

# BASKET THREE: IMPLEMENTATION OF THE HELSINKI ACCORDS

---

HEARING  
BEFORE THE  
COMMISSION ON SECURITY AND  
COOPERATION IN EUROPE  
NINETY-FIFTH CONGRESS  
SECOND SESSION  
ON  
IMPLEMENTATION OF THE HELSINKI ACCORDS  
Volume VI

---

SOVIET LAW AND THE HELSINKI MONITORS  
JUNE 6, 1978

---

Printed for the use of the  
Commission on Security and Cooperation in Europe



U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1978

32-057

For sale by the Superintendent of Documents, U.S. Government Printing Office  
Washington, D.C. 20402

## COMMISSION ON SECURITY AND COOPERATION IN EUROPE

DANTE B. FASCELL, Florida, *Chairman*  
CLAIBORNE PELL, Rhode Island, *Co-Chairman*

DICK CLARK, Iowa  
PATRICK J. LEAHY, Vermont  
RICHARD STONE, Florida  
CLIFFORD P. CASE, New Jersey  
ROBERT DOLE, Kansas

SIDNEY R. YATES, Illinois  
JONATHAN B. BINGHAM, New York  
PAUL SIMON, Illinois  
JOHN BUCHANAN, Alabama  
MILLICENT FENWICK, New Jersey

### EXECUTIVE BRANCH

PATRICIA DERIAN, Department of State  
DAVID MCGIFFERT, Department of Defense  
FRANK WEIL, Department of Commerce

---

R. SPENCER OLIVER, *Staff Director and General Counsel*  
GUY E. CORIDEN, *Deputy Staff Director*  
ALFRED FRIENDLY, *Senior Consultant*  
CATHY COSMAN, *Staff Assistant*  
LYNNE DAVIDSON, *Staff Assistant*  
MEG DONOVAN, *Staff Assistant*  
ESTER KURZ, *Staff Assistant*  
SUSAN PEDERSON, *Staff Assistant*  
HELEN SEN, *Staff Assistant*  
ANNE SIEGEL, *Coordinator*

# CONTENTS

## IMPLEMENTATION OF THE HELSINKI ACCORDS: SOVIET LAW AND THE HELSINKI MONITORS

### WITNESSES

Tuesday, June 6, 1978:

	Page
Williams, Edward Bennett, Washington trial lawyer, American counsel for Aleksandr Ginzburg, imprisoned member of Moscow Helsinki Watch Group and administrator of Solzhenitsyn Fund for the Aid of Political Prisoners and their Families-----	3
Dershowitz, Alan, professor, Harvard Law School, civil liberties activist, American counsel for Anatoly Shcharansky, imprisoned Jewish activist and member of the Moscow Helsinki Watch Group--	45
Clark, Ramsey, former U.S. Attorney General, national chairman, Advisory Committee ACLU, American counsel for Yuri Orlov, imprisoned founding member of the Moscow Helsinki Watch Group, and for Oleksiy Tykhy and Mykola Rudenko, two imprisoned members of the Ukrainian Helsinki Watch Group-----	73
Fletcher, George, professor, UCLA Law School, expert on comparative legal systems-----	87

### MATERIAL SUBMITTED FOR THE RECORD

Tuesday, June 6, 1978:

A collection of documents submitted by Edward Bennett Williams:	
Document No. 1—Letter from Alexander Solzhenitsyn to E. B. Williams, February 4, 1977-----	10
Document No. 2—Letter from Irina S. Ginzburg to the KGB prison administration, April 11, 1977-----	10
Document No. 3—Complaint from Irina S. Ginzburg to the Supreme Soviet of the U.S.S.R., November 30, 1977-----	11
Document No. 4—Statements of Irina S. Ginzburg to head of prison IZ 37/1, Kuznetsov-----	11
Document No. 5—Summary of complaints lodged by Yuri Mnyukh and Vera Lashkova with Kaluga Motor Vehicle Commissioner and head of KGB, Andropov-----	12
Document No. 6—Statement for the press by Irina S. Ginzburg and Irina Orlova, September 26, 1977-----	12
Document No. 7—Open letter from Ludmila Ginzburg, February 2, 1978-----	13
Document No. 8—Letter from Irina S. Ginzburg to the Supreme Soviet of the U.S.S.R., January 10, 1978-----	13
Document No. 9—Letter from Svetlana Pavlenkova to E. B. Williams, May 1977-----	14
Document No. 10—Statement by Malva Landa on Aleksandr Ginzburg, June 21, 1977-----	15
Document No. 11—Letter from Kirill Uspensky to E. B. Williams, May 25, 1977-----	16
Documents No. 12, 13—Letters from Valeriy Ronkin to E. B. Williams, August 4, 1977-----	17, 18
Document No. 14—Letter from Boris B. Weil to E. B. Williams, October 14, 1977-----	18
Document No. 15—Letter from S. Pirogov to E. B. Williams, October 31, 1977-----	19
Document No. 16—Letter from Valeria Isakova to E. B. Williams, October 2, 1977-----	19

Tuesday, June 6, 1978—Continued

A collection of documents etc.—Continued

Document No. 17—Letter from Larissa Bogoraz to E. B. Williams and Irina S. Ginzburg, October 29, 1978-----	Page 20
Document No. 18—Letter from Yuli Daniel to E. B. Williams, November 29, 1977-----	20
Document No. 19—Letter from E. Nikolaev to E. B. Williams, December 7, 1977-----	20
Document No. 20—Dr. Andrei Sakharov's appeal on behalf of Aleksandr Ginzburg, February 2, 1978-----	21
Document No. 21—Letter from Valeriy Smolkin to E. B. Williams, February 2, 1978-----	22
Document No. 22—Letter from Aleksandr Podrabinek to E. B. Williams, February 2, 1978-----	22
Document No. 23—Letter from Petr Vins to E. B. Williams, February 2, 1978-----	23
Document No. 24—Letter from Yu. I. Fedorov to a former fellow-prisoner, June 11, 1977-----	23
Document No. 25—Excerpt from letter by V. Petrov to Irina S. Ginzburg-----	24
Document No. 26—Information on interrogations of former political prisoners, summer and fall, 1977-----	25
Document No. 27—Statement of Vitaliy Pomazov to Soviet authorities, December 5, 1977-----	27
Document No. 28—Complaint from Irina S. Ginzburg to senior investigator of Kaluga KGB Office, M. V. Oselkov, November 26, 1977-----	28
Document No. 29—Letter from Valeriy Ronkin to E. B. Williams-----	
Document No. 30—Letter from V. Platonov to KGB investigator Oselkov, December 25, 1977-----	29, 30
Document No. 31—Letter from Vera Lashkova to E. B. Williams, November 26, 1977-----	30
Document No. 32—Statement of Nikolay Ivanov addressed to E. B. Williams, November 4, 1977-----	30
Document No. 33—Letter from Vladimir Borisov to E. B. Williams, December, 1977-----	31
Document No. 34—Letter from V. Isakova to E. B. Williams, January 23, 1978-----	32
Document No. 35—Summary of "Izvestia" article dated April 4, 1978-----	32
Document No. 36—Open appeal of Yuriy Mnyukh, January 7, 1977-----	33
Document No. 37—Letter from Tatyana Khodorovich and Malva Landa to members of the Russian Social Fund, April 5, 1977-----	34
Document No. 38—Statement for the press of Russian Social Fund Representative Kronid Lyubarsky, July 23, 1977-----	35
Document No. 39—Open statement of Irina S. Ginzburg and Sergey Khodorovich, November 6, 1977-----	37
Document No. 40—Press conference statement of Malva Landa, Irina S. Ginzburg, and Sergey Khodorovich, April 15, 1978-----	37
Document No. 41—Correspondence between Yu. S. Belov and Procurator of Kaluga Region, February–March, 1978-----	37
Document No. 42—Statement of L. Yu. Boytsova addressed to Moscow legal consultation office No. 2, April 15, 1978-----	38
A collection of materials submitted by Prof. Alan Dershowitz:	
Appendix A—Petition from U.S. law professors submitted to Chairman Brezhnev, protesting trial, conviction, and sentencing of Yuri Orlov, May 19, 1978-----	54
Appendix B—Summary of Soviet television broadcast, "Traders of Souls," of January 22, 1977-----	57
Appendix C—Complaint filed by Anatoly Shecharansky with People's Court of Dzerzhinsky Region of Moscow regarding "Traders of Souls" broadcast, February, 1977-----	60
Appendix D—Open letter from Dr. S. L. Lipavsky as it appeared in "Izvestia," March 4, 1977-----	60
Appendix E—Text of "Izvestia" article "Epilog to S. Lipavsky's Open Letter: CIA—Spies and 'Human Rights,'" March 5, 1977-----	63



# V

## STATEMENTS AND LETTERS SUBMITTED FOR THE RECORD

Letter from Joseph B. Pomerant, Q.C., on behalf of Ukrainian Helsinki Watch Group members Mykola Matusevych and Myroslav Marynovych, to Hon. Dante B. Fascell, June 7, 1978-----	Page 108
Letter from Myroslaw Smorodsky, Esq., on behalf of imprisoned Helsinki Watch Group members, to Hon. Dante B. Fascell, June 7, 1978-----	109
Letter and accompanying case summary "The Orlov Defense," from John Macdonald, Q.C., to Hon. Dante B. Fascell, June 1, 1978-----	110

## APPENDIX

"Soviet Law and the Helsinki Monitors," a study prepared by the staff of the Commission on Security and Cooperation in Europe, June 6, 1978-----	115
Unofficial Record of the trial of Georgian Helsinki Watch Group member Grigory Goldshtein, translated and distributed by the Student Struggle for Soviet Jewry-----	145
Moscow Helsinki Watch Group Document on the trial of Ukrainian Helsinki Watch Group member Pyotr Vins, April, 1978-----	152
Legal Appeal on behalf of Ukrainian Helsinki Watch Group members Mykola Rudenko and Oleksiy Tykhy, filed by Ramsey Clark, Esq., with Soviet officials, July 7, 1977 and accompanying letters, April 3, 1977----	154

## IMPLEMENTATION OF THE HELSINKI ACCORDS: SOVIET LAW AND THE HELSINKI MONITORS

---

TUESDAY, JUNE 6, 1978

COMMISSION ON SECURITY AND  
COOPERATION IN EUROPE,  
*Washington, D.C.*

The Commission met, pursuant to notice, at 9 a.m., in room 2212, Rayburn House Office Building, Hon. Patrick Leahy and Hon. Dante B. Fascell, chairman, presiding.

In attendance: Commissioners Leahy, Fenwick, Fascell and Dole.

Also in attendance: R. Spencer Oliver, staff director and counsel; Alfred Friendly, Jr., senior consultant.

### OPENING STATEMENT OF SENATOR LEAHY

MR. LEAHY. Good morning. We will be somewhat limited in the number of Commissioners who will be here this morning from the Senate side. I understand most of the members are going to be in Alabama for Senator Allen's funeral. Chairman Fascell may be joining us for part of the time.

We organized today's hearings in response to really what has been an alarming incidence of judiciary repression against citizens of the Soviet Union who have acted to encourage their country's adherence to the human rights provision of the Helsinki Accords. Over this past weekend, Vladimir Slepak, a member of the Moscow Helsinki Monitoring Group was arrested. In light of this most recent arrest, our presence at this hearing today becomes even more significant for his arrest reaffirms once again the Soviet policy of repression directed at those who call for implementation of the human rights provisions. This arrest provides only the latest example of bias in the administration of Soviet law.

Slepak has been trying to leave the Soviet Union for 8 years. Instead, for proclaiming that desire in a banner held from his apartment balcony, he and his wife face possible 5-year prison terms. The charge is called "malicious hooliganism." The malice, however, is not Slepak's, but that of the Soviet Government. Principles VII and IX of the Helsinki Accords confirm the right of the individual to know and act upon his rights and duties in the field of human rights. At the same time, these provisions also confirm the relevant and positive role that individuals play in the implementation of the Accords.

Acting on the basis of these promises, dozens of individuals throughout the Soviet Union formed affiliated Public Groups to Promote Observance of the Helsinki Agreement. The purpose of these Groups

was to issue open, documented reports on Soviet practices which they believe ran contrary to the Agreement provisions.

For their efforts in relation to these reports, 23 members of the Group have been exiled or imprisoned as of today and sentences have ranged up to 15 years of hard labor or internal exile. And this is allegedly based on Soviet criminal law.

We are fortunate to have with us today a noted Soviet legal expert, Prof. George Fletcher of the University of California Law School, and also three prominent U.S. trial attorneys who have been chosen to represent five of these imprisoned Helsinki Group members: a well-known Washington area lawyer, Edward Bennett Williams, who is representing Aleksandr Ginzburg; Harvard Law Professor, Alan Dershowitz, who is Anatoly Shcharansky's legal representative; and former Attorney general, Ramsey Clark, representing Yuri Orlov and two Ukrainian members, Oleksiy Tykhy and Mykola Rudenko.

Their knowledge of general Soviet legal theory and specific practices as they apply to these individual cases should help focus public attention on how the Soviet Union has been violating not only international law, but its own laws as well, in its treatment of the arrested Helsinki Group members.

In addition, the Commission staff has prepared two reports which we are going to release today as background for the hearing. One is a biography of the 58 courageous men and women who joined the public group and their affiliates throughout the Soviet Union and the other is a detailed and lengthy examination of how Soviet law has been and is being applied to political offenses. The Commission is grateful for the assistance of Dina Kaminskaya and Konstantin Simis, two distinguished Moscow attorneys, who were forced into exile last year. What emerges from the report is that even fair laws are subverted in the process of their application to cases of a political nature.

Soviet law provides strict procedures for conducting house and personal searches. Yet almost every Helsinki Group member has been searched in violation of these procedures. Soviet law provides that persons shall not be kept in pretrial detention for more than 9 months. Yet 10 Helsinki Group members have been detained for 11 months or longer. Soviet law provides defendants in an open trial the right to call defense witnesses, to have friends and relatives observe the trial and to give an uninterrupted final summation. Yet seven defendants in Moscow, Georgia, and Ukraine were denied some or all of these rights during their trial.

Such practices applied only in the cases of those persecuted for their political opinions showed the disdain Soviet authorities have for their own laws and for the principles they promised to uphold in the Helsinki Final Act. They call into question the value of promises the Soviet Government made to its own citizens and to the heads of government of 34 states. They cannot go on unnoticed, in the minds of Soviet citizens, or in the courts of world public opinion.

Our first witness today will be Edward Bennett Williams, the distinguished Washington trial lawyer. He has defended a number of people and has taken on cases where defense has been required, whether the cause had been popular or not, including such people as the late Senator Joe McCarthy, the late Representative Adam Clayton Powell, and labor leader Jimmy Hoffa. Throughout all of these cases Mr.

Williams has upheld the finest traditions of the American Bar, and has done so in a way that all of us who are lawyers can certainly feel a debt of gratitude. All Americans can also. He is now representing Aleksandr Ginzburg who is an imprisoned member of the Moscow Helsinki Group and he is the representative of the Solzhenitsyn Fund for the Aid of Families of Political Prisoners.

Mr. Williams, we are delighted to have you here with us this morning.

### STATEMENT OF EDWARD BENNETT WILLIAMS

Mr. WILLIAMS. Thank you very much, Senator Leahy. I was here just exactly 1 year ago discussing the *Aleksandr Ginzburg* case. I am going to try to not to be repetitive this morning, first of all so that I will not tax your patience and second because it is not necessary to be repetitive. There is a whole new series of outrages that the Soviets have perpetrated in the *Ginzburg* case with which I should like to acquaint the Commission today.

I have prepared a statement and I will confine myself in the economy of time to highlighting that statement for the Commission.

It is now over 16 months since Aleksandr Ginzburg was arrested on his doorstep in the middle of the night by the KGB in Moscow and whisked off to solitary confinement where he has been held incommunicado ever since.

For him, it has been a long and a lonely time, waiting in poor health and in isolation, forbidden all contact with his family, forbidden all contact with counsel, kept ignorant of any charges lodged against him, helplessly awaiting trial, certain conviction and maximum punishment. He has been held, members of the Commission, without charges, without counsel, without bail, without communication, without recourse, and I submit without humanity.

For the friends of Aleksandr Ginzburg, in the Soviet Union and in the West, these past 16 months have provided a chilling example of the Soviet Union's disregard for its own laws and procedures and for the legal rights of its own citizens under the Soviet Constitution. We have seen first-hand their disdain for solemn international commitments. We have seen and we have heard and felt the scorn with which the leaders of the Soviet Union view basic human rights and the most elementary and universal principles of justice.

Many of the facts are already known to this Commission. We know that scores of Soviet citizens, as Senator Leahy pointed out a few moments ago, like Aleksandr Ginzburg, have been arrested and imprisoned because of their beliefs. We know that the Soviet Union has forbidden lawyers from the West to enter the Soviet Union to give comfort and counsel to the families of those prisoners and to the prisoners themselves.

Not one of us in this room representing these dissidents has been given permission to enter the Soviet Union, although each of us has asked. Some of us many times; always we have been told not only no, but that it was arrogant to ask.

We know that the Soviets effectively blocked any effort to discuss the basic human rights provided for in the Helsinki Accords during the Belgrade Conference. They would not even discuss these matters,

although the Belgrade Conference was held to review what had happened to the Accords which had been signed 2 years before.

We know that they have blocked entrance of scholars, legal scholars, preeminent legal scholars, from the West, who have asked simply to come into the Soviet Union to view their legal proceedings. We know that all appeals for leniency and for mercy and for simple fairness have fallen on ears without hearing.

But the case of Aleksandr Ginzburg—with its unprecedented 16-month-long investigation—has provided some new and startling information about the Soviet judicial system. We now know that this investigation has been accomplished by blackmail, by threats, by intimidation, by coercion, and by extortion. We now know that witnesses have been imprisoned during these 6 months because they have refused to give the kind of evidence that the KGB wanted in order to formulate charges against Aleksandr Ginzburg. We know that they have made promises to prisoners now in Vladimir Prison that if only they would give evidence against Aleksandr Ginzburg their sentences would be commuted and they would be released. And I am not speaking without documentation, as I shall show the Commission in a moment.

I want to present to the Commission today the testimony of scores, literally scores, of Soviet citizens who have risked their lives, members of the Commission, in the interest of justice for another. I have here handwritten letters, statements, and declarations that these courageous people have written to me, as Aleksandr Ginzburg's counsel, to tell me of the threats and the coercive techniques used by the KGB in their desperate efforts to formulate a case against Ginzburg. They tell me of a course of conduct that puts all civilized men to shame. Most importantly, they have asked that their testimony be presented, if not to a Soviet court, then to the court of world opinion.

I want to hand up to the Commission this testimony and ask that it be placed in the record of these proceedings.

Mr. LEAHY. Without objection, it is so ordered. [See pp. 10-38].

Mr. WILLIAMS. These people, members of the Commission, have risked their freedom and their lives to make these declarations in the interest of justice for another. This investigation was longer than any that we have known about. It was so long it violated Article 97 of the Soviet Criminal Code. The interviews that were conducted, the investigation that was conducted surpassed in its intensity even the investigations of Yuri Orlov and Anatoly Shcharansky.

Let me describe for you just a few incidents that typify this investigation, hopefully without being repetitive or taxing your patience. On November 11, 1977, Lt. Vladimir Sergheevich Gaydel'tsov, the KGB interrogator in Kaluga Prison where Ginzburg is held, summoned Leonid Borodin, a friend and former campmate of Ginzburg's to Kaluga to be questioned. Borodin refused to give evidence of the kind that Mr. Gaydel'tsov wanted and he was charged with being an uncooperative witness and he is now imprisoned and being held incommunicado.

