Face with the Peasant, Village and State in Riazan,” 68.

Table 12: Education of Judges of RSFSR Provincial Courts from 1923 to 1927⁷²

<u>Education Level</u>	<u>1923</u>	<u>1924</u>	<u>1925</u>	<u>1926</u>	<u>1927</u>
Higher Education	17%	14.9%	No data	16.6%	15.7%
Secondary Education	21%	23.2%	No data	18.8%	18.4%
Elementary Education	62%	62%	No data	64.6%	65.9%

Table 13: Education of Judges of RSFSR People's Courts from 1923 to 1927⁷³

<u>Education Level</u>	<u>1923</u>	<u>1924</u>	<u>1925</u>	<u>1926</u>	<u>1927</u>
Higher Education	9.9%	6.3%	No data	4%	3.7%
Secondary Education	14.6%	13.4%	No data	15.7%	13.6%
Elementary Education	75.5%	80.3%	No data	80.3%	82.7%

Though the general education level of judges at both levels of courts was low, educational levels of people’s court judges was abysmal. The data from Table 13 indicates that the educational levels of people’s court judges remained mostly stagnant from 1923 to 1927, with the decline of judges possessing higher education from 9.9 to 3.7 percent offset by the increase of judges possessing an elementary education from 75.5 to 82.7 percent.⁷⁴ People’s court judges with any type of education beyond the elementary level were almost as rare in 1927 as in 1923. With such low levels of education, legal personnel at higher levels could hardly

⁷² Zelitch, *Soviet Administration of Criminal Law*, 330.

⁷³ Ibid.

⁷⁴ A letter written to the editor of *Pravo i sud*, a short-lived (1924-1926) legal journal published by the Saratov provincial court, complained about the lack of education among legal personnel in Balashovskii county in 1926. The letter complained that seventy-five percent (fifteen out of twenty) of all court personnel had no legal education whatsoever. See Ia. Antonov, “Samoobrazovanie sudebnykh rabotnikov,” *Pravo i sud*, no. 3 (1926): 83.

expect people's court judges to do as they were instructed even if they wanted to; their educational levels were such that it was unlikely they could properly understand the legal codes, much less the directives sent from above.

Above the level of people's court judges, educational levels of judges at the provincial level were alarmingly low. From 1923 to 1927, at no point did more than seventeen percent of all provincial judges receive more than a secondary education. The poor quality of judicial education throughout the lower levels of the Soviet judiciary explains why judges frequently misunderstood codified legality and rendered weak decisions. The difference in education was a considerable difference between provincial judges and republic judges, as judges at the RSFSR Supreme Court had all received higher education: in most cases, they had even received legal training.

Even when judges at the RSFSR Supreme Court were able to communicate with judges at lower levels, the educational standards were such that it was always a challenge for the top to effect change at the bottom. Even so, the RSFSR Supreme Court did try, and the provincial court communicated much of that change to people's courts. The next section reviews examples of how this occurred, demonstrating that the communications between different levels of courts often devolved into simple power struggles which had little to do with improving the Soviet system of justice.

III. The Movement of Information between Different Levels of Courts

Legal personnel at different levels of the judiciary sparred over questions of interpretation and application of the law; such battles often masqueraded as divergent interpretations of legality, when in fact they were little more than raw struggles to assert power against officials at

different levels of the legal system. To understand the nature of these struggles, this section will begin by tracing how information flowed from people's courts (Moscow city and Zvenigorod county courts) up the ladder of the judiciary to provincial courts (Moscow province courts), and then to courts at the republic level (RSFSR Supreme Court). In some cases officials at lower levels complied with directives from above, in other cases they did not understand the directive, and in many cases they willfully ignored the directive altogether. When the latter two situations occurred, the initial question of the correct application of legal policy or procedure often receded to the background of a far simpler question of who could assert dominance. The incidence of such battles, which had more to do with personal aspirations than with the delivery of justice to common Soviet citizens, complicates how we view the efficacy of the Soviet legal system during the 1920s.

Instructions from RSFSR courts filtered through provincial courts to people's courts. Moscow province's judiciary communicated with people's courts almost entirely through the mail, but also by telegraph.⁷⁵ The province received information from county courts both from official reports sent to the province from the county, and also from complaints lodged against county courts from individual grievances against county court decisions and practices.⁷⁶ The procuracy's power to supervise the courts, prisons, and investigators provided a number of

⁷⁵ Most communication took place through the mail service. For example, see the circular authored by Narkomiust, on December 14, 1925, sent to all provincial courts in the RSFSR, and then sent from the Moscow province court to Zvenigorod county courts. The circular requested all provincial and people's courts work together to ensure the resolution of all cassational appeals for crimes involving hooliganism within two weeks from when an appellant registered an appeal. See TsGAMO, f. 3765, op. 1, d. 23 (Circulars of the Moscow Province Court sent for Information and Guidance, February-June 1925), l. 96.

⁷⁶ Moscow province courts repeatedly sent directives to Zvenigorod county judges informing them how to instruct convicts on their rights to cassational appeal, and requesting that the judges give convicts the option of registering cassational appeals immediately after receiving verdicts. See TsGAMO, f. 3765, op. 1, d. 1 (Circulars and instructions from the Moscow Province court, sent for information and guidance, 1923), ll. 164, 201. Also see TsGAMO, f. 3765, op. 1, d. 13 (Circulars of the People's Commissariat of Justice and the Moscow Province Court, sent for information and guidance, 1924), l. 26.

reports detailing the power dynamic at play among Moscow province's legal personnel during the 1920s.

Almost immediately after the judicial reforms of 1922, different levels of the newly created procuracy struggled to understand their responsibilities. The announcement of the VTsIK's May 28, 1922, "Statute on Procuratorial Supervision," charged the procuracy with ensuring that all economic institutions, public organizations, and private organizations conformed to the norms and practices established by Soviet legal codes and legislation.⁷⁷ Along with the wide-ranging and nebulous task of ensuring that institutions functioned within the confines of established legality, the statute specifically called for the procuracy to oversee the conditions of individuals confined by the state. This applied to suspects of crimes and convicted criminals.⁷⁸ The Moscow province procuracy experienced difficulties in understanding its newfound task of supervising the legality of the internment of inmates.

It was unclear to the Moscow procurator's office what was to be stressed in applying supervision to the agencies under its scope, as is evident from one of its first reports on its general activities from January 1 to April 1, 1923.⁷⁹ In the report's section on the supervision of detention facilities in Moscow province, the procuracy identified how many prisoners were in work houses, prison hospitals, reformatories, or in the hands of investigators, the diets of prisoners, and the question of whether or not they received sufficient meals.⁸⁰ Embedded within

⁷⁷ See subsection 1 of *Sobranie zakonov i rasporiazhenii Rabocheho i Krest'ianskogo pravitel'stva RSFSR 1922*, no. 36, st. 424.

⁷⁸ See subsection 4 of *ibid.*

⁷⁹ TsGAMO, f. 162, op. 1, d. 122 (Report on the work of the Moscow Province Procuracy from January 1 to April 1, 1923), ll. 1-78. The report itself is unsigned, though the final page says it is the work of Moscow province's procuracy. See TsGAMO, f. 162, op. 1, d. 122, l. 78.

⁸⁰ *Ibid.*, ll. 64-78.

the report was an issue of vital importance mentioned only in passing, and only after detailing a host of other issues, such as the exact number of calories allotted for each prisoner.⁸¹ In a few pages the report detailed an epidemic of hunger strikes, which threatened the viability of Moscow's prison system.

From January 1 to April 1, 1923, Moscow city reformatories (*ispravdomy*) reported 315 instances of individual hunger strikes by incarcerated individuals, punctuated by two wide-scale hunger strikes encompassing entire prisons. Concerned with trying to remedy the strikers' grievances, a procuratorial investigation revealed the reasons behind each hunger strike. Of the 315 individual hunger strikes, 101 were due to foot-dragging by criminal investigators resulting in suspects remaining incarcerated for periods of time beyond what was permitted by the criminal code of procedure.⁸² Ninety-eight complained of people's courts' inexpedience in processing cases. Forty-five were from individuals who believed that they deserved a reprieve from recently passed VTsIK amnesties in commemoration of the five-year anniversary of the October Revolution. Eleven were concerned with complaints about the tardiness of cassational panels in dealing with cases. Five complained about the way in which the reformatories were administered. The remaining fifty-five fell under the category of "various other reasons."⁸³

The majority of all hunger strikes (63.1 percent) resulted from the inability of Moscow investigators and people's courts to conclude cases in a timely fashion. Such delays undoubtedly occurred due to a combination of an overabundance of caseloads and the confusion caused at the

⁸¹ See *ibid.*, ll. 69-71 for statistical summaries of the number of calories allotted for each prisoner and what types of foods were included in their diets.

⁸² In the absence of extenuating circumstances, investigations were not supposed to take longer than a month. See *Ugolovno-Protsessual'nyi Kodeks RSFSR (1923)*, st. 105.

⁸³ TsGAMO, f. 162, op. 1, d. 122, l. 72.

lowest levels of the judiciary in trying to understand and apply the changing nature of Soviet legality. At the same time, the report showed that very few prisoners took issue with the expedience of the cassational system. Of the hunger strikes, only 3.5 percent were caused by complaints of cassational tardiness. This pales in comparison to the number of hunger strikes caused by the delays of investigators and people's courts, which implies that, at least in the eyes of those accused and convicted of crimes, the appeals system functioned more reliably than other elements of the criminal justice system.

Procurators focused much of their concern on the wide-scale hunger strike which occurred because of overcrowding.⁸⁴ The Moscow procuracy found that as of February 12, reformatories had a capacity of 4,134 prisoners, with 4,104 spots filled, leaving thirty free spots. Work houses (*ardomy*) had a capacity of 969 prisoners, but held 2,160, meaning that they were overcapacity by 1,191 spaces. Prison hospitals had space for 670 prisoners, with 574 spots filled, which left ninety-six spots free. Finally, though police stations had room for 865 prisoners, they held 1,818 prisoners as of February 11, which came to an overcapacity of 953 prisoners.⁸⁵ The Moscow city prison system was badly overcrowded, and it did not surprise procurators that there was a hunger strike. In contrast, the procuracy's report revealed little about the other hunger strike resulting from prisoners' complaints of inappropriate treatment. The report gave no indication that the procuracy attempted to find out what "inappropriate treatment" meant, and there were no details describing how the situation had deteriorated to the point of causing a wide-scale hunger strike. Regardless, the picture of the Moscow prison system was clear: chaos due to overcrowding, which was in turn due to courts' inability to process cases expediently.

⁸⁴ Ibid.

⁸⁵ Ibid., l. 65.

The report produced an immediate order to adjudicate all cases as quickly as possible to ensure that similar hunger strikes did not crop up again in the near future.⁸⁶ Though courts struggled to deal with caseloads throughout the early 1920s, subsequent reports by the procuracy made no mention of any recurring episodes of hunger strikes. Of course, it is possible that unreported hunger strikes occurred, but the lack of any further reports of hunger strikes indicates that the procuracy successfully exerted its influence to quash any recurrences. Without question, such influence on legal structures in Moscow city was accounted for by the procuracy's physical presence in Moscow city; procurators could personally visit individuals who attempted to resist the procuracy's will, thereby directly intervening in affairs in Moscow city. The same could not be said for what happened in the countryside surrounding Moscow city.

Over the course of 1923, Moscow province courts struggled to explain to Zvenigorod county courts how to deal with complaints raised against decisions. A letter addressed by Lunin, a member of the Moscow province court, to all Zvenigorod county courts in April 1923, attempted to explain how people's courts should inform convicted criminals of their right to protest convictions. For the sake of expediency, Lunin urged the county courts to make convicts aware of their right "as they become aware of the decision in its final form," informing them that they should lodge "a protest at the time of the final decision." Lunin further urged judges to include in the written verdict whether or not a convict had actually raised a protest.⁸⁷ His exhortations marked the first of many attempts by Moscow province to instruct Zvenigorod county courts on the proper way of initiating protests of verdicts to higher courts. Not long after

⁸⁶ *Ibid.*, ll. 73-78.

⁸⁷ TsGAMO, f. 3765, op. 1, d. 1, l. 35. Even though Lunin's name is on the letter, it appears that the letter was written, and perhaps entirely composed by his secretary, Sonkin. Handwritten comments on the letter indicate that it was read on April 25. The comments, however, obscure the date of when the letter was written, though it appears to have been written on April 8, 1923.

Lunin's letter the province sent a series of forms detailing the process of cassational protest, including a model form for use by the courts to register each instance of cassation.⁸⁸

Subsequently, Moscow province sent routine directives to Zvenigorod county courts detailing the proper way to initiate cassational proceedings.⁸⁹

Lunin's directives and Moscow province courts attempts to instruct Zvenigorod county courts indicate a few deficiencies plaguing Zvenigorod county peoples' courts in 1923. First, that Lunin had to send a letter to the county courts explaining how to make convicts aware of their right to protest a decision meant that the courts were not doing so. It was not the responsibility of convicts to know how to protest decisions. How could they be expected to know procedure or the proper legal recourse? Rather, the courts were supposed to make the process obvious and easily negotiable upon handing down a sentence. Instead, lower-level courts routinely failed to apprise convicts of their right to a cassational appeal.

Second, that peoples' courts failed to record protests at the conclusion of cases speaks to an ignorance of procedure rather than laziness or intentionally refusing to carry out directives from higher courts. Since the entire case record had to be sent to the Moscow province court level upon the conclusion of a case, it would have been clerically expedient if officials at the Moscow province level knew whether a case record could be stored or if the case was still active. They would know if the case was still active if the final decision included an addendum noting that an appeal had been raised. If people's court judges routinely did not indicate at the end of cases whether a convict had filed an appeal, Moscow province judges would be forced to write to them to find out if the case was still open. This meant more paperwork for everyone involved,

⁸⁸ Ibid., l. 74.

⁸⁹ Ibid., ll. 164, 201.

which, of course, nobody wanted. Thus, this failure demonstrates an instance of ignorance rather than willful refusal. Regardless of the reason for the failure, high-level legal officials decided that the situation required their immediate attention.

A circular jointly authored on January 17, 1924, by People's Commissar of Justice and Chief Procurator of the RSFSR Dmitrii Kurskii and Narkomiust board member Iakov Brandenburgskii exhorted all procurators and judicial personnel of provincial courts to ensure that "proceedings in criminal cases [be based] on purely criminal acts [as stipulated by] the [appropriate] article of the criminal code of the RSFSR."⁹⁰ This order was in response to the great number of cases which had been tried by people's courts using incorrect or inapplicable articles of the criminal code, along with the general confusion brought about by the transition from the dual court-tribunal system to a unified system of courts.

While at first glance this circular seemed to apply primarily to judicial matters at the people's court level, the circular was addressed to judicial personnel at the province level who oversaw the correct application of the criminal code at people's courts. The circular lamented that Narkomiust had received reports indicating that people's courts had routinely prosecuted cases independent of any particular statute of the criminal code. Rather than properly apply the relevant article of the criminal code, individual courts prosecuted cases and rendered decisions based on their own understandings of how they perceived crime and the attendant penalty for a conviction.⁹¹

⁹⁰ TsGAMO, f. 3765, op. 1, d. 13 (Proceedings of the Zvenigorod County People's Court in 1923), l. 13.

⁹¹ In particular, the circular mentioned the misapplication of article nine of the criminal code, which stated that sentencing should be commensurate with the socialist sense of justice attendant to the relevant section of the criminal code.

Clearly, by the beginning of 1924 provincial courts struggled to enforce their will on people's courts.⁹² Were people's courts intentionally ignoring directives from above, or were they simply ignorant? Though there were indications that simple ignorance was at play, there were examples of people's court judges employing a sophisticated understanding of criminal codes to circumvent orders from above.

Article 258 of the criminal code of procedure allowed both defendants and judges the ability to delay the rendering of a final verdict by gathering additional evidence, calling additional witnesses, and subpoenaing experts for their testimony. This article granted defendants the right to fully present their cases without the possibility of interruption. Specifically, article 258 stipulated that "the people's court, in recognizing circumstances when the explanation of the parties [defense, procuracy, or judges] may be relevant to the case, may not refuse the calling of experts or witnesses or the recovery of other evidence solely on the grounds that the facts of the case are clear enough [to render a verdict]. Similarly, the people's court may not limit the number of witnesses or experts called by the parties or by those who represent the parties [involved in a case]." Although the wording of the statute addresses any party involved in a case, the latter half of the article makes it clear that the article was intended to provide rights for the defense. The latter half of article 258 couldn't apply to judges, as there could be no reason why they would limit themselves from calling additional witnesses or requesting the gathering of additional evidence. Likewise, the article would not apply to a procurator, as a procurator should have known that judges could not conclude a case without allowing the procuracy to call all of its witnesses and present all of its evidence. Thus, article 258

⁹² TsGAMO, f. 3765, op. 1, d. 13, l. 13.

of the criminal code meant to provide defendants with the ability to fully present their cases as they saw fit, even if it appeared to presiding judges that defendants were merely delaying a final verdict by calling on experts and witnesses *ad infinitum*.⁹³ Unfortunately, lower court judges abused the wording of article 258 in their own interests.

A circular authored by president of Moscow province's courts, Stel'makhovich, on February 10, 1926, identified judicial abuse of article 258 as an issue which required immediate attention. Stel'makhovich complained that people's courts throughout Moscow province had repeatedly ignored the "provincial court's categorical prohibition" of the practice of beginning new trials without passing a final verdict on trials which had just been concluded. Instead, people's courts routinely "heard cases in the order of five to six" at a time, and then then passed verdicts on all five or six cases at once. Apparently, people's court judges routinely invoked article 258 to avoid rendering a verdict on individual cases. Under the ruse of requiring more time to call witnesses and experts, judges refused to provide verdicts. Instead, they used article 258 to keep cases open, continued calling witnesses and experts, and only provided verdicts when five or six cases had simultaneously reached their end stages, at which point judges rendered verdicts on blocks of cases instead of individual cases. Put simply, judges abused article 258 to avoid rendering verdicts in a timely manner. It was more convenient for judges to rule on several cases at once, and the misapplication of article 258 allowed them to do so. Once Stel'makhovich became aware of this perversion of the criminal code of procedure, he ordered people's court judges to cease misapplying article 258.⁹⁴

⁹³ *Ugolovno-Protsessual'nyi Kodeks RSFSR (1922)*, st. 258.

⁹⁴ TsGAMO, f. 3765, op. 1, d. 36 (Circulars sent from Moscow Province Court to provide information), l. 20.

Stel'makhovich did not complain that people's courts failed to understand how to apply article 258 properly. Instead, he thought that people's courts understood the article and intentionally abused it as an excuse to delay handing down sentences at the conclusion of cases. As Stel'makhovich lamented, "violations of article 258 of the code of criminal procedure and article 177 of the code of civil procedure are not only formal breaches of law, but they also distort the very intent of the legislation [responsible for creating the articles]."⁹⁵

Stel'makhovich claimed that the days of delay in rendering decisions made it appear to defendants that judges did not reach verdicts on the merits of the case. It appeared to defendants that judges ruled on the basis of factors exogenous to the facts of the case that occurred to judges between the time they invoked article 258 and when they finally rendered their verdicts. Stel'makhovich also found it hard to believe judges could remember the relevant facts of a case in the time between the conclusion of proceedings and their rendering of a sentence. Most alarmingly, Moscow province court officials noticed that many of the verdicts rendered in batches of five and six cases simply did not make any sense; the verdicts did not match the facts of the cases. Stel'makhovich concluded by "recalling the provincial court's categorical demands for compliance with article 258 of the criminal code of procedure," with the warning that "further breaches of the articles of the law will result in disciplinary actions against people's court judges."⁹⁶

Aside from the fact that people's courts were abusing the criminal code of procedure for their own convenience, Stel'makhovich's circular presented a few other concerns and solutions from court officials at the provincial level. First, that the president of the provincial court

⁹⁵ Article 177 was the code of civil procedure's analog to article 258 of the code of criminal procedure.

⁹⁶ TsGAMO, f. 3765, op. 1, d. 36, l. 20.

personally authored (or at least, made it appear as if he personally authored) the circular showed the importance ascribed to the problem of procedural malfeasance at the people's court level. Second, the circular stressed the "psychological" impact on defendants when witnessing the abuse of the criminal code of procedure and passing of judgment on several cases at once.⁹⁷ Stel'makhovich was concerned that such decisions must have seemed illegitimate to anyone, even to defendants who knew nothing of legality; which in turn made socialist legality appear anything but just. Third, people's court judges abused the criminal code of procedure in a manner which betrayed their apathy to the cause of justice. Instead, they seemed committed only to clearing cases as quickly and conveniently (for them) as possible. Whether a verdict was just or unjust did not matter to them.

Stel'makhovich's circular was terse and warned, rather than implored, people's court officials that further abuse would result in disciplinary action. The message was clear: delaying decisions on court cases in general, and abusing article 258 of the criminal code of procedure in particular, was no longer permitted. Stel'makhovich's warning illustrates a prime example of central legal officials attempting to exert their authority on local courts, in this case with the threat of direct intervention against those who refused to comply.⁹⁸

While it is difficult to determine exactly how much people's court personnel knew about legality, it is possible to identify the legal literature at their disposal. Records for Zvenigorod county's anticipated budget for 1927 list the legal newspapers and journals purchased for people's courts and their personnel. In total, only four papers and journals were included in the budget: *Izvestia*, *Pravda*, *Krasnyi luch'*, and *Ezhenedel'nik sovetskoi iustitsii*.⁹⁹ Neither *Izvestia*,

⁹⁷ Ibid.

⁹⁸ Ibid.

Pravda, nor *Krasnyi luch'* were papers which dealt specifically with legal issues.¹⁰⁰

Ezhenedel'nik sovetskoi iustitsii, the official weekly paper of the Ministry of Justice, represented the only legal journal or newspaper included in the budget for Zvenigorod county.¹⁰¹ Whether or not legal personnel actually read any of the newspapers purchased by Zvenigorod courts, the choice of reading materials purchased by the courts begs scrutiny. Of the four purchases, only one was of a newspaper dealing specifically with legal issues.

More importantly, the budget did not include the purchase of *Proletarskii sud*: the official bi-weekly journal published by the Moscow province court. *Proletarskii sud* included articles discussing pressing legal matters, examples drawn from actual cases explaining how to deal with specific issues, theoretical debates discussing the nature of Soviet law, changes to key statutes of the criminal code and criminal code of procedure, and decisions and orders made by Moscow province court plenums and RSFSR court plenums. Without question, the publication of *Proletarskii sud* was the easiest way to transmit important information from Moscow province courts to Zvenigorod county courts. That Zvenigorod county courts did not purchase the only journal which included instructions from Moscow province courts points to three possibilities.

⁹⁹ TsGAMO, f. 3765, op. 1, d. 55 (Receipts and expenditure estimates of the people's courts in the fiscal years of 1926-27), l. 27.

¹⁰⁰ *Izvestia* was the newspaper charged with expressing the official views of the Soviet government as published by the Presidium of the Supreme Soviet. *Pravda* was the official newspaper of the Communist party of the Soviet Union. *Krasnyi luch'* (*luch'* is not a word in Russian while *luch* translates to "ray" or "beam.") It appears likely the author of the budgetary report simply misspelled *luch*, as the same mistake appears on other pages), was the official weekly paper of Zvenigorod county's All-Union Bolshevik Communist Party.

¹⁰¹ Along with covering important cases, legal debates, and practical applications of the law, it also detailed the litany of changes to legal codes as they were promulgated. For an example of the range of adjustments to the legal code covered by the pages of *Ezhenedel'nik sovetskoi iustitsii*, see "Sistemiticheskii ukazatel' materialov, pomeshchennykh v *Ezhenedel'nik sovetskoi iustitsii* za 1925 g.," published as a supplement to the end of year issue of *Ezhenedel'nik sovetskoi iustitsii* in 1925.

Perhaps Zvenigorod county courts lacked the funds to afford *Proletarskii sud*.¹⁰² Or perhaps they felt the four papers listed above were more important. Or maybe, Zvenigorod county courts were simply not interested in the information include in *Proletarskii sud*. Of the three, the following analysis point to the latter explanation as the most likely.

Zvenigorod county could have easily afforded *Proletarskii sud*. In the budgetary section for newspapers and journals, five items were listed. *Izvestia* and *Pravda* each cost eleven rubles per year. *Krasnyi luch'* cost three rubles, and *Ezhenedel'nik sovetskoi iustitsii* cost eight rubles and fifty-four kopeks. In total, Zvenigorod county budgeted thirty-three rubles and fifty-four kopeks for the purchase of legal newspapers and journals.¹⁰³ In terms of total expenditures for purchases anticipated by Zvenigorod county courts in 1927, this represented less than one percent of the total budget.¹⁰⁴ In 1927, a yearly subscription to *Proletarskii sud* cost ten rubles, with a special rate of eight rubles for court personnel.¹⁰⁵ A yearly subscription to *Proletarskii sud* cost less than subscriptions to *Pravda*, *Izvestia*, or *Ezhenedel'nik sovetskoi iustitsii*. Considering that an additional eight rubles would have meant an increase in the budget of less than one-tenth of one percent, and in view of the fact that the budget spent nine rubles on alphabet books and nine rubles on the category of “various books,” it is difficult to believe that Zvenigorod county lacked the funds to purchase *Proletarskii sud*.¹⁰⁶

¹⁰² Zvenigorod county courts were not sent copies of *Proletarskii sud* for free. Like with all legal journals, there was a special reduced rate for legal personnel.

¹⁰³ TsGAMO, f. 3765, op. 1, d. 55, l. 27.

¹⁰⁴ *Ibid.*, l. 29. The total budget amounted to 12,390 rubles and fifty kopeks. Expenditures on journals and newspapers accounted for .27 percent of the budget. All calculations are my own.

¹⁰⁵ See the first page of any issue of *Proletarskii sud* in 1927 for subscription rates.

¹⁰⁶ TsGAMO, f. 3765, op. 1, d. 55, l. 27.

Proletarskii sud would have been a better investment than either *Pravda* or *Izvestia*, both of which cost more. While it is true that both newspapers included information about trials, especially show trials, neither newspaper primarily concerned themselves with legal matters or provided courts with technical legal instructions, neither included amendments to penal codes and codes of procedure, and neither relayed specific directives from higher courts. *Proletarskii sud* included all of these, along with information only relevant to courts within Moscow province. Put simply, all county courts within Moscow province were one of the intended audiences of *Proletarskii sud*.

Considering that *Proletarskii sud* was inexpensive and included information addressing issues faced by Zvenigorod county courts, it is clear that the courts simply were not interested in the information offered by *Proletarskii sud*. Although it is true that directives should have been sent from Moscow province courts to Zvenigorod county courts, which would in turn see to it that all legal personnel were aware of Moscow province courts wishes, *Proletarskii sud* collated important directives in an easily accessible manner for people's court personnel. Zvenigorod county's decision to forego *Proletarskii sud* indicates an apathetic attitude towards the wishes of superior legal bodies.

Aside from the legal literature available to judicial personal, much of what informed courts' decisions was garnered during pre-trial investigations by investigators. By the end of the 1920s, it was clear to top legal officials that it was necessary for the procuracy to use its power of supervision to ensure that investigators' pre-trial work was of a sufficient quality to give judges the chance to render rigorous decisions.

Thus, on February 21, 1928, Chief Assistant Procurator of Moscow province Shumiatskii sent a letter to all investigators and assistant procurators in Moscow province lauding the recent

reforms enacted by Moscow province's office of the procurator. Shumiatskii noted how the recent consolidation of investigators as a body directly subordinated to the procuracy provided not only for more oversight over investigations, but also resulted in more rigorous investigations that were simply "better than before." To demonstrate the superiority of investigations under the direct supervision of the procurator's office, the Moscow procurator's office highlighted how most cases now took two months or less from the beginning of an investigation to the conclusion of a trial, in contrast to the lengthy periods of time endemic to investigations prior to the consolidation of investigators as an organ of the procuracy.¹⁰⁷ Not only did most cases conclude within a two month period, but "a significant number" concluded within two weeks. Moscow province's county courts stood out as a beacon of expedience; they reported investigations concluded and delivered to local procurators within nine days of the incidence of a crime.¹⁰⁸

After listing the above achievements, the letter changed its tone and focused on a number of areas which required improvement. Shumiatskii admonished investigators to refrain from overconfidence as far too many cases took longer than four months from investigation to verdict:

To radically improve investigative work the following measures must be undertaken:

1) to complete the investigations on all cases which have been lingering for over four months, but be sure that the speed of the investigation does not lead to sloppy work:

¹⁰⁷ "Chto bol'shinstvo del zakanchivaetsia sledstviem do 2-kh mesiatsov" refers to period of time between when an investigator began an investigation and when the case was concluded in the court of first instance. This time frame did not include protests of the verdict rendered by the court of first instance.

¹⁰⁸ TsGAMO, f. 7155 (Assistant Procurator for Klin District), op. 1 (files in permanent storage, 1928-1934), d. 1 (Circulars Sent from Moscow Province Procurators to County Procurators, and correspondences between procurators concerning the execution of compulsory regulations), l. 3.

2) to not allow long breaks between investigative actions. It is forbidden to justify such breaks by claiming that time was lost due to a lack of response from individuals involved with a case, or that experts need to be called in to complete an investigation, or that subpoenas from investigators need time to be delivered etc. Investigators and procurators must take all measures to ensure that such actions are absolutely necessary to the investigation and undertaken as quickly as possible:

3) on the subject of experts, it must be borne in mind that the demand for an expert for each individual case must be valid and that the investigator must set strict and absolutely certain limits on what the expert is supposed to do [and how long it should take]:

4) there are cases when courts return cases to investigators because they require further investigation. Whenever courts return cases investigators must determine whether further investigation is necessary before writing a resolution on the fitness of the investigation. If an investigator finds the court's call for further investigation to be unjustified, the investigator must present the case immediately to a procurator for protest, and in such situations the procurator must challenge the court's decision [to return the case to the investigator for further investigation].¹⁰⁹

Despite all of these issues requiring urgent attention, Shumiatskii claimed that the foremost problem, the key to ameliorating a host of issues linked with investigative work, was “the right direction of inquiry.” To support his claim, he pointed out that Moscow province had undertaken 50,000 police inquiries in the latter half of 1927. Of those, only approximately 10,000

¹⁰⁹ Ibid., ll. 3-4.

resulted in cases brought to trial. The rest were terminated due to a lack of proper procedure or line of inquiry involved with the investigation. Shumiatskii concluded that this meant that eighty percent of all investigative work was therefore “idle,” and the situation must be addressed forthwith.

Procurators were charged with examining all of the cases terminated in their investigatory stages in rural areas, to review similar cases which occurred during the first quarter of 1927 in county courts, and to do the same for “the most typical” of Moscow districts for the first quarter of 1927 as well. After collating information from terminated cases, procurators were told to determine:

1) the reasons for the basis of the investigation, for example, a statement about the theft of clothes, a statement concerning fights, and so on;

2) how many of these statements represented well-founded facts which could form the basis for an investigation, and whether it followed that the investigators should have been guided by article ninety-five of the criminal code to stop the inquiry;¹¹⁰

3) if the reasons for the investigation were well-founded and if there was an inquiry initiated whether the investigation was terminated due to improper management of the investigation by the investigative division.¹¹¹

¹¹⁰ Article ninety-five of the criminal code stated that giving “misleading information to the judicial and investigative authorities or official otherwise entitled to prosecute, as well as false testimony given by a witness, expert or interpreter during the inquiry, investigation or trial of the case [is punishable by] hard labor or imprisonment up to three months. [Giving] misleading information or evidence connected: a) with the accusation of a serious crime, and b) with mercenary motives, and c) fabrication of prosecution evidence [is punishable by] imprisonment for a term not exceeding two years. See *Ugolovnyi Kodeks RSFSR (1926)*, st. 95.

¹¹¹ TsGAMO, f. 7155, op. 1, d. 1, ll. 4-5.

Overall, the tenor of the report indicated that the procuracy had managed to extend far more control than ever before. It closed by ordering assistant procurators to work with local investigators and police, and to report on their progress to the office of the Moscow province procuracy within a month's time.¹¹² What it was asking investigators to do was beyond the scope of what it could have hoped to accomplish at the beginning of the decade. This supports the story described by this chapter; despite setbacks, the efficacy of the legal system improved over the course of the 1920s in Moscow province.

By the end of the 1920s, the procuracy had managed to exert its control, if only to a limited extent, but certainly more than it possessed at the beginning of the decade. Much of what the top levels of the judiciary knew about the bottom came from information received as the result of the procuracy's bid to supervise legal affairs. At the same time, reports from procurators indicated endemic problems with the lower levels of the judiciary, especially with people's courts in the areas surrounding Moscow city. Whether judicial officials in such courts willfully ignored orders from above or carefully manipulated the system to affect their brand of justice, the fact remained that legality in the 1920s in the province of Moscow was marked by struggles for power between different layers of the Soviet judiciary. Though the top often couched its desires in the altruistic desire for an improved legal system, reports on the activity of lower courts adopted the language of a struggle for control, which accomplished anything but a better system of justice. At no point did the Moscow province procuracy consider that people's court judges in the area surrounding Moscow might have different ways of accomplishing what was ultimately desired: a new form of justice capable of prejudicing justice in favor of peasants and

¹¹² Ibid., l. 5.

workers. That they accomplished this for the peasantry was lost in the stream of information sent up and down the ladder of the legal system in Moscow.

Conclusions

High-level judicial officials struggled to gain control over legal practices in Moscow province throughout the 1920s. The chaos of the restructuring of the judicial system in the early 1920s contributed to the inability of the top to control the bottom, though this tension was exacerbated by differences in educational and social backgrounds of judges at different levels, the types of crimes brought before different levels of courts, and the ways in which they interpreted the class-based nature of socialist justice. To people's court judges outside of Moscow, this meant little more than convicting peasants at a rate far lower than they convicted workers or managers. To high-level officials, this demonstrated a critical misunderstanding of the legal system, and helped convince them to remove class-based prejudice from the wording of the criminal code in 1927.

Though this chapter has provided evidence of high-level legal officials' improved ability to control low-level legal personnel by the end of the NEP, there were still instances of the bottom ignoring the wishes of the top. In some situations, people's court judges gained the acumen to manipulate codified legality to their own desires, often at the expense of the desires of high-court officials and of the proper administration of justice. The adherence to legal formalism desired by the top was exploited by legal officials at the bottom for their own interests. This tension between the top and bottom levels of the legal system often played out in the courtroom, as illustrated by the case studies in the remaining chapters

Chapter 4: Cassation in Courts and Tribunals: Appellant Strategies, Judicial Verdicts, and Cassation as an Expression of Power

This chapter combines the historical background and appellate guidelines described in chapter two with the context of the judicial system in Moscow province established in chapter three to determine how the cassational process actually functioned during the 1920s. This chapter will argue that, first, Soviet legal officials used the results of cassation to determine how well lower courts adhered to legal regulations imposed from above. Officials collected vast amounts of data on the frequency of cassation, who engaged in cassation, and what types of crimes were most commonly brought before cassational panels. They analyzed this data to determine how well lower courts carried out higher courts' vision of Soviet legality.

Second, a survey of hundreds of cassational instances reveals a general framework for how appellants argued their appeals. This template, which drew on pre-Soviet notions of beseeching the judiciary for mercy, was combined with new notions of the nature of Soviet power to create a unique range of strategies attempted by appellants. Though such a range was mostly populated by barely literate expressions of aggravation with judicial verdicts, the totality of strategies included complex understandings of Soviet legality. Some appellants even attempted to construct past and future biographies of themselves as ideal Soviet subjects to gain favor with cassational judges.

Third, a review of cassational cases shows that in many instances, high-level judges mostly ignored appellant strategies and based their rulings on two factors: social class of the appellant and the correct application of relevant legal codes and legislation. This phenomenon stands out as anomaly when considering that students of both late-Tsarist Russian legality and general legality for any system have found a direct correlation between individuals' legal

knowledge and the likelihood of their success in the courtroom. I argue that such an assumption does not apply to high-level cassational reviews in the early Soviet period. Instead, high-level judges routinely prioritized legal formalism when considering cassational appeals, often discarding appellants' arguments along the way. At the same time, higher courts often used cassational decisions as a way to project their influence against lower courts. The framers of the Soviet justice system created cassation as one of the few ways higher courts could directly interfere in lower courts' affairs. The cases reviewed in this chapter relate the first archival evidence demonstrating precisely how higher courts used cassation against lower courts.

Fourth, this chapter reviews case studies which confirm that the class considerations considered so important during the first half of 1920s did not factor into high-court appellate cases by the latter half of the 1920s. The prejudice granted to workers by numerous amnesties, guiding principles, and codes described in chapter three was relaxed by the removal of key phrases granting preference to the working and peasant classes in 1927. The case studies below show, however, that high courts had already stopped considering class backgrounds as a reason for leniency as early as 1926.

I. The Frequency and Importance of Cassation in the RSFSR

Throughout the 1920s Soviet legal officials regarded the functioning of cassational courts as a bellwether for the overall efficiency of the judicial process. Both *Rabochii sud*, the official journal of the Leningrad province court, and *Proletarskii sud*, its counterpart for the Moscow province court, repeatedly stressed the rising number of cases reaching cassation as an indicator of the growing confidence of the public in the Soviet judiciary. For example, a *Proletarskii sud* article on the Moscow city and province cassational panels from 1924 to 1925 noted that

Moscow province experienced a growth in the percentage of criminal cases sent to cassation from 9.6 percent during the third quarter of 1924 to 11.9 percent over the second quarter of 1925. This was accompanied by an increase over the same period from 9.9 percent to 12.1 percent for the city of Moscow. The author of this article, B. Zagor'e, collected a number of similar statistics for individual regions within Moscow city, highlighting the regions which reported almost a doubling of percentage of cases resulting in cassation. He claimed that the trend demonstrated both a rising level of confidence in the courts amongst the general populace and a sign that the courts themselves were capable of handling more cases than in previous years.¹

The caseload was staggering. In 1924, 160,278 requests for cassation were filed from cases tried in people's courts. This represented 12.7 percent of all criminal cases tried in people's courts Union-wide. By 1926 there were 180,648 total requests for cassation, which accounted for 21.1 percent of all cases tried in people's courts.² At the provincial court level, the percentage of total cases appealed to the RSFSR Supreme Court was even higher. In 1924, twenty-two percent of all provincial court cases resulted in cassation at the Supreme Court, and in 1925 twenty-eight percent of all cases resulted in cassation.³

Officials regarded a decline in the number of sentences changed by appellate courts as a key indicator in evaluating the capability of trial judges. In the earliest stages of the Soviet judicial system cassational panels altered an alarmingly high percentage of cases. During the first quarter of 1922, 37.2 percent of all criminal cases starting in Moscow city courts ended with an alteration to the original sentence in cassation. 63.4 percent of these cases were changed due to

¹ B. Zagor'e, "Obzhalovanie, otmena, i izmenenie prigovorov," 32-34.

² Zelitch, *Soviet Administration of Criminal Law*, 313.

³ *Ibid.*, 313-314.

mistakes committed by judges overseeing the original trial.⁴ Similarly, during the first quarter of 1924 41.2 percent of all cases sent to cassation from Moscow city courts ended with some type of alteration of the original sentence. By the end of the third quarter of 1925, however, the percentage dropped to 13.5 percent. The rapid decline in the percentage of cases changed between 1924 and 1925 was understood to be a clear signal of the growing competency of court judges. Throughout the existence of the Soviet Union, officials perceived reductions in the percentage of cases changed on appeal as indicative of the increased reliability of trial court judges.⁵ In addition, the reduction in alterations to sentences indicated that lower courts were finally falling in line with the standards of higher court. Excesses in sentencing and ignorance of legality declined as lower courts adhered to the standard applied by higher courts.

An article written by the president of the Cassational Board of the Supreme Court of the RSFSR, K. Gailis, in 1929 showed how cassational panels functioned over the latter half of the 1920s:⁶

⁴ All percentages are collected from a series of statistical tables in *Proletarskii sud*, no.1 (1922): 16-17. The judicial errors listed included misapplications of sentences with respect to crimes committed, procedural error, and a lack of connection between court documents and evidence with the verdict rendered.

⁵ The quality of trial judges' verdicts was determined by how many verdicts were overturned on appeal. A low percentage of successful appeals was considered an indicator of an effective judge. See Solomon, *Soviet Criminal Justice under Stalin*, 52. For an example of the USSR Supreme Court considering a low rate of cassational alterations to verdicts as an indication of the increasing efficacy of courts of first instance, see the report of the president of the war board of the USSR Supreme Court during the fifth plenum GARF, f. R-8131 (Procuracy of the USSR), op. 2 (Inventory of archival materials of the Procurator's Office of the USSR Supreme Court in 1925, handed over to the Central State Archive of the October Revolution and socialist construction of the USSR), d. 6 (Proceedings of the Fifth Plenary Session of the Supreme Court of the USSR, including copies of minutes and reports on the activities of the Supreme Court and Military Board, copies of drafts of statutes of the Supreme Court of the USSR, and others), ll. 66ob-67.

⁶ See K. Gailis, "Doklad o rabote Ugolovno-Kassatsionnoi Kollegii Verkhovnogo Suda za 1928g.," *Sudebnaia praktika*, no. 10 (1929): 8-14, and continued in *ibid.*, no. 11 (1929): 3-6. *Sudebnaia praktika* was a supplement to the *Ezhenedel'nik sovetskoi iustitsii*.

Table 14: Cases Processed by the RSFSR Cassational Division from 1927 to 1928⁷

<u>Case Types and Statuses</u>	<u>1927</u>	<u>1928</u>
Total Cases Remaining from the Previous Year	3,126	2,077
Cassational Cases Received During the Year	16,377	16,573
Supervisory Cases Received During the Year	2,133	2,235
Total Cassational and Supervisory Cases on the Docket	21,636	20,855
Cassational Cases Reviewed and Concluded	17,355	14,396
Supervisory Cases Reviewed and Concluded	2,204	2,486
Total Cases Reviewed and Concluded	19,559	16,882
Total Cases Remaining at the End of the Year	2,077	4,003

Gailis lauded the RSFSR Supreme Court’s cassational division’s expedience in processing cases during 1927. That there were fewer cases remaining on the docket at the end of 1927 than at the beginning indicated to Gailis that the Supreme Court, finally, was fully capable of handling the caseload appealed from lower courts. At the same time, Gailis noted that 1928 ended with almost double the caseload remaining than there was at the beginning of the year. Gailis cautioned readers to refrain from jumping to conclusions on the basis of statistics alone, as he claimed that two factors accounted for the rise in unresolved cases. First, the turnover of half of the personnel of RSFSR Supreme Court judges during 1928 meant that new personnel needed time to learn the machinery of the appellate process. Accordingly, it was expected that there was a period during which cases were processed at a reduced rate. Second, Gailis blamed recent changes to the criminal code of procedure allowing a wider range of cases to be appealed from people’s courts to provincial courts. He argued that this accounted for the provincial courts’ failure to send its appellate cases to the RSFSR Supreme Court in an expedient manner, which resulted in a backlog of cases. Gailis argued that, when considering these mitigating factors, the

⁷ Gailis, “Doklad o rabote Ugolovno-Kassatsionnoi Kollegii Verkhovnogo Suda za 1928 g.,” *Sudebnaia praktika*, no. 10 (1929): 10.

data supported his conclusion that the RSFSR Supreme Court capably handled its caseload of appellate cases.⁸

Gailis turned his attention to raw data describing the reasons behind cassational panels' decisions to uphold or amend the decisions of lower courts:

Table 15: Changes Made by Republican Supreme Court Cassational Panels to Judicial Verdicts from 1927 to 1928⁹

<u>Type of Change to Verdict</u>	<u>1927</u>		<u>1928</u>	
	<u>Total</u>	<u>Percent</u>	<u>Total</u>	<u>Percent</u>
Verdict Upheld in Cassation	23,321	64.7%	21,476	69.6%
Sentence Reduced due to Unjust Nature of Verdict ¹⁰	3,954	11%	2,552	8.3%
Verdict Changed due to Amnesty	4,754	13.2%	4,656	15.1%
Verdict Cancelled	2,498	7%	1,206	3.9%
Case Dismissed	1,452	4.1%	967	3.1%
Totals:	35,899	100%	30,857	100%

The decrease in the percentage of cases changed by Supreme Court cassational panels from 1927 to 1928 demonstrated the increasing rigor of sentences rendered by provincial courts. The percentage of cases altered by Supreme Court cassational panels decreased from 35.3 percent in 1927 to 30.3 percent in 1928. In absolute numbers, Supreme Courts altered decisions in 12,578 cases in 1927, compared with 9,381 in 1928, which calculates to a decrease of 24.4 percent from 1927 to 1928. Of those cases altered during 1928, almost half were accounted for by the promulgation of amnesties, compared with 37.7 percent of all cases amended by amnesties in 1927. Amending sentences on the basis of applying an amnesty did not point to the incompetence of lower courts as they could not be held responsible for amnesties promulgated

⁸ Ibid.

⁹ Ibid., 11. Note that this data includes cases from all republican Supreme Courts, not just the RSFSR Supreme Court.

¹⁰ This provision was covered by the fourth cassational guideline detailed in chapter two of this dissertation and *Ugolovno-Protsessual'nyi Kodeks RSFSR* (1923), st. 437.

after they had rendered a sentence. The only categories which indicated incompetence on the part of original courts of jurisdiction were sentences reduced due to unjust nature of verdicts, verdicts cancelled (and subsequently remanded to lower courts), and cases dismissed entirely. Each of these categories saw substantial declines both in absolute numbers and as a percentage of total cases appealed from 1927 to 1928. Every statistic pointed to the increased abilities of provincial courts to render correct decisions.¹¹

Having established a macro-level view of the functioning of cassational panels in Supreme Courts, Gailis catalogued the types of crimes appealed to the RSFSR Supreme Court. When considering alterations to the criminal code removed much of the wording providing for preferential treatment of the working class, the judiciary was interested to determine what types of crimes were appealed by convicts of particular class backgrounds. Gailis' collations of statistics considered five social classes: workers, peasants, managers, the disenfranchised (*netrudovoi elementy*), and those who did not fit any of the first five categories (others):¹²

Table 16: Republican Supreme Court Cassational Board's Review of Appeals by Workers Organized by Crime from 1927 to 1928¹³

<u>Type of Crime</u>	<u>1927</u>	<u>1928</u>
Officials' Abuse of Power ¹⁴	69	29
Embezzlement and Forgery ¹⁵	54	9

¹¹ Percentages in this section have been calculated by the author of this dissertation.

¹² I review the first three categories of social classes because the latter two categories were not only negligible in their gross number of appeals (similar to workers), but because both categories fall outside the scope of this dissertation.

¹³ Gailis, "Doklad o rabote Ugolovno-Kassatsionnoi Kollegii Verkhovnogo Suda za 1928 g.," *Sudebnaia praktika*, 1929, no. 10 (1929): 13. These totals are for all republican cassational boards. Also note that criminals who were convicted of multiple crimes fell under multiple categories.

¹⁴ *Ugolovnyi Kodeks RSFSR* (1926), st. 109-111, 121.

¹⁵ *Ibid.*, st. 116, 120.

Bribery ¹⁶	74	56
Wrecking ¹⁷	0	0
Murder ¹⁸	382	396
Intentional Bodily Harm Resulting in Debilitating Injury ¹⁹	353	418
Rape ²⁰	347	410
Usury ²¹	105	140
Espionage ²²	0	1
Rioting ²³	1	10
Discrediting Authorities ²⁴	26	1
Robbery ²⁵	19	35
Opposition to State Enterprises or Agencies ²⁶	1	0
Totals:	1,431	1,505

The majority of workers' appeals to the RSFSR Supreme Court's cassational division were for crimes of a violent, non-political nature. The frequency of workers' appeals hardly changed from 1927 to 1928, even though the sections prejudicing the criminal code in favor of workers was removed in 1928. Clearly, this did not alter the frequency with which workers attempted cassational appeals for serious crimes. When comparing the raw data for workers'

¹⁶ Ibid., *st.* 117, 118.

¹⁷ Ibid., *st.* 128.

¹⁸ Ibid., *st.* 136, 137.

¹⁹ Ibid., *st.* 142.

²⁰ Ibid., *st.* 153, 154.

²¹ Ibid., *st.* 173.

²² Subsection 10 of *ibid.*, *st.* 58.

²³ Subsection 2 of *ibid.*, *st.* 59.

²⁴ Ibid., *st.* 113.

²⁵ Ibid., *st.* 167.

²⁶ Subsection 7 of *ibid.*, *st.* 58.

appeals with peasants' appeals, however, it becomes apparent why the rewording of the criminal code had such a negligible effect. There were far fewer workers convicted than peasants:

Table 17: Republican Supreme Court Cassational Board's Review of Appeals by Peasants Organized by Crime from 1927 to 1928²⁷

<u>Type of Crime</u>	<u>1927</u>	<u>1928</u>
Officials' Abuse of Power	71	77
Embezzlement and Forgery	43	21
Bribery	277	162
Wrecking	6	1
Murder	3,371	3,580
Intentional Bodily Harm Resulting in Debilitating Injury	4,005	3,883
Rape	2,236	2,288
Usury	417	419
Espionage	3	355
Rioting	102	247
Discrediting Authorities	505	0
Robbery	799	99
Opposition to State Enterprises or Agencies	0	0
Totals:	11,835	11,132

For every case appealed by workers, peasants appealed approximately eight cases in both 1927 and 1928. The types of crimes appealed by workers and peasants were analogous in their relative frequency, but clearly, peasants appealed far more cases in total.²⁸ Given the current scholarly understanding of peasants' knowledge of legality during the late-Tsarist era, one might attribute this to peasants possessing more knowledge of the possibility of appeal. However, it is likely that the more accurate explanation is also the simplest one: provincial courts convicted peasants at a far higher rate than workers. Thus, there were far fewer incidences of workers'

²⁷ Gailis, "Doklad o rabote Ugolovno-Kassatsionnoi Kollegii Verkhovnogo Suda za 1928 g.," *Sudebnaia praktika*, no. 10 (1929): 13.

²⁸ When calculating each type of crime as a proportion of the whole, the rates of appeal of each type of crime are similar for peasants and workers.

appeals. This evidence suggests that the changing of the wording of the criminal code to deemphasize class considerations had little effect on how courts considered class backgrounds in reaching verdicts. This fits the assertion made earlier that the wording of criminal codes during the 1920s did not prejudice class when determining whether a defendant had committed a crime. Rather, class considerations played a role in the severity of sentences.

This explanation of the nature of courts' conviction rates is all the more plausible when looking at the next table detailing the frequency of appeals by the managerial class:

Table 18: Republican Supreme Court Cassational Board's Review of Appeals by Managers Organized by Crime from 1927 to 1928²⁹

<u>Type of Crime</u>	<u>1927</u>	<u>1928</u>
Officials' Abuse of Power	6,842	6,013
Embezzlement and Forgery	2,728	1,637
Bribery	1,034	984
Wrecking	289	276
Murder	227	203
Intentional Bodily Harm Resulting in Debilitating Injury	77	75
Rape	279	336
Usury	32	37
Espionage	0	16
Rioting	0	4
Discrediting Authorities	4	303
Robbery	0	9
Opposition to State Enterprises or Agencies	3	17
Totals:	11,515	9,910

The managerial class appealed nearly as many cases as peasants in both 1927 and 1928. That there was a drop of fourteen percent in the number of cases appealed by managers in 1928 when worker appeals increased by five percent and peasant appeals decreased only by 9.4

²⁹ Gailis, "Doklad o rabote Ugolovno-Kassatsionnoi Kollegii Verkhovnogo Suda za 1928 g.," *Sudebnaia praktika*, no. 10 (1929): 13.

percent hints at residual effects of the de-emphasis on class considerations.³⁰ However, the reduction of approximately fourteen percent still left the managerial class with nearly as many appeals as peasants, and many times more appeals than workers. If the change in the wording of the criminal code altered how judges considered class, the effect was minor indeed. Managers continued to appeal cases at a disproportionately high rate.

In contrast to both workers and peasants, managers rarely appealed crimes of violence. Instead, almost all of their crimes were of a political and economic nature: abuses of power, forgery, embezzlement, bribery, and wrecking. This is no surprise when considering that the nature of managerial labor put managers in positions to commit political and economic crimes. What is surprising is the high number of appeals rendered by the managerial class. Undoubtedly, the higher educational level of managers, the greater likelihood that they read newspapers and journals explaining the judicial process, and their stronger familiarity with the legal system accounts for their disproportionately large number of appeals when compared to peasants. At the same time, this points to peasants' lack of familiarity with the legal system in general and the appellate system in particular.

Soviet legal journals devoted ample attention to the everyday functioning of cassational panels. Almost every issue of *Rabochii sud* and *Proletarskii sud* included a section describing the proceedings of exceptional cassational cases.³¹ Each section reviewed a number of cassational instances, detailing those aspects meant to serve as exemplars for cassational panels

³⁰ Percentages are calculated by the author of this dissertation.

³¹ With the exception of the first and last editions of each journal, every issue included a section titled "kassatsionnaia praktika" for both criminal and civil cases.

in subsequent cases.³² In addition, both journals discussed theoretical questions related to appeals, correct application of the criminal and procedural codes, and provided guidance in evaluating anything related to the cassational process.

Given the volume of cassational cases and what they indicated about the quality of work of judges, it should come as no surprise that Soviet officials paid close attention to cassation.³³ It stood out as the best method by which higher court judges, especially RSFSR Supreme Court judges, understood how lower courts functioned. Thorough reviews of case files and careful readings of appellants' cassational arguments provided the only way by which superior court judges could see how convicts understood the legal process. Most importantly, cassation permitted higher court judges to correct mistakes made by lower court judges, which, ultimately, is what any appellate court is supposed to accomplish.

Having established the wider context of the importance of cassational appeals and the types of crimes and criminals who were mostly likely to appeal, I turn to a microstudy of the strategies employed by appellants.

³² Such exemplars were similar to the types of exemplars meant to inform the general public on a variety of subjects published in *Vlast' sovetov* and *Izvestia TsK*.

³³ Although cassation was valued for its ability to inform legal officials of the effectiveness of lower-level courts, cassational panels (and the judiciary in general) were warned to refrain from haphazardly ordering cases remanded since it was "required to save money and the energy of court workers as much as possible by limiting the repetition of cases of the first instance." If anything, this meant that high-level judicial officials were especially interested in the affairs of cassational panels, as they placed a premium on fast, effective judicial decisions. See Chel'tsov-Bebutov, "Obzhalovanie prigovora zashchitnikom," 192.

II. Framework of an Appeal

In contrast to every other document included in case files, cassational appeals did not fit a prescribed framework.³⁴ The documentation of every other phase of a case, from pre-trial investigations, to interrogations, to indictments, to court transcripts, to judicial decisions, had a prescribed format prompting the investigator, procurator, judge, or defendant to follow a set pathway of questions and procedures. For example, when an investigator interviewed witnesses or suspects, he had a series of questions he had to ask before he could begin asking for details of the crimes.³⁵ Similarly, when judges rendered their sentences, they had to produce a short summary of the crime, the trial process, and a listing of all the names of the accused, the criminal codes by which they were convicted, and the reason for the severity of their sentences.³⁶

Cassational appellants, however, were permitted to write their appeals in any way they saw fit. Even though cassational panels were ordered by the criminal code of procedure to look for specific reasons when considering whether an appellant warranted a reprieve, convicted criminals were not informed of the guidelines upon receiving convictions; they were only told

³⁴ The framework of appeals described in this section has been developed from a survey of hundreds of appeals found in GARF, f. R-1005, op. 3 d. 87-89 and 125 cases sampled from TsGAMO, f. 5062, op. 3.

³⁵ For example, see the “witness interrogation” (*protocol doprosa svidetelia*) form in the interrogation of witness Natalia Kirpicheva in the murder conviction of Aleksandra Lapshina in TsGAMO, f. 5062, op. 3, d. 897, ll. 7-7ob. This interrogation form, like all interrogation forms, was formatted to begin with the name of the investigator and the statute of the criminal code of procedure by which he was conducting his investigation. Next, there were seven categories which had to be filled out for each witness: 1) name and age 2) birthplace 3) place of residence 4) occupation 5) party affiliation 6) whether the witness had ever been convicted of a crime 7) relationship to the victim or perpetrator. Only after all of this had been attended to could the investigator take down witnesses’ statements. This general formatting of court documents applied to every document included in case files, with the exception of letters of appeal. This is not to suggest that there were not instances when court documents did not completely conform to the types of set patterns described above, just that there was a rule in place for all court documents aside from appeals. For an exception see the people’s investigator Shkunov’s pre-trial report for the same case in TsGAMO, f. 5062, op. 3, d. 897, l. 33. Investigator’s reports often did not fit a formatted pattern, though such a pattern did exist.

³⁶ For example, see TsGAMO, f. 5062, op. 3, d. 897, ll. 58-60 for the judicial decision to sentence Lapshina to ten years imprisonment. The decision was structured identically to all other decisions rendered by courts of first instance reviewed in this dissertation.

that they had the option to file a cassational appeal within seventy-two hours.³⁷ As a result, a range of strategies developed from eloquent, legally informed pleas based on a number of mitigating factors, to barely literate scribbles indicating no knowledge of the appeals process or the legal process in general. The least eloquent appeals were handwritten with a shaky or untrained hand; they almost never extended beyond a few sentences in length, and were not addressed to any person or institution. Their arguments were not legally informed, and their desire for a reprieve often consisted of little more than a general displeasure with the sentence rendered.³⁸ This type of appeal was most often employed by appellants surveyed by this dissertation, and were outnumbered only by appeals in which appellants failed to write anything at all. While appellants were instructed to submit an argument to cassational boards explaining why they thought their cases deserved reconsideration, the cases reviewed here reveal that appellate boards considered convicts together in groups; that is, if one member of a criminal gang submitted a cassational appeal, a cassational panel reviewed the case for all members of the criminal group. This likely explains why so many cassational appellants did not write anything at all.

In contrast to the “minimal” appeal, eloquent appeals employed a combination of arguments based on technical legality and personal pleas. Though no two appeals were completely alike, eloquent appeals followed a general framework. They opened with the

³⁷ See chapter two of this dissertation for an extensive discussion of cassational guidelines.

³⁸ Though specific examples of each type of appeal are detailed below, the best collection demonstrating the range of possible appeals is found in GARF, f. R-1005 (Supreme Tribunal of the VTsIK, Supreme Court of the RSFSR), op. 2 (1918-1922), d. 87 (Statements and Petitions of convicts sentenced by revolutionary tribunals at the front, and at army and war districts, and other tribunals which rendered sentences of death or of long terms of forced labor, January-December, 1921), GARF, f. R-1005, op. 2, d. 88 (Cassational appeals of convicts sentenced to death, supervisory reviews of these convictions sent for approval by the cassational division, September-October, 1921), and GARF, f. R-1005, op.2, d. 89 (Cassational appeals and petitions of convicts and their relatives and their correspondences with provincial revolutionary tribunals, February-December 1921).

addressee at the top right-hand corner; with very few exceptions, the addressee was not the correct cassational body responsible for adjudicating the appeal. The appeal was often addressed directly to a procurator, or to the court of original jurisdiction, or to the correct level of courts, but not to a cassational panel. Considering that many eloquent appeals showed an understanding of law, it is likely that courts of original jurisdiction provided cassational appellants with incomplete or incorrect information in explaining which legal body had jurisdiction over their appeals.³⁹

Appellants followed the address with one of four headers: *zaiavlenie*, *proshchenie*, *obzhalovanie*, or *zhaloba*. The words have different meanings, but appellants used them interchangeably. In looking at each term's strictly legal definition, a *zaiavlenie* is a declaration or statement, a *proshchenie* is a petition or more commonly, a plea, a *zhaloba* is a complaint or a grievance (a cassational appeal, *kassationnaia zhaloba*, translates directly to a cassational appeal), and an *obzhalovanie* only translates to an appeal against a judicial verdict.⁴⁰

Other than appeals, *zaiavlenie* and *zhaloba* were used in a variety of legal contexts. For example, investigators often titled their findings and procurators titled the briefs of their cases with “*zaiavlenie*.” *Zhaloba* opened complaints by procurators against a host of issues identified during supervisory reviews. For cassational appellants however, the four words were used interchangeably to open their cassational appeals. Whether the appeal included articulated personal pleas or well-argued legal reasons, one of the four headers appeared at the opening of

³⁹ While this sloppiness indicates nothing more than incompetence by lower-court judges, it also presages collectivization when judges intentionally misinformed or completely denied convicts the right to cassational appeals upon the conclusion of a trial. See Solomon, *Soviet Criminal Justice under Stalin*, 95.

⁴⁰ See A. Mamulyan and S. Kashkin, *Russian-English Comprehensive Law Dictionary* (Eksmo Education, Moscow: 2008), 191, 235, 445, 671.

every eloquent appeal, seemingly with no linkage whatsoever between the type of argument employed and which word titled the appeal.

Following the header, every cassational appeal included a formal greeting to the cassational panel, typically consisting of nothing more than a “dear comrade judge” (*dorogoi tovarishch sud*).⁴¹ The impersonal nature of the greeting is what one would expect of a formal, legal plea. But at the same time, it also indicates that the appellants never knew exactly to whom they were appealing. At no point in the appeal did appellants ever address or mention any of the judges who actually reviewed their appeals. At best, appellants included the name of the correct cassational panel in the address at the top of the appeal. Thus, appellants structured their appeals as pleas to institutions rather than to specific individuals.⁴²

Following the greeting, the body of the appeal consisted of a combination of three elements: a short summary of the results of the trial, an argument based on technical legality, and a biography of the appellant including a variety of personal exhortations for leniency. Every cassational appeal relying on an eloquent argument, and even many of those which did not, started with a few sentences reviewing the circumstances of the crime, the article of the criminal code by which the appellant had been sentenced, and the duration of the sentence imposed by the

⁴¹ Cassational appeals sent to the VTsIK tribunal represent an exception to this rule. Despite including highly articulate, well-argued reasons for cassation, none of these appeals opened with a greeting to the judiciary. For example, see GARF, f. R-1005, op. 2, d. 89, l. 445 for D. I. Makovskii’s cassational appeal to the VTsIK revolutionary tribunal (Makovskii’s appeal is discussed later in this chapter). See GARF, f. R-1005, op. 2, d. 87-89 for hundreds of appeals to the VTsIK, none of which include a greeting.

⁴² This supports Kenneth Jowitt’s conceptualization of the Party’s interaction with the public under the umbrella of “charismatic impersonalism.” In this theoretical framework, the impersonal arbitrariness of both Party and state officials replaces the procedural impersonality dominant in Western system of government. Party and state officials are understood to apply the rules as they see fit to advance revolutionary interests. Thus, interactions between the public (appellants) and state officials (judges) would conform to the model of citizens communicating with an all-knowing, impersonal institution. See Kenneth Jowitt, *The Leninist Response to National Dependency*, (Berkeley, CA: Institute of International Studies, University of California, Berkeley, 1978), 34-42.

court of initial instance. This brief section of the appeal involved nothing more than a summary of the judicial decision.

Following this, the second part of the most eloquent appeals included an argument based on specifically legal reasons explaining why the sentence should be amended, reduced, or overturned entirely. Such arguments touched on various aspects of the guidelines relevant to cassation: violations of the criminal code of procedure, misapplication of the criminal code, application of the incorrect article of the criminal code in evaluating the crime, or the initial court's ignorance of legal legislation relevant to the case. As the case studies below demonstrate, these arguments ranged from impressive demonstrations of the rules of cassation and legality, to misinterpretations of relevant legal codes, to arguments which completely misunderstood existing legality. Though many appellants attempted arguments based on technical legality, very few managed to advance arguments which cassational panels regarded as deserving of alterations to sentences.