Another of Ginzburg's friends, Vitaliy Pomazov, tells us in these documents that on November 28, 1977 he was summoned to Kaluga by the same Lieutenant Gaydel'tsov. The KGB official threatened Pomazov and refused him permission to write out his own statement and refused to tell him what the nature of the charge was that they were

investigating vis-a-vis Aleksandr Ginzburg, although Article 160 of the Soviet Code of Criminal Procedure clearly requires that any witness who is interrogated is entitled to know the nature of the accusation which is being investigated by the police.

Between April and May 1977, KGB Captain Obrubov at Vladimir Prison repeatedly summoned Viktor Anisimov to be interrogated. Anisimov is now a prisoner. He has been in prison a long time. He is a political prisoner. He is due to be released in 1989. He was told if only he would cooperate, if only he would sign a statement to the effect that all the information that Ginzburg had gathered and reported about political prisoners in monitoring the Helsinki Accords was false, he would be released. He refused.

In March of this year, members of the Commission, I received a letter dated February 2, 1978, from Aleksandr Podrabinek. That is Document 22 in that packet, that extraordinary packet that I handed up to you. Podrabinek, among other things, says, "I have never met a more honest, noble, and fine human being," concerning Aleksandr Ginzburg. He says, "His merciful activity helping political prisoners and their families was disinterested, generous, self-dedicated and, alas, very dangerous for him. His example is a source of courage and inspiration for many honest people in our country who would consider it an honor to be able to share with him at least part of the torment and suffering. \* \* \*"

Members of the Commission, 45 days later Podrabinek was arrested and incarcerated and he has been held ever since under investigation, incommunicado, without counsel, without charges.

In March 1978, I received a letter from Peter Vins, Document 23 in that packet which I handed up to you. And among other things, he says, "Because a man is kind and loves his fellow men, he is thrown in a damp prison cell. Because he is honest and will not accept evil and violence he is taken away from his friends, his wife and his two little sons." That same month, that month did not end, members of the Commission, it did not come to an end, we did not reach March 31 before Peter Vins was arrested and sentenced to forced labor.

Many other friends and associates of Ginzburg's have sought to testify on his behalf during the investigation in this case. You can see by reviewing that packet. In each instance, their offers have been rejected; we do not want evidence attesting to his good character. We do not want evidence demonstrative of the fact that he has committed no offense other than to express his honestly held opinions and views. All of this, of course, is in violation of Article 46 of the Code of Criminal Procedures which guarantees an accused in the Soviet Union the right to call witnesses in his defense.

Last week I spoke to Aleksandr Ginzburg's mother on the telephone in Moscow. She is over 70 years old and she is in very poor health. She is certain that she will never see her son again. She told me that she has now learned that he will be charged with violating Article 70 of the Soviet Criminal Code which is characterized as the dissemination of anti-Soviet propaganda and that as a second offender, he will receive the maximum sentence of 10 years and thereafter be put into exile for 5 years.

He was tried once before, by the way, and I heard you make reference, Senator Leahy, in your introductory remarks to a Dina Kamin-

skaya. She was the lawyer who participated on behalf of the other defendant when Aleksandr Ginzburg was tried in 1968. When Aleksandr Ginzburg was tried in 1968, he had a lawyer named Boris Zolotukhin. Boris Zolotukhin did an unprecedented thing in an Article 70 case. Instead of standing up in front of the court and asking for mercy, and begging for mercy, he stood up and he asked that his client be acquitted. That was an unpardonable sin for a lawyer given the privilege to try an Article 70 case. Boris Zolotukhin was disbarred. Boris Zolotuksin was expelled from the Communist Party for the arrogance and effrontery of asking that his client be acquitted.

I think you can search the record, you can search through all the annals of Soviet jurisprudence, and you will never find as long as you look the record of an acquittal of anyone charged with an Article 70 violation. Dina Kaminskaya was in that case and when they finally got around to asking Aleksandr Ginzburg, as they were about to tell him what the charges were, if he wanted to confer with counsel, the name on his lips was Dina Kaminskaya. He was never told that I had been retained by his wife and by the Solzhenitsyns to represent him. Naturally, he did not ask for me; he asked for her. And she expressed a willingness—and you know what happened to Dina Kaminskaya. She was thrown out. She is, thank goodness, here in the United States. I wish she were here today so that she could stand up and take the accolade that is entitled to her, but I understand that she is ill and could not be here today.

I have learned now from Andrei Sakharov that there is no longer a possibility for me to talk to Mr. Ginzburg's mother or Mr. Ginzburg's wife because their phones are now gone. I was fortunate enough to have a couple of telephone conversations with his mother and his wife, but that is over. The phones have been disconnected to isolate them from all communication in anticipation of his trial.

Doctor Sakharov also told us that Ginzburg will not be tried in Moscow. He will be tried in Kaluga. And if you think that the Moscow trial of Orlov was cloaked and shrouded in secrecy, if you think that it was conducted *in camera*, if you think that we were excluded from any view or observation of it, wait until you see the Ginzburg trial up in Kaluga. Doctor Sakharov tells us that his family may not even be allowed to attend. You know what kind of justice he is going to get in Kaluga Prison. You can mark his mother's words. I would say this prophecy of hers was a manifestation of excellent maternal prescience when she predicts the outcome with certitude and the length of sentence and the length of the exile. And when she says further that she, as his mother, will never see him again.

That Aleksandr Ginzburg is innocent of any wrongdoing needs no elaboration. He has become a blazing beacon of hope and courage to free men and women everywhere.

As director of the Russian Social Fund, Ginzburg's crime has been to feed the hungry, to care for those in need, and to inspire those otherwise without hope. As a member of the Helsinki Watch Group, Ginzburg's crime has been to speak the truth, openly and without fear. As a devoutly religious man, Ginzburg's additional crime has been to worship his God and to serve his fellow man by the lights that he has been given.

I would like, if I may, to spend my last minute not as an advocate, but as an American citizen and say to the Commission that with the

arrest, the prosecution and the trial and the sentencing of Ginzburg, which is sure to come this month, with the arrest, the prosecution and trial and sentencing of Yuri Orlov and Anatoly Shcharansky, who will be so ably represented by Alan Dershowitz and Ramsey Clark, the Soviet Union will have proven to the world that it has no intention of abiding by its pledges to respect human rights sections of the Helsinki Accords.

The Soviet Union began ignoring its human rights promises the day after the Helsinki Accords was signed. Emigration was curtailed, dissidents were rounded up and refuseniks were harrassed.

What did we get—what did we get—alas, for agreeing to the ratification of the boundaries in Eastern Europe that the Soviets wanted so badly—what did we get? We got a horse laugh. That is what we came away from Helsinki with.

I am sorry to say that I now believe that they have made the Helsinki Accords into a charade. It is time that we recognized that. They have broken their word. I think we should notify the world that insofar as any obligation that we have to them under those Accords, as a declaration of intent, that the U.S. signature is nullified.

I urge the Congress of the United States to pass a resolution urging the President to declare the Helsinki Accords breached by this continued course of arrogant contumacy and that obligations of the United States or the Soviet Union under the Helsinki Accords are annulled.

Thank you, members of the Commission.

[Mr. Williams' written statement follows:]

STATEMENT OF EDWARD BENNETT WILLIAMS ON BEHALF OF  
ALEKSANDR GINZBURG

Mr. Chairman, Members of the Commission: It is now over 16 months since Aleksandr Ginzburg was arrested on his doorstep in the middle of the night by the KGB.

For Aleksandr Ginzburg, it has been a long and lonely time, waiting in poor health and in isolation in a cell in Kaluga Prison, forbidden all communication and contact with his wife, his two young sons, and his aging mother, not knowing what crimes he is alleged to have committed and cut off from the advice and counsel of an attorney, helplessly awaiting a trial, certain conviction and maximum punishment.

For the friends of Aleksandr Ginzburg in the Soviet Union and in the West, these past 16 months have provided a chilling example of the Soviet Union's disregard for its own laws and procedures and for the legal rights of its own citizens under the Soviet Constitution. During these months, we have seen first-hand the Soviet Union's contempt for world opinion and its disdain for solemn international commitments. In these 16 months of Aleksandr Ginzburg's incarceration, we have seen and we have heard and we have felt the scorn with which the leaders of the Soviet Union view basic human rights and the most elementary and universal principles of justice.

Many of the facts are already known to this Commission and to the world. We know, for example, that scores of Soviet citizens like Aleksandr Ginzburg have been arrested and imprisoned because of their beliefs. We know that the Soviet Union has forbidden lawyers from the West to enter the Soviet Union to provide comfort and counsel to the families of those who were arrested. We know that the Soviet Union has blocked all attempts to discuss the human rights provisions of the Helsinki Accords at the Belgrade Conference. We know that the mock trials have already begun and cruel sentences have been imposed. We know that Soviet authorities have forbidden the most distinguished and pre-eminent legal scholars from observing these trials and have also prevented the press from covering these proceedings. We know too that all appeals for leniency, for mercy, and for simple fairness have fallen on deaf ears.



But the case of Aleksandr Ginzburg—with its unprecedented 16-month-long investigation—has provided us with new and startling information about the Soviet judicial system. We know now that the investigation of Aleksandr Ginzburg has been accomplished by blackmail, threats, intimidation, and repeated violations of the Soviet Union's own Code of Criminal Procedure. We know now that some witnesses have been imprisoned for refusing to cooperate with the KGB and that others have been imprisoned for coming forward with testimony in support of Alexander Ginzburg. We know now that promises of commuted prison terms have been made to prisoners in exchange for fabricated testimony. We know now that the investigation of Aleksandr Ginzburg has been a simple, old-fashioned fishing expedition with one purpose only—to keep Aleksandr Ginzburg in jail.

How do we know this?

Today, on the eve of Aleksandr Ginzburg's "trial" in the Soviet Union, I would like to present to this Commission and to the world the testimony of scores of Soviet citizens who have risked their lives and their freedom to obtain justice for Aleksandr Ginzburg. In these handwritten letters and statements, these courageous people have written to me, as Aleksandr Ginzburg's lawyer, to tell me of the threats and coercive techniques used by the KGB, to tell me of their desperate attempts to present evidence on behalf of Aleksandr Ginzburg during the investigation, to tell me of a course of conduct by the Soviet authorities that puts all civilized men and women to shame, but most importantly, to ask that their testimony be presented, if not to a Soviet court, then to the court of world opinion.

Each of these personal statements constitutes an uncommon, indeed, a sublime act of human courage. These people have risked their freedom and their lives to make these declarations in the interest of justice for another. I am presenting this extraordinary packet of documents to the Commission today.

The KGB investigation of Aleksandr Ginzburg was extremely lengthy and wide-ranging, requiring a pre-trial incarceration that violated Article 97 of the Soviet Code of Criminal Procedure. The interviews conducted and the material collected in the course of this investigation surpassed in volume the material collected during the Orlov and Shcharansky investigations. The KGB sought evidence of a number of different alleged crimes ranging from speculation in foreign currency and murder to drunkenness and "parasitism."

Let me describe just a few incidents that typify this investigation. On November 11, 1977, Lieutenant Vladimir Serghyevich Gaydel'tsov, the KGB interrogator in Kaluga in charge of the Ginzburg investigation, summoned Leonid Borodin, a friend and former campmate of Ginzburg's to Kaluga to be questioned. Borodin refused to cooperate and was sentenced to 6 months of forced labor for violating Article 182 of the Soviet Criminal Code (Refusal to testify).

Another friend of Ginzburg's, Vitaliy Pomazov, reports that on November 28, 1977, he was summoned to Kaluga by the same Lieutenant Gaydel'tsov. The KGB official threatened Pomazov and refused him permission to write out his own statement, in violation of Article 160 of the Code of Criminal Procedure. In addition, Pomazov was not informed of the offense that was being investigated.

Between April and May 1977, KGB Captain Obrubov at Vladimir Prison, repeatedly summoned Viktor Anisimov to be interrogated. Anisimov is a political prisoner serving a term which expires in 1989. Anisimov was promised a sharp reduction in his sentence if he would sign a statement to the effect that all the information about political prisoners gathered and reported by Ginzburg and the Helsinki Watch Group was false. Anisimov refused.

Soviet citizens who have publicly registered their support for Aleksandr Ginzburg have also suffered.

In March 1978, I received a letter dated February 2, 1978, from Alexander Podrabinek in which he states of Ginzburg:

"I have never met a more honest, noble and fine human being. His merciful activity helping political prisoners and their families was disinterested, generous, self-dedicated and, alas, very dangerous for him. I know that his example is a source of courage and inspiration for many honest people in our country who would consider it an honor to be able to share with him at least part of the torment and suffering the regime has in store for him."

On May 16, 1978, Western journalists reported from Moscow that Mr. Podrabinek had been arrested.

Also in March, 1978, I received a letter from Peter Vins, who wrote:

"Because a man is kind and loves his fellow men, he is thrown in a damp prison cell. Because he is honest and will not accept evil and violence he is taken away from his friends, his wife and his two little sons."

That same month, Peter Vins was arrested and sentenced to forced labor.

Many other friends and associates of Ginzburg's have sought to testify on Ginzburg's behalf during the investigation and at trial. In each instance, their offers have been rejected, thus violating Article 46 of the Code of Criminal Procedure.

Finally, Kiril Vladimirovich Uspensky, another friend of Ginzburg's provided this description of Alexander Ginzburg's life just before he was arrested, giving us an unusual insight into KGB surveillance techniques:

"Ginzburg was surrounded by spies using the most modern technology, eavesdropping devices inside the house, highly sensitive telescopes and microphones from the houses across the road from his. He was being constantly summoned to the militia and the KGB offices where they would try to intimidate him.

"But this sick man never lost his characteristic courage and spiritual strength, and when friends made gloomy prophecies predicting his arrest, he would counter with jokes."

These are but a few of the incidents reported to me over the past 16 months.

Just last week, I spoke with Aleksandr Ginzburg's mother over the telephone in Moscow. She is over 70 and in very poor health, and she fears that she may die without ever seeing her son again. She told me that she had learned that Alik would be charged with a violation of Article 70 of the Soviet Criminal Code, that is, distributing anti-Soviet material, and that he would receive the maximum sentence as a second offender of 10 years imprisonment under the most punishing conditions—the notorious "special regime"—followed by 5 years of exile in a distant province should he survive his imprisonment. His mother was totally distraught.

More recently, I learned from Andrei Sakharov that the telephones of Alik Ginzburg's wife and his mother had only recently been disconnected to isolate them from all communication in anticipation of the trial. Dr. Sakharov told us further that Alik would be tried in Kaluga far away from the reach of the Western press, and that all friends and correspondents would be prevented from traveling to Kaluga to attend the trial. As with the trial of Yuri Orlov, only a handful of selected officials will be permitted to attend, and, according to Dr. Sakharov, there is considerable doubt whether Ginzburg's immediate family will even be allowed entry into the courtroom.

That Aleksandr Ginzburg is innocent of any wrongdoing needs no great elaboration. That he has become a blazing beacon of hope and courage to free men and women everywhere goes without saying.

As Director of the Russian Social Fund, Aleksandr Ginzburg's crime has been to feed the hungry, to care for those in need, and to inspire those otherwise without hope. As a member of the Helsinki Watch Group, Ginzburg's crime has been to speak the truth, openly and honestly. As a devoutly religious man, Ginzburg's crime has been to serve his God and love his fellow man.

If the Soviet Union carries out its plan to punish Aleksandr Ginzburg, it will itself guarantee that people throughout the world and for all time will remember what Aleksandr Ginzburg's crimes really were. As Chief Justice John Marshall once wrote:

"There are certain great principles of justice whose authority is universally acknowledged. Nations may differ from each other in condition, and that of the same nation may change by the revolutions of time, but the principles of justice are the same. They rest upon a base which will remain beyond the endurance of time."

Before concluding, I would like to speak briefly as an American citizen.

With the arrest, prosecution, trial and sentencing of Aleksandr Ginzburg, Yuri Orlov and Anatoly Shecharansky, the Soviet Union will have proven to the world that it has no intention of abiding by its pledges to respect human rights as set forth in the Helsinki Accords.

The Soviet Union began ignoring its human rights promises the day after the Helsinki Agreement was signed. Emigration was curtailed, dissidents were rounded up and jailed, and refuseniks were harassed.

What did we get for agreeing to the ratification of boundaries in Eastern Europe that the Soviets wanted so badly—a horse laugh.

The Helsinki Accord is a farce and a charade. It is time it is recognized as such.

The Soviets have broken their word. We should notify the world that the U.S. signature is nullified.

I therefore urge the Congress of the United States to pass a resolution urging the President to take such action.

## [Materials submitted by Mr. Williams follow:]

*(The Russian originals of most of the documents which follow are available from the Commission files)*

## DOCUMENT No. 1

The arrest of Alexander Ginzburg, main representative of the Russian Social Fund in the USSR, is not the usual act of violence against a single dissident, it reflects the decision of the Soviet authorities to crush by hunger and poverty hundreds of families of persecuted and imprisoned people and to force thousands of others into fear and silence. This act of violence concerns Western people more than can be imagined at first glance. It is an essential link in the unflinching total preparation of the Soviet home front so that it should not in any way hinder the external offensive conducted so successfully during these years and which will yet be broadened: against the strength, the spirit and the very existence of the West.

February 4, 1977.

ALEXANDER SOLZHENITSYN.

## DOCUMENT No. 2

To: The Substitute Procurator in charge of controlling the KGB.

To: The KGB prison administration.

From: Irina S. Zholkovskaya, Moscow, Ul. Volgina 13 kv. 31.

## COMPLAINT

Concerning the behavior of the administration of the Kaluga KGB prison for pre-trial investigation.

On February 3, 1977 the KGB in Moscow arrested my husband Alexander I. Ginzburg and on the same night they sent him to Kaluga, to prison No. 12 37/1. On the next day, February 4, I took a food-parcel to the prison; a month later, on March 4, I took there my second parcel (one a month is allowed.) I live in Moscow, with my two little children, 2 and 4 years old, so I have to buy all the food products for these parcels in Moscow. In purchasing such products I follow the indications given on the list of allowed products which hangs in the Kaluga prison, precisely in the room where you have to go to leave your parcel. On April 5 I again went to the Kaluga prison with my monthly parcel and to my great surprise I discovered that they would not accept products which they had taken on the previous occasions. They would not accept cookies bought in Moscow (declaring that they were "home-made" and contained raisins) a 100-gram can of fish (on the grounds that "the doctor doesn't allow that", cheese (because it was soft cheese) candy (because it hadn't been bought in Kaluga) parsley and dill (without any explanations). The prison employee receiving the parcel told me that sausage was not allowed unless it was Soviet made and that if I brought Finnish sausage (as on the previous occasions) they would not take it. In Moscow stores you sometimes can buy Hungarian apples or Bulgarian tomatoes: does that mean that the Kaluga prison authorities will not allow them either? I also brought some school-copybooks for my husband, but they refused to take them, although copybooks are listed as permitted. Their explanation was: if it is necessary, he will get some from us. They also refused to take a pair of trousers, though I explained that he had been arrested wearing a pair of old and almost torn trousers.

Finally they proceeded to explain to me that they would accept only products bought in Kaluga. This is particularly absurd if you consider that there is almost nothing you can buy in Kaluga. Thus, in the large supermarket Voskhod the saleswoman told me on April 5 that they had not had any cheese for about three months.

I tried to get in touch with the prison manager Kuznetsov and with investigator Oselkov but they both refused to see me.