The final section of the body of cassational appeals, the personal biography, included a wide range of tactics deviating from legally-derived argumentation. Such strategies invariably attempted to portray the appellant in a sympathetic light. Most personal biographies emphasized working class backgrounds. In the event that an appellant's background precluded the possibility of self-portrayal as a worker, professed sympathies for the interests of workers was a dominant trope. If possible, an appellant's service during the Civil War functioned as a way to ally oneself with the working class, especially if the appellant did not have a working class background. In such circumstances, the appellant typically came from peasant stock, in which case appellants attempted to elucidate how their peasant backgrounds paralleled the experiences common to

workers. In short, appellants clearly understood that it was in their best interests to represent themselves as workers.

Following the proclamation of social background, which ranged from a few sentences to a few pages, appellants' strategies included a number of arguments. The most effective argument relied on the admission of criminal activity due to need. These appeals explained crimes as nothing more than the act of desperate, well-meaning individuals who turned to crime to feed themselves and their families. As the analyses of a number of amnesties have indicated, judicial authorities were likely to opt for leniency when convicts committed misdeeds due to privation. Such crimes suggested that criminals were not recidivists. Some appellants understood that demonstrating non-recidivism was pivotal for a successful appeal, and they consequently admitted their crimes fully, expressed regret, emphasized that they had no criminal record, and promised to live as reliable citizens of the new socialist order.⁴³ As the case studies in the next section show, appellants who relied on this type of strategy stood a much better chance of reprieve than those who constructed appeals focusing on issues unlikely to resonate with judges.

Many appellants demonstrated a total misunderstanding of the appellate system in focusing on factors in their personal biography which could not help their causes. Convicts who wrote short, badly argued appeals claimed that they deserved shorter sentences because many of their friends who had committed similar crimes received shorter sentences. Such appellants did not realize that judges could not reduce sentences for this reason. Typically, these appellants continued by blaming their misdeeds on the influence of bad friends who had persuaded them to commit a crime. In some pleas, appellants blamed life-long friends for repeatedly pushing them to misdeeds which they would otherwise never commit. Once again, the authors of such

⁴³ The best example of a convict proclaiming herself as someone who had the potential to live as an ideal Soviet subject is explored with the Maria Kozlova case (including cassational and supervisory reviews) in chapter five.

arguments did not realize that they actually harmed their causes by demonstrating that they associated with criminal elements, thereby indicating recidivist tendencies.

Badly written appeals rarely extended beyond this point, but when they did, what followed invariably focused on tales of alcohol-induced misdeeds committed with no forethought, led by somebody other than the appellant, and often hinting that the appellant did not even necessarily commit the act for which he received his conviction. Such appeals almost never resulted in success, as appellant panels expected appellants to fully admit wrong-doing and express contrition. When such appeals did result in success, as the case studies in the next section show, the result had nothing to do with the strategy employed by the appellant. In those cases, judicial discretion overrode all other considerations.

The less eloquent appeals were the norm. In the event that appellants wrote anything at all, the majority of written appeals consisted of little more than a few scribbled sentences demanding a judicial review of the case for no reason other than the convict's displeasure with the sentence. Though representing a minority, eloquent appeals describing understandings of the legal system and constructing personal biographies around notions convicts thought would result in favorable decisions tells us much about the ideals of the Soviet system of justice and how individuals believed that they could represent themselves as ideal, Soviet citizens. It is with this in mind that this section turns to a series of case studies analyzing the appellant strategies and the considerations influencing judicial decisions in cassational cases.

III. Case Studies of Cassational Appeals

The following case studies represent a first attempt to study cassation during the 1920s on the basis of the archival record. The cases below are representative samples from hundreds of

cases reviewed in TsGAMO, *fond* 5062, *opis* 3 and GARF, *fond* R-1005, *opisi* 87-89. The cases from the GARF *fond* only include cases brought before revolutionary tribunals, but the TsGAMO *fond* includes cases appealed from revolutionary tribunals and courts. The cases in this section have been chosen as the best illustrations of the types of strategies described in the previous section, which also provide insight to the factors influencing judicial decisions and how judges considered appellant arguments.

This section begins with a comparison between two identical crimes committed during the summer of 1921. The facets of each case were almost identical with one notable exception: the appellate strategies employed in cassation were vastly different. Though one appellant was eloquent, persuasive, and provided a compelling legal argument for a reduced sentence, while the other appellant's argument represented the type of "minimal" strategy in which appellants simply scribbled a few lines, both appellants' cassational appeals resulted in similar reductions to their sentences. Ultimately, cassational panels' rulings did not consider appellants' arguments. Rather, in this early period of the Soviet judiciary, cassational judges of the highest courts largely ignored appellants' arguments in applying a standard set of considerations. For convicts hoping to receive reduced sentences, the mere act of submitting an appeal was more important than what they argued in their appeals. In this case, the system was more concerned with form than content.

The remaining case studies identify specific types of appellant strategies employed throughout the rest of the 1920s. In contrast to the early period of the 1920s, some of these cases demonstrate that appellant strategies did affect judicial rulings.

A Comparison of Two Embezzlement Cases: The Irrelevance of Legal Strategies from 1921 to 1923

Over the latter half of 1921, twenty-six year-old proletarian Vasilii Zaitsev was a key member of a criminal gang responsible for the embezzlement of various goods valued at millions of rubles from manufacturing plants across Moscow city. When the gang was discovered, Zaitsev was the only member captured and brought before the courts. On May 19, 1923, a Moscow province court heard his case and quickly concluded that he was allied with a group of thieves who systematically stole from government warehouses from July to November of 1921. The court, consisting of presiding judge Lavrov and lay assessors Georgievskii and Retling, determined that Zaitsev was personally responsible for selling goods stolen from the Likinskii manufacturing plant valued at 3.5 million rubles. Originally, Zaitsev was found guilty under subsection eight of article 180 of the RSFSR criminal code, which stated that “theft from public warehouses, trucks, ships and other repositories” deserved “imprisonment for a term not less than three years or capital punishment.”⁴⁴ The court found Zaitsev deserving of the death penalty, but because of a general amnesty proclaimed by the VTsIK on November 2, 1922, on the occasion of the five year anniversary of the October Revolution, his death sentence was commuted to imprisonment for ten years and an additional loss of rights for five years. The court concluded by informing the convicted of his right to raise a cassational complaint within seventy-two hours of the conclusion of his case.⁴⁵ Undoubtedly because he was the only one in custody at the conclusion of the trial (the other members of Zaitsev’s criminal circle were still at

⁴⁴ *Ugolovnyi Kodeks RSFSR* (1922), *st.* 180.

⁴⁵ Cassational complaints could be opted for immediately upon receiving a verdict, submitted to the court of first instance within seventy-two hours of the verdict, or sent directly to a higher court. See *Ugolovno-Protsessual’nyi Kodeks RSFSR* (1923), *st.* 344, 400. There were exceptions to the seventy-two hour rule. For example, if a defendant was tried *in absentia*, the defendant had the right to submit a cassational appeal within fourteen days of being notified of a conviction. See *ibid.*, *st.* 359.

large), Zaitsev was the only convict who exercised his right.⁴⁶ Zaitsev appealed the decision to a cassational panel attached to the RSFSR Supreme Court, which ruled in August, 1923 that although Zaitsev's argument for a reduced sentence had no merit, that there were a number of factors in his favor which had not been considered either by the courts or by Zaitsev himself. After reviewing the case, the cassational panel considered his social background as a proletarian, absence of criminal record, and sincere remorse for his crime in deciding to reduce Zaitsev's sentence from ten years imprisonment to five years.⁴⁷

Aleksandr Basharin was a member of a criminal gang engaged in wide-scale thievery of state goods in 1921. Basharin was a state official in charge of the transport of leather from Moscow to Ekaterinburg in the summer of 1921. When it was discovered that a portion of one of the shipments under his care never arrived in Ekaterinburg, an ensuing investigation found Basharin responsible for the embezzlement of the missing leather. In November, 1921 the Moscow revolutionary tribunal overseeing his case ruled that, as in Zaitsev's case, Basharin would have received the death penalty if not for the application of an amnesty recently passed by the VTsIK.⁴⁸ The tribunal, after a lengthy explanation of Basharin's crimes, sentenced him to five years imprisonment. Basharin then opted for a cassational appeal, which was not brought to the attention of a cassational panel attached to the VTsIK until a year after his original sentence.

⁴⁶ TsGAMO, f. 5062, op. 3, d. 164, ll. 216-218.

⁴⁷ TsGAMO, f. 5062, op. 3, d. 164. The cases analyzed in this paper are stored at TsGAMO, in an *opis* which includes slightly over 1,000 cases. Each *delo* is titled with the names of all accused individuals and the article of the criminal code under which they were tried. For cases which were tried before the 1922 criminal code came into effect, the crime itself was included on the title page.

⁴⁸ This is not the same amnesty as the one applied in Zaitsev's case. The November 4, 1921 amnesty was declared by the VTsIK to "commemorate the four year anniversary of workers' power, along with the end of the civil war and the transition to peace building." See "Ob Amnistii," Dekret VTsIK 4 Noiabria 1921 g. in *Sbornik dokumentov po istorii ugolovnogo zakonodatel'stva SSSR i RSFSR: 1917-1952 gg.*, ed. I. T. Goliakov (Moscow: Gosizurdat, 1953), 109-111. As will be discussed below, Zaitsev unsuccessfully argued for the application of this amnesty in his appeal.

Included in Basharin's appeal was the request for a retrial under article 180 of the recently codified criminal code: the same article applied to Zaitsev's case. That Basharin's appeal communicated an unusually advanced familiarity with the legal code did not influence the VTsIK cassational panel's decision, as it rejected part of his legal argument, but ultimately decided to reduce his sentence by twenty months due to two factors: the application of an additional amnesty and Basharin's background as a Red Army veteran of peasant origin who exhibited proletarian characteristics throughout his life.⁴⁹

A comparison of Zaitsev and Basharin's cases shows a range of legal strategies, from Zaitsev's ineloquence to Basharin's eloquent, legally-informed appeal. That every aspect of their cases was so similar, with the exception of their appellant strategies, allows us to assess how appeals factored into judicial decisions in Soviet appellate panels during the early 1920s.

The value of the comparison is evident when analyzing the few differences hidden amidst the similarities. Among the major similarities, both Zaitsev and Basharin were members of gangs engaged in massive embezzlements of state goods in Moscow during the summer of 1921. Both were saved from death sentences by amnesties declared by the VTsIK. Both were determined to be of some combination of peasant origins and proletarian proclivities. Finally, both successfully reduced their sentences with cassational appeals.

A careful review of their cases identifies only four major differences. First, Basharin's case was handled by the system of revolutionary tribunals while Zaitsev's case was tried in the system of courts that followed the elimination of the tribunal system. Second, Basharin was a state official whereas Zaitsev was not. Third, Basharin enjoyed the benefit of two amnesties

⁴⁹ TsGAMO, f. 5062, op. 3, d. 12. The cassational panel applied the November 2, 1922 amnesty in reducing his sentence.

while Zaitsev only received one. Fourth, and most importantly, Basharin's appeal demonstrated a high degree of legal knowledge and argumentation explaining how the legal code and legislation could be applied to his case while Zaitsev's appeal included nothing more than a statement of annoyance with his conviction and a total ignorance of Soviet legality. Nevertheless, both of their cassational appeals resulted in similar outcomes.

The first three differences were immaterial. First, the cassational panels attached to the RSFSR Supreme Court were the successors to the cassational panels attached to the VTsIK, and as this dissertation has discussed, it should come as no surprise that they ruled in similar manners for similar crimes, especially given that their rulings were only a year apart.⁵⁰ Second, that Basharin was a state official and Zaitsev was not played no role whatsoever in the outcomes of their cases.⁵¹ Third, the application of one amnesty instead of two was entirely due to the fact that Basharin was caught and tried before Zaitsev; Basharin was lucky that his original trial and cassational appeal happened to fall days after the decrees of the amnesties of the four and five-year anniversaries of the October Revolution. Unfortunately for Zaitsev, although he committed his crime at almost the same time as Basharin, he was not tried until November 1922 (after the passage of both amnesties), and therefore was only eligible for the second of the two amnesties.

⁵⁰ As early as 1920, prominent Soviet legal scholars and officials such as Iuri Martov, Peter Stuchka, and Vladimir Lenin recognized that revolutionary tribunals were incapable of acting as a legal instrument of class justice. As a result, cases involving class enemies accused of class-based crimes increasingly became the domain of the political police. Consequently, from 1921 to 1922 revolutionary tribunals passed verdicts which were no more severe than their successor: the court system established in the latter half of 1922. See Portnov and Slavin, *Stanovlenie pravosudiia Sovetskoi Rossii*, 53-88, and Matthew Rendle, "Revolutionary Tribunals and the Origins of Terror in Early Soviet Russia," 693-721.

⁵¹ *Ugolovnyi Kodeks RSFSR (1922)*, st. 180. The article of the criminal code under which Basharin attempted to gain a retrial included no difference between the range of penalties (a minimum of two years imprisonment with no maximum penalty stated) possible for a state official convicted of stealing goods from state agencies and a non-official convicted of stealing goods from state agencies. Both Basharin and Zaitsev were tried for embezzlement and not for simple theft because they were both members of gangs including state officials who embezzled goods from the state. The differences between the different subsections of article 180 of the criminal code will be discussed below when detailing how article 180 could have been applied to Basharin's case.

The critical difference, and the one which bears the most scrutiny, is the difference between their arguments for appeal. Though one might expect that an appeal based on a legally-informed argument stood a better chance of gaining a reduced sentence than an appeal based entirely on emotion and legal ignorance, the cases suggest that there was no link between expressions of legal knowledge of appellants and successful appeals. I argue that the legal knowledge expressed by criminal appellants had no impact on the rulings of cassational panels attached to the highest Soviet courts and tribunals from 1921 to 1923.

This finding complicates the long-held belief postulated by Marc Galanter that in the United States legal system, and indeed in any legal system, there is a positive correlation between legal knowledge and legal outcomes.⁵² That is, Galanter argues that individuals who understand how the courts work (the “haves”) are at a distinct advantage when compared with those who do not (the “have-nots”). As a result, those who possess legal knowledge generally receive more favorable verdicts. Though Galanter’s seminal article specifically addresses the United States legal system, his argument is malleable to any study of any legal system. Indeed, his connection between legal knowledge and legal outcomes is not peculiar to studies of Russian legal systems, as the work of Jane Burbank shows.

The arguments offered in this dissertation engage Jane Burbank’s assertions of the relationship between peasants and courts in the late-Tsarist era. She provides compelling evidence demonstrating how peasants who became familiar with Tsarist legal codes used their newfound knowledge to their advantage in courtrooms. She depicts peasants as active agents who had the ability to affect judicial outcomes through the application of knowledge of legal codes and legislation. She extends this depiction to argue that peasants possessed both a wide

⁵² Marc Galanter, “Why the ‘Haves Come out Ahead: Speculations on the Limits of Legal Change,” 95-160.

familiarity with late-Tsarist legality and a pronounced ability to achieve their desires through the courts.⁵³

Applying Burbank's assertion to the early Soviet era is challenged by the example of Zaitsev, which shows that some criminal defendants who had every incentive to gain and express legal knowledge during their appeals expressed a total ignorance of legal codes and regulations pertinent to their cases. I go a step further in asserting that the expression of legal knowledge of defendants is entirely irrelevant when analyzing the outcomes of cases of appeals of serious crimes in the Soviet Union from 1921 to 1923. Whether appellants expressed legal knowledge or ignorance, judges on high-level cassational panels were primarily interested in two factors: the social background of the accused and the correct application of the legal code. Even if the appellants themselves failed to formulate arguments highlighting these two factors, judges took it upon themselves to scour the case record for them.

Zaitsev's cassational complaint was handled on August 23, 1923, by a panel consisting of RSFSR presiding judge Kronberg and RSFSR member judges Muranov and Tatarintsev. As a matter of procedure, the court reviewed not only Zaitsev's sentence, but also the sentences of his compatriots who had been tried *in absentia*. After tersely determining that there was no basis for a cassational complaint for any of the convicts involved in Zaitsev's case, the cassational panel ultimately reduced Zaitsev's imprisonment for reasons which had nothing to do with Zaitsev's plea.⁵⁴ Explaining how the reasoning employed by the cassational panel's decision fit within the bounds of codified legality is the focus of the ensuing analysis.

⁵³ Jane Burbank, *Russian Peasants Go to Court*.

The panel's review opened according to procedural guidelines with a presentation by one of the judges, during which he briefly introduced the case.⁵⁵ Following this, the RSFSR procurator charged with arguing on the state's behalf extensively outlined the major points of the case, namely, Zaitsev's criminal activities from July to November of 1921 and the province court's determination that Zaitsev would have been condemned to death had it not been for the VTsIK amnesty of the five year anniversary of the October Revolution.⁵⁶ Zaitsev's complaint was condensed down to a single argument; Zaitsev claimed that his crimes should have been covered not only by the VTsIK amnesty of the five year anniversary of the October Revolution, but also by another VTsIK amnesty promulgated on November 4, 1921. It was noted that the November 4 amnesty had been applied to some of his compatriots after they had been apprehended and convicted, all of whom received shorter terms of imprisonment than Zaitsev. In reaching its decision, the panel made it clear that the November 4 amnesty did not apply to Zaitsev's case and that Zaitsev's argument had no cassational basis for a reduction in sentence. Nevertheless, the panel decided to reduce Zaitsev's length of imprisonment from ten years to five years due to three factors: his "sincere admission [of his crimes] . . . proletarian background, and that this was his first conviction." In addition to the reduction of the length of his imprisonment, the panel decided to waive Zaitsev's loss of rights for five years.⁵⁷

⁵⁴ TsGAMO, f. 5062, op. 3, d. 164, ll. 228-229ob.

⁵⁵ *Ugolovno-Protsessual'nyi Kodeks RSFSR* (1923), st. 410. Every cassational hearing began with a judge summarizing the case and the reasons for appeal. After the judge finished his summary, the appellant (in attending the hearing) had the right to plead his case before the panel.

⁵⁶ TsGAMO, f. 5062, op. 3, d. 164, ll. 229-229ob. Unfortunately, the procurator's identity is unknown as his signature at the end of his summary is completely illegible.

⁵⁷ *Ibid.* Article forty of the criminal code stipulated that the loss of rights included active and passive voting rights, the ability to exercise voting rights in professional and other organizations, as well as the right to occupy a position of legal responsibility, including a position as a people's court judge or any type of attorney. See *Ugolovnyi Kodeks RSFSR* (1922) st. 40.

In amending Zaitsev's sentence the panel retained article 180 subsection eight of the criminal code, reduced his sentence to almost the lowest limit permitted by the subsection, and decided that article forty did not apply to Zaitsev's case. According to article 180 subsection eight, the penalty for embezzling from a government-owned warehouse ranged from three years imprisonment to death. The reduction of Zaitsev's term of imprisonment still remained above the minimum term of imprisonment permissible by the article. Thus, the panel's reduction of Zaitsev's imprisonment fit within the boundaries of the penalty called for by the criminal code. What is of particular interest, however, is the negation of article forty.

Article forty fell under section four of the "general section" (*obshchaia chast'*) of the criminal code, which dealt with convicts who had committed crimes or exhibited characteristics which necessitated additional penalties "with regard to measures of social protection." Such penalties were enforceable against individuals who represented a social danger to society.⁵⁸ Articles thirty-two and fifty of the criminal code provide the key to answering why the panel could, and indeed should, have dropped article forty from Zaitsev's case. Article fifty allowed any court or cassational panel the power to apply "the necessary measure of social protection or other, less severe punishments" as summarized by subsections of article thirty-two of the criminal code, including the loss of rights mentioned in subsection eight.⁵⁹ Article thirty-two of the criminal code specified a variety of different types of applicable penalties beyond the penalties specified by transgressions of specific articles of the criminal code. This meant that a court could convict a criminal under an article of the criminal code for a specific crime, such as

⁵⁸ *Ugolovnyi Kodeks RSFSR (1922), obshchaia chast' and st. 40.*

⁵⁹ The loss of rights mentioned in article thirty-two subsection eight was articulated in article forty. Article thirty-two of the criminal code provided a summary of the types of penalties which could be applied to criminals who could receive any of the additional penalties listed in the "general section" of the criminal code. Articles within the "general section" subsequent to article thirty-two elucidated the types of penalties and their lengths.

property theft, and then apply further penalties if the convict was determined to represent an element from which society required protection.⁶⁰ Once the cassational panel ruled that Zaitsev was remorseful for his crimes, did not present a pattern of criminal behavior, and was of a preferred, proletarian background, he was not considered a social threat to society. Accordingly, the penalties attendant to the “general section” of the criminal code, particularly article forty, could not be included in Zaitsev’s sentence.

In considering the cassational guidelines relevant to the change in Zaitsev’s sentence, even though the panel did not specifically mention a guideline, sections three and four of article 359 of the criminal code of procedure both applied. Specifically, section three allowed a cassational panel to amend a sentence when presented with “a violation or an incorrect interpretation of the criminal code” and section four permitted an alteration of sentence if “the sentence rendered was clearly unjust.”⁶¹ According to the logic of the cassational panel, both the application of article forty was an obviously incorrect interpretation of the criminal code and the sentence itself was clearly unjust. That Zaitsev did not make these arguments himself did not matter, as the panel was permitted to review the case in its entirety regardless of the appellant’s specific argument for review. What does matter, however, is the possibility that Zaitsev knew that his admission of guilt and reference to background counted in his favor. Such a strategy would indicate a degree of legal understanding and agency, one which was complemented by a cassational panel eager to achieve social justice. Determining whether Zaitsev employed such a strategy requires an analysis of his handwritten letter addressed to the RSFSR Supreme Court.

⁶⁰ *Ugolovnyi Kodeks RSFSR (1922)*, st. 32, 50.

⁶¹ *Ugolovno-Protsessual’nyi Kodeks RSFSR (1922)*, st. 359.

Zaitsev's plea for a *proshchenie* was written on August 19, 1923, and arrived at the desk of the cassational panel attached to the RSFSR Supreme Court four days later. His plea was originally addressed to the cassational division of the Moscow province court, which was the court of his original case. He should have sent his plea to the RSFSR Supreme Court, which should have been made clear to him upon receiving his sentence. In Zaitsev's plea "Moscow province" was crossed out and "Supreme Court" inserted. This basic mistake indicates that even at the level of province courts convicts were not receiving (or understanding) the basic instructions given at the conclusion of a case regarding the proper channels to initiate cassational proceedings. Zaitsev's plea included only a few handwritten sentences, in which he "sorrowfully" admitted his crimes and requested that a cassational panel review his case because he was "extremely dissatisfied" with the severity of his sentence. This constituted the entirety of Zaitsev's plea.⁶²

Zaitsev's entire strategy revolved around the expression of his sincere remorse for his crimes. He did not even attempt to contest his guilt, instead immediately listing his crimes and proclaiming his regret. Zaitsev's plea reflected no knowledge of technical legality. Instead it harkened back to the traditional Russian *plach*: a ritual lament both decrying one's fate and pleading for mercy from an authority.⁶³ The *plach* could include several elements: a story of misfortune, placing blame for misdeeds on bad influences, expressing general unhappiness with the state of one's life, and throwing oneself on the mercy of an official. Zaitsev's plea included the latter two aspects.

⁶² TsGAMO, f. 5062, op. 3, d. 164, ll. 226-226ob.

⁶³ Golfo Alexopoulos, *Stalin's Outcasts*, 115-122. Alexopoulos' work is discussed further below during the analysis of Basharin's plea.

Even though he did not do so himself, the cassational panel responsible for Zaitsev's case inserted a legal argument on his behalf (the application of the Nov. 4, 1921 amnesty), rejected the argument, and then found a series of reasons to lower Zaitsev's sentence. In this particular case, these factors did not point to a legal strategy posed by a defendant, but rather the types of factors which were important to high court judges. The admission of guilt was a factor which Zaitsev offered, the panel wanted to see, and which invoked a pre-Soviet strategy. The fact that Zaitsev was a proletarian impacted the panel's decision, even if Zaitsev himself never presented his background as a viable reason for a reduced sentence. One can only expect that he would have done so had he known it would have counted in his favor.⁶⁴

The case study of Vasilii Zaitsev's conviction and subsequent successful cassational protest provides a picture of a judicial structure in transition. Zaitsev himself gave no indication that he understood the criminal code by which he had been convicted, the Soviet judicial process, or any facet of Soviet legality. The only strategy he employed reflected pre-Soviet notions of legality and how to communicate with political officials. The cassational panel attached to the RSFSR court, however, did its best to apply the law according to procedural guidelines in a manner which provided a just resolution for Zaitsev. In doing so, this particular panel exemplified a new legality based around providing social justice on the basis of legal guidelines and social backgrounds, even for those who had no concept that they were the intended beneficiaries of the new system.

⁶⁴ Cassational protests presented by other defendants did include argumentation based on social background. For example, see the 1921 case of Aleksandr Basharin discussed below. Also see the 1925 case of Vasilii Malishev and Aleksandr Mitropol'skii, discussed later in this chapter, for another example of a cassational panel invoking social background as a reason for a reduced sentence, even though Malishev and Mitropol'skii made no legal argument and neglected to mention their backgrounds in their cassational protests.

In contrast to Zaitsev's case, some appeals included not only an emphasis on an appellant's social background as a member of the proletariat, but also related a familiarity with the criminal code and informed explanations of how its correct application should result in a lower sentence for an appellant. For example, the appeal written on behalf of Aleksandr Basharin not only cast him as a proletarian with a commendable war record, it also implored the cassational panel in charge of his case to reduce his sentence through a retrial under article 180 (the article for theft cases under which Zaitsev was convicted) of the newly codified criminal code to his case, and through the application of a recently promulgated amnesty.

Basharin was a member of a gang which stole nearly forty-eight *puds* (a *pud* is an obsolete Russian measurement of weight, with each *pud* equal to roughly 16.38 kilograms) of leather from several train cars in 1921.⁶⁵ As an agent of the Main Directorate of the Leather Industry (*glavkozha*), Basharin received orders on June 24, 1921, to oversee the transport of 1,500 *puds* of leather from Moscow to Ekaterinburg. Upon arrival in Ekaterinburg, it was discovered that the train carried only approximately 1,450 *puds*. An investigation ensued, during which Basharin revealed under questioning that he was personally responsible for allowing forty-eight *puds* to be removed from the shipment.⁶⁶ He at first claimed that the reason why only 1,450 *puds* arrived when 1,500 *puds* were sent was because the leather had dried during the journey, and that this accounted for the shipment's decreased weight upon arrival. Investigators pressed him for a more convincing answer, at which point he revealed that he had been responsible for the removal of 48 *puds* from the original shipment, that his associates loaded the stolen leather

⁶⁵ On September 11, 1918, the Sovnarkom adopted a decree "On the Introduction of the International Metric Decimal System of Weights and Measures," which gradually phased out the use of *pud* over the ensuing years, with the complete elimination of *pud* from the official lexicon by the beginning of 1924.

⁶⁶ TsGAMO, f. 5062, op. 3, d. 12, ll. 254-255.

from the warehouse into a vehicle, and that the 48 *puds* were later sold.⁶⁷ The revolutionary tribunal overseeing his case ruled on November 19, 1921, that he should have been executed for embezzlement, but his sentence was commuted to five years imprisonment after the application of the VTsIK amnesty commemorating the four-year anniversary of the October Revolution: the same amnesty which was not granted to Zaitsev.⁶⁸

Almost a year later in early November 1922, Basharin's father, Nikolai, wrote a legally informed appeal to plead for his son's early release.⁶⁹ The appeal began with the request to reduce Aleksandr's sentence from five years to 2.5 years by applying the newly passed amnesty commemorating the five-year anniversary of the October Revolution to his case: the same amnesty which was granted to Zaitsev. In the event that the amnesty could not be applied, Nikolai requested the retrial of the case under the new criminal code, with the implication that a new trial would likely lead to a lower sentence. He stated that if Aleksandr's "crime qualified under the criminal code, which came into effect in June," then "his crime must fall under article 180 subsection five." Unfortunately, his assessment of his son's crime and the precise wording of article 180 and its subsections did not guarantee that a retrial would have resulted in the application of article 180 subsection five. The request for an additional amnesty could not have

⁶⁷ See the message sent from the "Chief of the Secret Section" (*Zav. Sekretnoi Chasti*) to the Chief of Moscow's Criminal Investigation Division, in *ibid.*, ll. 65-65ob. It is unclear exactly how much the leather was sold for, as the amounts changed from document to document during the investigation, possibly to reflect the value of the leather in relation to inflation. For example, TsGAMO, f. 5062, op. 3, d. 12, ll. 65-65ob claimed that the leather was sold for 650,000 rubles, but TsGAMO, f. 5062, op. 3, d. 12, l. 312 claimed that the leather sold for 33,000,000 rubles, 11,000,000 of which went to Basharin.

⁶⁸ For the decision of the Revolutionary Tribunal to reduce Basharin's sentence on the basis of the November 4, 1921, amnesty of the four-year anniversary of the October Revolution, see *ibid.*, ll. 312-313.

⁶⁹ It is uncertain when Nikolai wrote the letter, though it is known that the Moscow Revolutionary Tribunal (the addressee) received the letter on November 16, 1922. Typically, letters of appeals reached their recipients within a few days after they were mailed. See *ibid.*, l. 329.

harmed his son, but ironically, there was the potential that a retrial of the case under the new criminal code could have resulted in a longer sentence for Basharin.⁷⁰

A close reading of article 180 of the criminal code might have prevented Basharin's father from requesting its application. The opening to article 180 made it clear that it addressed cases of "theft of property in the possession, use or conduct of a person or institution." Eight subsections addressed a variety of types of theft, in increasing order of seriousness with increasingly severe punishments. The first four subsections did not apply to Basharin's case. Subsection five applied to cases of "simple theft from state or public institutions and warehouses, or from cars, ships, barges and other vessels, and committed by a person who had access to them through his official position is punishable by a term of imprisonment of not less than one year." Had a court tried Basharin under article 180, subsection five, it might well have decided to reduce his sentence to as low as only one year imprisonment. A court applying article 180 could have also chosen subsection six, which applied to the same type of thefts as subsection five, except that it applied to individuals who were in charge of the "superintendence or security" of the stolen goods. The penalty for violation of subsection six was imprisonment for no fewer than two years, with strict isolation while imprisoned. Since Basharin was in charge of overseeing the transfer of the leather from the state warehouse to the state trains, subsection six could have applied to his case. Well-organized thefts (*kvalifitsirovannaia krazha*) from government agencies, storage facilities, or warehouses (which is what Basharin stole from) were addressed in subsection seven, violation of which triggered the same penal regulations as subsection six. Finally, subsection eight addressed embezzlement cases: systematic or large-scale theft from state warehouses, transports, or other repositories organized by government officials. The

⁷⁰ Ibid., ll. 329-329ob.

penalties for violating subsection eight ranged from three years imprisonment to capital punishment.⁷¹

A close reading of article 180 of the criminal code might have convinced Basharin's father that a court was likely to apply its more severe subsections. All investigators and legal personnel involved with the production of the tribunal overseeing Basharin's original case described his crimes in a manner most befitting subsection eight of the new criminal code: the most severe subsection of the code which had a minimum penalty of three years and a maximum penalty of death. Basharin was a government official who was part of a criminal group involved in the organized embezzlement of state goods. That Basharin's original trial resulted in a death sentence should have indicated that the legal system considered his crimes to be of a severe nature. The best Basharin could have hoped for was qualification under subsection six or seven of article 180, but not subsection five. Based on his own testimony, the findings of investigators, and the results of his initial tribunal, he should have expected to find himself retried under subsection eight. It is possible that Basharin's father believed that his son would have received the minimum penalty possible even if he were convicted under subsection eight, which would have meant an overall reduction in his sentence from five years to three years. While it seems that Basharin's father did not fully comprehend the wording of article 180, it is noteworthy that he was not only aware of the new criminal code, but that he was aware which general article of the code applied to his son's case.⁷² And although the cassational panel rejected his argument and declined to retry the case under article 180, Basharin's father knew which article of the

⁷¹ *Ugolovnyi Kodeks RSFSR (1922) st. 180.*

⁷² The new criminal code was published on June 1, 1922, and Basharin's father's letter was received by the Moscow Revolutionary Tribunal on November 16, 1922. See the stamp of receipt on TsGAMO, f. 5062, op. 3, d. 12, l. 329.

criminal code applied to his son and realized that the minimum end of the range of penalties attendant to article 180 would have meant a reduction in his son's sentence.