This situation is particularly cruel in view of the fact that my husband was sick when he was arrested. He had been treated in hospital for pneumonia, a TB condition and a bad case of stomach ulcer and his treatment had not been completed.

The behavior of the Kaluga KGB and prison personnel is inhumane and illegal. I demand your intervention. I also ask you to give the necessary instruc-

tions so that the products which were illegally refused on April 5 be accepted without waiting until the next scheduled date. This is necessary in view of my husband's physical condition.

April 11, 1977.

(Signed) IRINA ZHOLKOVSKAYA.

---

DOCUMENT No. 3

To: The Supreme Soviet of the U.S.S.R.

COMPLAINT

On June 21, 1976 (i.e. 17 months ago) my home telephone was suddenly disconnected. My phone number was 129-46-35. I never received any explanations as to the reasons why it was done although I complained both to the town sector and to the city telephone exchange, as well as (repeatedly) to the ministry of communications. I have to assume that the telephone was disconnected after my husband, Alexander Ginzburg (now arrested and charged with anti-Soviet propaganda under article 70 of the Criminal Code of the RSFSR) had talked to Natalya Solzhenitsyn, wife of Alexander Solzhenitsyn, the writer who was exiled from the USSR. However, none of the offices where I complained ever gave me any official reply. During the past months I have been asking in vain that my telephone be connected again. I live alone with two small children (5 and 3 years) and I need the telephone badly. For 17 months I have been paying the monthly amount due as if my phone had been working, because I know of cases when telephones had been taken away because people had not thought it necessary to pay for a disconnected telephone: this was used as an excuse not to restore the connection.

I know that according to Soviet internal regulations the authorities may disconnect telephones if citizens are using them for conversations which "damage the prestige of the Soviet state." It is also true that Soviet law forbids to listen in on citizens' conversations. However, be that as it may, the same internal regulations prescribe a maximum period of disconnection of one year. If a telephone is being taken away forever, which may happen for the same reason, the authorities are required to notify the owners. I was never informed or notified of any such decision. When I managed, after many vain attempts, to be received by the manager of the telephone exchange of the Cheremushkino town sector, he told me that my telephone would be connected after June 21, 1977. Nothing happened however. I have been writing and sending endless complaints on this matter. According to Soviet law, official institutions are required to answer citizens' complaints within two weeks, one month if it is a particularly difficult case. Obviously laws are not the same for everybody. I received no answer to my letters to the telephone administration or to my complaints to the ministry of communications. Therefore I have to ask you to do something about this matter, so that this illegal situation comes to an end and my telephone will finally be given back to me. I am sending a copy of this letter to the commission on violations of postal and telephone rules at the Belgrade conference which is checking the implementation of the provisions of the Helsinki Agreement, which was signed also by the President of the Supreme Soviet L. I. Brezhnev.

November 30, 1977.

IRINA ZHOLKOVSKAYA.

---

DOCUMENT No. 4

To: The Head of Prison IZ 37/1

Kuznetsov.

From: I. S. Zholkovskaya.

STATEMENT

On February 3, 1977 my husband A. I. Ginzburg was arrested under article 70/2 of the Criminal Code of the RSFSR and jailed in your prison. 10 months have passed since then. During all this time I repeatedly tried to send him a pair of trousers and a shirt. He was wearing old clothes when he was arrested and by now they must be completely torn. I also wanted to send him a jersey slack suit. I was continuously denied permission to send him any of these things.

On December 5 I shall be sending my husband his monthly package. I ask you to allow me to send my husband:

- (1) a pair of trousers;
- (2) a shirt; and
- (3) a slack suit.

If the reason for the previous denials is that fact that my husband has other things which he does not need, I am ready to take them all.

IRINA ZHOLKOVSKAYA.

P.S. On December 5, Major Kuznetsov gave the necessary order and after a ten-month struggle the prison administration finally accepted from me, to be given to Ginzburg, a pair of trousers, a shirt, one change of underwear and one pair of warm socks.

#### DOCUMENT No. 5

Below is a summary of official complaints, lodged by Yuri Mnyukh with the Motor Vehicle Commissioner of the Kaluga Region and by Vera Lashkova with the Commissioner, with the head of the KGB, Andropov, and with the Special Administrative Supervisory Sector of the Central Committee of the communist party. (*The full texts in Russian are in the Commission files.*)

These two individuals were among those who used to drive Mrs. Ginzburg to Kaluga whenever she had the use of a car, on the days when she was permitted to leave a parcel for her husband at the prison (once a month). Obviously her movements were watched closely enough for the KGB to know exactly when, how and with whom she would be going. Instructions were issued to the Kaluga police so that every time a police car would meet Mrs. Ginzburg's party outside of town and start harassing them there and then. They would be stopped and the driver issued a warning for some fantastic reason: speeding when they were driving at 30 km. an hour, or stopping in a forbidden place after the policeman had signalled them to stop there, etc. A warning in the Soviet Union is issued by punching a specially designated part of the driver's license. Once it has been punched three times, the license is revoked, so that it is a very serious threat; in this case it was used to frighten off those who would help Mrs. Ginzburg and to harass her and her friends. All the complaints point out that every time police blatantly violated Soviet laws, but they were obviously obeying orders which they can neither contradict nor resist.

#### DOCUMENT No. 6

STATEMENT FOR THE PRESS BY IRINA ZHOLKOVSKAYA GINZBURG AND IRINA ORLOVA

Eight months have passed since our husbands were jailed. We don't know whether they are alive or not, whether they are in good health, we don't know what the charges against them are. We don't know anything at all about their fate.

Fully disdaining public protest in our country and throughout the world, the Soviet authorities silently prepare the lynching of Alexander Ginzburg and Yuri Orlov.

On October 4, the opening day of the Belgrade conference, we shall go on a hunger strike.

We ask for the release of our husbands.

We ask that the inhuman treatment inflicted upon our husbands and their families finally be stopped.

September 26, 1977.

IRINA ZHOLKOVSKAYA.  
IRINA VALTOVA ORLOVA.

On the opening day of the Belgrade Conference which is meant to check the implementation of the Helsinki agreements, October 4, 1977, we proclaim a one-day hunger strike to protest against the arrest and sentencing of several members of the Helsinki agreement monitoring groups in the USSR and also as a sign of our solidarity with all those persecuted for their ideas and their faith.

(Signatures: 54 names).

## DOCUMENT No. 7

## OPEN LETTER FROM ALEXANDER GINZBURG'S MOTHER

I am addressing all people of good will in our country and abroad. My son Alexander Ginzburg has spent one year in the KGB's torture chambers. I know absolutely nothing about him. I don't know what his health condition is or how he is being treated.

I have lived sixty years under the Soviet regime and this long experience has made me wise. I know very well what terror means. They now call it Stalinist terror. People kept disappearing around me. Later on they were rehabilitated, that is the state itself admitted that they had been innocent. All this gives me sufficient grounds for frightening prognoses.

Alik was sick when they arrested him, barely a week after his discharge from hospital. The diagnosis had been a very preoccupying one, they were talking about tubercular condition. His temperature would rise every day. Besides, his old ailments—stomach ulcer and inflammation of the pancreas—had again become acute. Both are a consequence of his term in the Vladimir prison.

You can well understand how terrible it is for us not to know anything about his physical condition for an entire year. All the thoughts that come to one's mind during endless sleepless nights and days full of anguish. Once a month we take a food parcel to the prison: ten pounds of food products allowed by the prison rules. We leave our parcel at the prison office window. That's all we can do. And hope that he will be given our parcel. We cannot be sure because we never get a message from him and they don't even show us his signature as confirmation of receipt.

For a long time, ten months, we had applied in vain for permission to send him some clothes and underwear. For ten months such permission had been denied. And so, of course, a terrible doubt would arise: Is he still alive? In November 1977 they allowed us to send him a pair of trousers and a shirt. But there is nothing to confirm that he has received them.

My daughter-in-law Irina does all she can possibly do. Her efforts are ceaseless but, alas, vain. My grandchildren, their children, are growing. Sanya is now 5, Alyosha is 3. They are beginning to understand many things. They are waiting for their father. And we all live only on hope. Justice must triumph.

We deeply trust in your help.

February 2, 1978.

LUDMILA GINZBURG.

## DOCUMENT No. 8

(Copy for Mr. Williams)

To: The Supreme Soviet of the U.S.S.R.

Article 34 of the Basic Principles of Criminal Procedure (dated December 25, 1958) proclaims that pre-trial imprisonment may not exceed 9 months. No law and no Article of the constitution foresees any legal possibility of an extension of this period.

Article 156 of the Constitution of the USSR proclaims all citizens' equality before the law and before the courts.

In view of the above, my husband's pre-trial imprisonment in excess of nine months is unlawful and a violation of our constitution.

My husband, a very sick man, has been in jail for over 11 months. During these 11 months he has not been allowed to see me or our two little sons. He has not been allowed to see anybody. I have not received one single letter from him and have not been permitted to write him. I do not know what his physical condition is. He has not been allowed to see a lawyer.

I insist that my husband be released from jail immediately.

January 10, 1978.

(Signed) IRINA ZHOLKOVSKAYA GINZBURG,  
Moscow, Ul. Volghina No. 13, apt. 31.

## DOCUMENT No. 9

(Letter to Attorney Williams)

DEAR MR. WILLIAMS: I know that you kindly agreed to defend my friend Alexandr Ginzburg. I have no possibility whatsoever of openly defending him in my country; I tried to do so, writing open letters to the media, but never received any answer—of course. I therefore decided to write you a letter which you may use as the testimony of a witness.

I have known Alexander Ginzburg's wife and mother since 1969. As to him, I met him for the first time on January 23, 1972, two days after his release from the Vladimir prison. Since then, our encounters have been frequent and we became close friends. My 17 year old son and I often spent our summer vacations in Tarausa with the Ginzburg family, we often visited them in Moscow and he with his wife and eldest son came to visit me in the city of Gorky, where I live. I am writing all this to show how intimately I am acquainted with this family and their way of life.

I am well acquainted with all the difficulties Alexandr Ginzburg experienced when trying to find work. An accusation of parasitism against him would be simply ridiculous<sup>1</sup> as such a thing is contrary to his nature. He is an exceptionally active and energetic man. I personally witnessed the construction of his "house": he bought a ruined one-room old peasant hut, completely rotten, (13 square meters) and using bits of material which other people had thrown away he repaired it and made it fit for living, working on it personally day and night, without any help. There is a tiny plot of land in front of the hut on which one apple tree and two cherry trees grow. The KGB is now presenting this as a "summer residence" and a "country property". Rumors are also being spread about his wife's flat in Moscow which was bought "in a mysterious fashion" and maybe even "using money belonging to the Russian Social Fund". I declare (and this can easily be proved) that Mrs. Irina Zholkovskaya Ginzburg bought this one-room flat out of her salary as a teacher of the Moscow University before she was married to Alexander. Later on, when the second child was born, and they naturally needed more space, a 2-room flat went on sale in the building where they lived and they exchanged their flat for it, paying the difference out of the proceeds of the sale of books which were their personal property and which they sold through official legally authorized channels—a book resale store belonging to the state. As to the automobile they own, it was a gift from Natalya Solzhenitsyn's mother, Mrs. Svetlova, who gave the Ginzburgs her car before leaving the Soviet Union.

I was with the Ginzburgs often enough to see how well liked and respected he was by his neighbors, his fellow-workers and all those who ever met him. But I can well imagine that now under KGB pressure people will be speaking about him differently.

I also declare that they lived in an exceedingly modest way and often had to go even without the most necessary things. I am therefore particularly indignant at the KGB campaign trying to present him as a parasite and a debauchee.

He was a tender loving caring father. No matter how tired and how busy he was, he always dedicated much attention and all his free time to his children. They have not seen him for four months now but he is always present in all their conversations and games, although at their age (2 and 4) children forget easily.

And now I would like to speak about his health. I have been a witness during the past years to his sufferings from an ulcer which was very difficult to treat; every spring and every fall it would become particularly virulent and he would be forced to lie down. During the time of our acquaintance Alexander also was sick with pneumonia several times. It goes without saying that his physical condition is a consequence of labor camps and of the Vladimir prison. When they arrested him this time he was sick, suffering from unhealed bronchopneumonia and there is no way of knowing what state he may be in now. He needed a hospital and instead he was thrown into jail; a prison bunk instead of a hospital bed, wardens in place of doctors. And what was his crime? It was charity! Helping innocent victims of persecution. Alexandr Ginzburg helped not only prisoners but also

<sup>1</sup> "Parasitism" is a special type of crime existing only in the Soviet Union. Whoever does not hold an officially approved and registered job is a "parasite" and as such can be exiled, or jailed, or sent to forced labor. This clause of the Code is frequently applied against those who are unable to find a job because they are considered ideologically unreliable. It is a stratagem to get rid of potential critics without actually mentioning politics or ideology.

their children, mothers and wives. He helped me, too. I am the wife of a political prisoner. He always helped me. Even before the Solzhenitsyn Fund was created I found support and compassion in his family. Many people looked to Alexandr Ginzburg for help and always received it, together with human attention and care. He carried a huge burden and we realize this with particular clarity now that he has been taken away from us.

I would like to add that I have relatives in the United States who can identify me and confirm many of the facts of which I write. My brother with his wife live in Boston. This is their address:

Mikhail Pankratov and Elena Semeka Pankratov, 3 Fifield Street, Watertown, Ma. 02172. Tel. (617) 926-6238.

May 1977. City of Gorky, Ulyanov Stret No. 12 apt. 12.

Respectfully yours,

(Signed) SVETLANA PAVLENKOVA  
(born Pankratova).

#### DOCUMENT No. 10

#### MALVA LANDA'S STATEMENT ON ALEXANDR GINZBURG

For a year and a half or two years prior to his arrest I was on close terms with the Ginzburg family and frequently visited their home, where I sometimes spent a long time. I watched Ginzburg within his family and with other people: former political prisoners, among them Alexander's fellow-inmates, relatives of political prisoners, and also other people who wanted to help the innocent victims of harassment and persecution, defend human rights, denounce vices or the viciousness inherent to the system itself.

Alexandr Ginzburg always was available to everybody: to those who came simply to see him and talk, and to those who needed help, support and advice. He was invariably patient, understanding, tolerant, kind, wise and extremely modest and self-effacing. He never told anybody what to do or how to do it. But a flow of kindness and wisdom emanated from him. The only person for whom he never had any time was himself. No time and no energy to take care of food, clothing, even of his health. This was a deliberate conscious choice of a way of life. It often happened that only late at night would he have a free moment to eat a dish of soup or a loaf of bread with milk. He was usually unable to go to bed before midnight and he always got up around six o'clock in order to help his wife with the small children and with house hold chores.

He never complained about his health, but he often was in severe pain due to his ulcer, a consequence of his camp term from 1967 to 1971. Many of his nights were simply sleepless because of the pain. But people coming to see him and ask for his help never heard a word about it from him.

Alexandr Ginzburg is a highly intelligent, talented and capable man. He deliberately renounced what may have been a brilliant career simply because in our system anybody, and especially an intellectual, in order to be given a responsible job and a chance of advancement first of all has to subordinate his conscience to the regime's will. This he would not do. Being a very capable man and an excellent worker, he performed all sorts of odd manual jobs with great skill, thus earning some money for his family. He was unable to obtain any stable job anywhere because nobody under our system will employ a dissident, a nonconformist, a person who places his conscience above the ideology imposed by the regime. And he consistently refused to accept even the smallest pay for the task he performed in managing the Russian Social Fund, although this task took up much of his time and energy. All this was perfectly natural to him. This is the kind of man he is.

We often talked about persecuted people in our country, about those in need of help. He knew hundreds of cases, of names, of human fates. The two of us together wrote several appeals and several documents for the Helsinki Agreement monitoring group in our country. There were so many episodes of ruthless, merciless cruelty and appalling persecution and we felt it was our duty to inform the world about them. We wrote specifically about the conditions of life of prisoners of conscience in our country. We were always in a terrible hurry because we realized that any day may have been the last one for us. We both wanted to accomplish something before we were stopped and muzzled.

Among Alexandr Ginzburg's friends, among those whom he tirelessly assisted, there were people belonging to all the ethnic groups living on the territory of our



country. There were people belonging to all social, educational categories, people still learning or holding jobs and people who had been thrown out of school or out of work because of their nonconformism, often simply because they openly professed their religious faith. To all of them, he was simply Alik. At present, a massive intensive slanderous campaign is trying to smear this name with mud.

There was no common ideology to unite people around Alik. He was surrounded by persons of various creeds and opinions. What mattered, the only determining criterion was one basic principle: refusal of violence, lies, hypocrisy, intolerance; defense of the freedom of conscience, of thought and word. Respect for human personality. And the desire to help all those unjustly persecuted, arrested, jailed. A steadfast decision to resist an inhuman state.

Speaking of friends who were in jail, in labor camps, in psychiatric hospitals or in exile, of those who are in particular distress, Alik used to say "let's wish success to our hopeless cause". But he never acted as if it were hopeless. He realized perfectly well that the regime was going to get even with him and that when the time came they would be entirely ruthless. During the months preceding his arrest he felt that it was coming. But there was not the slightest change in his state of mind, in his behavior. He did not for a second regret the choice which he had freely made and subsequently confirmed with every action at every hour of his life.

Any human being's destruction is a calamity. But it is a catastrophe and a threat to all mankind when the best, kindest and noblest people are deliberately and silently destroyed. And that is what our regime is out to do: "weed so thoroughly that nothing will ever grow again" is the official formula used by our Communist party.

Alik believes that what he has done will not be in vain, that the words he said and wrote will find an echo in many people's hearts and minds and that these people will be willing to help and defend innocent victims of persecution.

June 21, 1977.

(Signed) MALVA LANDA.

---

#### DOCUMENT No. 11

DEAR MR. WILLIAMS: I think that my testimony may prove useful to you in your defense of Alexandr Ginzburg.

I have known Alexandr Ginzburg since 1959, i.e. almost twenty years. I made his acquaintance when he came to Leningrad in order to collect materials for the typewritten poetical journal he was editing under the title *Syntaxis*. I believe it must have been, chronologically, the first samizdat publication in our country. It was not at all political or in any way "anti-Soviet". Alexandr Ginzburg, who at the time was studying journalism at the Moscow State University, simply wanted certain poems published, even if it was a mere 10 to 15 copies, poems by young contemporary authors, most of them belonging to his generation, who could not get their words officially published for purely formal reasons. Naturally, no commercial or prestige considerations were linked to the whole idea of this publication.

At that time Ginzburg impressed me most favorably. He had a great personal charm and a noble and disinterested love for poetry. He was very well acquainted with Russian poetry, he knew a number of poems by heart and was eager to discover new unknown poets. If he had been allowed to lead a normal life. I feel sure that he would have become a talented and outstanding editor and organizer.

He came to see me several times and I let him copy from my collection such poems which he liked, some of which have become widely famous since. There was not one single poem which could have been termed "anti-Soviet", in spite of all the vagueness of the term itself.

Maybe six months after these encounters with Ginzburg I was arrested by the KGB, charged under what is now article 7 of the Criminal Code. When the investigation of my "case" was finished, I was unexpectedly summoned for questioning by a major, a KGB investigator "for particularly important cases" who had come from Moscow on purpose and whose name I forget. The subject of the questioning was Ginzburg's "case"; charges against him were under the same article—i.e. "anti-Soviet propaganda", of which he had allegedly made himself guilty by publishing the typewritten journal of poetry.

It is interesting to note that neither Ginzburg nor I had ever mentioned our encounters during the investigation, but the KGB knew about them; they had

obtained such information by means of electronic eavesdropping, which had been taking place in my apartment for a number of years prior to my arrest.

Because he had edited and published this perfectly innocent poetry magazine, Ginzburg was sentenced to two years of forced labor in a camp. Enough is known about his second arrest, and besides in those years we did not meet. We met again after Ginzburg had served his second term. We used to meet in Tarusa, where Ginzburg was forced to live; sometimes we met in Moscow, and once or twice at my home in Leningrad.

In summer 1975 I spent about two weeks in Tarusa as a guest of the Ginzburg family. That was the time when I became thoroughly acquainted with the huge work Ginzburg was performing as distributor for the Russian Social Fund, or the "Political Red Cross", as it is widely known among political prisoners. Ginzburg was a very sick man; he was being constantly harassed by the management of the institutions or concerns he was working for: they would always assign him the hardest jobs, which doctors would not allow him to handle; they would always threaten that they would fire him, and then they would really fire him, and he would then be in danger of being declared a "parasite" and prosecuted as such. He was surrounded by spies using the most modern technology, eavesdropping devices inside the house, highly sensitive telescope and microphones used from the houses across the road from his. He was being constantly summoned to the militia and the KGB offices where they would try to intimidate him. This sick man never lost his characteristic courage and spiritual strength and when friends made gloomy prophecies, predicting his arrest, he would counter by jokes. He was resolutely against any idea of emigrating to the safety of the West. And alone he managed a huge job which not all Soviet institutions could master. He kept in mind several hundreds of names and addresses of people who needed the Fund's help. He remembered what had been sent to whom of them, and what should yet be sent; he remembered who had children, among the political prisoners or those jailed for their religious beliefs, what was their age, what sort of clothes they needed, or what gifts they would like to receive for Christmas. Later on, in Spring 1976, the Group to Promote the Implementation of the Helsinki Accords was formed and at that time Ginzburg and Orlov became the real soul of this group. Information on human rights violations was invariably routed to them and they were the ones who insisted that such information should always be painstakingly checked before being published in the Group's official documents.

I, who watched his activity and was present at many of his meetings with people who used to come from all parts of the country to see him, often really felt that it was not one man I had in front of me, but a huge institution with a huge staff I could not see!

And at the same time Alexander Ginzburg as I knew and know him is a charming and extremely modest, fine person, a deeply believing Christian, a man who is genuinely fond of his family. For twenty years now he has dedicated his entire life to the service of justice and goodness. For such service, he already has had to spend seven years in jail and in forced labor camps. A new jail term is now in store for him, and if we think of the state of his health and of the conditions in Soviet jails, it becomes clear that he will hardly be able to survive.

May 25, 1977.

KIRILL VLADIMIROVICH USPENSKY

(K. Kostsinsky).

*Kanal Griboyedova 34 apt. 21, Leningrad 23, U.S.S.R.*

---

DOCUMENT No. 12

To: Alexander Ginzburg's lawyer, Mr. Williams.

I know that you were kind enough to accept the defense of Mr. Ginzburg and I believe that my testimony may be useful in obtaining justice. Therefore, I am hereby informing you that I and my family received material help from the Fund managed by A. I. Ginzburg. This help was given unconditionally, *not* in exchange for anything.

VALERIY RONKIN, locksmith,

*Novaya Str. No. 21 Apt. 49, Luga-Zaklinskye,*

*Leningrad Region, U.S.S.R.*

## DOCUMENT No. 13

DEAR MR. WILLIAMS: In connection with the article signed Petrov Agatov about Alexander Ginzburg, which was published by the weekly *Literaturnaya Gazeta*, I assume that the signer of the article will be produced as a witness at the Ginzburg trial and his testimony will be like the article. Since I am not sure at all that I shall be offered a chance to testify, I wish to send you this letter which you can use in the way you consider best and you can request that I be summoned to testify for the defense.

I met Alexander Ginzburg in summer 1968 in the forced labor camp for political prisoners ZhKh 385/17-A in Mordovia. Since then we have always been friends.

Being closely acquainted with Alexander, I can affirm that everything written by Petrov Agatov is a lie from the beginning to the end.

I can assure you that the defendant whom you assist is characterized by his deep sense of justice, his capacity for true compassion with other people's ordeals, his kindness and his personal courage together with modesty and absence of any rhetorics. It is difficult for me at this time to remember dates and details of every conversation in which Ginzburg took part. But I do remember that once in camp, when one of the prisoners, driven to despair by our "educators", said that the day will come when all KGB people will be destroyed, Alexander answered: "If that ever happens, I shall still be fighting against murder and violence, no matter who is the victim. My arms are my pen and my camera".

Wherever violence was being exercised (the Chinese cultural revolution, Soviet occupation of Czechoslovakia or political repression in Chile) Ginzburg always condemned it. It is a lie that Ginzburg gave money out of the Fund's resources on political conditions. In summer 1976, while talking to him about the Solzhenitsyn Fund, I asked him: "Do you also help police informers' families?" He answered: "Of course. Their children are innocent, aren't they?"<sup>2</sup>

Because he wanted to help all those who are unhappy and was quite unable to say no to somebody in need all sorts of Petrov-Agatovs and similar individuals could approach him. Now they can calumniate him using the fact of their acquaintance.

Respectfully,

VALERY RONKIN

(former political prisoner now living in Luga).

Zaklinye, Ul. Novaya 21/49.

## DOCUMENT No. 14

DEAR MR. WILLIAMS: I am writing you because you are Alexandr Ginzburg's lawyer.

I was sentenced back in 1970 in the town of Kaluga (I was in jail there in the same prison where Ginzburg now is) as per article 190-I of the RSFSR Penal Code to 5 years of deportation. My crime: I had passed on *samizdat* publications (*samizdat*, meaning literally "self-published", can be anything, from a poem or a tale to an open letter or an essay, which state-owned and controlled Soviet publishing houses or media will not publish and which is circulated in handwritten or typewritten copies. Translator's note).

My wife and small son joined me in the place where I was confined, in the Tyumen Region. After the Russian Social Fund was founded, we received regular material help from it. After my deportation term expired, in 1975, we continued receiving help from the Fund. At the time I met Mr. Ginzburg personally (I had only heard about him from mutual friends up to that time, and also read a lot about him in the Soviet press). I visited him at his home and was deeply impressed by his tender love and attention for his children (usually none of us has too much time for our children . . .). There are few people as pure in heart and morally beautiful as Ginzburg.

The help I and my family received from Ginzburg never was tied to any conditions. Later on, when we started earning money again we were able to contribute to the Fund ourselves and were happy to do so because we knew that our modest offerings would help political prisoners' families.

<sup>2</sup> The author refers to prisoners in forced labor camps who, in order to obtain slightly better living and working conditions or in the hope of being released earlier agree to inform camp authorities and the camp KGB denouncing fellow-inmates, for instance, for anti-Soviet conversations, for rebellious moods etc.

It is against the traditions of the democratic dissident's movement in our country to ask for something in exchange for help or to limit it to people of a specific political or ideological trend.

I am prepared to repeat this testimony on Alexandr Ginzburg at a trial or a public hearing. My wife can also testify. If necessary we can supply concrete details.

(I am an emigré and I just arrived from the U.S.S.R.)

October 14, 1977.

Respectfully yours,

BORIS BORISOVICH WEIL,  
XVI Blumberggasse 4/12, 1160 Vienna, Austria.  
tel. 466 53 94.

DOCUMENT No. 15

OCTOBER 31, 1977.

From: S. Pirogov, Olgasr. 63, 7000 Stuttgart, Bundesrepublik Deutschland.

DEAR MR. WILLIAMS; I was prosecuted and sentenced in the Soviet Union for political reasons and I was assisted by the Russian Social Fund which was selflessly and honestly managed by A. I. Ginzburg. I am writing to you about it because you are his lawyer and because the KGB is attempting to smear his personal reputation and his humanitarian activity.

It goes without saying that no strings whatsoever were attached to the help I received. It was fair and unconditional.

I am prepared to testify officially on all the above should it become necessary.

Respectfully yours,

S. PIROGOV.

(Translator's note: Mr. Pirogov emigrated from the Soviet Union recently and now lives in Western Germany at the above address.)

DOCUMENT No. 16

DEAR MR. WILLIAMS: I know that you have kindly accepted to defend A. J. Ginzburg and I hope that my testimony will be useful to you in the fulfillment of this noble task.

My name is Valeria Ivanovna Isakova. I live in Leningrad, zip code 19186, Naberezhnaya Moyki No. 29 apt. 15. My husband Georgy Valentinovich Davidov was arrested in 1972 and charged with so-called "anti-soviet propaganda" as per Art. 70 part I. He was sentenced to 5 years of imprisonment and 2 years of deportation. I have two children. And I wish to state the following:

Ever since the organization of the Russian Social Fund of assistance to political prisoners, of which A. I. Ginzburg was the acting manager up to the date of his arrest, I have received help from the Fund and such help was indispensable to keep my family alive. Such help was particularly valuable at the time of my children's long sickness. During that period I simply had no income and no means to survive, because if you have to stay away from work to take care of your sick child the state only pays you for the first 5 days now (and it used to be only for the first 3 days).

The Fund's help also enabled me to travel to the camp where my husband was being held for a meeting with him. Such a trip is far too costly to be paid for out of my monthly budget of 140 rubles (at the official Soviet rate of exchange, around \$160; actually it is about \$50 a month).

The Fund also helped my husband providing him with money so that he could subscribe to some magazines.

A. I. Ginzburg never put any conditions to the granting of such help. I was never requested to supply any information or to write "anti-Soviet letters".

Personally I am deeply grateful to A. I. Ginzburg for his constant care for my family. Aside from the material help, there was his moving attention to our needs and worries, his personal kindness and gentleness which were most valuable to me in my difficult situation. Should it become necessary, I am willing and ready to testify in defense of A. I. Ginzburg. I beg you to rely on me as a witness for the defense.

October 2, 1977.

Respectfully yours,

ISAKOVA.

## DOCUMENT No. 17

To: Mr. Edward Bennett Williams.

To: Mrs. Irina S. Zholkovskaya (Alexander Ginzburg's wife).

Ever since my husband A. T. Marchenko was arrested I have been receiving regular help from the Russian Social Fund for political prisoners and their families which up to February 1977 was managed by Alexander I. Ginzburg. I received money, clothing and toys for our child. I am ready and willing to state the amounts I received so far if Alexander Ginzburg himself asks me to do so at the trial or if his wife Irina Zholkovskaya makes the same request.

I beg you to consider this letter as my testimony and to use it as you deem fit. If you think it is necessary, i.e. useful for Alexander Ginzburg, please remember that I am prepared to be a witness for the defense in Ginzburg's trial, no matter what court will try him.

October 29, 1977.

LARISSA BOGORAZ,

*Moscow, Leninsky Prospekt, No. 85 apt. 3, or Village Chuna, Irkutsk, region, Chapaev Str. No. 18.*

## DOCUMENT No. 18

To: Edward Bennett Williams, A. I. Ginzburg's lawyer.

I wish to make it known to all lawyers and to all legal institutions that I am ready at any time to testify about A. I. Ginzburg's life and behavior during the period beginning in the spring of 1968 and ending in the summer of 1969. I was on close terms with him during that time and could observe him thoroughly, so that I know his qualities both as a man and as a citizen. I think that my impartial judgment may be useful towards a fair decision of A. I. Ginzburg's fate.

November 29, 1977.

YULI DANIEL',

*Kaluga, Moskovskaya No. 182 apt 24,  
Moscow, Ul. V. Ulbrichta 3, apt 52.*

## DOCUMENT No. 19

DEAR MR. WILLIAMS: As many other people in our country, I am deeply concerned with the fate of Alexandr Ginzburg who was arrested by the KGB in February 1977. A few days after Ginzburg's arrest I sent a letter of protest to the RSFSR Prosecutor's Office asking them to release A. Ginzburg. My letter of protest was sent to the Moscow Prosecutor's office and I never received a reply from either one. I also signed a collective letter in defense of Alexandr Ginzburg.

Since neither personal nor collective letters in defense of Ginzburg led to his release, I deem it my duty to write you, knowing that you have undertaken the difficult task of defending Ginzburg's interests.

I have known Ginzburg for not too long a time: we met in the fall of 1975. But during the period of our acquaintance and our frequent encounters I found out that he is a very honest, courageous and good man.

The first thing that impressed me deeply about him was that while he was imprisoned (during his previous term) he had actually learned Japanese in jail. When visiting him in Tarusa, I saw his Japanese copybooks and saw him work on them.

But what I would like to stress particularly is that he was continuously harrassed and persecuted by the authorities. I was his house-guest in Tarussa back in October-November 1976 and I was a witness to daily visits (sometimes more than once a day) of militiamen, of representatives of the local military district, of the regional committee, etc. All of them came to inquire: where is Ginzburg? When did he leave. When will he be back? I always answered that he had gone to work and would be back late in the evening. But the harrassment continued. I remember that once he was summoned to three offices on the same day. He explained to me that they were trying to charge him with being unemployed (a "parasite") although he had submitted all the necessary papers proving that he was employed as secretary to Dr. Sakharov.<sup>3</sup> At the same time

<sup>3</sup> As member of the Academy of Science of the U.S.S.R., Dr. Sakharov has the legal right to employ a private secretary.

the Moscow militia was constantly watching his wife's apartment there, in the hope of "catching" Ginzburg if he came to see his wife and children.<sup>4</sup> The militia in Tarussa even questioned me as to what Ginzburg was doing, although they had all the evidence concerning his job.

I would also like to say that his health conditions are very preoccupying. He suffered from a bad ulcer (which among other things made it quite impossible for him to drink, no matter what the *Literaturnaya Gazeta* says about this). On January 4, 1977 his apartment was searched, and on the next day, January 5, he was in hospital. I went to visit him there regularly up to the very last day before his discharge. He had had no time to recover when he was arrested. He was charged with anti-soviet activities, but this charge is false. He repeatedly told me in private conversations that the KGB had offered him a visa to emigrate and go to the West, but he had refused because he wanted to live in his own country. He always said that he wanted one thing only: that laws and citizens' rights be respected. He himself always was a law-abiding citizen. As to the charge of being anti-soviet, it is interesting to observe that there are many different nations living on the territory of our country: Russians, Ukrainians, Estonians, Tartars, a number of small tribes of a few hundred people each. All in all there are 150 various ethnic groups. Nobody ever said that Ginzburg is anti-Russian or anti-Ukrainian or anything of the kind; obviously his activity did not in any way harm any of the nations living on the territory of our country.

Mr. Williams, I understand that under the conditions of our totalitarian state, when you, Alexandr Ginzburg's lawyer, are not even allowed to travel to the USSR to defend him, it will be very difficult for you to help him. But I do beg you: (in English in the original letter, handwritten): Do everything you can for my friend Alexandr Ginzburg, for his freedom, for his two little children. Help him to be free again.

I am not a lawyer and I probably did not touch upon the most important aspects which could help you defend my friend Alexandr Ginzburg. But the main thing is that we may again see Alexandr free.

December 7, 1977.

Sincerely yours,

EL. NIKOLAEV,  
Moscow 113403,

*Bulatnikovskaya 5, Building No. 5, apt. 327.*

#### DOCUMENT No. 20

#### DR. ANDREI SAKHAROV'S APPEAL

Exactly a year ago, Alexandr Ginzburg, manager of the Russian Social Fund of help to political prisoners and their families and member of the Helsinki Accords Watch Group in the USSR, was arrested. He has two small children and is his old mother's only son. He is a kind and generous man, an active man, always compassionate and attentive to other people's sufferings. Our friend, our Alik.

He is still in a prison cell, under investigation, awaiting trial. None of his relatives and friends know what he is being charged with. So many things have happened since Ginzburg's arrest, and yet his imprisonment continues being for us a fact of the greatest importance, a highly alarming fact of which we think with invariable deep bitterness.

Ginzburg became known to the whole world ten years ago, when our country's intelligentsia launched a vast campaign to defend him and his companions against an unjust and harsh sentence. His friend, the poet Yuri Galanskov, who was sentenced during the same trial, perished in a forced labor camp. Over one thousand people at that time signed letters of protest in their defense, thus clearly demonstrating their attitude towards the repressive policy of our regime.

What Ginzburg is facing today is even more unjust and more cruel. His defense must be most energetic and worldwide. Ginzburg's arrest has been the beginning of a tide of political repression. Members of the Helsinki Watch Group have been singled out particularly as victims of this repression.

Ginzburg's defense is at the same time the defense of all his companions and a fight against political repression as such.

February 2, 1978.

ANDREI SAKHAROV.

<sup>4</sup> After his release from jail, Ginzburg had to stay in exile, confined in the town of Tarussa. Coming to Moscow, where his wife and children live, in his case is a criminal offense.

## DOCUMENT No. 21

To: Attorney Edward Bennett Williams, Alexander Ginzburg's counsel.  
 From: Valeriy Manuilovich Smolkin.

On November 28, 1977 I was summoned for questioning to the KALUGA office of the KGB in connection with Alexander Ginzburg's case. I did not obey the summons because for moral and ethical reasons I do not deem it possible to cooperate in any way with the KGB. A year ago they arrested my close friend Ginzburg and since then they have kept him behind bars simply because he has dedicated all his life to helping all the needy and suffering people. His help is entirely disinterested and he has committed no other "crimes". I want to stress that my friend Ginzburg chose for himself this path of Christian self-dedication in a perfectly natural and simple way, because he cannot live and behave otherwise. I am very fond of Alexander Ginzburg and thankful that fate brought us together. His life and his fate cannot be indifferent to me, just as his family's fate. I belong to those people who believe that Alexander Ginzburg should be released immediately in the name of justice and goodness, to those who are prepared to do everything for that purpose. Mr. Williams, if you need more detailed testimony about my friendly contacts with Alexandr Ginzburg in Moscow and in Tarussa and about his personality, I am willing and prepared to let you have such testimony.

Moscow, February 2, 1978.

VALERIY SMOLKIN,  
*Vilnius, Raudonosios Armijos 247, apt. 27,  
 Lithuania, U.S.S.R.*

## DOCUMENT No. 22

To: Attorney Edward Bennett Williams, counsel for Alexander Ginzburg.

DEAR MR. WILLIAMS: I understand that you have agreed to act as defense counsel for my friend Alexander Ginzburg and I want to let you know briefly my opinion about him. I have known Ginzburg since 1975. On several occasions I have been asked to do certain things on behalf of the Russian Social Fund of help to political prisoners. For instance, in January 1976 I was requested by the Fund to visit political prisoners in Siberia. At present I am distributing the Fund's help to political prisoners in psychiatric hospitals. Working with the Fund I got well acquainted with Alexander Ginzburg.

Of all the people I know, he is the one who impressed me most deeply and most favorably. I have never met a more honest, noble and fine human being. His merciful activity of help to political prisoners and their families was disinterested, generous, self-dedicated and, alas, very dangerous for him; it deserves not merely praise, but deep veneration. There is no doubt but that he well understood the danger he was exposing himself and his family to, but this did not stop him. For his acts of mercy, he is already being punished in jail and he may well have to pay for it in ten years of imprisonment in forced labor camps and jails.

I know for certain that his example is at present a source of courage and inspiration for many honest people in our country. They would consider it an honor to be able to share with him at least part of all the torment and suffering the Soviet regime has in store for him.

I am willing and ready to state and confirm this opinion I have of Alexander Ginzburg in front of any objective court. If this statement can be of any use in defending Ginzburg, I beg you to use it.

Moscow, February 2, 1978.

Respectfully yours,

(Signed) ALEXANDER PODRABINEK.