After his attempt to invoke the criminal code on behalf of his son, Basharin's father wrote about personal characteristics which he believed should have qualified his son as a candidate for a reduced sentence. His father framed this part of the appeal by asserting that he believed his son was "in his origins, really the son of a proletarian." The father described his own background as a "hardworking peasant" from the small village of Petelina. He claimed that he, like his children, had always endured the harsh labor endemic to peasant life. He proceeded to note how his son grew up in Petelina and immediately joined the Red Army at the start of the Civil War. He detailed how his son served for three years as a soldier, including battles against Kolchak and war injuries.⁷³ He claimed that his son's injuries should have convinced anyone that "his devotion to the interests of the October Revolution [was] without dispute." Following this, the father admitted his son committed a serious crime, and that he was not going to provide any excuses for what was clearly a criminal act. Instead, his father threw himself on the mercy of the court, claiming that his son had already suffered enough for his transgression. The father continued by discussing how both he and his wife were very old, how they too were suffering along with their son, and that they desired to see their son once again, with the implication that they might die before his son would be released from prison. In addition, they were dependent on Aleksandr's ability to care for not only themselves, but also for their "sick daughter who was completely disabled."⁷⁴

⁷³ Admiral Aleksandr Kolchak commanded the White Army in Western Siberia during the Civil War.

⁷⁴ TsGAMO, f. 5062, op. 3, d. 12, ll. 329-329ob.

The cassational tribunal attached to the VTsIK did not grant Basharin a new trial, but it did reduce Basharin's sentence by twenty months in applying part four of the VTsIK's general amnesty on the occasion of the five-year anniversary of the October Revolution.⁷⁵ The wording of the amnesty "alleviated the plight of . . . workers and peasants . . . who had turned to crime mostly out of necessity, accident, or [who committed a crime] for the first time and had not committed acts aimed to undermine the gains of the proletarian revolution." Although it could have been argued that Basharin undermined the gains of the proletarian revolution by stealing state goods, his father's appeal made it clear that he was a worker of peasant origin who had demonstrated his loyalty to the revolution in battle. In addition, Basharin had no criminal record. When viewed as a worker of peasant origin who had fought for the Red Army and had no previous criminal convictions, it was clear why Basharin qualified for amnesty. Part four of the amnesty specified that sentences could be reduced by between one-third and one-half, and that it should have been taken into consideration whether previous amnesties had already been applied.⁷⁶ That Basharin received the minimum reduction available indicated that the tribunal thought his crimes were serious, especially when considering that some of his co-defendants received full reprieves for their roles in the crime.⁷⁷

⁷⁵ Ibid., l. 342. Cassational panels habitually granted the same reduction in sentence to all of those convicted for a crime, even if some of those convicted failed to submit an appeal. In this example, some of Basharin's associates received reduced sentences without filing appeals, and it can only be assumed that their reprieves occurred because they were grouped with Basharin's case.

⁷⁶ See "Ob amnistii k piatoi godovshchine oktiabr'skoi revoliutsii," Dekret VTsIK 2 Noiabria 1922 g. in *Sbornik dokumentov*, 149-150. The amnesty also called for the release of all prisoners who had committed crimes resulting in imprisonment or hard labor for a term no longer than one year, along with the release of all prisoners who had stolen or embezzled food products for personal use in areas which were stricken by famine.

⁷⁷ For example, I.S. Gushchin had received a five-year suspended sentence through the amnesty of the four-year anniversary of the October Revolution. Deputy Chairman Lavrov led the tribunal which reviewed both Gushchin and Basharin's cases on November 29, 1922. Though Basharin received the minimum reduction possible, Gushchin received a full reprieve through the application of the amnesty commemorating the five-year anniversary of the Revolution. See TsGAMO, f. 5062, op. 3, d. 12, l. 336.

Basharin's father framed his appeal around nuanced legal reasons for either a retrial or an outright reduction of sentence. Though he might have misunderstood how his son's crimes would have been interpreted under article 180 of the criminal code, he was clearly familiar with the code and at least hoped for a favorable application of the article relevant to his son's crime. The success of the appeal, however, was grounded in a combination of its personal plea and identification of the possibility of the application of the recently announced amnesty by the VTsIK.⁷⁸ Though one could argue the father's appeal for an amnesty which was later applied demonstrates an example of how the application of legal knowledge achieved success, cassational panels attached to the VTsIK applied amnesties to cases regardless of whether an appellant mentioned the possibility of applying an amnesty; VTsIK cassational panels were well aware of the amnesties, especially because the amnesties were announced by the VTsIK. True agency for Basharin's father would have been apparent if the VTsIK cassational panel was convinced by his appeal to send the case to the courts for retrial under article 180 of the criminal code. This, however, did not occur.

The appeal focused mostly around the portrayal of Basharin and his family as ideal Soviet subjects. His father described him as a proletarian with peasant roots, even though his son's service in the Red Guards was immaterial to the facts of the case and should have had no bearing on his cassational case. There was even the inference that his injuries constituted service to the state which merited reward. Finally, the father threw himself at the mercy of the court with the claim that both he and his wife might die before seeing their son again unless his sentence was reduced.

⁷⁸ The amnesty was decreed on November 2, and Basharin's father's appeal was received by the Moscow Tribunal shortly thereafter on November 16.

The characterization of the convicted as a member of the new socialist society exemplifies a tenet central to a large number of appeals, not only in the realm of criminal cassation. Basharin's father constructed his appeal with the goal of convincing the court that Aleksandr Basharin typified the kind of citizen who should have been included in the new socialist society, his crimes notwithstanding. This strategy was similar to the types of appeals made by *lishentsy*: individuals who, once classified as members of groups considered inimical to Soviet power (such as speculators, monks, former Tsarist policemen, and those who used hired labor for profit), forfeited their Soviet citizenship and lost the right to partake in military and civil service, could not receive public assistance, and were denied the ability to vote.⁷⁹ The *lishentsy* had the right to appeal the loss of their citizenship, and often did so. Out of a sample of roughly 500 such appeals, Golfo Alexopoulos discovered that the only strategy common to a majority was "the presentation of a Soviet self, boasts of loyalty, service, and work achievement (fifty-five percent)."⁸⁰ Alexopoulos' data, along with the letter cited above written by Basharin's father, point toward a general strategy of presenting the self before Soviet officials as an ideal Soviet subject. This strategy speaks to how individuals in the 1920s understood what it meant to be Soviet citizens, or at the very least, how they thought they could represent themselves as Soviet citizens before the courts. In addition, Basharin's father emphasized several aspects which fall under the category of strategies identifiable with the pre-Soviet *plach*: mentioning illnesses of individuals reliant upon the convicted, focusing on the general hardships of those related to the convicted, relying upon the emotions of the reader in the hope for sympathy, and admitting the guilt of the accused all qualify this appeal under the banner of the *plach*.

⁷⁹ See Alexopoulos, *Stalin's Outcasts*, 97-127, and idem., "The Ritual Lament: A Narrative of Appeal in the 1920s and 1930s," 117-129.

⁸⁰ Alexopoulos, *Stalin's Outcasts*, 102.

Cassational Panels' Attention to Social Background: A Theme throughout the Early to Mid-1920s

In many cases, cassational panels focused on convicts' service to the state, even if the convicts themselves made no mention of such service in their appeals. The following example demonstrates that the type of considerations evident in the Basharin and Zaitsev cases during the early 1920s continued at least until the middle of the 1920s.

In January 1925, authorities apprehended Vasili Malishev and Aleksandr Mitropol'skii for their roles in a series of armed robberies.⁸¹ As part of a criminal band that had been terrorizing a variety of Moscow stores over a period of months, the pair repeatedly entered establishments and held proprietors at gunpoint.⁸² The Moscow province court found both guilty of armed robbery and sentenced them to be shot. Upon receiving their cassational complaints, the RSFSR Supreme Court considered a series of factors pertaining to their personal characteristics. The court highlighted their status as unemployed workers who had no previous records of criminal activity. In addition, both had "served for a long time in the Red Army and were in battle." At no point did the court question their guilt. Ultimately, the court decided to cancel their death sentences and sentenced both to ten years imprisonment with a loss of rights for five years.⁸³

The investigators, procurators, and judges involved with the original case never seemed to doubt the pair's guilt. Neither one indicated that they intended to become reliable socialist

⁸¹ TsGAMO, f. 5062, op. 3, d. 447, l. 2.

⁸² *Ibid.*, ll. 230-230ob.

⁸³ *Ibid.*, ll. 263-263ob.

subjects or conform to anything desired by the nascent Soviet state. Nevertheless, the RSFSR Supreme Court considered a series of factors in rendering its decision in favor of clemency.

First, the pair's service in the Red Army informed the court's construction of their characters. The cassational verdict neglected to mention why they joined the Red Army or where they served, but the fact that they were soldiers who had seen action counted in their favor. Second, both convicts were unemployed workers. Taken together, Malishev and Mitropol'skii were seen in a sympathetic light as former Red Army soldiers who wanted to work, but failed to find jobs. As a result, the Supreme Court saw it fit to commute their death sentences to extended terms in prison.

The cassational court's decision not only highlights the importance of the social background of the convicted, but also illustrates the latitude afforded cassational panels in determining how they adjusted convicts' sentences. Once again, this is an example of a higher court correcting an error made by a lower court; in this case, the lower courts failed to take into account the social backgrounds of the convicted.

The tendency of higher courts to intervene in the decisions of lower courts extended beyond high court judges altering sentences during cassational reviews. As the next case shows, procurators attached to the highest levels of the judiciary also interceded in the affairs of lower courts.

The Diligent Procurator and the Changing Nature of Class Considerations in Criminal Cases by the latter half of the 1920s

Procurators had the ability to initiate cassational proceedings against defendants who were acquitted, for those whom the procurator believed to have received excessively harsh or

lenient sentences, or in cases when a court's verdict was based on an obvious misapplication of the criminal code.⁸⁴ Consider the case of a group of armed robbers who committed a home invasion in 1926.

Aleksei Seletchik (a literate, unmarried, twenty year-old locksmith who was a member of the Union of Communist Youth, or Komsomol, until 1925), Aleksandr Gorbachev (a literate, unmarried, twenty-five year-old who was unemployed and not a party member), Ivan Andreev (a literate, unmarried, twenty-five year-old who was unemployed and not a party member), and Ivan Shvestsov (a literate, unmarried, twenty year-old railroad switchman who was not a party member) spent the evening of November 16, 1926, drinking two bottles of wine.⁸⁵ After finishing the wine they briefly discussed whether they should go for a leisurely walk in pursuit of women before deciding that there was "easy money" to be had by "robbing one of the local peasants."⁸⁶ Eventually they chose to invade the home of Vladimir Golubin during the late night of November 16 and early morning of the following day. The group reached Golubin's home and demanded that he let them in through the front door. Upon his refusal some members of the group moved around the back of the house and found another door, which they used to gain entrance. The group rushed through the door and brandished weapons, ordered the inhabitants to put their hands up, and then gagged everyone with the exception of Golubin's eighty year-old mother, who hid in the attic. During the robbery, Gorbachev began "torturing the women, inflicting wounds to Anna Golubina [Vladimir's wife] in the right shoulder."⁸⁷ The group then

⁸⁴ Zelitch, *Soviet Administration of Criminal Law*, 277.

⁸⁵ TsGAMO, f. 5062, op. 3, d. 600, l. 181.

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*, l. 66.

took “clothes, underwear, a pocketwatch, and 150 rubles” before fleeing.⁸⁸ Ultimately, what doomed the group was the discovery of the pocketwatch in the belongings of Seletchik after he was apprehended.⁸⁹ Over the course of the investigation it was eventually discovered that the group had stolen close to 1,000 rubles in money and goods during the robbery of Golubin, and, more importantly in the indictment describing the type of charge brought against the group, people’s investigator Gus’kov claimed that the group represented the hallmarks of a criminal band actively fighting against the interests of Soviet power, which qualified them to be prosecuted under article fifty-nine of the criminal code (the significance of this article will be described below).⁹⁰ Subsequently, a Moscow province court convicted all four on May 3, 1927, under article fifty-nine subsection four of the criminal code, with each receiving a five year prison sentence with an additional loss of rights for two years.⁹¹

On July 9, 1927, RSFSR Assistant Procurator Sheverdin filed a cassational complaint with the RSFSR Supreme Court, in which he argued that all four were convicted under the wrong article of the criminal code.⁹² Article fifty-nine subsection four of the criminal code applied to those who participated in “the organization and participation in bands (armed gangs) and the organization of gangs which robbed, looted, or attacked Soviet institutions, private individuals, train stations, or involved the destruction of railways regardless of whether the attacks were accompanied by murder or robbery.” Individuals convicted by article fifty-nine subsection four of the criminal code were to be “executed, with all property confiscated, except

⁸⁸ Ibid.

⁸⁹ See the conclusions of the investigator in *ibid.*, ll. 66-68.

⁹⁰ *Ibid.*, ll. 121-123.

⁹¹ *Ibid.*, ll. 154-155, 181-182.

⁹² A review of the archival record does not indicate that Sheverdin initiated cassational proceedings more so than any other RSFSR procurator.

when mitigating circumstances permit a reduction of sentence to no less than three years imprisonment with confiscation of all property.”⁹³ Sheverdin argued that the convicted should have been subject to article 165 subsection three, which stipulated that the “theft of property in the presence of the owner [of the property] constitutes a charge of robbery. When robbery is committed without violence it is punishable by imprisonment of up to one year, when committed with violence it is punishable by imprisonment of up to three years, and when the same actions are committed by a group of people or [if an individual commits robbery] repeatedly it is punishable by imprisonment of up to five years.”⁹⁴ The acts committed by the four convicts could have rendered them subject to either statute, but a close look at article fifty-nine reveals why Sheverdin insisted that only article 165 could have applied to their case.

The logic behind Sheverdin’s cassational protest becomes apparent when considering subsection one of article fifty-nine. It stated that “a crime is acknowledged as [a crime] against the public order even if it is not directly aimed at the overthrow of the Soviet government and the Workers’ and Peasants’ Government, if it nevertheless leads to criminal activities against the government or the national economy and entails resistance to authorities and obstruction of their activity, contempt for the law, or other actions resulting in the weakening of power and authority of the government.”⁹⁵ All criminal actions prosecuted under any subsection of article fifty-nine had to meet the qualifications for classification as a crime “against the public order” as defined by subsection one. Subsections two through twelve of article fifty-nine described a series of crimes, including robbery, which involved the intention or realization of harm to the public

⁹³ *Ugolovnyi Kodeks RSFSR (1926) st. 59.*

⁹⁴ *Ibid., st. 165.*

⁹⁵ *Ibid., st. 59.*

order. Sheverdin argued that the convicted committed an act which included criminal forethought, the use of weapons, and the characteristics of a criminal band, but that nothing about their crime indicated or resulted in an attempt to harm the public order. They did nothing to harm the government or the economy, they did not obstruct or resist the authorities, and their actions did not result in the weakening of government power. In short, there was nothing about their crime which qualified them for prosecution under article fifty-nine of the criminal code. Instead, the case should have been tried under the appropriate criminal code for robbery: article 165 subsection three. The cassational panel overseeing the case agreed with Sheverdin in determining that the use of article fifty-nine subsection was completely “arbitrary,” and remanded the case back to the Moscow province court system for a new trial.⁹⁶

Sheverdin’s protest fell on deaf ears, however, once the case was sent back to the Moscow province court system, as the new trial resulted not only in the same sentence, but also a refusal to apply article 165 subsection three of the criminal code. Instead of applying article 165 subsection three or article fifty-nine subsection four, the court decided on September 12, 1927, to invoke article 59 subsection three, which dealt with individuals who “took part in riots . . . coupled with a clear defiance of legal authorities or meeting the legal requirement for resistance, or compelling others to perform obviously illegal acts . . . threatening the public welfare. Instigators, leaders, and organizers [of such acts are subject to punishment of] no less than two years imprisonment, with other participants [subject to punishment] of hard labor for no more than six months.”⁹⁷ The court entirely ignored the actual robbery of the Golubin household, instead focusing on the actions of the group in the time leading up to the robbery, along with the

⁹⁶ TsGAMO, f. 5062, op. 3, d. 600, ll. 160-160ob.

⁹⁷ *Ugolovnyi Kodeks RSFSR (1926) st. 59.*

violence committed during the robbery. The court determined that the four members of the group effectively started a riot and tried to encourage others to join, which constituted a clear threat to the public welfare. Consequently, they were subject to the punishments attendant to transgression of article fifty-nine subsection three of the criminal code even though Sheverdin successfully argued in cassation that their act of robbery did not qualify them for prosecution under article 59. Ironically, the sentence rendered by the court under article fifty-nine subsection three could have been rendered by following Sheverdin's instructions and using article 165 subsection three. The maximum penalty allowable by article 165 subsection three for a gang involved in a robbery was five years, which is exactly the sentence the Moscow province court decided upon, even though article fifty-nine subsection three provided courts the power to hand down a sentence of anywhere from two years imprisonment to execution.

There are a few themes highlighted by this case. First, the archival record shows that this is a prime example of a case during the latter half of the 1920s, in which defendants' social backgrounds did not influence the actions or decisions of judicial officials at any stage. This case confirms Peter Solomon's finding that by the latter half of the 1920s, "after a revival of the slogan 'revolutionary legality,' the RSFSR Supreme Court took a stand against class discrimination, especially in the form of leniency for workers who committed crimes."⁹⁸ There is absolutely nothing in the trial record or cassational protest which indicated that the defendants' positions as unemployed workers, or former members of the Komsomol played any part in the determinations made by investigators, procurators, judges, or cassational panels. No Moscow court judges or RSFSR legal official involved in the defendants' cassational protest raised the

⁹⁸ Solomon, *Soviet Criminal Justice under Stalin*, 33.

defendants' social backgrounds as reason for a more lenient or harsher sentence than they would otherwise receive if they were of a different social background.

Second, though the original case ended with the successful prosecution and sentencing of the defendants, an assistant procurator from a higher court fulfilled his duty to ensure that the case received further attention. It was not unusual for procurators to raise protests against decisions of lower courts, especially because procurators were specifically tasked with overseeing the affairs of lower court procurators and investigators.⁹⁹ In situations when procurators from higher courts knew of procedural malfeasance or blatant misapplications of the criminal code, it was their duty to review the case record and protest the verdict, which is exactly what Sheverdin did. Even a cursory review of the case record demonstrates that the defendants committed a crime, a fact which they never seriously contested, but they didn't commit a crime which conformed to the guidelines of article fifty-nine subsection four. The robbery itself could not possibly have been construed as an attempt to weaken Soviet power or harm the national economy, and the initial court's use of article fifty-nine subsection four was obviously incorrect, which is precisely one of the guidelines listed in article 359 of the criminal code of procedure as a viable reason for remanding a case through cassation. The initiation of the cassational process on the basis of an incorrect interpretation of the criminal code, of which this case is a prime example, is an issue spanning across many of the case studies examined in this dissertation.

Third, though the defendants' guilt was never questioned, Sheverdin saw it as his responsibility to ensure that the defendants received, in his mind, justice, even at the expense of reintroducing a completed case. Sheverdin easily could have ignored this case with little chance

⁹⁹ For an example of the type of supervision superior court procurators were supposed to provide investigators and procurators in lower courts see the letter sent (discussed in chapter three and found in TsGAMO, f. 7155, op. 1, d. 1, ll. 3-4) on February 21, 1928, by Chief Assistant Procurator of Moscow province Shumiatskii to all people's court investigators and procurators in Moscow province. For a detailed discussion of the role of procurators in cassational proceedings see A. Pushkin, "Voprosy kassatsionnoi praktiki," *Rabochii sud*, no. 13-14 (1929): 945-948.

that another legal official would ever review the case and consequently determine that Sheverdin should have protested the case by way of cassation on behalf of the defendants. Sheverdin himself had nothing to lose by simply letting the case fall through the cracks. Since the defendants themselves didn't protest the initial court's ruling, the case would have ended without Sheverdin's intervention. Aside from his duty to oversee the affairs of lower court procurators and investigators, his protest of this particular case speaks to a desire to ensure that the defendants received socialist justice, in this case not only by applying the correct article of the criminal code, but also with the implication that a trial by the correct article would logically result in a reduced sentence for the convicted. The penalties attendant to transgression of article fifty-nine subsection four ranged from a minimum of three years imprisonment to execution. That the convicted received five year sentences, penalties which bordered on the minimum allowable by law, indicated that their crimes were not considered particularly serious by the court. In addition, the facts of the case boiled down to a group of drunken friends with no criminal backgrounds who haphazardly decided to rob a random peasant in a manner which demonstrated little forethought. While converting the case to article 165 subsection three could still have resulted in five year prison sentences for all involved, the five year maximum penalty was intended for organized groups of criminals, not for a group of drunken friends who hatched an ill-conceived plot to rob at random. Also, that the convicted had received almost the minimum penalty under article fifty-nine subsection four indicated that they had a good chance at receiving a penalty towards the lower end of the range of penalties available under article 165 subsection three (the analogous penalty would have been one year imprisonment). With these considerations taken together, Sheverdin was not merely quibbling with a lower court over technical legality.

Rather, the conversion of the case to the correct article of the criminal code could have resulted in reduced sentences for the parties involved.

Fourth, this case represents a clear example of a higher court applying its definition of legality on a lower court's ruling, with the lower court refusing to accede to its demands. The province court's initial use of article fifty-nine subsection four was a clear misapplication of the legal code. Sheverdin not only attempted to deliver socialist justice to the convicted, but he also performed the vital duty of properly regulating the activities of lower court officials. As a RSFSR procurator it was his responsibility to oversee the affairs of procurators at lower levels and to correct their actions when necessary. In this particular case, the province court refused to follow the advice of Sheverdin and the RSFSR cassational panel. Instead of passively agreeing to retry the case under article 165 subsection three of the criminal code, the province court insisted on applying article fifty-nine (though it did apply subsection three instead of four---undoubtedly because the RSFSR cassational panel ruled that subsection four had been misapplied). In insisting on using article fifty-nine, the province court signaled that it considered the acts of the criminal group were intended to diminish Soviet power regardless of the input of Sheverdin or the RSFSR cassational panel. Moreover, the province court's refusal to follow the demands of RSFSR legal officials is a clear example of an inferior legal body fighting against control from above. Whether the provincial court was truly of the belief that the accused were actually struggling against Soviet power is guesswork. What is obvious from the archival record, however, is that the province court contested the authority of the RSFSR Supreme Court.

Given that the case turned into a squabble between different levels of legal officials, one must wonder if the irony of the argument over the application of the correct article of the criminal code was not lost on the participants; they were supposed to be primarily concerned

with delivering socialist justice to the victims, perpetrators, and society. After all of the investigations, argumentation, and the flurry of paperwork sent back and forth between different levels of courts, the actual penalties for the convicted never changed. The initial court sentenced the defendants to five years imprisonment under article fifty-nine subsection four. The cassational panel remanded the case and recommended that it be tried under article 165 subsection three, which could have resulted in a sentence of five years imprisonment. Finally, the court of remand found the defendants guilty and sentenced each of them to five years imprisonment. The actual penalty doled out to the defendants did not change from the initial conviction through the court of remand's final decision. Thus, after all of the time and effort put into determining the correct application of the code and the final truculence of the province court to heed the advice of RSFSR judges, one must ask how argumentation over technical legality and legal officials at different levels sparring with each other translated to anything resembling the expedient and proper delivery of socialist justice.

Comparisons to Other Criminals

Once incarcerated, convicts encountered other criminals, some of whom had committed similar or identical crimes. Much to the consternation of some prisoners, there seemed to be no uniform punishment for any given crime. Some convicts received different sentences for the same crime. Without regard to the legal code, they believed that this represented a miscarriage of justice to the extent that they built their cassational complaints around the idea that they should receive the same sentences as fellow prisoners convicted for nearly identical crimes. What they failed to understand was each statute of the penal code has a maximum and minimum sentence; a judge or cassational panel could assign a sentence anywhere within the range of the maximum

and the minimum. This basic misunderstanding of the penal code resulted in ill-formulated arguments for cassation.

For example, in the previous case of four workers convicted for banditry, one of the convicted, Ivan Andreev, argued for a reduced sentence on the basis of his knowledge of other prisoners who had committed crimes similar to his own, but who had received less severe sentences.¹⁰⁰ It is unknown whether Ivan Andreev's appeal was successful, though the case file fails to include any mention of his appeal being heard before any judicial body. At the very least, his appeal reflects a basic misunderstanding of the judicial system. That other prisoners may have received more lenient sentences for similar crimes could not have any bearing on his case. His ignorance of what applied as a legitimate basis for cassation was not uncommon, though again, the mere fact that he opted for cassation should have resulted in a hearing before a cassational panel regardless of the fatuousness of his argumentation.

The System Conforming to Code: The Triumph of Legal Formalism

There were instances when cassational panels judged cases strictly on issues dealing with interpretation of statutes and adherence to procedure. For example, on October 13, 1926, a province court found cashier Modest Grigoriev guilty of stealing almost 8,000 rubles.¹⁰¹ The accused submitted a cassational complaint, in which he provided no legalistic reasons for why he should have received a reduced term of imprisonment.¹⁰² In response, the cassational panel in charge of his case upheld the original sentence, reasoning that the convicted provided no

¹⁰⁰ TsGAMO, f. 5062, op. 3, d. 600, l. 194.

¹⁰¹ TsGAMO, f. 5062, op. 3, d. 511, l. 160.

¹⁰² *Ibid.*, l. 180.

legitimate grounds for cassation whatsoever and that the case exhibited no aspects worthy of a cassational review.¹⁰³ According to the archival record, the panel did not consider anything aside from interpretation of statute or procedural malfeasance in its evaluation of Grigoriev's appeal. Aside from serving as an example of a case which adhered to formalistic legality, this case also serves as a reminder that individuals had a right to a cassational hearing even if they could provide no viable reason for cassation.

Sometimes, even when faced with a horrific case and a completely unsympathetic convict, cassational panels abstained from considering emotion, instead opting for a strict interpretation of the cassational guidelines. On October 18, 1926, a Moscow province court sentenced Vasilii Barinov to ten years imprisonment and a loss of rights for five years for his role in the suicide of his fifteen year-old daughter, Anastasia. The court believed that he sexually abused his daughter for at least three years, to the point that she decided to kill herself.¹⁰⁴ The RSFSR Supreme Court's cassational panel reduced Barinov's sentence to five years imprisonment and no loss of rights because the sentence rendered by the Moscow province court exceeded the maximum allowable penalty allowed by the article under which Barinov was convicted.¹⁰⁵ Barinov's cassational argument stood solely on the basis of a misapplication of the criminal code. The cassational panel, which undoubtedly considered Barinov to be a despicable character, conformed to the letter of the law and reduced his sentence accordingly. The application of legal formalism took precedence over sentimentality.

¹⁰³ Ibid., ll. 187-187ob.

¹⁰⁴ TsGAMO, f. 5062, op. 3, d. 493, ll. 128-128ob.

¹⁰⁵ Ibid., ll. 136-136ob.

Indication of Legal Experts Aiding Appellants

Though archival records reveal no direct involvement by defense attorneys in cassational appeals, indirect evidence suggests defense attorneys and other experts likely assisted appellants. For example, on April 19, 1922, D. I. Makovskii appealed directly to the VTsIK Supreme Tribunal, imploring it to grant him a reduction in his sentence. In his appeal he claimed that Smolensk province's revolutionary tribunal convicted him on February 18, 1922, of failure to pay taxes on food he produced, and sentenced him to five years imprisonment.¹⁰⁶ This in itself was unremarkable. Every aspect of his appeal, however, was unusual. First, it was typed. The *delo* in which Makovskii's appeal is stored includes dozens of appeals from the same time period. Makovskii's is one of only three which were typed. The fact that it was typed is especially strange when considering that Makovskii claimed to have authored the appeal from a reformatory. Typewriters were scarce during the early 1920s (as demonstrated by the rarity of typed appeals).¹⁰⁷ That Makovskii managed to find a typewriter while he was incarcerated is so atypical we must question whether to believe he actually typed his appeal while in a reformatory in Smolensk.

Second, the type of arguments put forth in the appeal indicated a strong familiarity with codified law. Makovskii's appeal centered around two main arguments. First, he complained that between his pre-trial detention and the time he had spent in prison since his conviction amounted to over four months. He specifically noted that since he had been imprisoned for over two months since the date of his conviction, that he had submitted a cassational appeal after his conviction, and that he should be released immediately as his appeal had not been processed in a

¹⁰⁶ GARF, f. R-1005, op. 2, d. 89, l. 445.

¹⁰⁷ Tracy McDonald points out that typewriters were so scarce in 1923 that people's courts throughout Riazan province did not have them. See McDonald, "Face to Face with the Peasant, Village and State in Riazan," 59.

timely manner.¹⁰⁸ Second, he claimed that he qualified for an amnesty promulgated by the VTsIK on February 27, which specifically dealt with individuals who had defaulted on taxes for production of food over the previous year.¹⁰⁹ Under the provisions of the amnesty, Makovskii would have qualified for a review of his case, and likely, at least a significant reduction in his sentence. That he invoked a recently promulgated amnesty which applied perfectly to his case, and that he knew about the procedural laws ensuring an expedient cassational review indicated a deep knowledge of the legal legislation and codes pertinent to his case. In fact, Makovskii's succinct summation of the legal reasons behind his appeal and his omission of any personal biography set his appeal apart as the only appeal reviewed by this dissertation to invoke only legal reasons in an appeal. While it is possible that other appellants did so as well, evidence for such appeals is scant in the files studied in this dissertation.

Third, the appeal was addressed correctly to the institution responsible for adjudicating Makovskii's case.¹¹⁰ Most appeals were addressed to the court which originally convicted the appellant, which indicates that very few appellants understood which level of the judicial system was responsible for processing their appeals. Makovskii, however, addressed his appeal directly to the VTsIK, making him one of the few appellants who actually understood how the judicial hierarchy was structured with regard to appeals.

¹⁰⁸ GARF, f. R-1005, op. 2, d. 89, l. 445. Makovskii was convicted on February 18, and his appeal to the VTsIK was dated April 19. Makovskii claimed to have submitted an appeal on February 20. By the time his letter would have arrived at the VTsIK Revolutionary Tribunal, two months would have passed.

¹⁰⁹ For details of the amnesty see "O rasprostraneniі amnistii na neplatel'shchikov prodnaloga gubernii, vypolnivshikh 100% prodnaloga," Dekret VTsIK 27 Fevralia 1922 g., in *Sbornik dokumentov po istorii ugolovnogo zakonodatel'stva SSSR i RSFSR: 1917-1952 gg.*, ed. I. T. Goliakov (Moscow: Gosizdat, 1953), 144-145.

¹¹⁰ See GARF, f. R-1005, op. 2, d. 89, l. 445. The appeal was addressed to the "Supreme Tribunal of the RSFS Republic."

Finally, although the entire appeal was typed, it was signed and dated with (what appears to be) a black pencil.¹¹¹ That it was dated in pencil counts as another aspect of this appeal which was out of the ordinary. Every other typed appeal reviewed in this dissertation included a typed date, either at the beginning or the end of the appellant's letter. Makovskii's appeal, however, did not. The dates of his original trial, when he claimed to submit his first attempt at a cassational appeal, and the promulgation of the VTsIK amnesty were all typed. His signature and the date of the appeal were the only parts of the appeal not typed. Taking all of the circumstantial evidence into consideration, it is difficult to conclude that Makovskii actually wrote the appeal himself.