(Translator's note: Alexander Podrabinek is a young medical assistant who was collecting documents on the use of psychiatry against dissidents in the Soviet Union. The KGB searched his room and confiscated a great number of evidence he had obtained and was preparing to publish. He is now under ruthless pressure by the KGB to force him to leave the country, which he does not want to do. The KGB told him that if he did not emigrate they would arrest his brother Kiril. Alexander refused to submit to such blackmail. Kiril has been arrested and is in jail at present.)

P.S. On May 16, 1978, Western correspondents reported from Moscow that A. Podrabinek had been arrested.

## DOCUMENT No. 23

To: E. B. Williams.

It is one year today from the press conference which was held by Alexander Ginzburg on the eve of his arrest. He was the representative and distributor of the Russian Social Fund of help to political prisoners and their families. He was helping orphans and widows abandoned by everybody, giving them his attention and loving care. In his home, these people met with compassion and mercy, human kindness and warmth.

On February 3, 1977 Alexander Ginzburg was arrested. There are some strange customs in our country: because a man is kind and loves his fellow-men, he is thrown into a damp prison cell. Because he is honest and will not accept evil and violence, he is taken away from his friends, his wife and his two little sons.

In the name of prisoners of conscience, Evangelic Baptist Christians, in the name of Ukrainian political prisoners and their families, I want to deeply thank Alexander Ginzburg and his wife Irina Zholkovskaya who for the sake of humanity have taken upon their shoulders the heavy cross of suffering.

People of good will! Christians of all the world! Do not forget Alexander Ginzburg, his wife and their two little sons in your prayers. Their tragic fate is a true example of Christian self-dedication.

February 2, 1978.

(Signed) PETR VINS.

(TRANSLATOR'S NOTE: Petr Vins is the son of George Vins, the well-known Baptist pastor serving a term in a Soviet labor camp. He was arrested in March 1978 and sentenced to forced labor in camps.)

## DOCUMENT No. 24

LETTER FROM YU.I. FEDOROV TO AN OLD FRIEND AND FORMER FELLOW-PRISONER

JUNE 11, 1977.

DEAR V: On January 26, since I had plenty of free time and although I did not have an authorization to leave town, I went to the village of Podgornoe, to see Victor Petrovich's wife, L. F. Chamovskikh. The welcome was very warm. But on January 28 at 12:40 p.m. I was arrested in their house and taken back "home". (The town of Tarusa, where Fedorov is confined. Translator's note).

The arrest itself and what happened afterwards seemed somewhat unusual. First of all it was strange that they had missed me almost at once, since normally they are not all that vigilant. Then, having missed me, they also immediately located me in the village of Podgornoe and in the right house, too. The search they conducted in that house was also quite unusual in view of the minor offense involved; they checked all the walls and took away everything made of paper, from books and pictures down to stationery. All the correspondence found was confiscated. Another thing: normally such an offense is not a cause for a long investigation, not more than 7 to 10 days. In this case, however, there were two questionings, aside of which nothing happened for a month. At the end of February two KGB officers took me to Moscow by plane, and from there by car to Kaluga.

Two days prior to that trip I had been questioned by a KGB colonel from Tomsk; he was the head of the investigation department. During the questioning I was shown Petrov-Agatov's article and learned that there was an investigation in course.<sup>5</sup> Therefore arriving in Kaluga I was quite sure that all this business was in connection with Ginzburg. And in fact my first "conversations" with the KGB officials there confirmed it: yes, indeed, Ginzburg, the Fund (The Russian Social Fund of help to political prisoners and their families founded by Solzhenitsyn, of which Ginzburg was manager in the USSR. Translator's note) the Chronicle (a clandestine publication listing all the cases of prisoners of conscience and ideological persecution in the USSR. Translator's note) but there was also something more than that and I will revert to that later.

I want to say at once that from what I saw and heard I could deduce that our "friends" of the KGB mean business. They have obviously secured ap-

<sup>5</sup> See also Mrs. Ginzburg's letter. Petrov-Agatov's slanderous article against dissidents and in particular Ginzburg was published by the weekly Literaturnaya Gazeta. It had been the signal for Ginzburg's arrest. Such articles are published after it has been decided to get rid of a person disturbing the regime.



proval at all levels, they pay no attention to public outcry and they won't stop before anything. However, their outspokenness concerning both methods used and consequences foreseen is somewhat surprising. They guarantee with absolute firmness that by the end of this year there will be a press-conference "Ginzburg, Orlov & Co." "And it will be a lot better than the Yakir press-conference!"

I expressed some doubt and told them not to be too sure, but their answer was: "what do you think they can do? They know what's in store for them: 15 years of special regime (the strictest type of camp under very hard living and working conditions. Translator's note) under our control. This means death. They are smart people. We'll explain and they will understand. We have plenty of witnesses!"

Well, as far as witnesses go it would seem that they do have some. I believe you correspond with Murashov?<sup>6</sup> Please ask him about the dollars and "certificates" (privileged type of money accepted by special stores selling only for hard currency, where the supply is infinitely better than in normal Soviet stores accessible to all Soviet people. Translator's note) that Ginzburg allegedly gave me in February 1975, allegedly in his presence! I can only say that not only did I never see any dollars or certificates, but I also did not see Murashov himself after he was released from camp, somewhere in 1971 or 1972!

So there is not much talk about politics. What they are aiming at is: contacts with foreign countries and with certain foreign "institutions", currency deals, speculation, corruption, forgery, crookedness, drinking, immoral behavior and so on. That's what they are out to prove! And I must say that I don't envy Ginzburg, Orlov and the others, for these fellows are almighty and they have plenty of Petrov-Agatovs they can use.

I was questioned every day; "conversations" started at 10 o'clock a.m. and ended around 8 to 10 p.m. with a break of 2 to 3 hours. But my dear Evgeniy Mikhailovich Saushkin (name, patronymic and last name of the KGB official interrogating Fedorov. Translator's note) was not satisfied: he felt that I was not being sincere with the investigators. It wasn't nice of me: he had offered me coffee, had invited me to the music-hall and to the Art Museum, had shown me around town, but I kept never knowing anything precisely about those things he was interested in!

And now I shall tell you about the "something more". It turned out that in the USSR there are two "centers of fight against the regime" and two "leaders": one of the centers was Tarusa and the leader was Ginzburg; the other center was Luga and I was the leader! I learned that I had been the leader of an all-union illegal organization! And my investigators named certain of the "organization's staff members" and urged me to name the others! At that point, however, we came to a dead end: obviously I could not name "the others", seeing that I was only finding out from them, for the first time, that I had in my organization a "chief of the ideological section" by the name of Ivanov, a "chief of the operations section" by the name of Kharzenkov, etc.; other names were mentioned—Uzlov, Dragosh, Khakhbakhev, Gavrilov, Klimenko, Nagorny and many others!<sup>7</sup>

Dear V., all this, of course, is sheer nonsense and I don't understand what they plan to do with it. It is a fact that more than a month was spent to "talk" about it. They declared that they have "all the necessary evidence". I asked them to show me at least one proof, to make our "conversation" a little bit more interesting. But they refused to do so. They said it was too soon.

Our "negotiations" had reached this stage when they were interrupted on April 27, 1977. I was told: "Think it over—we shall probably meet again".

It's hard to tell what's going to happen in the future. Wait and see. Usually our "friends" dislike stopping halfway, but . . . ?

YURI.

#### DOCUMENT No. 25

(Excerpt from a letter written by V. Petrov, former political prisoner, now in exile at Vasyugan, Kargasovsky Region, Tomsk province, addressed to Irina Sergeyevna Zholkovskaya):

Yuri Ivanovich Fedorov has been taken to Kaluga and there they would talk with him every day, though they only filled four record sheets with the contents of all these conversations. One of the records was about the confrontation be-

<sup>6</sup> Former camp inmate now living in Leningrad. He told friends of the KGB questionings, affirming that he had not testified against Ginzburg.

<sup>7</sup> Former camp inmates living in different places.

tween Fedorov and a certain Evgeny Murashov who declared having personally witnessed Ginzburg give Fedorov after his release from jail 1000 soviet rubles and 400 U.S. dollars. Fedorov burst out laughing at this unexpected and brazen story; he did admit that his friends helped him, but insisted that he had never been asked for anything in exchange, either written statements or any sort of activity. There never was as much as a hint in this sense. To put it shortly, Fedorov proved to be an unsatisfactory witness. So they started terrorizing him. For example they told him that Tarusa was the center of a legal movement, whereas our little town of Duga was the center of a conspiratory secret organization. They quoted names and functions of the "conspirators" within this organization. And they told Fedorov that they would lay their hands on both "centers". "And stop looking that way all the time!" (The KGB-official's finger pointed in the direction of the West, which must have cringed for sure). "We shall take care of the women, too, very soon". He then proceeded to name Kronid Lubarsky's wife Salova, Svetlana Pavlenkova, Isakova-Davydova; he talked with particular venom of Ginzburg's mother, calling her "that old whore". As to her son, the KGB official frankly declared him to be an enemy, but a clever enemy: now he eats sweet little tomatoes which his wife brings to the prison for him, but he well knows what "special regime camp food" means to somebody with his stomach ailments. This is the reason why the KGB has not lost hope of organizing a press-conference of Alexander Ginzburg which would get the widest publicity in the Soviet press and would probably be shown over the All-Union TV. (For quite a long time, apparently, the KGB actually hoped that they would make Ginzburg recant and repent).

---

#### DOCUMENT No. 26

##### THE INVESTIGATION OF ALEXANDER GINZBURG'S CASE

(Information about questionings of former political prisoners. Kaluga, summer and autumn 1977.)

##### 1. Vladimir Gandzuk

Having served two terms in camp, he is now in internal exile at the village of Podgornoe, Tomsk region. He has been sick with TB. as well as a bad bone and joint ailment, for many years. He does not receive a pension.

He was questioned on August 29 in Kaluga by investigator Odintsov:

"Did you receive on August 20, 1976 100 rubles from Alexander Ginzburg?"

"I did.

"When did you receive a parcel from Irina Zholkovskaya (Ginzburg's wife)?"

"In autumn 1976. It contained canned foods.

"Foreign ones?"

"No, domestic. There was also toothpaste.

"Foreign toothpaste?"

"Florena. It is sold in our stores.

"Did you receive any books from Ginzburg?"

"No.

"Do you know what Ginzburg was doing? Do you know that he acts as distributor for the Political Prisoners Help Fund and that in addition to that he distributes anti-Soviet literature which he gets from the West? Do you know about the Fund's existence?"

"Yes, I do. I heard about it on the radio.

"Were there any books in Zholkovskaya's parcel?"

"No.

"Why did Ginzburg send you money if he does not know you personally?"

"He must know that I am sick, so he wanted to help me.

"Do you consider yourself a political prisoner?"

"Of course I am a political prisoner; I am not a criminal, am I?"

##### 2. Vladimir Potashov

(He served terms in camps in Mordovia and in the Perm region from 1970 to 1974, under Article 70 of the Criminal Code. He now lives in Omsk.)

He was questioned in August in Kaluga. They questioned him about the situation of prisoners in strict regime camps (probably in connection with the Helsinki Monitoring Group documents on this subject) and specifically about work conditions and food.

They asked him if he had received any money from the Fund. Potashov replied that he had once received 175 rubles.

"What for?"

"I thought it was due to me as a political prisoner."

"Did you receive forbidden literature?"

"No."

Potashov then asked if he would be called to testify in court. The investigator answered he did not know.

### 3. *Sergey Mal'chevskiy* (driver from Leningrad)

Sentenced in 1968 to 7 years of forced labor in camp and 3 years of internal exile. He is now in exile in the Komi Autonomous Republic.

Summoned to Kaluga between August and September 1977.

He was questioned about Ginzburg's life in the camps of Mordovia between 1968 and 1970 as well as about the Fund's help.

His answer was that he had only known Ginzburg for a very short time in the camp. As to the Fund, he had received help in the amount of about 1000 rubles.

### 4. *Leonid Borodin*

(Before his arrest he was director of a school near Leningrad. In 1967 he was sentenced as member of a Christian-Social group for the liberation of the people, to 6 years in strict regime camps. Between 1968 and 1979 he was in the same camp as Ginzburg, camp 17-A, in Mordovia. In May 1969 together with other camp inmates he took part in a hunger strike in order to obtain permission for Ginzburg to get married to Irina Zholkovskaya. These events are described in a book published by the emigré publishing house Posev in Frankfurt under the title *The Story of a Hunger Strike*, (1971).

In mid-August he was summoned to Kaluga. He refused to give any testimony and to submit to questioning. Nonetheless the investigator read aloud a number of questions concerning Ginzburg's behavior in the camp. Then he read aloud the deposition of an unnamed witness describing in some detail episodes of the 1969 hunger strike, telling how camp painters had made portraits of those on strike (these portraits became famous in the West later) and how documents were smuggled out of the camp to later become part of the book.

On November 11, investigator Gaydel'tsov again interrogated L. Borodin. He repeated the same questions which had already been asked back in August. Borodin again refused to answer. Gaydel'tsov thereupon proceeded to charge Borodin under Article 182 of the Criminal Code for refusal to testify. Under this Article Borodin was later on sentenced to six months of coercitive labor.

### 5. *Yaroslav Gasuk*

He spent 12 years in strict regime camps, was released in 1972 and lives in the Komi Autonomous Republic. Investigator Saushkin questioned him in Kaluga on November 1, 2 and 3. Questions were about Ginzburg's behavior in camp 17-A, about prisoners' portraits made by painters among the prisoners. Gasuk spoke very highly about Ginzburg. As to the portraits, he did not know anything. He was shown documents by the Helsinki Group about the camp situation and specifically about food rations; these documents were published by an emigré magazine, Posev. Gasuk said: "well, of course you can't starve to death in a camp because you receive food parcels . . ."

### 6. *Sergey Khakhaev*

(An engineer from Leningrad, he was sentenced back in 1965 as leader of an unofficial marxist group Kolokol to 7 years of strict regime camp and 3 years of exile. He was released in 1975 and since then has been living in Luga near Leningrad).

He was interrogated three times in connection with Ginzburg's case, in November 1977.

He declared that he had not been in the same camp as Ginzburg in Mordovia, ever, and that he had received no money from the Fund.

The investigator told him his own story of how things had gone. He said that through the intermediary of Khakhaev, Ginzburg had sent other former political prisoners living in Luga 2,500 rubles in order to form an illegal organization of former political prisoners. This story seemed very funny to Khakhaev and his laughter probably was so wholehearted that the investigator gave this subject up and did not even introduce it into the record of the questioning.

### 7. *Sergey Ponomarev*

(Journalist from Gorky, was sentenced in 1969 under Articles 70 and 72 to 5 years in strict labor camps.)

He was interrogated by investigator Gaydel'tsov on November 23 and 24. Ponomarev spoke highly of Ginzburg. Thereupon Gaydel'tsov told him that (a) Ginzburg had not written the White Book (he served a 5 year term for writing it!) but had only prompted others to write it; that the book had been written by Galanskov, who was tried together with Ginzburg and sentenced to 7 years of strict regime camps, but for a different offense, and who died in 1973 in a camp in Mordovia from a stomach ulcer because the camp authorities denied him medical assistance; (b) Ginzburg had talked Galanskov into going on a hunger strike which was very harmful to his health and therefore, that was Gaydel'tsov's conclusion, Ginzburg was guilty of Galanskov's death; (c) that while serving his term Ginzburg had bribed the entire management of the camp and had lived "better than you and I live in freedom, in any case he always had coffee and tea"; (d) after his release, working for the Political Prisoners' Fund, he only helped his friends.

(See also Irina Zholkovskaya Ginzburg's complaint to the senior investigator of the Kaluga regional KGB M.V. Oselkov, dated November 26, 1977).

### 8. *Vitaly Pomazov*

(Former student of the Historical Faculty of Gorky University. He was sentenced under Article 190 of the Criminal Code and spent three years in common regime camps. He now lives in Protvino, near Tarusa).

Gaydel'tsov questioned him on November 28 in Kaluga. The questioning was conducted in violation of the Code of Criminal Procedure. The witness was threatened: "I assure you that you will meet Ginzburg elsewhere!" and at the end "you'll end up as Borodin for refusing to testify", meaning in a camp; in addition to that, Pomazov's testimony was continually being edited to suit the investigator's purposes, and the witness was under strong pressure to say what the investigator wanted him to. Although Ginzburg had already been in jail 9 months at that time, the investigator refused to tell the witness what he was being charged with (though he was obliged to do so). Such refusal to state the charges is a violation of Art. 158 of the Criminal Code which says that the witness has the right to know the circumstances of the case in connection with which he is being questioned. (See Vitaly Pomazov's complaint to the U.S.S.R. Procurator's Office, dated December 5, 1977, in which he lists all the violations of the code which took place during his questioning).

Between February and August 1977 a considerable number of former political prisoners were also questioned. They were threatened, blackmailed, or promised all kinds of privileges if they consented to testify as requested.

Between April and May 1977, KGB captain Obrubov, in charge of the Vladimir prison, repeatedly summoned prisoner Victor Anisimov. The latter has been sentenced under Art. 70; his term will end in 1989). Captain Obrubov offered Anisimov to testify in connection with Ginzburg's case.

Obrubov wanted the prisoner to write a statement to the effect that all information about the political prisoners' situation supplied by the Helsinki group documents is false and slanderous, and that all political prisoners' hunger strikes are but a comedy. Anisimov refused to write such a statement.

## DOCUMENT No. 27

(Copy for Attorney Edward Bennett Williams)

To: The Investigation Section of the Kaluga KGB.

To: The RSFSR Prosecutor's Office.

To: The USSR Prosecutor's Office.

I want to call your attention to the inadmissible methods employed by the senior investigator of the Mogilev KGB office, lieutenant Vladimir Sergheyevich Gaydel'tsov. On November 28, 1977 I was summoned as witness to the Kaluga KGB. Lieutenant Gaydel'tsov explained to me that it was in connection "with Alexander Ginzburg's case". And this is what the investigator did during the questioning, thus violating the rules of Criminal Procedure Code:

1. He tried to intimidate the witness. My answers did not satisfy him, so Gaydel'tsov would say: I can assure you that you will meet Ginzburg elsewhere! (i.e. in prison). Or: Watch out, you will end up in the same place as Borodin! (i.e. in a forced labor camp).

2. A witness is entitled to write down himself his testimony. But Gaydel'tsov insisted that he would write down my testimony editing it as he wanted, and that only after such editing by him would my testimony be transcribed in the official record. He would argue endlessly about some of my answers in order to change their wording. I did not change any of my answers, but it may well happen that a witness under such pressure will agree to change what he has said.

3. I was astounded by the fact that nine months after Ginzburg's arrest the investigator could not say what he was being charged with or under what Article of the Criminal Code. When I asked about it, the only answer I obtained was: "Ginzburg is charged with having committed a particularly dangerous crime". This of course does not mean anything. Art. 158 of the Code of Criminal Procedure grants every witness the right to know all the circumstances of the case in connection with which he is being questioned, and, naturally, first of all the charges.

All the above is a good reason to strongly doubt if the Ginzburg investigation is being conducted objectively.

December 5, 1977.

(Signed) VITALIY POMAZOV,  
U1, Pobedy No. 8, Apt. 35,  
Protvino, Moscow Region, U.S.S.R.

#### DOCUMENT No. 28

To: The Senior Investigator of the  
Kaluga KGB Office M. V. Oselkov.  
From: Irina S. Zholkovskaya,  
Moscow, U1. Volgina 13 apt. 31.

#### COMPLAINT

On November 23 and 24 of this year, a member of your investigating team investigator Gaydel'tsov questioned the witness S. M. Ponomarev (from the town of Gorky). Investigator Gaydel'tsov began his questioning by delivering a long lecture about Ginzburg, full of inventions and slander. Among other things he self-assuredly informed the witness that Ginzburg had nothing to do with the White Book on the Sinyavsky-Daniel' trial (although that is what Ginzburg and Galanskov were tried and sentenced for in 1968, as clearly stated in the verdict). According to Gaydel'tsov, the book was entirely the work of Yuri Galanskov, who died back in 1973 in a labor camp in Mordovia. Gaydel'tsov said that Ginzburg had forced Galanskov to work for him, then had brought about his trial and the verdict and in general he is entirely responsible for Galanskov's death.

This is not the first time the KGB is spreading this cynical and monstrous rumor. At first it was being repeated by its covert agents, now officials speak about it openly.

I hereby declare that I consider Gaydel'tsov's behavior to be illegal and immoral and his statements to be slanderous.

Further Gaydel'tsov told witness Ponomarev that while in a labor camp in Mordovia Ginzburg had bribed all the administration and that after his release from prison he had been buying houses for his friends ex-prisoners, using the money of the Fund for this purpose.

In my opinion, this is a stupid and irresponsible lie. Investigator Gaydel'tsov uses blackmail and slander to condemn beforehand a man who has not been tried and to put psychological pressure on the witness in order to obtain from him the testimony he needs for the prosecution. I hereby wish to express my distrust of investigator Gaydel'tsov and to request that he should have nothing to do in the future with my husband's case. I have good reasons to fear that the investigation in my husband's case is not being conducted objectively. Therefore I am compelled to send a copy of this letter to Attorney Edward Bennett Williams who represents my husband in the West, so that he and other Western lawyers may see how Ginzburg's case is being handled. I know that Mr. Williams has many

testimonies concerning my husband's life, his personality and his activity; this testimony comes from people living both here and in the West, among them the counsel who defended Galanskov and subsequently also Ginzburg, D. I. Kamin-skaya. In connection with the latest statement by investigator Gaydel'tsov, I beg Attorney Williams to use all the testimonies available to him as well as whatever other statements he may obtain from new witnesses and to submit them to such institutions or organizations as he may consider necessary.

Moscow, November 26, 1977.

IRINA ZHOLKOVSKAYA.

DOCUMENT No. 29

To: A. I. Ginzburg's lawyer.

CC: To the Investigation Office of the Kaluga region KGB.

STATEMENT

I have learned that the Kaluga KGB in the course of the investigation connected with Alexander Ginzburg's case are now analyzing the relationship between Ginzburg and his friend Yuriy Galanskov who died in a forced labor camp in Mordovia.

So as to establish the truth in this matter. I want to testify as follows: I met both Ginzburg and Galanskov in spring 1968, soon after arrival to the 17th camp section of the forced labor camp ZHKH 385 (the Dubraviag labor camp). I remained in the same camp section with them up to the month of July 1969 when I was transferred to the Vladimir prison.

During all this period of time Ginzburg and Galanskov were on very friendly terms.

I had many occasions to talk to both of them about their trial.

Galanskov never claimed to be the author of the White Book. Both of them gave the same explanation to the fact that they had been brought to trial together: the White Book being a collection of documents, the authorities had thought it would look better if they linked this case with another also connected with "illegal" writings, such as Galanskov's unauthorized magazine *Feniks*. There never was any rivalry.

I can affirm that Ginzburg never suggested to Galanskov to go on a hunger strike. The KGB tries to prove that he put pressure on his sick friend to compel him to proclaim a hunger strike. This is a lie. On the contrary, Ginzburg himself went on hunger strikes many times, but he always dissuaded Galanskov from following his example. I can mention one specific case: there was a hunger strike in protest against the trial of the participants of the August 1968 demonstration on the Red Square. Ginzburg did everything in his power to dissuade his friend from taking part in this hunger strike.

In July 1969 Ginzburg went on a hunger strike to support his request that he and Irina Zholkovskaya be married.<sup>8</sup> I, Galanskov and several other prisoners joined him. In my presence during a walk Ginzburg tried to convince Galanskov to stop the strike. But Galanskov refused to listen and then Ginzburg himself stopped the hunger strike. (There is a description of this episode in the documents collected under the title "The story of a hunger strike").

I also want to declare that Ginzburg was kept under the same conditions as all other prisoners, and maybe even worse. For instance I know of several cases when prisoners were allowed to get married. But Ginzburg had to fight and to go on a hunger strike to obtain such permission. As myself, Ginzburg was later sent to the Vladimir prison and he came out of jail a sick man. When I met him again in 1975 and 1976, he still was very sick.

I am prepared and willing to repeat and confirm all the above in front of a court, of any public organization and of representatives of the press.

(Signed) VALERIY EFIMOVICH RONKIN,

Ul. Novaya No. 21 apt 49,  
Vil'ge Zakl'nye, Luga, U.S.S.R.

<sup>8</sup> At the time of his second arrest Ginzburg was betrothed to Irina Zholkovskaya. Since Soviet law only allows close relatives to visit a prisoner in a labor camp, it was very important for them to obtain the authorization to be legally married.

## DOCUMENT No. 30

(Copy for Attorney E. B. Williams)

To: The Senior Investigator of the Kaluga KGB Office comrade Oselkov.  
 From: Citizen V. M. Platonov.

I have been questioned as a witness in connection with Alexandr Ginzburg's case and during the questioning I understood that the investigators are attempting to somehow put on Ginzburg the blame for Yuri Galanskov's tragic death.<sup>o</sup> I consider it necessary to declare that such accusations are entirely unfounded. I was in the same camp as Ginzburg and Galanskov at the time when they were serving their terms and I knew them both well. I know what their relationship was and I do not see any connection between this relationship and Galanskov's death.

I already said all this during the questioning but these words of mine were stricken off the record. I believe that Yuri Galanskov died because the operation he so badly needed was performed much too late. He had requested many times that they send him to Leningrad for surgery because he did not want to be operated upon in the camp, but they would not do it.

December 25, 1977.

V. PLATONOV.

## DOCUMENT No. 31

To: Mr. Edward Bennett Williams, Alexandr Ginzburg's lawyer.

From the questioning of witnesses in the preliminary investigation of Alexandr Ginzburg's case I have learned that investigator Gaydel'tsov claims that Ginzburg was not the author of the so-called White Book on Sinyavsky and Daniel's trial, while the verdict against Ginzburg states that he was sentenced to a five-year term of forced labor in camp especially for this reason.

I was tried at the same time, together with Ginzburg, Galanskov and Dobrovolsky. I was charged with typing the material contained in the White Book, part of which had been declared "anti-soviet". I did, in fact type all these materials and I can confirm that I always received them only from Ginzburg. Even before the work began, I knew that Ginzburg and nobody else is the person collecting and editing them. The books consists mainly of documents, with very little connecting text. All of the work, finding and putting together the documents and writing the comment, was performed by Ginzburg and to my knowledge Galanskov had no part in it. Galanskov at that time dedicated himself to the anthology Phoenix and this, in fact, was the charge against him at the trial.

I have already heard repeatedly that the investigators working on Ginzburg's case to accuse him of having caused Galanskov's death. This is a monstrous lie, particularly cynical when it comes from KGB officials.

Please consider all the above as my testimony which I am ready and willing to repeat anywhere.

November 26, 1977.

VERA LASHKOVA.

## DOCUMENT No. 32

To: Mr. Edward Bennett Williams.

## STATEMENT

As of late, certain people of very dubious reputation, such as E. Murashov, who is well known for several cases of false testimony and for his links with

<sup>o</sup> Yuri Galanskov was tried and sentenced together with Alexandr Ginzburg in 1968. This was Ginzburg's second arrest and trial. Ginzburg was charged with collecting the documents for the Sinyavsky-Daniel trial White Book and with editing the book. Galanskov was charged with editing a journal, Phoenix, not allowed by the Soviet censorship. While serving his term in a forced labor camp, Galanskov had a very bad case of stomach ulcer which required surgery. The operation was continuously postponed and at last performed in an emergency when it was already far too late to save him. He was never properly fed and did not get any medical assistance, so that it was a plain case of murder by the camp authorities. Apparently now, among all the fantastic charges which are being invented against Ginzburg, there is some sort of wild story in which he is the villain guilty of his friend Galanskov's death.

the KGB, are spreading entirely absurd rumours accusing Alexander Ginzburg (who is in jail at present) of having been guilty in Yuri Galanskov's death. Yuri Galanskov, a well known human rights defender, a poet and a scholar, was sentenced to forced labor camp back in 1968 together with Ginzburg. These rumours are so numerous that I feel compelled to make this statement. For the time being I am not going to go into detail, but I want to declare that from January 1970 and almost to his very tragic death I was constantly close to Yuri Galanskov in the forced labor camp ZhKh 385/17a. We lived in the same barracks, worked side by side, slept side by side and ate together. Thus, I was an eyewitness of the last three years of his martyrdom. I witnessed every day and every hour of his sentencing. As to Alexandr Ginzburg, two years prior to Yuri Galanskov's death he had been transferred to the Vladimir prison where he served the rest of his term and was released directly from that prison. This means that during the last two years of Galanskov's life Ginzburg had no possibility whatsoever of getting in touch with him, so that obviously he could have no influence on his fate. The fact that such wild rumours are being spread clearly shows the authorities' intention to smear Alexandr Ginzburg's reputation in front of the public opinion.

In this connection, I, Nikolay Viktorovich Ivanov, do declare that I am willing and ready to testify at any time and anywhere to prove that all such rumours are false and also to tell about the true circumstances of Yuri Galanskov's tragic death.

November 4, 1977 (fifth anniversary of Galanskov's death).

(Signed) NIKOLAY IVANOV.

My address: Village Brykovy Gory, Post Office Arsaki, District Alexandrovsky, Vladimir Region, 601602 USSR.

#### DOCUMENT No. 33

To: Alexandr Ginzburg's Defense Counsel.

From: Vladimir Borisov, member of the Initiative Group in the struggle for Human Rights in the Soviet Union.

DEAR MR. WILLIAMS: I have learned that Soviet authorities and the KGB plan to use painter Yuri Evgenyevich Ivanov in order to spread slander against A. Ginzburg. In connection with this I would like to write you a few lines about Yuri Ivanov's personality. I and even more than myself friends of mine wasted a lot of energy, money and efforts in attempting to help him during his hospitalization in Leningrad psychiatric hospitals. We never considered him to be mentally unbalanced and do not think so to this day. His confinement in a psychiatric hospital in our opinion is a typical example of extra-judicial persecution of a human being in its worst form. This approach prompted us to do all we could, independently on the victim's personal characteristics and on our likes and dislikes. But there is a limit to everything. He proved to be an inveterate liar, highly unscrupulous morally, tending only to get as much as possible for himself out of other people's miserable salaries in order to immediately squander it on alcohol. Gradually we came to know some details about his past in jail which had been less than honorable. All this ended up by turning against him even the most merciful among us. After his release from psychiatric hospital for quite a long time people continued helping him, at the same time drifting away from him, but at last all relations were severed. Psychiatrist Marina Voykhanskaya, who lives in the West, as well as her husband Victor Feinberg, can tell you more about this period of Ivanov's life. Dr. Voykhanskaya was actively helping him, as she always used to help prisoners in psychiatric hospitals. As to his behavior in the Vladimir prison, it should not be difficult to obtain detailed information from Evgeny Vagin, who now lives in Rome, Italy.

I shall be very happy if these few lines will be of use to you in your defense of Alexandr Ginzburg, a defense which has to be not only legal but also moral. Should this be necessary, I beg you to consider this letter my official deposition.

Leningrad, USSR. December 1977.

With deep and sincere respect.

VLADIMIR BORISOV.



## DOCUMENT No. 34

To : Alexander Ginzburg's lawyer, Edward Bennett Williams.

DEAR MR. WILLIAMS : I want to give you the following information :

Ever since the Russian Social Fund of help to political prisoners has been in existence, help has been offered several times to the wife of M. Sado.

In January or February 1975 Evgeniy Vaghin<sup>10</sup> gave her 200 rubles out of the Fund money. At the same time Vaghin informed me that Mrs. Sado does not wish to receive any further help. Vaghin gave her my address so that she could contact me in case of need.

In summer 1976 I visited M. Sado's wife and again offered her help. She declined it, saying that they had discussed this matter during her meeting with her husband and had decided not to accept such help. "For so many years there was no help, we can manage now". (The Fund only was organized in 1974.)

In May 1977 I learned that M. Sado was complaining about the fact that his wife did not receive any help. I again went to talk to his wife, this time together with another person, G. Zhavydenkov, and again offered her help, but her reply was the same as before.

In October 1977 V. T. Repin, from Leningrad, visited Mrs. Sado also offering her the Fund's help. She refused again, explaining that together with her husband they had decided not to accept any help and adding that he would soon be released in any case.<sup>11</sup>

I hope that you will be able to use my testimony in your noble defense of A. I. Ginzburg.

January 23, 1978.

(Signed) V. ISAKOVA,  
Leningrad, Nab. Moyki No. 24 apt 15.

## DOCUMENT No. 35

MAY 17, 1978.

## Memorandum

For : E. B. Williams and G. Craig.

On April 4, 1978 the Soviet newspaper *Izvestia* published an article describing a "criminal anti-Soviet enterprise" by some young Swedes, and at a certain point mentioning Alexander Ginzburg's name. We know from attorney Reznikova that the Swedes' "case" is part of the "evidence" cooked up by the KGB against Ginzburg. We may not openly mention information supplied by Reznikova, but we can certainly talk about the newspaper article. It is important to know as well as possible the evidence which will provide the basis for the verdict against Ginzburg. It is very useful to talk about such evidence even before it is actually presented (and we can do it quoting the newspaper) because to a considerable extent this disconcerts and upsets the KGB. Finally, it is important to show and prove a) what is considered "anti-Soviet propaganda and slander" by the Soviet authorities, and b) how the Soviet press again and again proclaims Ginzburg's guilt before the trial.

The *Izvestia* article is very long and I am here giving you an abridged exposé of its contents :

On the night of June 5 to 6, 1977, two young Swedes by the names of Sarelid and Engstrom were stopped with their car in the Soviet border town Brest. Their car, a Ford Consul 2000, was searched and a cache was found containing, according to *Izvestia*, "anti-Soviet writings of a slanderous nature". These writings, *Izvestia* says, had been given the two Swedes by persons with whom they had met clandestinely in the Soviet Union. These people were, prevalently, Pentecostals and "sectarian Baptists". (This has to be explained. The Pentecostals are considered an illegal sect in the Soviet Union and as such subjected to constant and violent persecution. As to the Baptists, there is a part of the Baptist church which has come to terms with the Soviet government and faith-

<sup>10</sup> Evgeniy Vaghin now is in the West. He lives and works in Rome and his testimony is easy to obtain. Both Vaghin and M. Sado belonged to the same group all the members of which were tried together and given long camp sentences. Vaghin served seven years in a forced labor camp and was released at the end of his entire term. As to Sado, rumors began circulating at a certain point about his having agreed to "cooperate with the authorities", i.e. to become a KGB informer.

<sup>11</sup> M. Sado was in fact recently released, before the expiration of his term. It is believed that this was the reward for services rendered to the KGB and specifically testimony against Alexander Ginzburg.

fully plays the role assigned to it, which is, mainly, telling the world at large and especially President Carter that all is fine with Baptists in the Soviet Union. Many Baptists, however, have not accepted any compromise, since such a compromise under Soviet religious legislation means in the first place total prohibition of preaching and teaching religion and of any type of missionary work. Such Baptists are the ones the Soviet authorities call sectarians and persecute violently as an illegal organization. I.A.) According to the newspaper, the meetings had been arranged in advance by a Swedish group called The Slavic Mission. *Izvestia* then proceeds to tell a long and confused story which in its opinion should prove that this Slavic Mission, which "pretends to be" a religious group trying to establish contacts with religious people in the USSR (presumably those persecuted for their religious beliefs) and to send them Bibles and religious literature, actually is creation of imperialist war-mongers and Western intelligence in general, whose aim is hindrance of detente, reviving of the cold war etc., and also subversive activity inside the Soviet Union under cover of religious contacts. *Nota bene*: such subversive activity even in *Izvestia's* delirious prose is "the introduction of hostile ideology". The Slavic Mission is accused of sending to the Soviet Union tape-recorders, copying machines, spare parts for printing machines, cassettes: all this is described as if the newspaper were talking about bombs and machine guns. The fact that members of the Slavic Mission also used to bring clothes with them, as gifts to Soviet citizens, also is quoted as a proof of their criminal subversive anti-Soviet activity. And now we come to Ginzburg. Among the "subversive documents" found in the Swedes' car, there was a collection of documents gathered by Alexander Ginzburg. Here is what *Izvestia* has to say on that: "It is absolutely clear that what we are dealing with is a conspiratory center, thoroughly well organized by Western intelligence for ideologic diversion and espionage. Religion has nothing to do with it all. For instance, what relation to 'pure' religion does a 425 page compilation have, which was put together by the well known criminal and enemy of the Soviet state Alexander Ginzburg and was found during the search in the cache of Sareld's car? This compilation was confiscated as material proof of guilt and listed in the Brest customs record as of June 6, 1977".

First of all, note the date of the "crime": June 6, 1977. At that time, Ginzburg had been in jail for over four months. Thus, he could have nothing to do with the transmittal of these documents, with sending them to the West. However, the article is put together in such a way as to lead to the conclusion that, on the contrary, he was guilty of that "crime"—although it was materially impossible. The truth is that Ginzburg did not know these Swedes and had never met them in his life: we know that for sure from his wife. But the article is meant to link Ginzburg to these people in the readers' mind.

We are giving weight to this episode simply because, as you well knew, Soviet practice is that whatever is published by the newspapers will inevitably be brought up in court during the "trial". And this is why the episode should be mentioned, with this very clear explanation. The newspaper article is a part of the charges. So, what are they charging him with? With transmitting documents to the West when he was in jail, had been there four months and had never in his life had anything to do with the people involved?

But then let us assume he had actually "committed that crime". And let us take a look at the "subversive compilation". We know what it really is. A copy of this set of documents has reached the West and can be made available to you. Ginzburg had put together documentation on the Pentecostals. The first document of the set is a declaration by the Pentecostals themselves, describing their intolerable situation and the lack of religious freedom of which they are suffering. It is followed by factual biographies of a few Pentecostals, among whom are some former prisoners. It is strictly factual documentary material. In no country in the world—except a communist country—would such material have to be smuggled out; but then, of course, in no country would such facts occur in the first place.

---

#### DOCUMENT No. 36

At the beginning of January 1977 the Moscow KGB searched the apartments of Alexandr Ginzburg and Yuriy Orlov in Moscow. Already at that time it became clear that their freedom and public activity were under serious threat. There is detailed information concerning the reasons and the circumstances of the searches. Part of this information is the appeal by the Moscow physicist

Yuriy Mnyukh, now member of the Helsinki group. Here is what Mnyukh wrote on January 7, 1977:

"Do not allow the Solzhenitsyn Fund to be dissolved.

"I was present at the search conducted on January 4 and 5, 1977, at Alexandr Ginzburg's apartment. What was officially termed a search for materials slanderous of the Soviet state and social regime actually represented a combined action aiming at: the confiscation of all and any documentation evidencing violation of human rights in the USSR and at the same time the liquidation of the Social Fund of help to political prisoners in the camps and prisons of the USSR and their families, founded by Alexandr Solzhenitsyn. KGB officials confiscated to the last ruble all public monies found, as well as money belonging personally to the Ginzburg family, all objects of any value and certified power of attorney and other documents from the Solzhenitsyn family, made out in a perfectly legal way to Alexandr Ginzburg.