In view of the facts that Makovskii's appeal was typewritten while he was incarcerated, that the appeal included well-formulated legal arguments relating a deep familiarity with codified law, that the appeal was addressed to the correct institution, and that the date of the appeal was handwritten rather than typed, it seems that Makovskii did not write his own appeal. Rather, it seems far more likely that someone with an intimate knowledge of the law wrote the appeal outside of Makovskii's prison, brought it to him, had Makovskii sign and date the letter, and then sent it to the VTsIK Supreme Tribunal. Of course, there is no way to definitively prove this occurred, but it is far more likely than Makovskii somehow finding a typewriter in prison, managing to teach himself the guidelines involving cassational procedure, learning the nuances of the February 27 VTsIK amnesty, and then typing an entire letter only to, for reasons unknown, date it in pencil. Attempting to discern who might have written the appeal for Makovskii is a matter of conjecture, though it is safe to say that there were only a few possibilities: a family member, a lawyer, a family member informed by a lawyer, or a family member who was a lawyer. The first possibility, that it was simply a family member with no legal training or aid, is

¹¹¹ Ibid.

the least likely, as the level of legal sophistication included in the appeal extended far beyond the ken of the layman. Equally unlikely was the possibility that the author of the appeal was a defense counsel, as the bar had been destroyed by the Revolution and was not reinstated until the announcement of the 1922 criminal code of procedure at the end of May.¹¹² What does seem likely, however, is that Makovskii's appeal was informed by an individual who had legal expertise, possibly one of the full-time legal consultants (*konsul'tatsionnye podotdely*) created by order of Narkomiust at the end of 1920.¹¹³ Such individuals almost always received their legal training during the late-Tsarist period, and they were reputed for being some of the few who could keep abreast of legal legislation. Again, it must be cautioned that the text and context of Makovskii's letter does not definitively prove that he did not write it, but all of the evidence points to the fingerprints of an unknown, legally informed author other than Makovskii.

Unfortunately, the *delo* including Makovskii's appeal does not include appellant decisions on any of the hundreds of letters sent to cassational panels. Rather than determine whether the strategy employed by Makovskii's appeal resulted in success, the above analysis demonstrates a rare instance when legal experts aided appellants in structuring the type of argument mostly likely to resonate with appellate panels at the highest level of the judiciary. Though scholars have posited how legal experts and defense counsels functioned in the early Soviet period, this is the first archival sign of how they actually aided defendants during appeals.

¹¹² For the establishment of the Soviet bar see Huskey, *Russian Lawyers and the Soviet State*, chpt. 3.

¹¹³ See *ibid.*, 74, for a description of legal consultants. See A. S. Tager, "Sovetskaia advokatura za 20 let," *Sotsialisticheskaia zakonnost'*, no. 11 (1937): 69, for an argument claiming that consultants advised defendants in a majority of case during the early 1920s, before the promulgations of the RSFSR criminal code of procedure.

Conclusions

Throughout the 1920s legal officials at the highest levels of the judiciary used data from cassational courts to assess how well lower courts adhered to directives from above. The decrease in the percentages of cases changed by cassational panels over the course of the 1920s indicated the increasing tendency of lower courts to render sentences in accordance with the will of high-level legal officials.

At the same time, higher and lower-level courts sparred over individual cases. The case appealed by procurator Sheverdin devolved into a simple contest between different levels of courts to see who could assert their authority. Questions of procedural legality and the promise of justice to the convicted faded into the background as Moscow province court officials and RSFSR Supreme Court officials bent (but never broke) the rules during their squabbles. Such instances demonstrate how cassational appeals could easily turn into simple struggles for power, as opposed to functioning as an arena guaranteeing the proper delivery of justice for criminals.

Cassational appellants during the 1920s employed a wide range of strategies in formulating their pleas. From barely literate scribbles to eloquent arguments grounded in intimate understandings of the rules and spirit of the criminal code, appellants exhibited a variety of notions of how the appellant system functioned and what types of strategies they thought would result in a favorable verdict. The frequent inclusion of the *plach* is a clear example of the carryover from the Tsarist-era; that appellants continued to employ the ritual lament suggests that they thought that Soviet high court judges offered reprieves on similar grounds to what they understood from the late-Imperial period.

Unfortunately for those appellants who offered eloquent pleas, high court judges mostly ignored appellate strategies during the early 1920s, even in cases when appellants demonstrated a

high level of understanding of technical legality. High court judges usually ruled on the bases of codified legality and class background. Even in situations when appellants mentioned neither, high court judges still used them as the most important factors informing their decisions. Thus, appellate strategies had little impact on appellate verdicts during the transition from revolutionary tribunals to courts in the early 1920s.

Chapter 5: Appeals from Above Spurred from Below: Supervisory Review as a Window into the World of High Court Decisions, Procedural Peculiarities, and Appellate Gridlock

The Soviet judiciary paid particular attention to supervisory appeals as a didactic tool, a barometer of the more contentious issues left unresolved by lower courts, and an instrument capable of redressing grievances predicated on articulated critiques of judicial decisions.¹ The ability of higher courts to choose cases for supervisory review, adjust sentences, and then provide guiding decisions to lower courts explaining the reasoning for alterations was lauded as a major accomplishment of the Soviet justice system.² And indeed, Soviet legal journals routinely included exemplar supervisory reviews to guide judges in their decisions.³

¹ For an example of the USSR Supreme Court's discussion of specific supervisory cases and supervision as a bellwether of the types of cases lower courts did not know how to adjudicate, see the protest of the RSFSR Supreme Court's procuracy to the USSR Supreme Court for a supervisory review of Smelov's conviction under the first subsection of article fifty-eight. Discussion of this case, and the ramifications of how its outcome should effect lower courts' adjudication of cases tried under article fifty-eight, lasted over the third and fourth plenums of the USSR Supreme Court over the courts of November 1925. See GARF, f. R-8131, op. 1 (Inventory of archival materials of the Procurator's Office of the USSR Supreme Court in 1924, handed over to the Central State Archive of the October revolution and socialist construction in the USSR), d. 15 (Proceedings of the third Plenary Session of the Supreme Court of the USSR, including copies of minutes, transcripts, reports, etc., Volume 1), ll. 149-162, GARF, f. R-8131, op. 1, d. 16 (Proceedings of the third Plenary Session of the Supreme Court of the USSR, including copies of minutes, transcripts, reports, etc., Volume 2), ll. 1-2, 94-110, and GARF, f. R-8131, op. 1, d. 17 (Proceedings of the fourth Plenary Session of the Supreme Court of the USSR, including copies of protocols, projects, and conclusions), ll. 15, 20-24. Also see GARF, f. R-9474 (Supreme Court of the USSR), op. 1 (Documents of the Plenum of the Supreme Court of the USSR), d. 5 (Report on the activities of the Supreme Court of the USSR in 1924), ll. 1-1ob for an example of a USSR Supreme Court's internal report opening with a review of supervisory appeals. Unfortunately, the *fonds* for the RSFSR Supreme Court (GARF, f. A-428) and for the RSFSR Procuracy (GARF, f. A-461) do not include any archival material for supervisory cases (or any other appeals) during the 1920s. Consequently, the archival record of the USSR Supreme Court is relied upon to demonstrate the wider importance of supervision. The case studies in this chapter, however, do explore supervisory appeals attempted at the RSFSR Supreme Court. Despite a lack of archival information on macro-level data pertaining to supervisory appeals, TsGAMO case files include several instances of supervisory appeals submitted to the RSFSR Supreme Court.

² For an example of a discussion explaining and lauding supervisory review in Soviet legal journals see N. Toporov, "Proizvodstvo v poriadke nadzore," *Rabochii sud*, no. 15 (1924): 193-196, which detailed the process of supervisory review and its place atop the hierarchy of appeals.

³ For examples of supervisory reviews resulting in guiding decisions published in legal journal see "Praktika sudebnogo nadzora," *Rabochii sud*, no. 22 (1926): 1374-1378, and "Praktika sudebnogo nadzor Leningradskogo Gubsuda," *Rabochii sud*, no. 23 (1926): 1435-1438.

In contrast to cassational appeals, a convict could not directly initiate a supervisory appeal. Only a procurator or judge could request a supervisory appeal after cassation had been declined or exhausted. Convicts could try to convince procurators and judges to recommend a supervisory review of their cases, but such attempts were rarely successful as, according to guidelines, they had to be predicated upon a substantive legal issue.⁴ On paper, this should have resulted in far fewer instances of supervisory appeals than cassational appeals, partly because supervision occurred after cassation, but mostly because supervisory appeals had to include convincing legal reasons for a supervisory review and few appellants were capable of convincing a procurator or judge of the merits of their case. And indeed, looking only at the raw statistics, it appears as if supervisory appeals occurred rarely. Though the RSFSR Supreme Court only reviewed some 2,000 cases per year during the mid-late 1920s (roughly eight times the number of cassational appeals it reviewed), this masked the time-consuming work spent filtering hundreds of thousands of requests to procurators down to the few thousand which actually had legitimate reasons for requesting supervisory appeals.⁵ In addition to the painstaking work of procurators, the system was glutted with requests when officials stretched the guidelines governing supervisory appeals to their limits, in some cases ignoring the need for a legitimate, legal reason in recommending high courts and procurators review convicts' cases. What was meant to be a final layer of appeals for special cases discussing nuances of the law had by the end of the 1920s turned into a mountain of perfunctory appeals drowning procurators in pointless work. As this chapter demonstrates, RSFSR Supreme court and VTsIK tribunal judges rarely heard supervisory appeals, but this was only because procurators and lower-level judges sifted

⁴ See chapter three for a detailed discussion of the codified rules of Soviet supervisory appeals.

⁵ See Table 14 in chapter four for statistics on the frequency of cassation and supervision in the RSFSR Supreme Court.

their way through hundreds of thousands of attempts at supervisory appeals which ignored the need for legal reasoning and included nothing more than single-sentence requests for judicial review. The system itself was at fault for the glut of appellate requests, as convicts were encouraged to attempt appeals even when they had no legitimate reason to do so.

The desire to provide the legally ignorant with remedies was commendable, but flawed. Krylenko's early vision of the procuracy as an institution "to which every person can go with a statement that his rights have been infringed from his point of view" was realized, but the effectiveness of the procuracy was greatly reduced by the requirement to review the cases of every single individual who thought his rights had been infringed.⁶ Ironically, the attempt to depart from the perceived legal formalism of the Imperial era prejudicing the courts in favor of the bourgeoisie resulted in a deleterious adherence to legal formalism by the end of the 1920s with the well-intentioned, but badly executed, guarantee to review any and all criminal appeals.

The mechanism of supervisory reviews is illustrated by three case studies. The first case study establishes a baseline for how supervisory appeals were intended to function. In this example, a convict attracted the attention of a judicial official by providing the official with a good reason for a supervisory appeal. The official then forwarded the case to the correct level of the judiciary for a supervisory review, which sided in favor of the convict. This route for appeals fit supervisory guidelines and performed the function envisioned by Krylenko.

The second case study illustrates a supervisory appeal which mostly adhered to guidelines, with the exception of the level of court deciding the appeal. Everything in the case conformed to code, aside from the curiosity of the Moscow provincial court processing a

⁶ Ia. L. Berman, *Ocherki po istorii sudoustroistva RSFSR s predisloviem N. V. Krylenko* (Moscow, 1924), 45, quoted in Hazard, *Settling Disputes in Soviet Society*, 157.

supervisory review after the RSFSR cassational court had already rejected a cassational appeal. The supervisory review should have been brought back to the RSFSR courts, but it was not. Such nonconformity to guidelines resulted in a more expedient brand of justice, one which bypassed needless paperwork and replications of decisions.

This is in contrast to the final case study, which illustrates how slavish conformity to guidelines resulted in an inexpedient, bureaucratic morass. As NEP ended and collectivization began, the process of supervisory appeals exhibited systemic problems resulting in procurators' swarmed by streams of baseless appeals. By this point, the system was broken, as convicts and their representatives knew that procurators had to review any request to initiate a supervisory appeal, and so they sent requests in the hundreds of thousands. The final case study reviews one such request, highlighting how it had no chance of advancement to a supervisory appellate panel, though the procurator who received the request had to spend time and resources reading it and responding to it.

I. Supervisory Review Rectifies a Miscarriage of Justice

Cases heard in cassation resulting in a supervisory appeal were rare, but they did occur. For example, in 1927 the RSFSR procuracy protested only forty-one cases to the RSFSR Supreme Court after the court had already rendered a decision by way of cassation.⁷ The following example relates one of the rare instances when the highest court in the land amended a decision in supervision. This case illustrates a model supervisory appeal when a convict attracted the attention of a high legal official who then brought the case before the highest court for a

⁷ "Doklad UKK Verkhovnogo Suda RSFSR o rabote za 1927 g.," *Sudebnaia praktika*, no. 16 (1928): 1-6.

supervisory review. The final result, in this ideal case, was a supervisory amendment to the cassational decision.

On December 19, 1921, twenty year-old Maria Kozlova walked through the unlocked door of Katerina Drako-Khrust's apartment. Kozlova immediately hit Drako-Khrust over the head several times with a blunt metal object as Kozlova's twenty-seven year-old husband Aleksei entered the apartment. After killing Drako-Khrust, the pair proceeded to ransack the apartment.⁸ After grabbing as many objects as they could carry, the Kozlovs proceeded to a nearby market, where they sold Drako-Khrust's belongings for approximately 8,000,000 rubles.⁹ After they were apprehended by authorities, Drako-Khrust's belongings were traced back to the Kozlovs. The case's chief investigator later linked the pair to a spate of similar thefts committed throughout Moscow.¹⁰ In this crime, however, Kozlova premeditated a plan to infiltrate Drako-Khrust's apartment with the intent of committing murder and theft. None of the previous thefts involved violence. When confronted with the crime, Aleksei admitted to ransacking Drako-Khrust's apartment, but he claimed that his wife had masterminded the plan, and that he took no part in Drako-Khrust's murder.¹¹ On March 15, 1922, Moscow's Revolutionary Tribunal found the pair guilty of robbery, murder, and banditry, and sentenced both to be shot.¹² What followed

⁸ TsGAMO, f. 5062, op. 3, d. 16, l. 110.

⁹ *Ibid.*, l. 110ob.

¹⁰ *Ibid.*, ll. 76-77ob. Though the Kozlovs were accused of many other crimes, the only other crime authorities could prove they committed was the burglary of Evgeniia Zubova's home in October 1921.

¹¹ *Ibid.*, l. 111.

¹² *Ibid.*, ll. 88-88ob. The severity of the sentence was unusual given that neither of the Kozlovs had been previously convicted of any crimes. It was not unusual, however, for individuals convicted of banditry to receive death sentences during this early period of the 1920s. See *ibid.*, ll. 77-77ob, for the tribunal's acknowledgment that neither had a criminal record.

were a series of appeals which resulted in a supervisory review and an edict from above to highlight a key aspect of the criminal code of procedure announced by the VTsIK later in 1922.

Aleksei Kozlov demanded a cassational appeal upon hearing his sentence. The next day, on March 16, a cassational tribunal hastily reviewed the Kozlovs' case, along with a series of other cases at the same time. On a single document, the tribunal passed sentences on three separate cases, with the Kozlovs' death sentences upheld.¹³

Maria Kozlova then sent a pair of letters addressed to the Moscow Revolutionary Tribunal, but delivered to the VTsIK, telling a tale of misfortune and remorse for her crime and expressing her willingness to reform herself and become an ideal Soviet subject. Her first letter was sent from a hospital at Lefortovo prison, where she was recovering from the miscarriage of her child.¹⁴ Apparently, Kozlova had informed an officer of the Moscow criminal investigation department on March 9, 1922, that she was in the eight month of her pregnancy. On March 11, the Moscow criminal investigation department had a telephone conversation with somebody (a subsequent investigation did not determine who) in the VTsIK, who told the criminal investigation department that Kozlova's pregnancy did not present any obstacle to the continuation of the Kozlovs' trial, and that criminal proceedings should continue.¹⁵ They were convicted on March 15, and her husband's appeal was rejected the following day. Her undated letter from the Lefortovo prison hospital describing her miscarriage arrived at the VTsIK along with the following letter on May 29, 1922.¹⁶

¹³ Ibid., l. 90.

¹⁴ Ibid., l. 98.

¹⁵ Ibid., l. 111.

¹⁶ Ibid.

Her second letter, following a standard format, admitted that she took full responsibility for her crimes, highlighted her record as an exemplary worker, expressed her sadness at her miscarriage, and vowed that she would become an ideal Soviet citizen if only given the chance.¹⁷ She stressed how her pregnancy should have delayed her case, but that she understood that she needed to be punished for her crimes, and that her miscarriage constituted a punishment fitting her sins. She took full responsibility for the crimes, claiming that she planned them herself and that her husband was nothing more than an accomplice. She noted that before her life of crime she was a good worker, and that if given a reprieve she would be again. She continued her plea with the claim that “in the future she would work for Soviet power, and that she would be redeemed by honest labor.”¹⁸ She closed by asking for a cancellation of her sentence of capital punishment so that, given the chance, she could spend her life helping the Soviet cause.¹⁹

Upon the order of president of the VTsIK, Mikhail Kalinin, Kozlova’s case received a full supervisory review after its receipt on May 29, 1922. Kalinin ordered an investigation into the circumstances of her crimes and the production of her case. A team of investigators immediately looked into the case and highlighted the following factors. First, the investigators found that witness statements along with all aspects of the case confirmed that Kozlova had indeed killed Drako-Khrust. At the same time, that Kozlova fully admitted her crimes and expressed deep remorse should be factored into how the VTsIK considered her appeal. Second,

¹⁷ Ibid., I. 101.

¹⁸ Ibid.

¹⁹ Ibid. Note that Kozlova’s appeal conformed to the *plach* described and documented in chapter four. Her tale of personal misfortune, acceptance of guilt, and throwing herself at the mercy of the state were all hallmarks of the types of *plachi* rendered by Golfo Alexopoulos’ *lishentsy*. More so than any other appeal in this dissertation, however, Kozlova’s letter accentuates her desire to transform herself into an ideal Soviet citizen through labor. For Alexopoulos’ discussion of the frequency of appellants’ linkage of labor with Soviet citizenship see Alexopoulos, *Stalin’s Outcasts*, 102.

that the crime, as defined under articles twenty-five and seventy-six of the recently promulgated criminal code, normally entailed a sentence of capital punishment.²⁰ Third, that given the nature of her crime there was no existing legal provision allowing for the full cancellation of her sentence. Fourth, and finally, that Maria Kozlova had filed a request for a review by the VTsIK according to the channels supported by existing guidelines.²¹

The investigators finished their report by reaching two conclusions. First, they agreed with the Moscow tribunal's decision to sentence Kozlova to death. However, second, they agreed that Kozlova's case should be heard in supervision before a VTsIK tribunal given the special circumstances of her ordeal. Accordingly, the investigators forwarded all of the case materials, including the details of Kozlova's pregnancy, to a VTsIK tribunal for a supervisory review.²²

On August 18, 1922, a supervisory tribunal attached to the VTsIK commuted her sentence to ten years imprisonment. Although it is unknown who sat on the tribunal, it was clear that Kozlova's sentence was commuted because the facts of the case did not fit the sentence, and that her trial should have been delayed until after she had given birth. Given that the investigators had found that the facts of the case actually did fit the sentence, one is left with the impression that the circumstances of her miscarriage were the primary reason why she received a

²⁰ Article twenty-five discussed a series of crimes involving "full consciousness of harm," and "premeditation, cruelty, cunning," by "recidivists," and by "gangs." Article seventy-six specifically called for capital punishment in egregious cases of gangs engaging in armed robberies and murders, for which Kozlova undoubtedly qualified. See *Ugolovnyi Kodeks RSFSR (1922)*, st. 25, 76. The new criminal code was promulgated on June 1, after Kozlova's cassational appeal was rejected, but before the VTsIK rendered a decision on her supervisory appeal. Though her supervisory appeal was received on May 29, a few days before the new criminal code came into effect, the VTsIK chose to apply its code to her case.

²¹ TsGAMO, f. 5062, op. 3, d. 16, l. 111ob.

²² Ibid. Of note, Lefortovo prison thought that Kozlova's appeal was a cassational appeal and not a supervisory appeal, as the prison did not realize that Kozlova's husband's cassational appeal included her. See *ibid.*, l. 116.

lower sentence. Kozlova's case was meant to serve as an example to lower courts how not to deal with a pregnant defendant.²³

The recently passed code of criminal procedure included a provision delaying the application of a sentence for some pregnant women convicted of crimes resulting in incarceration.²⁴ Along with individuals who had contagious diseases, “delaying the enforcement of the sentence shall be permitted only if . . . the pregnancy of the convicted is an obstacle to serving her sentence . . . then it is delayed until one year after her delivery.”²⁵ Aside from the oddity of coupling a provision for delaying sentences for pregnant women with convicts who had contagious diseases, the code of criminal procedure granted judges full discretion in determining whether a pregnant convict was too pregnant to serve her sentence. As thorough as the code of criminal procedure was in other areas, this was a curious vagueness. It could have stipulated that women pregnant beyond a certain stage received a delay in their incarcerations, but instead, it only said that a sentence should be delayed if the pregnancy was an obstacle, without specifying what that meant.²⁶

Regardless of the ambiguity of the wording of the procedural code, Kozlova's case was an exemplar to lower courts explaining how the new criminal code of procedure should be

²³ Ibid., l. 112.

²⁴ The new code of criminal procedure had been enacted on May 25, 1922. See chapter two for a discussion of the impact of the code of criminal procedure on appeals.

²⁵ See *Ugolovno-Protssessual'nyi Kodeks* (1922), st. 471. Of note, the revision to the criminal code of procedure in the following year reduced the term of delay from one year to two months. See *Ugolovno-Protssessual'nyi Kodeks RSFSR* (1923), st. 456.

²⁶ The specific wording of the second subsection of article 471 of the criminal code of procedure detailing an instance when a pregnancy could delay a sentence was as follows: “*esli beremennost' osuzhdennoi iavliaetsia prepiastviem k otbyvaniu eiu nakazaniia.*” Beyond the word *prepiastviem* (obstacle), there was no explanation when this section of the criminal code should be applied. See *Ugolovno-Protssessual'nyi Kodeks* (1922), st. 471.

applied to pregnant women. The Moscow Revolutionary Tribunal should have delayed her case, even though the regulations on how to deal with pregnant women were hazy and not clarified until the enactment of the criminal code of procedure in May 1922. Nevertheless, Kozlova's tale of tragedy exemplified why there needed to be a clear, procedural method for the legal system to deal with pregnant women. Kalinin pointed to the VTsIK's supervisory adjustment to Kozlova's sentence as an example to all courts explaining the proper method of processing cases involving pregnancies such as Kozlova's. Thus, Kozlova's case illustrates an example of a supervisory review both redressing a specific grievance and performing a didactic purpose.

II. The Kalugin Embezzlement Ring, Tarasov's Bribe, and Supervisory Anomalies

From September 1925 to June 1926, Aleksei Kalugin, the director of a group of warehouses responsible for the wholesale distribution of meat to state stores, led an expansive embezzlement ring involving the active participation of all of his subordinates.²⁷ Kalugin conspired to misrepresent how much meat the warehouse imported from producers and sent out to stores across Moscow. Investigators later determined that the embezzled meat ended up in the homes of Kalugin, his accountant, his workers, and the warehouses' security guards. In addition to embezzling meat, Kalugin manipulated the accounts of his warehouses to obscure how much product and value passed through the doors of his distribution network. Kalugin's warehouses were responsible for distributing meat to state stores at a price between ten and twenty percent above the price paid to firms which transported meat from the countryside to warehouses in

²⁷ The warehouses stored meat gathered by the joint-stock company (*aktsionernoie obshchestvo*) "Miaso." The first time the full name of the company appears in the court records is in a fruitless appeal sent by Kalugin's son to the Moscow province procuracy. See TsGAMO, f. 5062, op. 3, d. 851, l. 55. For more on the role played by joint-stock companies in the Soviet Union see N. N. Voznesenkaia, "Pravovye formy sovместnogo predprinimatel'stva i praktika SSSR," *Sovetskoe gosudarstvo i pravo*, no. 3 (1985): 59-66. Also see *Grazhdanskii Kodeks RSFSR* (Moscow, 1926), st. 322-366, for the regulations governing joint-stock companies during the NEP.

Moscow.²⁸ The ten to twenty percent difference in prices created a surplus, which Kalugin's company was allowed to keep as profit. Unsatisfied with the profits permitted by the state, Kalugin manipulated accounts to produce a profit far exceeding the maximum allowed.²⁹

Not only did Kalugin misrepresent how many rubles were spent on transporting meat to his warehouses, he kept much of the registered surplus for himself. Kalugin systematically understated exactly how much money was spent on importing meat in amounts small enough, he thought, that the People's Commissariat of Internal Trade (NKVT) would not notice anything amiss.³⁰ Kalugin faltered, however, by attracting the attention of state officials when an audit of his books showed that the amount of money Kalugin claimed to spend on bringing meat to the warehouse and the amount that he claimed he received from Moscow stores should have resulted in a larger surplus than was reported. Investigators' first look at the books did not show the entirety of Kalugin's embezzlement operation, but it did indicate that, even with the falsified low numbers, it appeared that he was skimming money from the surplus. The initial investigation determined that at least 12,000 rubles were missing.³¹ Kalugin thought that state auditors would not notice if a few percentage points from the surplus disappeared from the books.

His faulty assumption was predicated on the belief that his 150 ruble bribe to Ivan Tarasov, Kalugin's boss and member of the NKVT, would deflect attention from authorities.³²

²⁸ For the percentage which Kalugin was allowed to charge, and for instruction that the resulting surplus was supposed to be reinvested back into the warehouse see the investigator's conclusions in TsGAMO, f. 5062, op. 3, d. 851, l. 94.

²⁹ TsGAMO, f. 5062, op. 3, d. 851, ll. 94-96ob.

³⁰ The NKVT was responsible for ensuring that Kalugin's company, and similar joint-stock companies, adhered to the limits imposed by the state through regular audits.

³¹ TsGAMO, f. 5062, op. 3, d. 851, ll. 1-1ob.

³² *Ibid.*, l. 168. The bribe was given in two installments of fifty and one hundred rubles on two consecutive days.

Unfortunately for Kalugin and his embezzlement network, this assumption proved to be his undoing. Tarasov was the first to discover Kalugin's embezzlement during a routine check of the warehouse. Rather than report the crime, Tarasov accepted a bribe from Kalugin to keep quiet.³³ Though this kept authorities from checking Kalugin's books for months, complaints from meat dispensaries around Moscow of incorrect quantities of meat arriving from Kalugin's warehouse attracted the attention of other auditors attached to the NKVT. Shortly thereafter, the first of a series of new audits began to uncover the scope of Kalugin's embezzlement.³⁴

A team of accounting experts spent months reconstructing Kalugin's records to determine exactly how much he had embezzled from his warehouses. The accountants combined testimony from workers and guards at the warehouses with inventories from Moscow stores and transport records recording how much meat was sent to the warehouse and how much meat ended up in Moscow stores to arrive at a minimum amount Kalugin embezzled.³⁵ The accounting experts noted that Kalugin manipulated the books so adroitly that they had difficulty agreeing among themselves exactly how much he embezzled.³⁶ As a result, they arrived at the conclusion that

³³ Members of Kalugin's ring claimed that Tarasov personally manipulated the scales at the warehouse after Kalugin had been arrested to attempt to distance himself from the crime. Supposedly, Tarasov intended to claim that he knew nothing of the embezzlement because, when he tested Kalugin's scales, he failed to determine they had been manipulated, and that he therefore did not realize anything untoward was occurring at the warehouse. Investigators were never able to prove, however, that Tarasov reweighted the scales. Accordingly, he was only charged with accepting bribes, and not the more serious charge of taking part in the embezzlement operation. See *ibid.*, ll. 94ob, 96.

³⁴ *Ibid.*, ll. 81-84, 94-96ob.

³⁵ See the report of "butcher shop expert" (*ekspert miasnogo dela*) N.F. Ryvakov in *ibid.*, ll. 133-134ob.

³⁶ Experts tried to blame specific members of Kalugin's ring for specific amounts of goods and rubles. Experts determined that individual members of the group were responsible from anywhere between 1,103 rubles and 38,055 rubles, though they had trouble agreeing on precise numbers and how much blame should be apportioned to each member of the group. See the initial experts' report in *ibid.*, ll. 47-47ob. Also see the agreed upon minimum figure for Kalugin's embezzlement in the experts' final report in *ibid.*, ll. 81-84.

Kalugin embezzled at least 18,207 rubles and fifty-two kopeks, though it was likely that his ring had actually stolen far more.³⁷

A Moscow province court found both Kalugin and Tarasov guilty of a series of crimes on July 23, 1928. Kalugin received a five year prison sentence and a fine of 1,000 rubles for his conviction under article 118 and the second section of article 116 of the criminal code. Article 116 applied to “embezzlement by an official or person performing any duties on behalf of the state or public institutions involving money, valuables or other property in his possession by virtue of his official position.”³⁸ For less severe cases, the maximum permissible term of imprisonment could not exceed three years. The court ruled, however, that Kalugin qualified for a more severe sentence in applying the second section of the article for those who “have special powers, as well as the [the power over] assignment of critical state resources.”³⁹ In deciding that Kalugin’s embezzlement of meat constituted theft of a critical state resource, the court decided that his crime qualified for a higher sentence. This section of the article called for a minimum term of imprisonment of two years, with a maximum penalty of capital punishment. Rather than apply the most severe penalty available, the court also ruled that Kalugin’s crime qualified under article 118’s terms of “giving or mediating a bribe,” which called for a maximum penalty of five years imprisonment.⁴⁰ Ultimately, the court chose to strike a middle path between a minimum

³⁷ See the report of a team of investigators and accounting experts in *ibid.*, ll. 94-96.

³⁸ *Ugolovnyi Kodeks RSFSR* (1926), *st.* 116.

³⁹ *Ibid.*

⁴⁰ *Ibid.*, *st.* 118.

sentence of two years and a maximum sentence of death by sentencing Kalugin to five years for his bribe, and a fine of 1,000 rubles for his embezzlement.⁴¹

Kalugin's codefendant, Tarasov, received a sentence of two years imprisonment for accepting the 150 ruble bribe. The court determined he was guilty under article 117, which applied to individuals who received bribes in their roles as state officials.⁴² The court's decision clearly placed more blame on Kalugin for offering the bribe than on Tarasov for accepting it, and the court decided that it was Kalugin who first offered the bribe, rather than Tarasov demanding a bribe to keep quiet. Regardless of whose idea it was to offer the bribe, the court viewed Tarasov as a willing participant in Kalugin's conspiracy, and sentenced him to the maximum penalty allowable under article 117.⁴³

On January 9, 1929, a RSFSR cassational panel led by president judge Kiselev and member judges Golubev and Mukhitdinov reviewed a request for a cassational appeal from Tarasov.⁴⁴ As in all other cassational cases, they reviewed Kalugin's case as part of the review of Tarasov's case, even though Kalugin had not submitted an argument explaining why he deserved a review. Tarasov's appeal centered around two main arguments. First, he claimed that he only received the first installment of the bribe. Tarasov claimed that Kalugin's refusal to pay the remainder convinced Tarasov to cooperate with authorities. Tarasov argued that his cooperation, when viewed in combination with his lack of a criminal record and no history of ever having

⁴¹ TsGAMO, f. 5062, op. 3, d. 851, ll. 247-248. Although Kalugin embezzled far more than 1,000 rubles, he had already spent or lost all of the money he had embezzled by the time authorities caught up with him.

⁴² *Ugolovnyi Kodeks RSFSR* (1926), st. 117. The specific wording of the code clarified that this applied to officials who obtained bribes "for the performance or nonperformance" of any action that the officer should do as part of his job, but did not due to a bribe.

⁴³ TsGAMO, f. 5062, op.3, d. 851, ll. 247-248.