"Political prisoners in the USSR are kept on a totally insufficient ration of food which is also hygienically intolerable and therefore leads to ulcer and all sorts of other ailments. The attempt to liquidate the Fund is aimed at worsening their situation even more and at the same time at worsening the situation of their families.

"I appeal to all those to whom justice is dear not to allow this new shameful action. I ask people not only to compensate the Fund's losses by their voluntary donations but to increase its possibilities. This is indispensable not only in order to help political prisoners and their families in the USSR. It is indispensable to insist on the elementary right for people to conduct public humanitarian activities in this country legally and without obstacles. I appeal to everybody to speak out in defense of the man who has been for many years the self-dedicated representative of the Solzhenitsyn Fund in the USSR: Alexandr Ginzburg, who is in danger."

Moscow, January 7, 1977.

(Signed) YURIY MNYUKH.

#### DOCUMENT No. 37

To: Alexander Solzhenitsyn and Alexandr Ginzburg.

To: The members of the Russian Social Fund in the U.S.S.R.

On February 5 we took upon ourselves the strenuous but honorable and most necessary duty of distribution of the help provided by your Fund.

People have to eat every day. Therefore we began our work immediately, at a bitter time for us, after the arrest of Alexandr Ginzburg, a man of absolute integrity, justice and wisdom. And we want to express our respect, admiration and gratitude to him for the thoroughness and precision with which he managed the Fund's affairs and which are simply fabulous under the conditions of our life. We want to thank him and praise him for the just and wise distribution of the Fund's monies.

Only after we began this difficult work did we really understand the truly enormous significance of the existence of a Fund of help to prisoners and to persecuted persons, to their needy and harassed families, to their unhappy children.

For this reason we who live in a state which forbids and relentlessly eradicates compassion for prisoners decided to fulfill our first and foremost duty, that is to thank all those who have participated in the activity of the Russian Social Fund and are continuing to do so. Accept our thanks simply as human beings. God bless you all.

But aside from the primary need to keep alive our "political criminals", their long-suffering mothers, wives and children, the Fund in our country is indispensable for two more reasons, both of them fundamental.

The first of these reasons is the need to grant moral support to prisoners of whom the world knows nothing. When you talk to released prisoners, you hear again and again the same words: *the most terrible* part of it all is the feeling that everybody has forgotten you. And we want to stress that. It is the most terrible part of it all: the feeling that you are forgotten, abandoned, alone. Thus, the Fund saves Soviet prisoners from what is most terrible—from loneliness and helplessness. The Fund also saves the prisoners' families from the same thing. The presence of the Russian Social Fund makes parents hope that their children will survive no matter what happens to them because there are people in the world who care and remember.

The second reason is just as important. In the 60's, when open dissent began in our country, people who do not themselves take part in resistance started experiencing a timid desire to somehow help those who sacrifice themselves. Thus, a sprout of the Russian Social Fund was born inside our country.

Laws concerning prisoners in our country are terrifying. The prisoner has no right to accept compassion and other people have no right to show it. Severe punishment is in store for those who break these rules. Therefore, as the situation in our country became more and more cruel, the domestic Fund would probably have died if it had not been for the creation of the Russian Social Fund abroad. When it first came into existence, some people thought that money from abroad would frighten people off. But they were wrong. Kindness and charity generate more kindness and more charity. Our authorities had done everything to eradicate the feeling of compassion from people's hearts, but at this point compassion was reborn and conquered fear: Soviet citizens, too, began donating to the Fund.

This is the second fundamental merit of the Fund: the awakening of compassion and the diminution of fear. And for this we thank from the bottom of our hearts all the persons of good will who have donated to the cause of justice and charity to help us survive. Let justice and charity be the principles which will help all the people of the world to reach an agreement and will save them from wars and from terror.

Moscow, April 5, 1977.

TATYANA KHODOROVICH.  
MALVA LANDA.

SOLZHENITSYN'S ANSWER TO THE OPEN LETTER FROM TATYANA KHODOROVICH  
AND MALVA LANDA

MAY 25, 1977.

To: Tatyana Khodorovich and Malva Landa.

Thank you, my friends, for the fact that the Russian Social Fund was not abandoned for one single day, but was taken over by you immediately after the arrest of Alexandr Ginzburg.

You are remarkably right in writing that we have been wounded and humiliated so profoundly that for a Soviet citizen even charity becomes an act of courage leading to something unknown and terrifying. Our pride and joy are even greater because there are more and more people who dare cross the border of fear. We have been crippled, hurt and wounded at a much deeper level than the political one and the healing of our wounds also lies outside of politics.

God save you and all those who will help you and who will participate. May the enemy of Good never succeed in cutting off all the ways in front of you.

With all my soul, I am with you, with those in our country who are being oppressed and persecuted and who are behind the barbed wire.

ALEXANDER SOLZHENITSYN.

# DOCUMENT No. 38

## STATEMENT FOR THE PRESS

On July 21, 1977, at 11 a.m. an automobile well known to me, plate no. 4598 of the Tarussa regional KGB office, stopped in front of me while I was walking to the City Executive Committee in order to apply for a job. Two KGB officials (one of them wore a uniform and the other one was a plain clothes man, later on they identified themselves as captain Bykov and Reshetnyak) jumped out of the car and grabbed me declaring that they had something they wanted to talk over with me. They telephoned the City Executive Committee and told its president that our meeting was cancelled, then they took me home in their car. When we arrived they exhibited a search warrant in connection with prosecution case No. 1 against somebody by the name of Vitaly Shmelev. To my great astonishment I learned from the search warrant that three years ago, while I was a prisoner in the Vladimir jail, this Shmelev allegedly had given me his anti-soviet poems and fables (there was a long list of titles) which I supposedly copied to keep them for me. The search warrant was issued in order to find these poems and fables.

The search began. Four KGB men and two witnesses knocked on the walls, looked through books, tore off the floor covering and turned dirty linen upside down. Naturally, they did not find any poems, which they were not looking for

anyway. They were looking for something quite different, and were really very interested in finding it. They were after the card index of the Fund for political prisoners. After Alexander Ginzburg's arrest, I have been serving as one of the Fund's representatives. They looked over all the cards they could find in the drawers, but nothing was written on these cards and this made them very angry. Finally they came upon two sheets of paper on which names of particularly needy political prisoners' families were written down with the indication that they required immediate help. They were very happy. "That's a program of criminal activity", captain Pokashinsky declared. "It's a program of support and encouragement to anti-soviet people."

Their interest was further attracted by documents of Amnesty International, including the organization's statute. They confiscated all such documents with the following explanation: "we do not recognize this organization, and all the organizations which we do not recognize are criminal ones". They also confiscated some correspondence between me and priest Zheleudkov which dated back to my time in the Vladimir prison and which had passed the prison censorship.

On the next day I was summoned to the Tarussa KGB office for questioning by captain Bykov and during the questioning I finally understood what it was all about. A "case" was being fabricated against me, based on the testimony of a former inmate of the Vladimir prison, who had spent a few days in a cell next to mine and who had called himself Shmelev. That was back in 1975. After a week he had been transferred elsewhere. So now this man, who is still serving his term in a forced labor camp, apparently is testifying that he and I had had a fit correspondence while I was in the Vladimir prison, that he used to send me his "anti-soviet writings" which I copied and distributed to fellow-prisoners, and that I was always urging him to write more and more. In this story the KGB was telling me, there were all sorts of fantastic details, all of them such as to make me qualify for charges under Article 70 of the Criminal Code (anti-soviet propaganda). However in putting together all this fabrication they had made a slight mistake: in order to make it appear that our "criminal relation" had been a long one, they dated its beginning back to a time when I had not arrived in the Vladimir prison.

I am not easily surprised by lies and forgeries on the part of KGB officials, but I used to think that they are at least careful in putting together their forged cases. This is the first time I see a case which is simply shamelessly invented from the first letter to the last.

Why are they doing it? There cannot be the slightest doubt. They have been out to destroy the Fund for political prisoners for quite a long time now. A regime which is basically and essentially hostile to any manifestation of humanity cannot condone the Fund's humane goals. A regime which fears any type of human solidarity which it does not control considers human compassion and mutual help a crime. A regime which wants to physically destroy all independent-minded people naturally must be furious when somebody prevents it from achieving its goal.

Alexander Ginzburg has been arrested.

Mal'va Landa has been sent into exile.

It must be our turn now, those who remain: Tatyana Khodorovich and myself.<sup>12</sup>

They have not decided yet what pretext they will use to put me behind bars and they are working on three parallel "cases": they refuse me any kind of employment and at the same time they prosecute me for being unemployed—a "parasite".<sup>13</sup> The militia ruthlessly and brutally attacks me and then they accuse me of resisting militia officials. Of course, such charges only lead to a sentence of one year. The "case" they are concocting now could yield a ten-year sentence.

They can get rid of a man, of course, and they can rob the Fund. The KGB is quite capable of doing both. But once humane feelings, compassion and solidarity are reborn, nobody can stop or destroy them.

July 23, 1977.

(Signed) KRONID LYUBARSKY,  
representative of the Russian  
Social Fund and member of the  
Moscow group of Amnesty International.

<sup>12</sup> Both Kronid Lubarsky and Tatyana Khodorovich were forced into emigration, subsequently, by the KGB and are now in the West.

<sup>13</sup> The state being the only employer in the Soviet Union, if there is a KGB order that a person not be given any work, he will stay unemployed. But under Soviet law, unemployment is a criminal offense.

## DOCUMENT No. 39

## STATEMENT

In April 1974, the Fund for political prisoners in the USSR was created and began helping hundreds of prisoners of conscience and their families. The initiative of the Fund's creation belonged to Alexander Solzhenitsyn who donated the necessary money to do it. In addition to that, about a thousand individuals made contributions to the Fund in the USSR.

Ever since its creation Alexander Ginzburg served as manager of the Fund in the USSR. On February 3, 1977 Alexander Ginzburg was arrested. He is in jail to date. His closest aide, Malva Landa, was exiled in July 1977 and is unable to take part in the Fund's activity. The two people who took over as Fund representatives, Kronid Lubarsky and Tatyana Khodorovich, have been forced to emigrate.

But help to political prisoners and their families will continue and the Fund will not be abandoned. Today we are taking charge of the Fund as its managers. We will continue helping prisoners of conscience in the spirit of humanity and mercy which is our tradition.

Moscow, November 6, 1977.

IRINA ZHOLKOVSKAYA-GINZBURG.  
SERGEY KHODOROVICH.

## DOCUMENT No. 40

(On April 17, 1978 Mal'va Landa, Irina Zholkovskaya-Ginzburg and Sergey Khodorovich held a press-conference at Mrs. Ginzburg's apartment in Moscow. A number of Western correspondents turned up (though none of them thought it necessary, apparently, to report the event). The following statement was handed out to the correspondents during the press-conference:)

On April 14, 1978 officials of the Department of Internal Affairs of the Sverdlovsky Section of Moscow conducted four searches (in connection with criminal case No. 47152) : at the home and at the office of Mrs. Julia Zags, one of the most active members of the Fund for persecuted persons, at the home of her mother Sara Tverdokhlebova and at the home of her husband Alexander Shuster. Documents regarding the Fund were found and confiscated, as follows :

A card index containing information on persecuted persons; records of help given ;

Receipts for money remittance for parcels and packages sent to prisoners and their families ;

"Certificate checks" in the amount of 290 rubles sent to Sara Tverdokhlebova through the official Soviet channel Vneshposyltorg ("certificate checks" or "certificate rubles" means privileged Soviet currency which can be obtained only in exchange for hard currency from abroad and which entitles the owner to shop in special stores) ;

Notebooks containing addresses and telephone numbers, among them an old notebook belonging to Alexander Ginzburg, with new entries made by Julia Zags in the process of working for the Fund ; and, as usual in such cases, typewriters (three of them).<sup>14</sup>

We hereby officially lodge a protest against such measures by our authorities which clearly aim at terminating the Fund's activity. The Fund is the only source of charitable help to persecuted persons which exists in our country.

April 15, 1978.

MAL'VA LANDA.  
IRINA ZHOLKOVSKAYA-GINZBURG.  
SERGEY KHODOROVICH.

## DOCUMENT No. 41

FEBRUARY 7, 1978.

To : The Procurator of the Kaluga Region.

From : Yuri Belov, resident of Roslavl' in the Smolensk Province, Ul. Bryanskogo 19A.

I have learned that Alexander Ginzburg, at present detained in the Kaluga prison, among other things is being charged with slander against Soviet medicine

<sup>14</sup> Typewriters are confiscated in order to try and prove that "anti-Soviet literature" or "pamphlets" were typed on them.

and specifically he is accused of having said that I, Yu.S. Belov, was one of those subjected to cruel treatment in the Sychevskaya special psychiatric hospital where I had been sent for political reasons.

I beg you to allow me to testify as a witness for the defense in connection with this episode.

(Signed) YU. BELOV.

#### DOCUMENT No. 42

To: The Legal Consultation Office No. 2, Moscow, Kalinin Prospekt 13, Attorney E. A. Reznikova.

#### STATEMENT

My husband S. A. Kovalev, a prisoner at institution VS 389/36, on December 7, 1977 sent letters to the Regional Procurator's Office of the Kaluga Region, to the Regional KGB office in Kaluga and to the Moscow KGB, asking to be questioned in connection with Alexander Ginzburg's case. S. A. Kovalev mentioned in his letters that he well knows the defendant personally and volunteered to testify about a number of concrete episodes about which he is well informed, as well as to speak about Alexander Ginzburg as a person. On January 12, 1978, senior investigator Saushkin of the Kaluga KGB office replied informing him that there was no need for his testimony in connection with Ginzburg's case.

I have since seen my husband at a personal meeting we had on April 8, 1978 and he told me that he insists on being summoned as witness because in his opinion his testimony would help reaching a truly impartial and just decision in court.

In connection with the above I beg you to do all you can so that S. A. Kovalev be given a chance to testify in Ginzburg's case. I also ask that this statement of mine be kept on file with the documents pertaining to Alexander Ginzburg's case.

I am sending a copy of this statement to Ginzburg's wife and authorizing her to undertake any steps she may deem necessary in this connection.

April 15, 1978.

(Signed) L. YU. BOYTSOVA,  
Moscow, Ul. 26 Bakinskikh,  
Komissarov 7 korp. 2 kvart. 71.

#### QUESTIONS AND REMARKS

MR. LEAHY. Mr. Williams, I appreciate very much your very strong, and as always, well-documented statement here today. Hearing you this morning brings back some very pleasant memories of not so many years ago when I was a student in law school here in Washington and I used to spend, I think, every free moment I had in one of two places—either watching the U.S. Senate or in the trial courts, the various trial courts in Washington. I listened to you argue many a case during that time. I was particularly impressed with your concern not only with the outcome of the case you were handling, but the fact that the rights of all were protected and that whatever the outcome might be, that it was in accordance with the law and that no one at the conclusion of a trial could claim that the law had not been applied as intended and fairly.

I thought many a time during those years that if I had my druthers in life, there were two things I would like to do: one, that I would be a prosecutor, or second, to be in the U.S. Senate. I enjoyed my 8½ years as a prosecutor and during that time, felt very definitely that it is not just the defense attorney who must watch out for the rights of the accused and the rights of society, but of course, the State and the State's representative or whoever might be prosecutor.

I felt, during those 8½ years, and I had it reaffirmed to me day after day after day, that whoever represents the state has every bit

as much of a duty to make sure that everyone's rights are protected throughout any trial. Certainly, I am surely feeling that you concur and I know this feeling was emphasized time and time again by former Attorney General Ramsey Clark, who is here today. I find it frustrating and disheartening to hear not only your tale of what has happened in the Soviet Union, but the tale of so many others who talked about not a failure on the part of defense attorneys who, in many instances, have tried to provide defenses at their own great peril, but the abject failure of those representing the state to apply even Soviet law in the situations relating to political cases.

I was asked about this last week in Vermont, where people have expressed tremendous concern, and I get asked about these trials every single time I am back home, several times a month. We have, as of course you know very well, presently as a Vermont resident, Mr. Solzhenitsyn. That fact, and my own membership on this Commission, brings about a number of these questions.

I was asked the same thing—why do we not pull out? The Helsinki Accords are not being followed. I could not help but feel that, in a way, that might play into the Soviets' hands. If we did, they no longer have us to at least within that forum hold up the things that have happened to, as you said, the court of world opinion. Soviet policy, since the end of World War II, has been to reduce the U.S. presence in Europe, either physically through NATO and so on, or in various European international forums. Would we not be playing directly into Moscow's hands if we removed ourselves right now from the CSCE? Maybe I should ask it in a two-part question. Might it not be far better for us to continue to try to get compliance here? If not, if after several more years of very frustrating work, we are unable to, might not that be the time to pull out? Might we be playing in their hands if we did today?

Mr. WILLIAMS. I guess, Senator, that I expressed a welling frustration of someone who has watched helplessly on the sidelines now for 16 months while one of the most horrible procedural outrages with which I have ever been acquainted has taken place. I suppose that free men and women across the Earth are becoming an endangered species, and we have a very special obligation to reach out to help those who aspire to freedom, and so many people, including this Commission and the people of good faith at the Helsinki accords meetings, were reaching out to nurture the aspirations of those people who want freedom so badly. And the one thing that we came away from Helsinki with was this basket of human rights, to which the Soviets promised adherence. They reaffirmed at that meeting their adherence to the Universal Declaration of Human Rights.

I did a laundry list the other day of the Declaration of Human Rights as it articulates the rights of an accused anywhere on the face of the Earth and just the most elementary simple principles of justice. If you are going to lock a man up, at least he ought to have a charge against him. If you are going to lock a man up and hold him in isolation, at least he ought to have an advisor. If you are going to lock a man up in a cage, at least he ought to be able to talk to his wife and see his wife and children and enlist their help. If you are going to lock him up, at least the basic rudiments of justice require that he have his incarceration tested by someone in a quasi-judicial capacity. The most rudi-



mentary civilizations in the history of the world have accorded that to people who have been put in cages.

I have given you this morning a roster of persons who have been denied that right and it is not getting any better. We are now 30 months—more than 30 months away from Helsinki, and I have not sensed any intention of adhering to that treaty. I think there is a time—when you treat with someone and you enter into agreements in good faith with that someone—when if historically that someone breaches his commitment, abrogates it, arbitrarily and capriciously and contumaciously—then you have got to say to yourself that it is a charade. It is a charade. I am being regularly cuckolded by this person who purports to agree with me and extracts from me commitments to which I adhere, but to which he regularly fails to comply.

That is the frustration that I feel on this subject and I just wonder how long must we be patient in this area.

Mr. LEAHY. But I still go back to the same question—are we going to be any better off? I share your frustration very, very greatly and I think had I been in your position as defense attorney involved in this, I am not so sure I would have contained my frustrations at the level you have and to have been able to do so for so long. I admire you for doing that, but I question—are we any better off and are they any better off? Which is just as important really, renouncing it today or trying longer?

Mr. WILLIAMS. I really cannot answer that with any certitude, Senator, but I do think that if we announced that this long and continuous rejection and abrogation of the Helsinki accords renders an annulity insofar as they are concerned and the other 33 signatories who have been equally betrayed would join in that proclamation, it might have a salutary effect in world opinion and that it might induce them to recognize the gravity of the situation that they have created by their continuing breach.

Mr. LEAHY. Our chairman has joined us and I would yield now to Mrs. Fenwick.