⁴⁴ *Ibid.*, l. 312.

taken a bribe before, should qualify him for a minimal term of incarceration, rather than the maximum sentence handed down by the Moscow province court. This supported his second argument, that the cassational panel should reduce his sentence by invoking article fifty-one of the criminal code, which included a provision for reducing the sentences of individuals who not only were not social dangers, but who could provide a social benefit through their early release. Tarasov argued that the wording of article fifty-one, specifically the section on “a court being convinced of the need to define a measure of social protection below the lower limit [of a penalty] specified in the relevant article for the crime,” applied to his situation.⁴⁵ Tarasov claimed that his willingness to work with authorities, the lack of evidence of his acceptance of the full amount of the bribe, and his long history of good work demonstrated that he was an asset to Soviet power. As a result, he believed that the cassational panel should cut his sentence in half and transfer him from prison to a work camp.⁴⁶ The cassational panel determined that the facts of the case did not reflect Tarasov’s self-description or match with the experts and investigators’ conclusions, and therefore it ruled against his request.⁴⁷

Shortly thereafter, Tarasov attempted an appeal by sending a letter to the Moscow province court, attempting a different tactic. Though he did not mention the article of the criminal code of procedure which would have applied to his appeal, he claimed that the experts who provided testimony during the trial were inept, as evidenced by their inability to come to a unanimous conclusion on how much money was actually embezzled. Moreover, Tarasov claimed that the experts never actually established that he had received all 150 rubles as a bribe, and that

⁴⁵ *Ugolovnyi Kodeks RSFSR* (1926), *st.* 51.

⁴⁶ It was unclear whether Tarasov wanted to transfer to a work camp because he thought that he could best serve Soviet power through his labor, or because he had developed a healthy distaste for prison.

⁴⁷ TsGAMO, f. 5062, op. 3, d. 851, ll. 312-312ob

this inability to properly render evidence constituted a legitimate reason why his conviction should be altered.⁴⁸

On April 6, 1929, a commission of three judges of the Moscow province court system reviewed and denied Tarasov's request. The commission, consisting of president judge Degtiarev and member judges Kalikson and Levashev reviewed not only Tarasov's case, but Kalugin's case by way of a supervisory review. The commission did not even address the possibility of granting Kalugin a decreased sentence, but it did find Tarasov's argument unconvincing, and thereby ruled that his sentence should remain unchanged.⁴⁹ The entire case, although slow in producing a final conclusion after two rounds of appeals, had run according to guidelines, with one notable exception.

That a Moscow province judicial commission, and not a RSFSR judicial panel, had reviewed Tarasov's request by way of supervision stands out as a procedural anomaly. Tarasov himself never mentioned that he wanted a supervisory review. He titled his appeal only as a *zaiavlenie*, and he addressed his desire for a review to the criminal department of the Moscow province court.⁵⁰ The Moscow province judicial commission which received his *zaiavlenie* referred to it as a "private complaint" (*chastnaia zhaloba*).⁵¹ Nevertheless, in rendering its report, the Moscow province court classified the review of his appeal as a supervisory review.⁵² According to guidelines, a supervisory review could only take place before a panel of judges convened from a court higher than the court of first instance. In Tarasov's case, a Moscow

⁴⁸ Ibid., ll. 323-323ob.

⁴⁹ Ibid., l. 324.

⁵⁰ Ibid., l. 323.

⁵¹ Ibid., l. 324.

⁵² Ibid.

province court was his court of first instance, and the RSFSR Supreme Court had already reviewed his cassational appeal. Accordingly, the only court which should have been able to review his case by way of supervision was the RSFSR Supreme Court. The archival record for his case, however, shows that the Moscow provincial court treated his case as a supervisory appeal.⁵³

The Moscow provincial court had a number of options available had it decided to process Tarasov's appeal according to existing supervisory guidelines. A single provincial judge, and not a panel of judges, could have read Tarasov's letter and forwarded it to the RSFSR Supreme Court for a proper supervisory appeal. The provincial judge also could have sent the letter to the Moscow province procuracy, which could then decide whether the appeal should be advanced to the RSFSR Supreme Court. Or, a Moscow province judge could read the letter, decide that Tarasov had no basis for a legitimate supervisory appeal, and simply stop the appeal right there and then. What the Moscow province court could not do, however, was convene a panel and render a final ruling in the form of a supervisory review. This did not fit codified procedure, and yet, this is exactly what Moscow province court did.

Despite the abrogation of procedure, the Moscow province court's decision to render a supervisory decision on Tarasov's appeal was both pragmatic and expedient. Had the Moscow province court gone by the book, it would have forwarded Tarasov's appeal to a RSFSR procurator or judge, who then would have had to read through the case, decide if it merited a supervisory review, and if it did, initiate supervisory proceedings. This would have meant paperwork, convening RSFSR Supreme Court judges, and more time spent on Tarasov's case.

⁵³ The provincial court commission even cited two articles from the criminal code of procedure (articles 405 and 432) in rejecting Tarasov's appeal. Though both articles did apply to individual complaints against court decisions, they were not supposed to be invoked for supervisory reviews. See *ibid.*, and *Ugolovno-Protsessual'nyi Kodeks RSFSR (1923)*, *st.* 405, 432.

The provincial court would have had to act as the intermediary between Tarasov, his case file, and the RSFSR Supreme Court until all materials had been sent to the appropriate recipients. All of this would have been done to arrive at the same conclusion reached by the Moscow province judicial commission. Thus, though it did not adhere to procedure, the Moscow province court saved time and effort for itself and the RSFSR Supreme Court in adjudicating the case.

Cases like Tarasov's, though not conforming to procedural guidelines, did not indicate systemic problems with the process of supervisory review. If anything, this indicated that the judiciary had, in some situations, learned how to adjust practice to meet pragmatic needs, even if it meant bending the rules. By taking matters into its own hands, the Moscow province court supported a supervisory system responsive to the needs of both appellants and the courts. In this situation, decentralized decision making supported effective judicial practice. This example of pragmatism and informality stands in contrast to the case study discussed in the following section.

III. How Institutional Problems Led to Considerations of Supervisory Appeals for the Worst Convicts

In 1927, various levels of the procuracy throughout the RSFSR preliminarily reviewed 212,618 requests for supervisory appeals. Of these, only 10,453 cases were eventually forwarded to supervisory panels attached to provincial courts and the RSFSR Supreme Court.⁵⁴ The 202,165 cases not forwarded represent a prodigious amount of the procuracy's time wasted on frivolous appeals. While one could argue that those cases represented legitimate attempts at

⁵⁴ See Zelitch, *Soviet Administration of Criminal Law*, 318. Of the 10,453 cases reviewed, only 2,204 were reviewed by the RSFSR Supreme Court. The remaining 8,249 cases were reviewed by provincial level supervisory panels. See Gailis, "Doklad o rabote Ugolovno-Kassatsionnoi Kollegii Verkhovnogo Suda za 1928 g.," 10.

review which required the careful consideration of procurators, the following case study suggests that this was not so. Rather, many cases were submitted for preliminary review without any regard for the guidelines.

According to the pretrial investigation by people's investigator Fedoseev, a group of four young men and teenagers led by twenty year-old Sergei Kucherov raped twenty-four year-old Maria Blinova during the night of July, 10 1928, and the early morning of July 11. On the night of the crime, Maria's mother took Maria's six year-old son for an overnight stay to visit relatives in a neighboring village, leaving Maria alone in the family's home in the village of Ananovo.⁵⁵ In her family's absence, Blinova hosted several of her friends for a party, which lasted until midnight. Four of her friends, including Kucherov, eighteen year-old Gavriil Sidorov, eighteen year-old Mikhail Koptev, and seventeen year-old Boris Morozov, gathered outside of her house as partygoers were leaving.⁵⁶ Kucherov instructed the group to disperse as if they were going home for the night; he said that once everyone had gone home and the streets were cleared, they should return to Blinova's house. The others agreed to the plan, left the front of Blinova's home, and returned after the party had ended and Blinova had gone to sleep. The group found the front door was locked, but they gained entrance through an open window. They entered her bedroom and found her asleep, at which point Kucherov covered her head with a blanket and raped her while the others held her down. When Kucherov removed the blanket from her head as he was shifting positions to let Sidorov rape her, Blinova yelled repeatedly. The rapists fled, fearful that Blinova's screams would awaken her neighbors. In their haste, Kucherov left his belt and

⁵⁵ Ananovo is approximately sixty kilometers northwest of the center of Moscow city and thirty kilometers north of Zvenigorod county.

⁵⁶ All four were literate peasants who had never been party members. None had previously been convicted of a crime. Kucherov and Sidorov were described as "artisan-shoemakers," whereas Koptev and Morozov were simply described as peasants. See TsGAMO, f. 5062, op. 3, d. 895, ll. 54ob-55.

Sidorov left his galoshes, both of which Blinova found the next day. Kucherov and Sidorov approached a friend of theirs, Nikiforov, the following morning during breakfast to ask him to slip into Blinova's house to retrieve the articles they left behind from the previous night's rape. Nikiforov did not comply with their request.⁵⁷

On July 11, Blinova reported the incident to police. She accused Kucherov and Sidorov of raping her even though she did not see the faces of her attackers. She told investigators that she knew they were the perpetrators because she remembered seeing them at her party wearing the belt and galoshes left behind by the rapists. Investigators questioned the pair, who denied having anything to do with the attack on Blinova. Not long after the initial interrogation, Nikiforov came forward to tell investigators that Kucherov and Sidorov had tried to persuade him to gain entrance into Blinova's home and grab the belt and galoshes. Though he claimed he thought nothing of their unusual request at the time, he understood why they had approached him once the village knew that Blinova had been raped. During a second round of questioning, investigators presented Kucherov and Sidorov with Nikifirov's information. Almost immediately, Sidorov admitted to the rape, named his fellow rapists, and claimed that the whole plan was organized and concocted by Kucherov.⁵⁸

On October 8, 1928, a Moscow province criminal court led by court president Mikheev and lay assessors Tsiganov and Kuz'mina found Kucherov, Sidorov, Koptev, and Morozov guilty of rape under the second part of article 153 of the criminal code, which covered "sexual intercourse with the use of physical threats, intimidation, or by deception . . . when the rape results in the suicide of the victim, or if the victim was under the age of puberty, or if the rape

⁵⁷ Ibid., ll. 54-54ob.

⁵⁸ Ibid., ll. 54ob-55. The court minutes replicating the investigator's initial report are found in *ibid.*, ll. 80-82ob.

was committed by more than one person.”⁵⁹ Based on the pieces of clothing the rapists left behind, Blinova’s testimony, Nikifirov’s testimony, and Sidorov’s confession, the court determined that the four defendants had participated in the premeditated gang rape of Maria Blinova.⁶⁰ The case could not be prosecuted under the first section of article 153, as that section only dealt with cases of an individual raping a victim. Because the accused acted as a group, even though only one of them actually had intercourse with Blinova, all of the defendants fell under the auspices of the more severe second section of article 153, which called for a maximum penalty of eight years imprisonment (whereas the first section’s maximum penalty was only five years).⁶¹ Thus, all four of the accused were convicted under the second section of article 153.

Given that Kucherov planned the assault and violated the victim, that Sidorov was about to violate her before she screamed, and that the remaining two defendants had held the victim down, the court found that the accused deserved penalties of various severities concordant with their roles. Kucherov received six years imprisonment, Sidorov four years, and both Koptev and Morozov got two years.⁶² In the same decision, the court reduced Morozov’s term from two years to one year and four months because, according to article fifty of the criminal code, any minor between the ages of sixteen and eighteen convicted of a crime received an automatic reduction to his sentence by a third of the original sentence.⁶³ The court concluded proceedings

⁵⁹ *Ugolovnyi Kodeks RSFSR* (1926), *st.* 153.

⁶⁰ TsGAMO, f. 5062, op. 3, d. 895, ll. 87-88.

⁶¹ *Ibid.*

⁶² *Ibid.*, l. 88.

⁶³ See *ibid.*, and *Ugolovnyi Kodeks RSFSR* (1926), *st.* 50. Article fifty of the criminal code applied to penalties given to minors between the ages of fourteen and eighteen. Minors between the ages of fourteen and sixteen had their sentences reduced by half of the penalty originally pronounced by a court, and minors between the ages of sixteen and eighteen had their sentences reduced by a third.

by informing all convicts of their right to submit an appeal to the cassational division of the RSFSR Supreme Court.⁶⁴

Sidorov exercised that right. That the archival record does not include any trace that Sidorov wrote an appeal indicates that he simply verbally opted for a cassational appeal at the conclusion of his original trial (as was his right) without providing a written set of reasons explaining why he deserved cassation. This indication is strengthened by the decision of the cassational panel, which reviewed the sentences of all four defendants, as was typical for a case involving a group of defendants. The cassational panel's decision gave no indication that Sidorov provided any reason why he or any of his fellow convicts should receive a reduction in sentence.⁶⁵ On February 20, 1929, the panel, led by RSFSR Supreme Court judge Sheverdin, refused to reduce any of the defendants' sentences.⁶⁶

On February 8, 1931, senior assistant Moscow province procurator Gerchikov received an appeal written on Kucherov's behalf requesting an early release. The appeal was sent via a "supervisory committee" (*nabliuditel'naia komissii*) at Lefortovo prison responsible for reviewing inmates' cases. The supervisory committee determined whether to forward inmates' cases to the Moscow province procuracy, which then reviewed the entirety of the case before deciding whether it should be forwarded to the RSFSR Supreme Court for a supervisory review. The supervisory committee did not include a letter written by Kucherov, nor did the committee itself provide any reason why he deserved a reduction in sentence. In fact, there is no indication that Kucherov even knew that the committee had forwarded his case for review. The committee

⁶⁴ TsGAMO, f. 5062, op. 3, d. 895, l. 88.

⁶⁵ *Ibid.*, ll. 96-96ob.

⁶⁶ This is the same Sheverdin who submitted a cassational appeal when he was a RSFSR assistant procurator in 1927 for the Seletchik et. al. case described in chapter four.

simply forwarded Kucherov's case file on January 30 as a candidate for a supervisory review, requesting that his sentence be reduced in half from six years to three years.⁶⁷

Procurator Gerchikov factored a few considerations in his decision to decline to recommend Kucherov for a supervisory appeal. First, Gerchikov reiterated that Kucherov was the ringleader of a gang which slipped into Blinova's home through a window and that he alone violated her. Second, Gerchikov stressed that Kucherov had corrupted a minor in convincing seventeen year-old Boris Morozov to participate in the rape. Gerchikov pointed out that it was Kucherov, and not the other two members of the gang, who formulated the plan to rape Blinova, and it was Kucherov who persuaded Morozov to return to Blinova's house after all partygoers had gone home. That Kucherov masterminded a plan to rape a sleeping woman and convinced a minor to participate in a serious crime informed Gerchikov's decision to decline Lefortovo prison's attempt at a supervisory appeal for Kucherov.⁶⁸

Third, Gerchikov determined that Kucherov still represented a "social danger" to society. In reaching this determination Gerchikov gave equal weight to Kucherov's role in masterminding a gang rape with Kucherov's corruption of Morozov, associating both Blinova and Morozov as Kucherov's victims. At first glance, equating the two as victims was ridiculous. However, when we consider what qualified an individual as "socially dangerous" in the Soviet context, Gerchikov's equation makes sense.⁶⁹ The fifth section of the criminal code defined what made a criminal a danger to society.⁷⁰ Under that section, article forty-seven clarified that "the

⁶⁷ Ibid., ll. 105-105ob.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ See section five of *Ugolovnyi Kodeks RSFSR* (1926).

commission of a crime by a group or gang . . . or the commission of a crime with particular cruelty, violence or cunning,” qualified a criminal as a social danger.⁷¹ Article forty-eight, however, stated that if a crime was committed “under coercion . . . through ignorance or lack of consciousness . . . by a minor,” then the offender should not be considered a social danger.⁷² Thus, to mitigate Morozov’s crime and highlight Kucherov’s danger, Kucherov had to be cast not only as a rapist, but also as an individual capable of convincing Soviet youth to engage in violent crimes. This is why Gerchikov’s characterization of Kucherov as a social danger included the rendering of both Morozov and Blinova as his victims. In the context of the wording of what defined a “social danger,” Gerchikov had to show how Kucherov represented a danger to society, not only as a rapist, but as a rapist who corrupted youth to engage in rape. Given this characterization, Gerchikov refused to recommend Kucherov for a supervisory review.

Kucherov’s case illustrates a few heretofore unstudied facets of how the appellate system functioned. First, Kucherov never wrote a single word explaining why he deserved a reconsideration of his original sentence. The RSFSR Supreme Court reviewed his case in cassation because Kucherov’s codefendant Sidorov submitted an appeal. As cassational panels were to examine the entirety of a case, it was typical for a panel to review the sentences not only of the individual who submitted the appeal, but also codefendants who had not submitted appeals. This phenomenon has been explored in the case studies described in the previous chapter.⁷³ But what has not been explored is the incidence of an attempt at a supervisory appeal

⁷¹ See subsections four and six of *ibid.*, *st.* 47. The majority of subsections qualifying a criminal as a social danger focused on political crimes.

⁷² See subsections five, eight, and nine of *ibid.*, *st.* 48.

⁷³ For other examples when one member of a gang submitted an appeal resulting in a cassational review for all members of the gang see the Zaitsev case and procurator Sheverdin’s appeal in chapter four.

in the absence of any written plea from a convict. Kucherov himself submitted no written reason why he deserved a supervisory appeal. Instead, a board convened at Lefortovo prison forwarded his case on his behalf without any input from Kucherov himself. That a Moscow province procurator reviewed the case means that Kucherov, whose guilt was established beyond a doubt in his original conviction, received two instances of judicial review without asking for either one. Surely, this is not what the framers of the Soviet legal system had in mind when they constructed the appeals system in the early 1920s. They did want a system which made it easy for convicts to appeal their cases, regardless of their legal knowledge. But what we see here is a system which automatically appealed cases without the initiative of the convicted.⁷⁴ Considering that the unquestioned guilt of Kucherov in committing a particularly violent crime militated against any possibility of his early release, we must conclude that the appellate system was damaged. How could the system not be overloaded with cases if convicts like Kucherov, who never requested any type of review, were receiving preliminary consideration for supervisory appeals from overburdened procurators? The answer to this question is resolved in the second major point taken from Kucherov's appeals.

Lefortovo prison's decision to recommend Kucherov for supervisory appeal betrays an overcrowding problem endemic in Moscow prisons during the end of the NEP and beginning of collectivization. I discussed overcrowding resulting in hunger strikes across Moscow prisons during the early 1920s in chapter three, but here we see evidence that the problem still existed later on. This finding confirms Peter Solomon's assertion that attempts to ameliorate overcrowding in Russian prisons during the late 1920s had failed, and that the only way prisons

⁷⁴ Though it is possible that Kucherov demanded a supervisory review from Lefortovo's supervisory committee, the archives include no record of Kucherov's participation in any stage of the supervisory process or that he was ever aware a recommendation for a supervisory review had been initiated on his behalf. If Kucherov had demanded an appeal, the archives would have included some indication that he had done so.

could deal with rampant overcrowding was by recommending reductions in sentences for the worst criminals, such as Kucherov.⁷⁵ Prison wardens could not simply release prisoners into the streets, and cassational appeals were not available to prisoners who had already attempted cassation or who had not opted for cassation within the permissible time after the conclusion of their cases.⁷⁶ Thus, there were only two ways to release prisoners convicted of serious crimes within the framework of existing legality: VTsIK amnesties and supervisory reviews.

Amnesties, which were originally conceived of as an ideological measure designed to promote the class interests of socialist justice, had turned into a pragmatic tool applied when needed to relieve pressures on overcrowded prisons.⁷⁷ When it became clear that amnesties were incapable of satisfactorily dealing with the overcrowding problem, prisons were left with little recourse.⁷⁸ As a result, they cluttered the procuracy with requests that procurators recommend supervisory appeals for convicts who, had there not been an overcrowding problem, never would have been advanced as candidates for reductions to their sentences. Thus institutions passed their problems on to other institutions; the problem facing the Soviet prison system was passed on to the judicial system, with little result aside from more paperwork for all sides.

⁷⁵ See Solomon, *Soviet Criminal Justice under Stalin*, 67-69, 125 for a discussion of how Narkomiust and the VTsIK attempted to address overcrowding by ordering judges to sentence criminals to work battalions and to release prisoners on the basis of amnesties. Solomon pointed out that these measures were ineffective over the course of the late 1920s and early 1930s, partly due to judicial reluctance to accede to demands from above, and partly because of the influx of convicts during the collectivization campaigns.

⁷⁶ Penal authorities in the RSFSR Commissariat of Internal Affairs (*Narkomvnudel*) increasingly pushed for the applicability of conditional early release for criminals convicted of less serious crimes (such as hooliganism) to relieve pressure on overcrowded prisons during the latter half of the 1920s. Judges resisted, as they saw *Narkomvnudel*'s push as nothing more than an attempt to undermine judicial verdicts. Regardless of the institutional squabble over the issue of conditional early release, convicts of serious crimes, such as Kucherov, were considered too dangerous to receive conditional early releases. See Solomon, *Soviet Criminal Justice under Stalin*, 67-68.

⁷⁷ Solomon argues that amnesties from 1925 onward were passed primarily to release prisoners from overcrowded prisons. See *ibid.*

⁷⁸ For failure of amnesties to adequately relieve pressure on prison populations see *ibid.*

Procurators wasted valuable time reviewing cases which had no chance of resulting in successful supervisory appeals. As the Kucherov case demonstrated, even if procurator Gerchikov only superficially reviewed the case file, he still had to read through the basic facts of the case, consider why Kucherov did not deserve a supervisory review, and then write an explanation to Lefortovo prison explaining why Kucherov would not receive a review. Undoubtedly, the time Gerchikov spent reading Kucherov's request could have been better spent on any number of issues plaguing the procuracy. Nevertheless Gerchikov, or at the very least someone in Gerchikov's office, reviewed the case of a convicted rapist whose case offered no reason whatsoever to reduce his sentence. Pragmatically, when the office of the procuracy and the judicial system in general was weighed down with a ceaseless stream of cases, it made no sense to spend any time on Kucherov's case. But Gerchikov did so because of a guarantee stressed throughout this dissertation: easy access to appeals for all convicts regardless of their knowledge of the judicial system.

Conclusions

What began in the earliest days of Soviet power as the admirable desire to make criminal appeals available to anybody regardless of legal knowledge had morphed into a dogmatic adherence to legal formalism by the end of the NEP.⁷⁹ Though the Tarasov case demonstrated an instance when skirting the rules of codified procedure resulted in expedience, legal officials in the Kucherov case reviewed completely baseless appeals because, according to the guidelines, they had to. As we have seen, many cases of appellants who submitted cassational appeals lacked any argument whatsoever. Though such appeals cluttered the judicial system, the

⁷⁹ For a discussion of supervisory review adhering to legal formalism to its own detriment see M. Strogovich, "Osnovnye problem sudebnogo nadzora," *Rabochii sud*, no. 19 (1928): 1425-1432.

cassational process was designed specifically to allow convicts lacking in legal knowledge the ability to receive full reviews of their cases. The procedure and guidelines defining Soviet cassation were worded to allow the legally ignorant full reviews of their cases, partly in the pursuit of justice, and partly to differentiate the Soviet system from the bourgeois Imperial system, which Soviet jurists thought granted undue advantages to those who had the education and resources to manipulate the appellate system. The criminal code of procedure, however, clearly did not intend for supervisory appeals to perform the same function as cassation.

Supervisory appeals were supposed to articulate legal objections to cases which required the attention of higher courts to explain how lower courts should rule on similar cases. Only legal personnel were supposed to initiate supervisory reviews because this form of review was supposed to resolve cases involving difficult legal questions requiring the attention of high legal authorities. This was not supposed to be widely available to anybody who wanted to attempt an appeal without a legitimate reason, though, as the Tarasov case showed, the Moscow province court did adjudicate some cases through supervisory review as a measure of expedience. Nevertheless, as a rule, supervisory reviews were rare because procurators ensured that only legitimate appeals were sent to supervisory panels at superior courts.

The problem, as it became apparent by the end of the 1920s, was that convicts could request procurators review their cases without providing any reason why they deserved a reprieve.⁸⁰ Procurators did not have the option to simply ignore cases. As this case study has shown, they even reviewed the most baseless of claims, ones which could not possibly have resulted in supervisory reviews. Krylenko's vision of a progressive justice system ensuring

⁸⁰ This right was reiterated in a question and answer section of *Rabochii sud*. The question was advanced, "is it possible, and in what manner, can a verdict of the provincial court be appealed?" The answer was, "the complaint of an interested party may be filed with the office of the provincial procuracy or president of the provincial court, as they have the right to request a supervisory review of any criminal (or civil) case ..." See "Voprosy i otvety," *Rabochii sud*, no. 19 (1929): 1337-1338.

access to appeals for the legally ignorant had turned into a significant burden for procurators by the end of the decade.

Chapter 6: Informal Appeals: Petitions to Officials and Circumventions of the Legal Process

In this dissertation, "informal" legal appeals refer to instances when individuals accused of crimes appealed to a powerful official who had no direct involvement in a case until the appellant attracted his attention. The powerful official then influenced the case in one of two ways. In the first variant, the official used his position to personally intervene in the proceedings of the case on behalf of the appellant. In the second variant, the official used the influence of his position to beseech another official who could personally intervene in the case. Both variants involved defendants writing appeals framed similarly to the types of appeals discussed in chapters four and five.

An informal legal appeal, as opposed to a cassational or supervisory appeal, was attempted *before* a court had reached a verdict, typically between the period of the pre-trial investigation and the trial. Informal legal appeals, like their cassational and supervisory counterparts, demonstrated a range of appellants' legal knowledge and strategies. Two elements set these appeals apart. First, these appeals occupied a gray zone in Soviet legality. They were not illegal, but at the same time, they did not exactly fit into the framework of how and when appellants were supposed to appeal their cases. Second, these appeals were often successful. Garnering the favor of Party or legal officials through an informal appeal could result in appellants' release from prison and the cessation of all criminal proceedings. Cassational and supervisory appeals, if successful, typically resulted only in a reduction of an appellant's sentence. Successful informal appeals, on the other hand, cancelled cases entirely.

As opposed to cassational and supervisory appeals, Soviet legal officials did not quantify instances of informal appeals, probably because such appeals were difficult to categorize.

Compounding this problem, locating informal appeals in the archival record is difficult, as the only way to find them is through careful readings of court records. Accordingly, rather than propose sweeping generalizations concerning the nature of informal appeals in the criminal justice system during the NEP, this chapter proceeds with three case studies illustrating the efficacy of informal appeals, especially in comparison with their cassational and supervisory opposites.

I. The Case of Mikhailov and L’vov and the Influence of High Officials in Criminal Cases

Starting in 1922, the Trust of Fine Mechanics (*tochnoi mekhaniki*) was given the daunting task of developing a state watchmaking industry.¹ Though the Trust was based in Moscow, and thus had access to resources it would not have enjoyed had it been located nearly anywhere else, it started its task without a single factory at its disposal. Worse yet, nobody within the Trust knew how to construct a modern watchmaking factory. Given few resources at the outset and plagued by an irregular supply of raw materials over the course of 1922, the Trust, led by its chairman Mikhailov and committee member L’vov, had to rely on the expertise of foreign watchmakers to launch its project.²

Two Swiss watchmakers, Horowitz and Roshal’, were invited by the Trust in 1922.³ Shortly thereafter, the pair drew up plans for a modern watchmaking factory, with the intent that it would be fully completed and running by the end of 1922. What followed was a series of

¹ TsGAMO, f. 162, op. 1, d. 131 (Correspondences: Concerning the charges against the Chairman of the Trust of Precision Mechanics for malfeasance, the war against drunkenness and hooliganism, the defects in the work of the Moscow procuracy, and others), l. 10.

² Ibid.

³ The Russian spelling of Horowitz’s name is “Gorovich.” “Horowitz” is used, as it is clearly the English spelling of his name.

disagreements between the Swiss watchmakers and the Trust, seemingly over matters unrelated to the actual production of watches, ultimately resulting in the Swiss leveling accusations against Mikhailov and L'vov for a series of crimes, the most serious of which was embezzlement of state funds.⁴

After the initial investigation found Mikhailov and L'vov culpable of a number of crimes, including embezzlement, Mikhailov enlisted the help of A. Pavlov, Secretary of the Moscow City Soviet of Trade Unions (MGSPS). In a letter sent to Pavlov, which was later forwarded to Moscow province procurator Sheverdin (who was the procurator in charge of the case), Mikhailov admitted that the Trust had underachieved in its goal of creating facilities capable of mass-producing watches. Mikhailov claimed, however, that the Trust's failures resulted from the "intrigues" created by the Swiss watchmakers, whose accusations against Mikhailov and L'vov were motivated, according to Mikhailov, by personal disagreements rather than any actual criminal malfeasance.⁵

Mikhailov's letter emphasized how Horowitz and Roshal', rather than help build a factory, actually contributed to the failure of the watchmaking project. In April 1922, during the organization of the board of the Trust of Fine Mechanics, Mikhailov was directed by the Presidium of the Supreme Economic Council (VSNKh) to "get acquainted with comrade Horowitz with the goal of starting the production" of a watchmaking facility. It was agreed from the outset that Horowitz would be the director in charge of production, but Mikhailov had to approve all expenditures. "After working for some time," Horowitz repeatedly requested Mikhailov approve funds for a business trip to Switzerland. Since a representative of Horowitz's

⁴ For Horowitz and Roshal's claims against L'vov and Mikhailov see the preliminary investigator's interview of Horowitz and Roshal' in TsGAMO, f. 162, op. 1, d. 131, ll. 4-7ob.

⁵ Ibid., l. 10.

company, P. Bure Girard, was in Moscow at the time, Mikhailov denied Horowitz's request. Mikhailov reasoned that there was no reason why the Trust should spend money on Horowitz's business trip if he could communicate with his company's representative in Moscow. However, because Horowitz had a month-long holiday exit visa from the Soviet Union, he went anyway. This, Mikhailov claimed, demonstrated that Horowitz was looking for nothing more than an all-expenses paid trip to Switzerland.⁶

Upon returning from Switzerland Horowitz enlisted his compatriot Roshal' in approaching Secretary Pavlov with charges against Mikhailov. The pair informed Pavlov of a series of offenses allegedly committed by Mikhailov, including the embezzlement of funds which had been allocated to the construction of a new factory. They asked Pavlov to convene the District Committee (*raikom*) of the Communist Party (RKP) to discuss Mikhailov's alleged crimes. After considering the Swiss' allegations, Pavlov decided that he did not have enough facts at his disposal to make a decision on the case, but he agreed to forward their allegations to the RKP.⁷

The subsequent hearing, which lasted three days, was held by the Factory Works Committee (*zavkom*) of the RKP. After listening to the testimony of all sides, the RKP *zavkom* ruled that Horowitz and Roshal's allegations were unfounded. To their dismay, the RKP *zavkom* ordered their removal from the watchmaking project, as it was clear that they were more interested in personal squabbles and all-expenses paid trips than the construction of factories.⁸

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

In response to the RKP *zavkom*'s decision, Horowitz wrote a series of denunciations against Mikhailov and L'vov. He sent letters to secretary of the Central Committee of the Communist Party of the Soviet Union (CPSU) "Valerian Kuibyshev, members of the GPU, members of the Moscow Committee Communist Party . . . and others."⁹ Though Mikhailov did not know which letter spurred a top official to call for a criminal investigation, one of Horowitz's denunciations achieved its goal, and an investigation commenced into the affairs of Mikhailov and L'vov. Mikhailov sent a letter to Pavlov requesting his help immediately after the pre-trial investigation called for the indictment of Mikhailov and L'vov. Mikhailov's plea to Pavlov concluded with "the following; that once again we are subject to the bombastic denunciations and other provocations of comrade Horowitz. [And now we are] subject to a judicial investigation."¹⁰

On behalf of the accused, A. Pavlov sent a letter to Moscow province procurator Sheverdin. Pavlov opened the letter by emphasizing his long-term relationship with Mikhailov and L'vov: "as it is comprehensively and well known that comrades Mikhailov and L'vov worked together with me in various organizations over a number of years, I consider it my duty to expound on my views of the case of the Trust of Precision Mechanics."¹¹ From the outset, the letter was framed to inform Sheverdin that Pavlov vouched for the characters of Mikhailov and L'vov.

⁹ Ibid. Starting from the first ellipsis in this sentence part of the letter became illegible due to physical fragmentation of the document and the lightness of the lettering. Valerian Kuybyshev, a Bolshevik since 1904, was appointed deputy chairman of the Central Executive Committee (TsIK) in October 1919.

¹⁰ TsGAMO, f. 162, op. 1, d. 131, l. 10.

¹¹ Ibid., l. 8.

Pavlov continued by blaming the failure of the Trust to create a watchmaking industry on circumstance rather than ineptitude or corruption. The Trust had the insurmountable task of starting with “very difficult conditions; a complete lack of working capital, a lack of demand and customers capable of paying for products made by precision mechanics, and manufacturing weaknesses . . . due to being relatively new and poorly developed.”¹² In addition, Mikhailov and L’vov had no choice but to rely on foreign expertise as “the production of watches” involved technical knowledge “which Russia does not currently have.”¹³ Thus, Pavlov claimed that Mikhailov and L’vov were doomed from the start. They did not have the resources or the knowledge to succeed, and they were completely reliant on foreigners. Halfway through his letter, Pavlov had constructed a dichotomy: the reliable and diligent Mikhailov and L’vov on one side, and the unknown foreigners on the other.

Pavlov turned to the potential value of a watchmaking industry to Soviet power. Pavlov saw a long-term goal: “the main objective of the production of watches . . . was to give the trust valuable property in the form of the final product, which could serve as the basis for the deployment of the productive activities of the trust as a whole, which over time would lead to the creation of watch production in Russia.”¹⁴ To Pavlov, Mikhailov and L’vov’s potential success represented the first step in establishing the Trust of Precision Mechanics as a productive sector of the Soviet economy. Thus, in the long-term, Mikhailov and L’vov’s mission was synonymous with the expansion of Soviet power. Now the dichotomy had grown even starker: the diligent and

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

trusted Mikhailov and L'vov who wanted to build Soviet power on the one hand, versus the completely unknown foreign experts whose motives and goals were undefined on the other.

After heaping honorifics on his friends, Pavlov's tone changed when discussing the perfidy of the Swiss experts. Pavlov claimed that even with all of the "various difficulties in the organization of the trust, the board, represented by L'vov and Mikhailov," found some early successes until they "met the original hidden obstacle (*vstretilo original'noe skrytoe prepiatstvie*) represented by Roshal' and Horowitz."¹⁵ Pavlov described them as "fantasists and illiterate daredevils" who only came to Russia because "they themselves had no money," and thought that they could exploit the Trust of Precision mechanics for a quick and easy profit.¹⁶ Not content with the pay they would receive for aiding in the construction of watchmaking facilities, "Roshal' and Horowitz, despite the use of various means to discredit comrades L'vov and Mikhailov, suffered a complete defeat in attempting to gain positions as members of the committee of the trust."¹⁷ According to Pavlov, the Swiss experts planned to infiltrate the Trust's bureaucracy and exploit it for unknown ends. Mikhailov and L'vov discovered their plans, thwarted their attempts to gain positions on the Trust's committee, and relegated the Swiss to their original roles as foreign experts aiding in the development of the watchmaking industry. The Swiss, "subsequently withdrew completely after not being able to cope with the minor work assigned to them thereafter."¹⁸ Pavlov claimed that this reaction further illustrated the "surprising

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid., 1. 9.

¹⁸ Ibid.

consistency in the energy manifested by comrades L'vov and Mikhailov . . . all while Roshal' and Horowitz were persistently and systematically trying to interfere.”¹⁹

With Pavlov's damning portrayal of the Swiss experts nearly complete, he turned his attention to the investigation at hand. He echoed Mikhailov's concern that the investigation was nothing more than the continuation of the Swiss' failed intrigues. Although “at present . . . Roshal' and Horowitz are born again (*opiat' poiavliaiutsia na svet*), vigorously arguing about the various offenses of L'vov and Mikhailov,” Pavlov reaffirmed his faith in his compatriots by averring that “Comrades L'vov and Mikhailov are conscientious, honest workers, who vigorously and unselfishly performed a number of duties on behalf of the Party and the Soviet government.”²⁰ In the only part of the letter indicating any fault with L'vov and Mikhailov, Pavlov admitted “to certain shortcoming and errors in the work of the Trust of the Precision.”²¹ Nevertheless, having considered their characters and the intrigues of the Swiss, Pavlov made it known that he “rejects that there were selfish or criminal acts in their [L'vov and Mikhailov] work.”²² Pavlov closed his letter by addressing procurator Sheverdin, making it clear that he believed Sheverdin would reach a decision in favor of L'vov and Mikhailov: “I am confident you will manage to objectively investigate the case to protect our Soviet work and our necessary and valuable workers – comrades Mikhailov and L'vov.”²³

Pavlov's construction of friends and enemies was complete. Mikhailov and L'vov were party members who were “necessary and valuable workers,” “conscientious,” “honest,”

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

²³ Ibid.

“vigorous and unselfish,” “surprising and consistent in their energy,” while performing “a number of duties on behalf of the Party and the Soviet government.” In contrast, Roshal’ and Horowitz were foreigners, “fantasists and illiterate daredevils,” who represented “the original hidden obstacle” to Mikhailov’s and L’vov work. Most damningly, the Swiss experts clearly were concerned with their own enrichment, be it through paid vacations or positions on the Trust committee.

Shortly after Sheverdin’s receipt of Pavlov’s letter, the case against Mikhailov and L’vov ceased. Though the archival record does not reveal precisely why Sheverdin decided to stop the case before going to trial, Pavlov’s letter was almost surely responsible. It was highly unusual for a case to fail to go to trial after a pre-trial investigation resulted in a recommendation for an indictment, and there was nothing else in the case file between the recommendation for indictment and the cessation of the case aside from Pavlov’s letter. That there was absolutely no other factor in the record to account for the cessation of criminal proceedings makes it likely that Pavlov’s letter influenced Sheverdin to stop the case.

Pavlov’s letter to Sheverdin illustrates a prime example of a top official influencing the course of a criminal case. Though the Swiss managed to attract the attention of a high official themselves in initiating criminal proceedings, Mikhailov had a long-term friend in Pavlov, the secretary of the Moscow City Soviet of Trade Unions. Pavlov presented no actual evidence of Mikhailov’s innocence or the Swiss’ guilt, but he vouched for Mikhailov’s character as a conscientious, trusted worker. This signaled to Sheverdin that Pavlov wanted the case stopped, especially when Pavlov framed the case as insidious foreigners opposite stalwart workers.

Though Sheverdin was fully within his procuratorial rights to stop the case, this is a clear example of an “informal” appeal shaping the course of legality. It was not illegal for an

individual to enlist the aid of a powerful friend to vouch for his character or attempt to halt a case, but at the same time, it was also not within the bounds of the normal routes of appeal prescribed by technical legality. In this case, it was informal legality and the influence of powerful friends which produced results.

II. The Vinogradov Case: Comrade Krylenko and the RSFSR Procuracy vs. the OGPU

On May 11, 1925, senior investigator Lipkin of Moscow province's court, reviewed the case of Grigorii Vasilievich Vinogradov to determine if there was a basis for an indictment under criminal code article fifty-eight: the main article defining counterrevolutionary activities. Vinogradov had been arrested by the OGPU for his role in the arrest of Ivan Platonovich Kaliaev, the revolutionary responsible for assassinating Grand Duke Sergei Romanov on February 17, 1905.²⁴ The OGPU alleged that as a policeman and bodyguard for Sergei Romanov, Vinogradov qualified as a counterrevolutionary for physically detaining Kaliaev and transporting him to the nearest police station. Vinogradov later provided crucial evidence during Kaliaev's preliminary investigation and trial, which led to the conviction and execution of Kaliaev. Once the case was transferred to the Moscow province court's criminal division, Lipkin invoked articles 128 and 129 of the criminal code of procedure (the standard articles used to begin an investigation) in ordering for a full investigation of Vinogradov's role in the detention and resulting execution of Kaliaev.²⁵

²⁴ Kaliaev was a Socialist Revolutionary (SR) who assassinated Grand Duke Sergei Romanov by throwing a nitroglycerin bomb into his lap. Kaliaev expected to be killed in the blast, but survived and was immediately arrested. Kaliaev was hanged on May 23, 1905. See W. Bruce Lincoln, *The Romanovs: Autocrats of all the Russias* (New York: Anchor Books, 1983), 651, and Andrei Maylunas and Sergei Mironenko, *A Lifelong Passion: Nicholas and Alexandra: Their Own Story* (New York: Doubleday, 1997), 259-260.

²⁵ TsGAMO, f. 162, op. 1, d. 269 (Case against G.V. Vinogradov for his service as a policeman in the arrest of Kaliaev, who killed the Grand Duke Sergei Romanov), l. 6. Articles 128 and 129 of the criminal code of procedure

Vinogradov's case was exceptional not just for his historical role in the struggle between the Socialist Revolutionary party and the Tsarist regime, but also because the investigation for his counterrevolutionary activities under article fifty-eight of the criminal code occurred while he was already imprisoned for his conviction under article sixty-eight of the criminal code for "harboring and aiding all kinds of crimes under articles fifty-seven to sixty-seven [pertaining to counterrevolutionary activities] not related to the direct commission of the aforesaid offenses or for lack of awareness of their ultimate goals."²⁶ That is, Vinogradov had already been convicted under article sixty-eight for his role in Kaliaev's execution. Article sixty-eight could only be used for offenders who committed acts which unknowingly or unintentionally supported counterrevolutionary activity. Thus, Vinogradov had already been convicted for unknowingly aiding in counterrevolutionary activity by assisting in the arrest and investigation of Kaliaev; now he was being investigated for knowingly engaging in counterrevolutionary activity for the exact same offense.

It was up to Lipkin to determine if Vinogradov had done more than just "harbor and aid" in the execution of Kaliaev with a "lack of awareness of the ultimate goals" of the Tsarist court. Lipkin had to review the entirety of the original case in 1905 and the OGPU investigation to decide if Vinogradov's role as Romanov's bodyguard and his testimony to the Tsarist court should have qualified him to be prosecuted under the article for counterrevolutionary activity, even if the precise wording of article fifty-eight seemed to preclude Vinogradov's crime.

called for "an investigator to make a reasoned decision about bringing the person as a defendant if there is sufficient data providing the bases for a charge of a crime," and "the decision to bring charges should be indicated by when the decision is made, the time and place of its making, first name, last name of the accused, the time, place and other circumstances of the crime as they are known to the investigator, and the grounds of involvement [of the accused]." See *Ugolovno-Protsessual'nyi Kodeks RSFSR* (1923), *st.* 128, 129.

²⁶ TsGAMO, f. 162, op. 1, d. 269, l. 7. Also see *Ugolovnyi Kodeks RSFSR* (1922) *st.* 58, 68.

To apply article fifty-eight to Vinogradov's crimes meant that Lipkin's investigation had to find that Vinogradov had organized "for counterrevolutionary purposes armed uprisings or intrusion into Soviet territory . . . or participated in any attempt for the same purpose to seize power . . . or forcibly deprived the RSFSR any part of its territory."²⁷ Considering that Vinogradov obviously did not organize a group for counterrevolutionary purposes, attempt to seize power from a non-existent Soviet Union, or deprive the RSFSR of its territory, Lipkin would have had to rely on the *spirit* of counterrevolutionary crimes as stated in article fifty-eight as opposed to a strict application of the letter of the criminal code. It was up to Lipkin to frame Vinogradov's crime as knowingly counterrevolutionary according to the wording of the article.

In his full report calling for an investigation, Lipkin reviewed the case file as it was investigated by the OGPU. Lipkin wrote that the OGPU arrested Vinogradov on November 4, 1924, for suspicion of his position as a police officer under the Tsarist regime. The OGPU's investigation found that Vinogradov was in fact a police officer in the Moscow area from 1904 to 1917.²⁸ The OGPU also established that he was on duty the day of the assassination as a bodyguard to the Grand Duke.²⁹

The OGPU claimed that Vinogradov was shirking his duty when the assassination was committed. The Grand Duke's carriage rolled past Vinogradov's post at the *Novo-Nikolaevskii* palace in the Kremlin, after which the carriage headed towards *Nikolskii* gate and Vinogradov "found his duty completed and left his post and went to the *Spasskii* gate." After hearing the

²⁷ *Ugolovnyi Kodeks RSFSR* (1922) *st.* 58.

²⁸ The report described Vinogradov as an *okolotochnyi nadziratel'*: a "sergeant supervisor" in charge of local beat cops but subordinate to the district bailiff.

²⁹ TsGAMO, f. 162, op. 1, d. 269, ll. 8-8ob.

explosion of Kaliaev's bomb, Vinogradov ran to the scene of the incident. He stood guard over an incapacitated Kaliaev until another guard (only identified as Leont'ev) arrived to help escort Kaliaev to higher police officials. During the preliminary investigation and subsequent trial, Vinogradov acted as an eyewitness. The OGPU case file concluded by noting that five months of an OGPU investigation into Vinogradov's actions found that he had committed no other acts since 1905 which could have been considered counterrevolutionary.³⁰

After reviewing the OGPU's investigation, Lipkin summarized the case and explained why he believed that Vinogradov not only should not be tried under article fifty-eight of the criminal code, but that his original conviction under article sixty-eight should be overturned. He began by highlighting how there was no evidence of Vinogradov's active struggle against the working class, and that his position as a policeman "ruled out the possibility of autonomous action on his part." In addition, Lipkin found that Vinogradov played no significant role in the apprehension of Kaliaev, that in fact it was the unknown Leont'ev who was responsible for the arrest. Lipkin also found that Vinogradov's testimony against Kaliaev was of little importance in the Tsarist court's decision to execute Kaliaev; Vinogradov could not possibly deny that the murder of the Grand Duke had taken place, but at the same time, Vinogradov could not and did not provide any testimony claiming that Kaliaev had "committed, by order of the [SR] party, an act of terrorism." Lipkin further found that Vinogradov's position as a lower-level policeman granted him little agency in his actions, and thus, that his role in the Kaliaev apprehension and trial should not have been qualified him for prosecution under the RSFSR criminal code. Having determined that Vinogradov committed no crime whatsoever, Lipkin called for the case to be

³⁰ Vinogradov worked as a policeman from 1904 to 1917, and had worked as a security guard and superintendent since the October revolution. TsGAMO, f. 162, op. 1, d. 269, ll. 8-8ob.

sent to the Moscow province procuracy to cancel his conviction by invoking article four, subsection five of the criminal code of procedure, which ordered the termination of judicial proceedings “in the absence of the actions attributed to the accused of the offense.”³¹

On May 18 the case was forwarded to the Moscow province procuracy, which wasted little time in divesting itself from the decision-making process, instead opting to move the case up the chain of command.³² The office of the Moscow procuracy sent a memorandum to assistant procurators of the RSFSR Nikolai Krylenko and Ruben Katanian soliciting advice on how to proceed with the Vinogradov case on May 20.³³ The office of the Moscow procuracy succinctly explained that Lipkin’s investigation found that Vinogradov had committed no crimes, and that he certainly could not be prosecuted under article fifty-eight of the criminal code. Conversely, it appeared likely that the OGPU was intent on pushing for the use of article fifty-eight, with the intention of eventually shooting Vinogradov. The office of the Moscow procuracy recommended that “in view of this conflict,” if Krylenko and Katanian wanted to prosecute Vinogradov, they should use article forty-nine of the criminal code. Article forty-nine of the criminal code applied to “persons recognized by the court of their criminal activity or connection with the criminal environment of the area to be socially dangerous” with a penalty “to stay in certain areas [internal exile] for a period not exceeding three years.”³⁴ According to the office of the Moscow procuracy, to use article forty-nine would conform “to the practice of the Moscow province

³¹ TsGAMO, f. 162, op. 1, d. 269, l. 9. *Ugolovno-Protsessual’nyi Kodeks RSFSR* (1923), st. 4. The Moscow province procuracy was charged with supervising the preliminary investigation of any case and deciding whether to proceed with the prosecution of a case or cease judicial proceedings. See *ibid.*, st. 118.

³² TsGAMO, f. 162, op. 1, d. 269, l. 10.

³³ It is not known who wrote the memorandum as it was unsigned. Katanian’s last name was misspelled as Katan’ian. Krylenko was senior assistant procurator of the RSFSR in 1925. He would later be the chief procurator of the RSFSR from 1929 to 1931.

³⁴ *Ugolovnyi Kodeks RSFSR* (1922) st. 49.

court,” and conviction under article forty-nine would not result in any incarceration for Vinogradov. Rather, he would be sentenced to “permanent residence and work” (*postoiannogo zhitel'stva*) in the village of Zubovka in Kostroma province.³⁵

Several facets of the memorandum stand out as key to understanding how the Moscow procurator's office considered this case. First, the Moscow procurator's office refused to move ahead with senior investigator Lipkin's recommendations without seeking the approval of superior procurators at the RSFSR level. According to the rules of technical legality, the office of the Moscow procurator could have communicated directly with the OGPU to locate Vinogradov and begin the process to exonerate him on all charges. At the very least, Lipkin's findings should have been sufficient to quash any potential prosecution of Vinogradov under article fifty-eight of the criminal code. Instead, the Moscow procurator's office refrained from doing anything aside from sending the case up the hierarchical ladder to superiors at the RSFSR level. This indicates both a commitment from the Moscow procurator's office to superiors at the RSFSR procurator's office, and also that the political power of the RSFSR procurators would be needed to deal with the OGPU in this particular case.³⁶

Second, that the recommendation to replace Vinogradov's original conviction with a new case prosecuted under the auspices of article forty-nine of the criminal code, as per “the practice of the Moscow province court” indicates that the Moscow provincial court had routinely dealt with similar cases. An instance of the OGPU arresting someone for counterrevolutionary crimes

³⁵ TsGAMO, f. 162, op. 1, d. 269, l. 14. The village of Zubova has proven difficult to locate, but present day Kostroma Oblast is located roughly 400 kilometers to the northeast of the city of Moscow.

³⁶ On May 19, the Second Division of Moscow Province's procurator's office received documents which “transmitted the attitude of the political section of the Leningrad State Archives” regarding the Vinogradov case. The documents included in the file at TsGAMO, unfortunately, did not include any indication as to what exactly this “attitude” was, or (aside from the original Kaliaev case file) which documents were included. See TsGAMO, f. 162, op. 1, d. 269, l. 22.

committed before the existence of Soviet rule must have occurred frequently if the Moscow province's procurators office had a standard method of dealing with such cases. At the same time, that the Moscow procurator's office did not want to take any action after receiving Lipkin's conclusions (even if there was a standard practice for dealing with cases like Vinogradov's) indicates it believed the Vinogradov case held atypical significance, especially when considering the historical importance of Ivan Kaliaev's assassination of the Grand Duke.³⁷

Third, the office of the Moscow province procuracy seemed to realize that full exoneration was unlikely, and that the likeliest recourse was a compromise in the form of Vinogradov's banishment. It is curious, however, that the Moscow province procuracy felt the need to make Krylenko and Katanian aware of the possibility of the use of article forty-nine, as both were undoubtedly well-versed in the criminal code and fully aware of article forty-nine regardless of the Moscow province procuracy's recommendations. The Moscow province procuracy likely wanted to signal to its superiors that it knew how to deal with the case. After all, the Moscow province procurator's office would have looked foolish if it had sent a memo asking for help from above without providing some indication that it knew how to handle the situation. The Moscow province procurator's office would have been well aware that the RSFSR procurator's office was responsible for supervising the activities of a number of legal agencies, including the activities of the Moscow province procurator.³⁸ At the same time the Moscow province procurator's office had to ensure that the RSFSR's procurator's office understood that

³⁷ As Susan K. Morrissey put it, "Kaliaev became a mythical figure for the Left, a selfless hero who murdered and sacrificed his life for the revolution." While Kaliaev has been written about extensively, perhaps most notably as the protagonist for Albert Camus' exploration of political violence and modernity in *The Just*, recent scholarship has assessed his assassination of the Grand Duke as a bellwether for shifting notions of moral norms as they pertained to political violence amongst revolutionary groups in late Imperial Russia. See Susan K. Morrissey, "'Apparel of Innocence': Toward a Moral Economy of Terrorism in Late Imperial Russia," *The Journal of Modern History* 84, no. 3 (September, 2012): 607-642.

³⁸ Solomon, *Soviet Criminal Justice under Stalin*, 41.

support was needed before proceeding in any direction. It was a difficult tightrope for the Moscow province's procurator's office to walk: on the one hand crafting a memo which made it clear that it needed the RSFSR's procurator's office's input and power, and on the other hand demonstrating that it knew exactly how it felt it should deal with the case. All of these considerations framed the memorandum which was sent to the RSFSR's procurator's office on May 20, 1925.

The memorandum reached the RSFSR procurator's office on May 22 and was answered the following day with a letter sent back to the Moscow procurator's office instructing exactly how to proceed with the case. For the first time, the heading of the letter included the proviso that the information in the letter referred to a "secret case" (*del. Sekret.*). The letter was addressed to the Moscow province procuracy, addressed from the deputy secretary (whose signature, unfortunately, is illegible) of the RSFSR procurator's office, and a copy of the letter was sent to Krylenko. It is unlikely that Krylenko himself drafted the hard copy of the letter, as there would have been no reason for him to forward a copy of the letter to himself if he had written it. Instead, a secretary in the RSFSR's procurator's office drafted the letter entirely on his own, taking dictation from an unknown official in the procurator's office, or was given oral instructions directly from Krylenko. The actual author of the letter is not important, as the letter itself was copied to Krylenko, who would have cancelled the instructions if they did not meet with his approval. What is important is that the letter had the political weight of the office of the RSFSR procuracy in general, and Krylenko in particular.³⁹

The letter told the Moscow procurator how to cancel the case against Vinogradov. The author of the letter said that "on the order of comrade Krylenko I am informing you that [legal]

³⁹ TsGAMO, f. 162, op. 1, d. 269, l. 18.

proceedings against Vinogradov are to be discontinued due to a lack of criminal actions,” in accordance with the findings of investigator Lipkin. The letter ordered the Moscow procuracy to invoke article 148 of the criminal code of procedure to cancel the case.⁴⁰

After receiving instructions from above, the Moscow province procurator’s office relayed the instructions to Lipkin, whose subsequent request to the commandant of Butyrka prison requesting custody of Vinogradov met with resistance.⁴¹ On May 25 Butyrka prison’s commandant replied that he agreed with the conclusions of Lipkin’s investigation, but that Vinogradov could not be released because the OGPU was working on a different case against him.⁴² Lipkin forwarded the response to the office of the Moscow province procurator, which immediately forwarded news of the commandant’s intransigence to Krylenko on May 28.⁴³ At this point the archival record reveals a lull in the whirlwind of communications going up and down the procuratorial hierarchy. The procurator’s office made no immediate move to push for Vinogradov’s release, even though it had expressly ordered the OGPU to free him. This impasse which was not broken until two actors made their voices heard: Vinogradov and his wife.

Vinogradov’s appeal (*zaiavlenie*) written on June 5 to the “Moscow province procurator” demonstrated a legal fluency uncommon in communiques addressed from accused or convicted criminals to legal officials. Vinogradov opened his appeal by complaining that he had not received any word of the outcome of Lipkin’s findings from May 20, and that he should have

⁴⁰ Article 148 allowed a procurator to “propose” that an investigator cancel an investigation or use less severe criminal statutes in investigating a case. In the event that the investigator did not agree with the procurator’s proposal he could protest directly to the court. *Ugolovno-Protseessual’nyi Kodeks RSFSR* (1923), *st.* 148.

⁴¹ Butyrka prison’s origins date back to the seventeenth century. The Soviets used it primarily to inter political prisoners, but also as a transit for sending convicts to gulags in the east.

⁴² TsGAMO, f. 162, op. 1, d. 269, l. 25.

⁴³ *Ibid.*, l. 26.

been apprised of the outcome of Lipkin's investigation in an expedient manner. Specifically, he invoked article 207 of the criminal code of procedure in requesting "the opportunity to learn the outcome" of what resulted from Lipkin's investigation.⁴⁴

Although he had been detained by the OGPU for several months and his case had been investigated and discussed by Moscow province procurators and investigators for over a month, Vinogradov still did not know to whom he should send his appeal at the office of the Moscow province procuracy.⁴⁵ Individual procurators reviewed his case, read Lipkin's investigation, and passed along recommendations to procurators at the RSFSR level explaining how to proceed, but Vinogradov did not know the actual identities of any of the actors involved (outside of Lipkin and Krylenko). Since the procurators never revealed themselves to Vinogradov, he did not know to whom he should have addressed his appeal. Accordingly, the wording of Vinogradov's appeal indicated that he was communicating with an institution, not an individual. He addressed a "comrade procurator" repeatedly and expressed himself in formal language (*vy, ia proshu vas*) while emphasizing points of technical legality.

Vinogradov's invocation of article 207 of the criminal code of procedure displayed a legal knowledge beyond the ken of most criminal supplicants. Article 207 stated that "having completed the preliminary investigation, the investigator has to announce [the findings of the investigation] to the accused, and the accused can then ask [the investigator] if he desires

⁴⁴ Ibid., l. 37.

⁴⁵ Ibid., ll. 37-38. In the appeal it is clear Vinogradov did not know the names of any of the Moscow province procurators. He addressed his appeal to the "Moscow Province Procurator" (*Mossubprokuroru*) and made direct requests twice to "comrade Moscow province procurator" (*proshu Vas tov. Mossubprokuror*), whereas he directly referenced senior investigator Lipkin by name. He could have referred to Lipkin as comrade senior investigator, but he did not. This indicates that he knew Lipkin's name, but he did not know who he was dealing with in the Moscow province procurator's office.

(*zhelaet*) to conclude the investigation.”⁴⁶ The wording of article 207 applied specifically to situations in which an investigator had completed an investigation and made his recommendations, but a procurator had not made a decision whether to continue with the case. In such a situation, the accused had the right to request a speedy resolution of the question of whether the case would cease or proceed to trial. Vinogradov’s exhibition of his familiarity with the criminal code of procedure was accentuated by the wording of his appeal, in which he stated that “I desire (*zhelaiu*) that the investigating authorities review the investigative materials for the Kaliaev case in 1905.” It was no accident that he used the same verb (*zhelat’*) found in article 207 of the criminal code of procedure in formulating his request to investigative authorities. Undoubtedly, the first part of Vinogradov’s appeal showed that he was well-versed in the legal codes pertinent to his case.⁴⁷

Following his exhibition of legal acumen, Vinogradov reverted to a familiar theme: highlighting extra-legal factors which he hoped would pull at the heart-strings of the reader of his appeal. He started his *plach* in the second half of his appeal by referring to Kaliaev as “comrade Kaliaev”, and made it clear that he harbored no ill-will towards Kaliaev, and that in any case he was quickly separated from Kaliaev after the arrest. Vinogradov then shifted his focus to establishing that he had always been a hardworking individual, and that he was worried about the fates of his wife and young children. He concluded by appealing to his faith in Soviet justice, and his hope that the Moscow province procurator would ensure that the case reach a conclusion in an expedient manner.⁴⁸ Representing himself as a hardworking family man who

⁴⁶ *Ugolovno-Protsessual’nyi Kodeks RSFSR* (1923), st. 207.

⁴⁷ TsGAMO, f. 162, op. 1, d. 269, l. 37.

⁴⁸ *Ibid.*, ll. 37-38.

stood in solidarity with the basic goals of the workers' revolution was a theme which Vinogradov only barely broached in his initial appeal to the Moscow province procurator's office. However, he expounded on this theme in a subsequent appeal sent to a higher legal authority: the office of the procurator of the RSFSR.

His second appeal to the office of the procurator of the RSFSR was received on June 24 (the archival record does not reveal the date of authorship). It briefly reiterated much of the legal knowledge demonstrated in his appeal to the Moscow province procuracy while delving much further into his personal background in an attempt to portray himself as an individual sympathetic to the spirit of the Bolshevik revolution. This time he added that he was aware that Lipkin's investigation found that he had committed no crimes and that the procuracy had ordered his release. Upon realizing that, despite Lipkin's recommendation, his release was not imminent, Vinogradov employed his wife to determine the impediment to his freedom. According to Vinogradov, his wife was told that the only reason why Vinogradov had not been released from prison was because a specific order (*spravka*) granting his release had not been issued by the OGPU. As a result, Vinogradov complained that he continued to languish in prison indefinitely. The remainder of his appeal went into great detail concerning the circumstances of his arrest, the OGPU's frequent refusal to relay information to him concerning his case, and a personal biography highlighting those aspects of his character which demonstrated his solidarity with the working class.⁴⁹ To fully understand the strategy of Vinogradov's second appeal it is necessary to know what occurred in the interim between the receipt of his first appeal at the Moscow province procuracy and the second appeal he sent to the RSFSR procuracy.

⁴⁹ Ibid., ll. 42-43ob.

Vinogradov's June 24 appeal to the RSFSR procuracy indicated that his previous appeal to the Moscow province procurator calling for the application of article 207 of the criminal code of procedure was successful. Vinogradov wrote that after May 18 he "learned that the Moscow province court's control meeting [decided] to dismiss the case because of a lack of evidence. The Moscow province procurator sent an order to the chief of Butryka's prison to release me."⁵⁰ His first appeal to the Moscow province procuracy cited article 207 in calling for the procuracy to make a final decision whether to proceed with the case after hearing Lipkin's conclusions. Evidently, after Vinogradov sent his appeal, the procuracy heard Lipkin's conclusions and decided to cancel the case.

The success of Vinogradov's first appeal, however, was limited. While the Moscow province procuracy had decided to release him, Vinogradov was not made aware of the OGPU's refusal to release him until his wife informed him of the OGPU's intransigence. Though he expected that the procuracy would pursue his release, it seemed to Vinogradov that the procuracy had divested itself of his case after the commandant of Butryka prison refused to release him until the OGPU provided its own order for his release. He only found out about this development through the inquiries of his wife. To Vinogradov it appeared the Moscow province procuracy did not have the power to secure his release from the OGPU, and so Vinogradov appealed to higher authorities at the office of the RSFSR procuracy.

This second appeal, in contrast to his first appeal to the Moscow province procuracy, focused less on technical legality and more on personal characteristics. Vinogradov discussed the entirety of his career, emphasizing his constant empathy for working class causes, even when he was a gendarme for the Tsar. He discussed how his wife was dependent upon him, and that he

⁵⁰ Ibid., l. 42.

did not know how she would survive without his help. Ultimately, the appeal focused much less on proper legal procedure (as it was clear to Vinogradov that the OGPU ignored procedure), and instead made Vinogradov appear committed to the defense of the working class.⁵¹

On June 20 Vinogradov's wife (known only as K. Vinogradova) sent a handwritten appeal addressed directly to Krylenko. She opened her appeal by stating that she had "shared her work" (*razdeliia svoi trud*) with her husband for many years, and that she had never seen him commit a crime. All she had ever seen was a man who engaged in "backbreaking labor" to maintain a family of six, four of whom were disabled to the point that they could not work. She stressed his peasant background and claimed that he worked at several jobs in addition to tilling the fields when the family lived in the countryside. Since the October Revolution, "citizen Vinogradov has always adhered to all Soviet laws and he has always been in solidarity with the working population of the Republic." Vinogradov's wife closed the first half of her appeal by noting that the case was supposed to have been forwarded to the province court for a hearing on May 25.⁵²

K. Vinogradova apparently was aware of Lipkin's findings, as she said that she knew that the Moscow province procurator's office had pushed for Vinogradov's release. She also knew that the OGPU had refused to comply, instead demanding that he remain in custody for a new investigation. Vinogradova pointed out that he had already been held for almost eight months, and that a new investigation would not result in anything other than the continued detention of her husband, regardless of what the investigation might find. Having paid enough attention to the inexpediency of the case and the truculence of the OGPU, Vinogradova shifted to a familiar

⁵¹ Ibid., ll. 42-43ob.

⁵² Ibid., l. 34.

theme: a *plach* emphasizing how she had to care for four young children by herself in the absence of her husband. Having made clear that she was struggling to survive without her husband, she then addressed Krylenko directly for the first time, writing that she was “addressing herself (*obrashchat'sia*) to [him] as the only judicial power (*pravosudie*) in the Soviet Republic who can quickly review the case of citizen Vinogradov and release him from undeserved punishment.” If the appeal to justice was not enough, Vinogradova added that her husband’s release was imperative to save her children and herself from impending death due to “harsh living conditions,” which could only be remedied by his release.⁵³

Vinogradova’s appeal was distinctive in its simplicity, reflecting little understanding of the Soviet legal system, the powers of the OGPU, or what might persuade Krylenko to gain her husband’s freedom. Her appeal cast herself and her husband in terms common to many appellants; they were peasants who worked hard to make ends meet, and once the Revolution occurred her husband was in full support of the working class. All of these factors were commonly included in a typical *plach*. If nothing else, Vinogradova realized that it was in her interests to make it known that her husband was a hardworking peasant who was in full support of the Soviet regime.

What she clearly did not understand, however, were the charges he faced. In explaining his innocence she merely explained that the Moscow province procurator had ordered his release (a fact which Krylenko was fully aware of), and that she had never personally seen her husband break any Soviet laws. What she did not do was explain exactly why her husband was innocent of the specific charges for which he had been detained by the OGPU. She easily could have spent a few sentences explaining how he was not a counterrevolutionary instead of writing that she had

⁵³ Ibid., ll. 34-34ob.

never personally seen him break any laws: an observation of no consequence to the charges brought against her husband. Her lack of legal knowledge aside, she did employ a tactic common to almost every letter of appeal written by a woman in this dissertation; she emphasized her role as the primary caretaker of the family after her husband's arrest, and how she was incapable of caring for her children on her own. This lament shows up time and time again, and further illustrates the carryover from the Tsarist period of elements of the *plach* in appeals to Soviet legal officials. Vinogradova actually went a step further than most letter writers, implying that Krylenko was the only man in the Soviet Union who could free her husband, and that his failure to do so would have resulted in the imminent deaths of her and her disabled children.

The combination of Vinogradov and his wife's emotional appeals to the procuracy worked. On June 4 the office of the RSFSR procuracy ordered the immediate release of Vinogradov in accordance with article four, subsection five of the code of criminal procedure, which stated that "no prosecution may be instituted . . . in the absence of the actions attributed to the accused of a crime."⁵⁴ Vinogradov was released, and RSFSR deputy assistant procurator Malinin followed up on September 16, 1925, with a request to the Moscow province procurator's office for Vinogradov's full case file for safekeeping.⁵⁵

Vinogradov's first appeal couched in technical legality started the wheels of justice in motion, but it was his emotional appeal coupled with his wife's *plach* which pushed the RSFSR procuracy to step in and ensure that Vinogradov was released from prison. Thus, while Vinogradov's legal knowledge surely helped his cause, it was the familiar refrain of the ritual lament which finally convinced the procuracy to fight the OGPU on Vinogradov's behalf.

⁵⁴ *Ugolovno-Protsessual'nyi Kodeks RSFSR* (1923), st. 4, 5.

⁵⁵ TsGAMO, f. 162, op. 1, d. 269, l. 54.

Though the Vinogradovs had every right to send appeals to the procuracy while Vinogradov was in prison, RSFSR procurators could easily have disagreed with Lipkin's findings and left Vinogradov in the hands of the OGPU.⁵⁶ Alternatively, the RSFSR procuracy could have decided that it simply did not want to engage the OGPU over a case involving a former Tsarist policeman who helped capture a famed revolutionary. Ultimately, however, RSFSR procurators Krylenko and Malinin decided to engage the OGPU in a power struggle over Vinogradov's fate. On the one side were investigator Lipkin's definition of counterrevolutionary crimes, the procuracy's enforcement of codified legality, and the Vinogradovs' eloquent, yet emotional appeals. On the other side was a stubborn OGPU which clearly had no interest in legality or the orders of the procuracy. In the standoff, the OGPU blinked first. Exonerate

III. The Procuracy's Role in Exonerating Peter Bursevich

The OGPU apprehended forty-two year-old engineer Peter Ivanovich Bursevich in late 1923 after Nikolai Barmash and Peter Burlychev accused him of being a Tsarist informant from 1909 to 1914. Barmash and Burlychev claimed that Bursevich, who had been jailed by Tsarist security forces in 1906 for aiding revolutionary forces during the 1905 Revolution, told the Tsarist police of their illegal printing press in 1909 in return for privileges not usually accorded to political prisoners. The OGPU arrested Bursevich and commenced an investigation of Barmash and Burlychev's accusations.⁵⁷

⁵⁶ Technically, the procuracy had gained the right to supervise the affairs of the OGPU when the Soviet procuracy was created in 1922. Its ability to force the OGPU to do bend to its will, however, was always a matter of contention. See *Sobranie zakonov i rasporiazhenii Rabochego i Krest'ianskogo pravitel'stva RSFSR 1922, no. 36, st. 424.*

⁵⁷ TsGAMO, f. 162, op. 1, d. 156 (Case of Peter Ivanovich Bursevich), l. 7. Unfortunately, the archival record does not reveal the date of Bursevich's arrest by the OGPU.

On November 14, 1923, the deputy chief of the Department of Central Registration of the OGPU, Pavlov (not the same Pavlov mentioned earlier in this chapter), informed the office of the Moscow province procuracy that the board of the OGPU had decided on November 2 to transfer the contents of Bursevich's case to the procuracy to investigate what should be done with Bursevich.⁵⁸ On November 19 the Moscow procuracy registered that the OGPU had sent the case materials to the second division of the Moscow procuracy.⁵⁹ Along with the case materials, the OGPU included an arrest warrant, which the OGPU noted, was in compliance with article 108 of the criminal code of procedure. Article 108 of the criminal code of procedure guaranteed a preliminary investigation by an investigator attached to the courts for any case tried before a court or tribunal.⁶⁰ This article of the criminal code of procedure specified that an investigator attached to the courts, and not an OGPU investigator, had to investigate the case before presenting the case to a procurator to prepare the case for trial. Thus, as opposed to the Vinogradov case, here the OGPU complied with procedure in forwarding the case to an investigator attached to the Moscow province court.

In recognizing the potential explosiveness of a case involving an alleged Tsarist counterrevolutionary who, the OGPU alleged, managed to hide his crimes for years, the Moscow province procuracy assigned the investigation to the Moscow province court's senior investigator, Zlotnikov.⁶¹ His ensuing investigation ultimately agreed with the OGPU's assessment of Bursevich's counterrevolutionary activity.

⁵⁸ *Ibid.*, l. 1.

⁵⁹ *Ibid.*, l. 2.

⁶⁰ *Ugolovno-Protsessual'nyi Kodeks RSFSR (1923)*, st. 108.

⁶¹ TsGAMO, f. 162, op. 1, d. 156, l. 23.

Zlotnikov's investigation began with Bursevich's activities in 1905, when the Tsarist military enlisted Bursevich in an artillery brigade stationed at a garrison in Grodno.⁶² According to Zlotnikov, this garrison had engaged in activities sympathetic with the workers' revolution, and Bursevich himself had been "very active" in these activities. His commanding officers put Bursevich in charge of communications for his brigade, which made him responsible for sending orders to armament depots to ensure that the brigade had the requisite materials to sufficiently fortify Grodno. Almost immediately, Bursevich started forging letters of requisition to depots in Moscow and Riga. His forgeries claimed that factories from both cities had sent shipments to his garrison, and that in return he had sent out approximately 10,000 rubles of his garrison's funds to pay for the shipments. In fact, no ordinance had been shipped to his garrison, and he used some of the 10,000 rubles to help support the revolution.⁶³ He was soon discovered, arrested in April 1906, and sent to Moscow, where he was imprisoned at Butyrka.⁶⁴

At the end of 1909, Bursevich approached Butyrka's warden with information on the location of a secret, illegal printing press in Moscow. Police raided the location of the printing press on January 15, 1910, but found nothing, even after conducting searches on individuals found at the alleged location of the press. Although the raid failed, the police maintained surveillance on several individuals found at the location, all of whom had actually helped run the press, and all of whom were actually members of a cell of revolutionaries.⁶⁵

⁶² Grodno, is a city in modern-day Belarus near the borders of Poland and Lithuania. Bursevich was from the village of Chemera in Grodno province. See TsGAMO, f. 162, op. 1, d. 156, l. 7.

⁶³ The investigation did not describe exactly how Bursevich had supported the revolution aside from noting that he had used part of the money he had embezzled for revolutionary interests.

⁶⁴ TsGAMO, f. 162, op. 1, d. 156, l. 22.

⁶⁵ The investigator of the report claimed that Tsarist police files confirmed Bursevich's role as an informant. See *ibid.*, ll. 22-22ob.

Bursevich remained in Moscow after his release from prison in 1914, though the archival record fails to reveal his activities from 1914 to 1917. After the October Revolution, Bursevich managed to place himself on an emergency committee in charge of overseeing the collection of taxes and the general functioning of the newly founded state enterprises “*Glavsteklo*” (state enterprise for glass production) and “*Gosmoloko*” (state enterprise for milk production).⁶⁶ Allegedly, Bursevich had managed to hide his background, but how?

The investigation into Bursevich’s past claimed that he had managed to finagle his way to a position of power after the October Revolution through the omission of some key details of his life. He fully disclosed his role as an embezzler of funds on behalf of the Revolution of 1905 and his subsequent imprisonment in 1906. He left out the crucial fact that, at some point during 1905-1906, he had joined the “maximalist” faction of the Socialist Revolutionary Party.⁶⁷ In his capacity as a member of the “maximalists,” he knew of the whereabouts of a number of key faction members, including the location of members responsible for dispensing propaganda from secret printing presses.⁶⁸

Zlotnikov interviewed Barmash and Burlychev, two members of the “maximalist” cell which had been raided in 1910. They confirmed what they had already told the OGPU; Bursevich did indeed know of their printing press, and they claimed to know that it had to be Bursevich who told police of its location. More damningly, Barmash and Burlychev claimed it was “well-known” among inmates imprisoned in Butyrka that Bursevich was treated far better

⁶⁶ *Ibid.*, l. 22ob.

⁶⁷ The extreme, “maximalist” faction of the Socialist Revolutionary Party had begun to form in 1904, crystallized in 1905, and were expelled from the party in 1906. See Manfred Hildermeier, *The Russian Socialist Revolutionary Party Before the First World War* (New York: St. Martin’s Press, 2000), chpt. 4.

⁶⁸ TsGAMO, f. 162, op. 1, d. 156, ll. 22ob-23.

than most political prisoners. Prison officials allowed him to work as a librarian, gave him free access to books, granted him more free time outside of his cell, and gave him a “special status” not accorded to other prisoners.⁶⁹

The investigation further found that Bursevich operated in the same role as a Tsarist agent of counterrevolution after authorities transferred him to Taganka prison in 1910.⁷⁰ At Taganka he informed the authorities of the activities of at least one other revolutionary cell. When combined with Barmash and Burlychev’s testimony of Bursevich’s treachery, Zlotnikov concluded that Bursevich deserved to be convicted under article sixty-seven of the criminal code, which applied to those accused of “actively struggling against the working class and the revolutionary movement manifested in their positions of responsibility within the Tsarist system shall be punished by penalties prescribed by the first part of article fifty-eight.”⁷¹ Zlotnikov concluded his report by recommending the case proceed to an indictment. His recommendation was sent on December 29, 1923.⁷²

Peter Bursevich’s wife, Maria, wrote an informal appeal on January 4, 1924, addressed to the assistant procurator of Moscow province, who received the appeal on January 7. Her *zaiavlenie* skipped any greetings or pleasantries in beginning with a short summary of his case. She stated Bursevich’s name and the article of the criminal code by which he had been indicted. She claimed that Zlotnikov’s investigation included a critical error; though he had interviewed

⁶⁹ TsGAMO, f. 162, op. 1, d. 156, l. 23.

⁷⁰ Taganka was used a prison for political prisoners from its construction in 1804 until its demolition in 1958. For more on Taganka see relevant sections in M .N. Gernet, *Istoriia tsarskoi tiur'my, v piati tomakh* (Moscow: Gosizurzat, 1956).

⁷¹ *Ugolovnyi Kodeks RSFSR* (1922) st. 67. The first part of article 58 called for a maximum penalty of capital punishment and a minimum penalty of five years imprisonment for all those who engaged in counterrevolutionary activity against the Soviet state. See *Ugolovnyi Kodeks RSFSR* (1922) st. 58.

⁷² TsGAMO, f. 162, op. 1, d. 156, l. 23.

Barmash and Burlychev, he did not interview the other members of the cell whose names Bursevich supposedly gave to the Tsarist authorities. She listed all of the other members of the cell who should have been interviewed, claimed that they were all supposedly victims of her husband's alleged crime, and that "in the name of justice" they had to be questioned before the case proceeded to trial.⁷³

Maria Bursevich's appeal was somewhat atypical. It included no personal biography of herself, her family, or her husband, and it did not include any aspect of the *plach* seen in so many appeals. Instead, her appeal focused entirely on one argument: to avoid perverting justice the assistant procurator had to interview the other members of the cell her husband allegedly gave away to Tsarist authorities. Unlike most appeals hinging on a legal argument, her appeal invoked no aspect of technical legality. When appellants invoked technical legality, they invariably cited a specific aspect of the criminal code or criminal code of procedure. Maria Bursevich did not. She obviously did not know the wording of the criminal code of procedure, as there was an article of the code which fit her argument perfectly.

Article 112 of the criminal code of procedure ensured that "the investigator may not refuse the accused or the victim in the questioning of witnesses, experts, and others in the collection of evidence, if the circumstances of the questioning may be relevant to the case."⁷⁴ Further, she had the right to bring any complaint against the investigation of her husband within seven days of the receipt of the investigation's findings.⁷⁵ The procurator in charge of processing

⁷³ TsGAMO, f. 162, op. 1, d. 156, l. 21.

⁷⁴ *Ugolovno-Protsessual'nyi Kodeks RSFSR* (1923), st. 112.

⁷⁵ *Ibid.*, st. 212, 215.

the complaint had three days to decide whether the complaint had any merit.⁷⁶ In the event the procurator found in favor of the appellant, the procurator could demand the investigator provide justification for his actions.⁷⁷ If the procurator found no merit in the appellant's argument then the case proceeded as planned. Any of these aspects of the code could have been mentioned by Bursevich, but she omitted any mention of the criminal code of procedure in her appeal.

Bursevich did not have the legal knowledge necessary to advance a rigorous argument based on technical legality. Other appeals often invoked specific articles of the criminal code, the criminal code of procedure, or legal legislation pertinent to a case. Maria Bursevich did none of these things. Instead, she claimed that the investigator's refusal to interview all possible witnesses constituted an affront to "the name of justice." Luckily for Maria and Peter Bursevich, the assistant procurator who received her appeal, decided in her favor.

Assistant procurator Novikov agreed with Maria Bursevich's desire to interview the remaining witnesses even though her argument lacked legal acumen and Novikov had no incentive to heed her demand. He faced no repercussions if he had simply forwarded the case to trial without interrogating the remaining members of the cell. Even if a cassational or supervisory review determined during an appeal that the preliminary investigator should have questioned additional witnesses before submitting the case to procurators, blame for shoddy casework would have fallen at the feet of investigator Zlotnikov, not assistant procurator Novikov. Novikov read Bursevich's appeal, decided that Zlotnikov should interview the remaining witnesses, and forwarded his order on February 9, 1924.⁷⁸

⁷⁶ *Ibid.*, *st.* 218.

⁷⁷ *Ibid.*, *st.* 219.

⁷⁸ TsGAMO, f. 162, op. 1, d. 156, l. 18.

Once again, we see another case confirming that legal knowledge of appellants did not influence the outcomes of cases. Had legal knowledge been a determining factor, Novikov would have ignored Bursevich's plea. Instead, Novikov applied the code of criminal procedure in ordering Zlotnikov to do as Maria Bursevich demanded. The determining factor here, as with most of the appeals reviewed in this dissertation, was the will of the legal official in charge of the case. Be it for personal gain, the desire to project power, or, as in this case, a simple desire to deliver justice, legal officials determined the outcomes of cases, usually independent of the arguments expressed by appellants.

The ensuing investigation revealed that Barmash and Burlychev lied about Bursevich. After interviewing some of the witnesses named in Maria Bursevich's plea, it was determined that Bursevich had not acted as a Tsarist informant, and that instead, Barmash and Burlychev had been motivated by personal dislike of Bursevich in providing false information to the OGPU and Zlotnikov. A special administrative session of the Moscow province courts led by court president Lunin and court members Dembitskii and Gusev discussed what should be done with Barmash and Burlychev. Though Burlychev had not been located by the courts, Barmash had been incarcerated. The court session decided to indict Barmash under articles sixty-eight and 179 of the criminal code. Article 179 applied to anybody accused of providing "misleading information or testimony resulting in the prosecution of a serious crime," with an attendant penalty no lower than two years imprisonment.⁷⁹ In addition, article sixty-eight of the criminal code called for the prosecution of any individual who "harbored or abetted" counterrevolutionary crimes and criminals, for which Barmash qualified for falsely accusing Bursevich of counterrevolutionary

⁷⁹ *Ugolovnyi Kodeks RSFSR (1922) st. 179.*

activities.⁸⁰ Thus, Bursevich was released from prison and criminal proceedings were underway against his accusers.⁸¹

In contrast to the Vinogradov case, the Bursevich case demonstrated that the OGPU sometimes complied with the demands of the procuracy. While the OGPU could have blocked Bursevich's release, it did not do so. Instead, it passed him on to the court system.

Maria Bursevich's plea, albeit informal and uninformed, accomplished much. Up until her plea, all of the evidence in her husband's case pointed to his guilt. Although her informal appeal to the procuracy could have been ignored and failed to cite the proper procedural guideline, the court system acceded to her demands to interview more witnesses, and ultimately found that she was right; her husband was innocent of the charges leveled against him. As with many of the cases reviewed in chapters four and five, we see another instance of the judicial system rigorously applying criminal procedure even when an appellant made a vague appeal lacking in legal knowledge. Once again, the judicial system reversed its original direction in finding Bursevich innocent of all charges. The primary difference in this case is the nature of the appeal: informal as opposed to an appeal by supervision or cassation.

Conclusions

This chapter reviewed three different strains of "informal" appeals, all effective, and all occupying a gray area in the judicial system. None of the appeals were illegal, but none neatly fit any of the procedural guidelines. The one thread tying all three together is that they all successfully resulted in the cessation of criminal proceedings against the appellants.

⁸⁰ *Ibid.*, *st.* 68. The minimum penalty for conviction under article sixty-eight was one year.

⁸¹ TsGAMO, f. 162, op. 1, d. 156, l. 17.

Mikhailov's successful appeal to trade union secretary Pavlov showed how an influential party official interceded on behalf of a friend to quash a criminal case. Mikhailov was destined for a trial until Pavlov communicated directly with the procurator in charge of Mikhailov's case. Pavlov vouched for the character of Mikhailov without providing any specific evidence of his innocence. Pavlov signaled to the procuracy that, in his capacity as trade union secretary for the city of Moscow, he wanted Mikhailov exonerated of all charges, which were subsequently dropped. Of the three examples in this chapter, this case most closely strayed over the line to illegality, as the court records did not reveal any legal reason why the procurator decided to stop the case.

The Vinogradovs' appeals provide one of the best examples of institutional power struggles over the fate of an appellant. That Vinogradov assisted in the capture of the famed revolutionary Kaliaev was never in doubt. Quite simply, the OGPU refused to accede to the findings of the investigation of the Moscow province court, and the resulting battle between the procuracy and the OGPU had little to do with questions of technical legality. Instead, it was simply a question of who could assert control over the situation. A combination of the Vinogradovs' *plach*, the procuracy's dogged reassertion of the rules of procedure, and the personal interest of high-level RSFSR procurators eventually persuaded the OGPU to free Vinogradov.

Finally, the Bursevich case provides another example of an individual accused of counterrevolutionary crimes. But in this case, the OGPU willingly handed over jurisdiction of Bursevich to the criminal justice system. Bursevich was destined for a trial, which he likely would have lost, if not for the informal appeal sent by his wife requesting investigators to question more witnesses. Though her appeal lacked legal acumen and simply implored the

procuracy to act “in the name of justice,” her demand was met, and the subsequent investigation cleared her husband of all charges. Once again, an “informal appeal” was effective.

Conclusions

“What after all, in the final analysis, is the Leninist theory of dictatorship if it is not a doctrine of revolutionary power which rejects formal legality?”¹ One of the foremost Soviet jurists of the 1920s, Evgenii Pashukanis, posed this question in 1925 as part of a collection of essays compiled in Peter Stuckha’s *Revolution of the Law*.² Pashukanis, Stuchka, and other Soviet legal theorists debated how to resolve the desire for a flexible legality stressing class considerations with the need to govern a massive state with a rule-bound criminal code. Pashukanis convincingly argued that the answer lay in first accepting that Soviet law did not represent a complete break from the bourgeois law of the Imperial period. As Soviet law inherited many Imperial trappings, Pashukanis said that Soviet jurists should recognize that the best way to promote class interests was by continuously striking a balance between upholding codified law and adjusting legal rules for the protection of the proletariat. Rather than stress dogmatic formalism or legal nihilism, Pashukanis encouraged legal scholars and state officials alike to consider the application of the law on a case-by-case basis. Only by adopting this approach, Pashukanis argued, could the developing Soviet legal system effect class-considerations while maintaining a coherent rule of law.³

But Pashukanis, like his contemporaries, was asking a theoretical question divorced from the pragmatic demands of a justice system in its infancy. In determining the balance between legal formalism and revolutionary justice, Soviet jurists failed to account for the developing institutions tasked with executing Soviet justice on an everyday basis. Even if jurists united

¹ Evgenii Pashukanis, *Pashukanis: Selected Writings on Marxism and Law*, eds. Piers Beirne and Robert Sharlet, trans. Peter B. Maggs (London: Academic Press Inc., 1980), 144.

² *Ibid.*, 132.

³ John N. Hazard, foreword to *Pashukanis: Selected Writings on Marxism and the Law*, xi-xii.

behind Pashukanis' plan, convincing different levels of the judiciary, procuracy, and political police of the need to balance legal formalism with prejudicing justice in favor of revolutionary interests required the resolution of a series of problems.

Different levels of institutions were manned by personnel with widely divergent levels of education. The highest levels of the judiciary included the most educated jurists in the Soviet Union. They were responsible not only for formulating legal policy, but transmitting policies to the lowest levels of the judiciary. Unfortunately, the educational levels of judges in local courts was so low throughout the 1920s that they were rarely capable of understanding the flurry of directives sent from above, much less enact policies in the manner envisioned by high court judges and procurators. Even at provincial courts, most judges possessed nothing more than an elementary education. With such low levels of education plaguing legal personnel everywhere but at the RSFSR Supreme Court, one must marvel at Pashukanis' ambition in calling for nuanced approaches to the application of revolutionary justice when most legal personnel could not possibly have understood what those nuances meant.

Even when legal personnel understood the content of the law, different social backgrounds contributed to different ways in which they applied the law. Notions of "revolutionary justice" had different meanings to peasants manning the courts in the countryside, workers overseeing trials in urban courts, and intellectuals reviewing cases at the Supreme Court.⁴ Their experiences colored their interpretations of the law, resulting in the tendency of peasants to find in favor of peasants and workers to find in favor of workers. In both cases, peasant and worker judges applied brands of class-based justice in favor of their own classes.

⁴ This supports Tracy McDonald's findings for peasant people's court judges applying "a traditional peasant attitude toward crime," during the 1920s in Riazan province. See McDonald, "Face to Face with the Peasant, Village and State in Riazan," 68.

Beyond educational or social backgrounds, Pashukanis and other theorists could not account for divergent institutional interests motivating the actions of individuals at different levels of the judiciary, procuracy, and police. By the end of the 1920s, judges at lower level courts exploited the wording of legal codes to process caseloads at their convenience. To them, issues of revolutionary justice and legal formalism meant little, but learning how to manipulate the wording of the legal code to reduce their time spent in court meant much. Technically, they dogmatically adhered to legal formalism by applying the wording of the criminal code of procedure at the expense of the spirit of the law. But in actuality, they simply manipulated the law to clear cases as quickly as possible.

The political police cited the criminal code of procedure's provision allowing them to keep dangerous suspects incarcerated during ongoing investigations; even if it was obvious the investigation should have ended and the suspect should have been released. They hid behind codified legality when refusing to accede to procurators' demands to release suspects because they knew that procurators adhered to the wording of codified laws, even if the police only cited legal codes when it suited their interests. In such situations, the police weren't picking a side between Pashukanis' legal formalism and revolutionary justice; they simply exploited the wording of the law to accomplish what they wanted.

Supreme Court judges and procurators sparred with their counterparts at the provincial level over the correct application of legality in specific cases. Though both sides employed legally savvy reasons supporting their positions, what started as debates over the correct application of the law often devolved into power struggles between legal personnel at different levels of the procuracy and judiciary. These debates were not about the enforcement of codified legality. Rather, these were about legal officials using legal codes to assert their authority against

each other. The intransigence of lower level judges in refusing to accede to the guiding decisions accompanying cases remanded from higher courts demonstrates how lower level officials were more than capable of standing up to their superiors, but they did so with no regard to the convicted appellants whose lives depended on the outcomes of cassational, supervisory and informal appeals.

Despite institutional infighting dictating the course of legal practices in many situations, the framers of the Soviet legal codes ensured that convicted criminals received easy access to cassational appeals, regardless of their legal knowledge. Touted as one of the accomplishments of the Soviet system of justice, appellants merely had to verbally opt for a cassational appeal at the conclusion of their cases to receive a full review of the case record by a judge at a superior court. The appellant could advance an argument which a superior court judge determined to have no merit, but superior court judges still had to review the entirety of the case and reduce the appellant's sentence if they found problems with any aspect of procedure, the application of the criminal code, or if the duration of the sentence exceeded the severity of the crime. The framers of the guidelines for cassational appeals placed such importance on ensuring easy access to the legally ignorant that convicts did not have to submit any argument whatsoever to receive a cassational review. As long as a convict verbally opted for cassation, or if a codefendant opted for cassation, the convict was ensured of a cassational review by a panel of judges from a higher court.

This guarantee of a cassational review, however, came with an unspoken *caveat*. Though anybody had easy access to cassational remedy, those convicts who were able to advance nuanced, legally-informed arguments did not fare much better than those convicts who advanced no arguments or legally ignorant arguments. Especially during the early 1920s, high courts

applied a uniform, methodological consideration of existing laws, procedures, and defendants' backgrounds in determining whether an appellant warranted an alteration to their original verdict. Though there were instances when appellants employed legally-informed strategies in convincing judges to reduce their sentences, high court judges typically discarded appellants' arguments in enforcing their version of socialist justice.

Despite high courts' tendency to reject or ignore appellants' arguments, appellants developed a series of strategies blending legal acumen with notions of Soviet power and traditional ritual laments from the Imperial period. Appellant strategies included elements of one, two, or all of the following three categories.

The most common category, and the one found in nearly all appeals, was the Imperial-era *plach*, or ritual lament. For centuries Russians had submitted appeals to authorities reliant on a *plach*, in which appellants recounted tales of woe, the deleterious influences of malcontented friends, an upbringing marred by misfortune, sick or injured family members reliant on the appellant, and other calamities responsible for steering the appellant toward criminal activity. The transition of power from the Tsars to the Bolsheviks did not erase the *plach* from the Russian memory, as it frequently appeared in appeals made to high courts.

Less common than the use of the *plach*, appellants attuned to the ever-changing nature of Soviet legislation and legal codes during the 1920s employed sophisticated legal arguments invoking specific articles from the criminal code, criminal code of procedure, and from recently passed legislation pertinent to their cases. More often than not, such appeals were written by a spouse of the convicted, and though there is circumstantial evidence that defense counsels and legal aides assisted appellants, hard evidence from the archives has proven difficult to locate. Though there were instances when well-reasoned legal arguments were cited as the reason why

judges decided to alter appellants' sentences, high court judges typically applied their own standards in judging appeals independent of appellants' exhibitions of legal knowledge.

Finally, some appellants tried to convince judges that they merited reprieves as reward for their contributions to the construction of Soviet power, both in the past and, potentially, in the future.⁵ Convicts relied upon past service in the Red Army during the Civil War, activity on the side of the Bolsheviks during the October Revolution, or specific examples of labor abetting the growth of Soviet power. And indeed, judges frequently cited appellants' war records or sterling contributions to the Soviet state as reasons for reducing convicts' sentences. Appellants who could not cite a record demonstrating commitment to the Bolshevik cause implored judges to believe their sincere intent to reform their ways through honest labor aiding the growth of the Soviet state. Regardless of their success, such appeals explain how individuals convicted of serious crimes conceived of Soviet power during the NEP.

But regardless of an appellant's inclusion of one, two, or all three types of strategies in their appeals, the two factors that most determined a convict's chance of reprieve had little to do with what they wrote. Rather, the determining factors were whether an appeal reached a cassational panel, and whether the convict and his trial exhibited the characteristics high court judges were likely to consider as deserving of an alteration to the original sentence. That these two factors were more important than appellants' legal knowledge forces scholars to question the applicability of established notions of legal knowledge and courts during the late Imperial period to the early Soviet period.

⁵ Appeals reminding officials of past service and promising future devotion draw from an ancient Russian trope. See J. Arch Getty, *Practicing Stalinism: Bolsheviks, Boyars, and the Persistence of Tradition* (New Haven: Yale University Press, 2013), 32.

Scholars have convincingly argued for the linkage between an individual's ability to employ legal knowledge and the likelihood of their success in courts during the final years of Imperial power.⁶ Peasants routinely engaged courts for their own benefit, demonstrating both a wide knowledge of Tsarist legality and a willingness to use the courts to further their interests. Their ability to use legal knowledge to influence judicial decisions impacted their willingness to engage and reengage the Tsarist judicial system. During the early Soviet period, however, appellants' legal knowledge had little impact on high court judges' rulings on cases involving serious crimes. Though further study is needed to establish how litigants performed in Soviet civil courts during the NEP, the evidence in this dissertation points to a break of the correlation between legal knowledge and courtroom success from the late Imperial to the early Soviet periods.

Convicted criminals occasionally benefited from the opportunity for a second round of appeals with supervisory reviews, even though convicts did not possess the ability to initiate a supervisory appeal directly. Judges and procurators from superior courts selected cases for supervisory review after cassation had been exhausted. Their choice of cases was predicated on whether inferior courts had repeatedly made mistakes in similar cases which required corrections via guiding decisions from above, and whether a case included an aspect which high court judges and procurators wanted to alter as an exemplar for lower courts' future decisions. By the end of the 1920s, however, what was devised as a method of judicial review was warped by institutional interests into nothing more than a second layer of perfunctory appeals which cluttered the judicial system in ways the framers of Soviet legality could never have imagined. Institutions

⁶ For the leading scholarly work supporting this school of thought see Burbank, *Russian Peasants Go to Court*.

perverted the intent of supervisory review by exploiting formal legality to further their own interests.

Finally, the informal appeals described in the last chapter of this dissertation illustrated defendants' best chance of achieving a favorable result. Informal appeals occupied a gray area in the Soviet legal system; they were neither outside the bounds of codified legality nor were they clearly defined within the rules. An informal appeal included any situation when an individual accused of a crime attracted the interest of a top-level official to argue on their behalfs, or if a defendant had an important friend capable of influencing the course of a trial simply by vouching for the defendant. Once again, institutional power games often determined the efficacy of informal appeals. Nevertheless it was an informal appeal, and not an individual's knowledge of Soviet legal codes, that offered an individual the best chance of avoiding a lengthy term of imprisonment.

When Pashukanis tried to find a balance between legal formalism and revolutionary justice, he discounted the institutional chaos brought about by a nascent legal system struggling to establish a rule of law during turbulent times. The Soviet system of justice during the NEP was chaotic. But by studying the jets and eddies within the maelstrom we can tease order out of chaos. Even if our image of Soviet justice during the 1920s is still murky, the picture is starting to come into focus.

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