Mrs. FENWICK. Thank you, Senator Leahy.

I think everybody in this room has been impressed with the passion for justice and procedures of justice and more than that, the moral indignation that our witnesses express. Certainly what you say brings back terrible memories of the people that we saw in Russia and the people that have come before this Commission. People in tears, people afraid, people indignant—we have seen them all.

But I would like to speak to the fact that there is nothing that we can do for Mr. Ginzburg and Mr. Shcharansky and of course now, Mr. Orlov. His trial is finished and his suffering has begun. But I would like to speak to the question of the Helsinki accords. Yes, it is true that we could not force the Russians in Belgrade to indulge in or engage in a discussion that was not met with absolute obduracy but they had to hear our very able representative, Ambassador Goldberg, who most clearly made them hear whether they wanted to hear or not, and indeed others—members of the Commission, who went to Belgrade and forced publicly and privately the members of the delegation of the Soviet Union, and the members of the Warsaw Pact countries, to hear the feeling of the people of this country.

But I would like to mention also this whole question of the Helsinki accords and their effect. We Commission members went to see Chan-

cellor Kreisky of Austria who spoke to us of the effect of the Helsinki accords. He said that whereas the nations of Europe had been divided in half—Eastern European nations guided and controlled and policed by Russia, and Western nations turning toward the West—now a curious effect that he had never expected is that Europe has become a capsule. And I am convinced that the weakness of the Soviet Union is the gradual disengagement and the increasing variety of the nature of the regimes in Eastern Europe; Poland, where Cardinal Wysinski has assumed an almost equal position with Gierek as far as the management of the country is concerned; new Bishops in Hungary; religious activity in Rumania; although Czechoslovakia, of course, remains a hard situation.

But there is a difference between them and I think we should encourage and exploit this variety every time we see improvements and certainly we have—and I can attest to that—received certain permissions for people to emigrate from the different countries. The Helsinki accords were not universally welcomed at first. Maksimov, the man who runs Kontinent in Paris, said that when he read the Helsinki accords, he wept, and thought "And now I realize that Russia has a bomb on its hands." This is what it means to a great many well-informed people who care deeply about the welfare of the Russian people. The Helsinki accords are a bomb because Russia does not know exactly how to handle it and it is making its effect in the satellite countries and in Russia itself. We know that there are workers—not just the intelligentsia but workers—speaking out against the conditions in the Soviet Union. I am hoping very much that our labor movement here will have some Sakharov hearings on the whole question of working conditions in the Soviet Union. These are the things that we can do. But leave the Helsinki accords—leave a battlefield that is difficult—never. That is where we stay and fight. Never should we abandon something that gives us a foothold in the Iron Curtain.

Mr. WILLIAMS. I certainly agree with the last statement that Congresswoman Fenwick made. I do not think we should abandon ship either. But I think our only difference is that I think that they believe they do know how to handle the Helsinki accords commitment. They are handling the Helsinki accords commitment just the way they handle the noble declarations contained in their Constitution with respect to human rights. They ignore them. They handle the Helsinki accords just the way they handle the noble aspirations of the Universal Declaration of Human Rights and the United Nations Charter to which they adhered in 1945 and which they reaffirmed on August 1, 1975. They ignore them. And they are handling the Helsinki accord's basket of human rights in that same way. I think that we all agree the time has come to call the attention of the world to the fact, as Arthur Goldberg tried to do so valiantly in Belgrade, without much support, by the way, from some of the other signatories to the Helsinki accords, that they are ignoring them in the same way.

Mrs. FENWICK. Thank you. Mr. Chairman.

Mr. LEAHY. Mr. Chairman.

Mr. FASCELL. Mr. Williams, I want to thank you very much for making the case. The only way you can make a case on behalf of your client, it seems to me, and it is very important to make that case, is to do it both publicly and on the record. I guess that is about the most you could do at this point. I gather that is what you are saying.

Mr. WILLIAMS. That is about it, Mr. Fасcell.

Mr. Fасcell. Of course, we all share the frustration you have in dealing with the Soviets over a long period of time. I think we need to examine that for a moment, although I gather you have modified what appeared to be an absolute position at first.

It may be well to get some kind of consensus to say the Helsinki accords are no more. That might be some kind of a lesson to the Soviets. I doubt it. I do not think anything is a lesson to them, frankly. But the problem that we have with the Helsinki accords is the problem that we have in dealing with the Soviets across the board, and it raises the question—should we enter into any agreement with the Soviets? We know darn well they are not going to keep it. What good is SALT I or SALT II or SALT III or SALT V or anything else for that matter—based on the history of their actions? Does that leave us, the United States—and this is a continuing problem we have—does that leave the United States with only A to Z, A being war and Z being just ignoring everything that they do? We cannot do that, can we?

Mr. WILLIAMS. I do not think so, Mr. Chairman. I think that the dilemma that we face in the Helsinki accords is we have entered into an agreement with another contracting party in which they have promised that they will recognize all of the basic human rights that civilization has recognized in the last hundreds of years and then they do not do it. We cannot retaliate by saying since you do not do it, we will not do it because then we would be in a self-defeating position. The only thing that we can do is to say, well, we recognized permanently the Eastern boundaries—the boundaries in Eastern Europe that you were so anxious to have affirmed by us and recognized. That is something that we now reconsider and, of course, that takes us down the line to where you are going.

Mr. Fасcell. It seems to me, there is one small benefit, if any. At least you are able to sit here and make the case that whatever they agreed to is violated.

Mr. WILLIAMS. I think that when we strip away all the chaff and get right down to the essence of what we are talking about, Mr. Chairman, it is my belief that when you are dealing with someone who does not recognize the basic precepts of morality and who is not guided by moral considerations, that there is only one consideration with which you can speak and that is the consideration of strength. I think they understand strength. Oh boy, I think they understand strength. And I think that it is time for us to be strong and I think that is the greatest safeguard for peace in our time.

Mr. Fасcell. Are you talking in a military sense or total sense?

Mr. WILLIAMS. I am talking in every sense. I am talking about moral strength; I am talking about physical strength, if you want to use that expression; I am saying we must be strong and we must be strong in all of our positions. And I believe they understand and they respect strength. I do not believe that they respect vacillation and I do not believe that they respect one who turns away and ignores the violation of their commitments. I do not believe that. Because if you are talking about appealing to some moral sense of a regime that excludes as a matter of first principle the existence of God, it seems to me that you are engaging in an exercise in futility.

Mr. FASCELL. I was just sitting here thinking while you were running that out to the end of the string, Mr. Williams, I do not know where that leaves us in terms of nation-to-nation dealings. If there is in the long term absolutely no answer except force, we have got a very bad situation.

Mr. WILLIAMS. I hope not force, Mr. Chairman. I tried to say carefully "strength" and I think strength is the best antidote to the exercise of force in this age.

Mr. FASCELL. But strength, unless it is used, is a negative power, is it not?

Mr. WILLIAMS. Well, I think—

Mr. FASCELL. I mean, the strongest man in the world cannot beat a puny weakling unless he hits him.

Mr. WILLIAMS. No, but I think that he can get respect from that puny weakling that he might not get if he were not strong, if the puny weakling had no other principles governing his life.

That is how I look at it.

Mr. FASCELL. Thank you very much. The Commission's counsel, Mr. Oliver, has a question.

Mr. OLIVER. Mr. Williams, one aspect of the Helsinki Final Act and the Helsinki accords was that, by incorporating into it some of the language that it did, it raised, in the opinion of the West and the neutral countries, the question of human rights to a level of legitimate international discourse. One of the main points that the U.S. delegation in Belgrade made was, that because the Soviet Union was a signatory to the Helsinki Final Act, we had a right to raise these questions. We were supported by 27 other Signatories in that argument, and I believe that we substantially established our position. And we have made representations, not the Commission, but the U.S. Government has made numerous official representations in Moscow on the basis of the Helsinki Final Act protesting violations of the human rights provisions. And not only have we done so, but many other countries have periodically done so on family reunification cases and various other kinds of humanitarian issues.

But since the United States has not ratified the international declarations on civil and political rights, and we have no treaty or other document, we have no foundation which would enable us to legitimately raise these questions bilaterally on a day-to-day basis, multilaterally in places like Belgrade, and publicly in forums such as this. What justifications would we have to raise these questions if we renounce the Helsinki accords?

Mr. WILLIAMS. I am not saying that we should renounce it, Mr. Oliver. I am saying that we should recognize the fact that the Soviets have breached it and breached it continuously, not sporadically and in an isolated way. And I want us to adhere to the Helsinki accords with respect to all the signatories who adhere to them, but to recognize that there is one signatory whose signature was affixed to that agreement which did not have a good faith intention to adhere to it and I think since that happened, we have no obligation vis-a-vis that signatory.

Mr. OLIVER. Thank you, Mr. Williams. Your testimony today helps to make that point very clearly.

Mr. LEAHY. Do you have any questions, Mrs. Fenwick?

Mrs. FENWICK. No questions.

Mr. LEAHY. Mr. Fascell?

Mr. FASCELL. No questions.

Mr. LEAHY. Thank you, Mr. Williams, very much for being here with us today.

Mr. WILLIAMS. Thank you, Mr. Chairman.

Mr. LEAHY. Our next witness is Prof. Alan Dershowitz, a professor at Harvard Law School, who is active in the field of civil liberties. He was involved in a case study of Soviet Jewish political prisoners which was released as a book that I think many people here are familiar with, called "Courts of Terror." Presently, he is representing Anatoly Shcharansky, a Jewish activist and a member of the Moscow Helsinki Group, now awaiting trial under charges of treason.

We are certainly pleased that you are here this morning, Professor. I met with Mr. Shcharansky in 1975 in Moscow. I had the pleasure of bringing him a couple of letters from his wife at that time. I understood that was about the first time that he had received mail from her that had not been—and had not gone through any conduit—where there was any chance of it being censored, read, or anything else. She gave me the letters in a sealed condition here in Washington and I carried them in my jacket to Moscow and handed them over to him in the hotel room at the Hotel Rosea at that time.

I think it was a mark of Mr. Shcharansky's nature and that of most of the—in fact, all of the others that I met with at that time along with Senator Humphrey, Senator Ribicoff, Senator Javits, and a couple of others with them—as I handed him the letters it was obvious that he was eager to read them, but he ultimately put them in his pocket and continued to argue for others, not for himself, and for all the people whose rights he felt were being violated, who were being harrassed by the Soviet authorities and, who were being denied their rights because either of religious beliefs or their own beliefs in human rights. Throughout the whole time, Mr. Shcharansky never once pled for himself, nor did the others who were with him—some of whom are now facing trial—put pled for others.

I think that was probably the most important, the most impressive part of our whole meeting, a meeting which went on for quite some considerable time and a meeting that they undertook at some risk to themselves. They knew that the meeting itself would be monitored and so forth. I was enormously impressed with him and with the others at that time, but I think that impression only adds to my own frustration in the fact that the efforts that I have made on his behalf—the efforts of the other members of this Commission, Mrs. Fenwick, Mr. Fascell, the Members of both bodies who serve on the Commission, and so many of our colleagues in both bodies—our efforts have been in many ways so fruitless. Our frustration is doubled on the one hand in knowing the people individually and knowing how much they deserve our help and second, knowing that we have tried to act within the context of Soviet laws, Soviet declarations, and Soviet treaties while knowing that they are not being followed, too.

I mention that only to say that I am sure you are frustrated, but I want you to know that on this side of the table, we share those frustrations.

## STATEMENT OF PROF. ALAN DERSHOWITZ

Professor DERSHOWITZ. Thank you, Senator. Chairman, members of the Commission. It is no accident that Anatoly Shcharansky was concerned with the rights of others. The hallmark of those who are being oppressed most seriously in the Soviet Union is that they work for the human rights of others. We are not dealing with people who are personal pleaders, but rather with those who are acting in a representative capacity on behalf of a great many others, thousands perhaps, or silent millions within the Soviet Union.

Lincoln Steffens once described the great American lawyer, Clarence Darrow, as "the attorney for the damned." We are today speaking on behalf of imprisoned Soviet dissidents and are truly speaking of the "damned." They are our friends and our clients; yet we have never met them. They have been convicted by the Soviet authorities and press even before their trials. They have been imprisoned; yet they have committed no crimes.

It is appropriate that the cases of Shcharansky, Ginzburg, Orlov and the others under consideration today be presented to this Helsinki Commission, since the "crimes" for which these brave men and women—for we heard today that Ida Nudel, a woman, has been subject to arrest and charges for "malicious hooliganism", as well—these men and women are being imprisoned for crimes or acts that grow directly out of their heroic efforts to monitor Soviet compliance—or lack thereof—with the Helsinki accords. It is also appropriate that their cases are being presented to this Commission by lawyers such as Edward Bennett Williams, Ramsey Clark, George Fletcher, and myself, for the one thing that we all have in common is our willingness to criticize our own country's all too frequent failures to comply with human rights in particular cases. At the same time, for example, that I have been working for the defense of Anatoly Shcharansky, I have been aiding in several aspects of the defense of Johnny Harris, a black defendant facing the death penalty in Alabama, upon whom the Soviet press has very properly been focusing world attention. I think I can speak for all of us here today when I say that we are gravely concerned with, and would welcome further inquiry into the *Harris* case, the *Wilmington 10* case, and any other alleged instances of miscarriages of justice in this country.

Indeed, it can be truly said that the Soviet dissidents about whom we are speaking today are in prison because they tried to do in their country what we, and thousands of others like us, do in our country every day, and indeed what each of us is mandated to do under the Helsinki accords. It has been frequently observed that Soviet and American citizens have at least two rights in common: they are both free to criticize the United States; and they are both free to defend the Soviet Union. That, unfortunately, is where the similarity ends.

I am here today specifically on behalf of Anatoly Shcharansky, although I would also like to place into the record a petition that I helped to prepare and circulate to law professors throughout the United States protesting the trial, conviction, and sentence of Yuri Orlov. On the day of the conviction—a Thursday 2 weeks ago—more than 200 professors almost spontaneously signed this petition and more signatures are coming in every day.

Mr. LEAHY. Without objection, the petition will be made a part of the record and if you wish to send us the additional signatures when they arrive, they will be appended to the petition as it appears in the record. [See p. 54.]

Professor DERSHOWITZ. Thank you, Senator. It is particularly significant that law professors are signing this because we had hoped to build bridges with our colleagues in the Soviet Union. We have welcomed many Soviet lawyers to institutions in the United States on the basis of their representation that things have changed in the Soviet Union, that there is a real system of legality operating there. This collection of signatures from a representative group of law professors from virtually every major law school in the country is a way of telling our colleagues in the Soviet Union that we are taking a second look. We are reconsidering. We are wondering whether we have naively assumed that what appears to be a change is genuinely a change. We wonder whether we can honestly and consistently with our academic obligations continue to keep these bridges open. We hope we can, but we await anxiously your response to these concerns.

I am speaking here today as one of Anatoly Shcharansky's American attorneys, having received letters of authorization from both Shcharansky's mother in the Soviet Union and his wife in Israel. I am, unfortunately, a poor substitute for what Shcharansky is entitled to under Soviet law—namely, a vigorous Soviet lawyer advocating his defense in the Soviet Union before Soviet tribunals. But the few Soviet lawyers who were willing to defend Mr. Shcharansky, including Dina Kaminskaya, have all been systematically disqualified from representing him or forcefully excluded from the country. He is now without an attorney acceptable to him and his family and seems incapable of obtaining a vigorous defense.

If Shcharansky's defense cannot be presented to the Soviet investigators or the Soviet courts, it must be presented in the court of world public conscience. You Commissioners here today are representatives of that court of world public conscience.

Let me begin with a brief chronology of the events leading to Shcharansky's incommunicado detention nearly 15 months ago.

Shcharansky, a 30-year-old chess master and expert in computer technology, applied to emigrate to Israel in 1972. In 1974, he married Natalia Stiglitz in a Jewish religious ceremony. The next day, his wife left for Israel. During the 3 years prior to his arrest, Shcharansky served as an informal interpreter for many American dignitaries who have met with Soviet dissidents, including Senator Leahy, and many others who have met with him and with others. He was confined several times for short periods during roundup detentions.

In May of 1976, a group of Moscow citizens organized a public action group for the implementation of the Helsinki Agreement in the U.S.S.R. A higher calling under international law cannot be imagined. Shcharansky agreed to serve as one of the representatives of the Jewish dissidents in that umbrella group. The group, and various of its members, have written and distributed reports and other papers. Shcharansky has been among the signatories of these documents.

On January 22, 1977, an hour-long television documentary entitled "Buyers of Souls" was broadcast across the Soviet Union. This program—which is apparently part of a well-orchestrated anti-Semitic

media blitz—accused Jews seeking to emigrate to Israel of being part of a “Western-based anti-Soviet conspiracy.” It specifically named several dissidents, showing their pictures and giving their addresses, which was surely a provocation to hooliganism and vigilantism.

In February 1977, Anatoly Shcharansky, cognizant of his rights under the Soviet law and the Soviet Constitution, filed a lawsuit—he had the audacity to use the Soviet legal process and file a complaint with the Peoples Court of the Dzherzhinsky Region of Moscow, seeking a hearing and demanding a retraction of the slanderous information by the television station. I can tell you it was a pretty good legal document under Soviet law.

But on March 4, 1977, the response was the publication by *Izvestia* of the text of a letter allegedly written by Dr. S. L. Lipavsky, a neurologist who had involved himself in the Jewish dissident movement, but who—it now turns out—was almost certainly a KGB agent under instructions to infiltrate both the Jewish movement and the American CIA. The letter “confesses” that various Jewish dissidents had conspired with certain American diplomats in Moscow to commit espionage. Along with the letter, *Izvestia* also ran an article which, in effect, charged Shcharansky, among others, with spying for the United States and with treason. The American diplomats named were Messrs. Levitsky and Presel; also named were American newsmen Alfred Friendly, Jr. and George Krinsky. On March 15, 1977, Shcharansky was arrested and has been held incommunicado since.

From that time, the Soviet authorities have interrogated hundreds of witnesses, including many members of the Jewish refusenik community. Many were threatened with reprisals if they refused to cooperate in providing evidence against Shcharansky; several have been arrested.

At the end of February, word was received in the United States that the Soviet authorities had appointed a Moscow attorney named Silvia Dubrovskaja to represent Shcharansky. I immediately sought to contact her—my co-counsel, an attorney appointed by the Soviet authorities to represent a client who I was also appointed to represent—and I offered my assistance in the defense preparation, a common tactic throughout the world. Since I had interviewed several crucial witnesses to the events underlying the alleged charges who were no longer in the Soviet Union and to whom Shcharansky’s Soviet attorney had no access, I obviously had access to critical defense information unavailable to her. The following is the text of a cable which was sent to Advocate Dubrovskaja on March 6, 1978 by Congressman Robert Drinan, and I quote:

I have been informed of your appointment as advocate for Anatoly Shcharansky. As you may know I have spent considerable time with Shcharansky during a visit to Moscow and regard him as a personal friend.

I have been following his case with great interest and concern. On several occasions I have been assured by Soviet authorities that Shcharansky will be vigorously represented by an advocate of his choice pursuant to Soviet law. Professor Alan Dershowitz of the Harvard Law School has been appointed by Mrs. Ida Milgrom, Shcharansky’s mother, to represent Shcharansky’s interest in the United States. Professor Dershowitz has interviewed numerous witnesses to events relevant to the Shcharansky case who have left the Soviet Union. The testimony and information provided by these emigre-witnesses is obviously not available to you, and yet it may prove crucial to the Shcharansky defense case. Professor Dershowitz and I would very much like to share our information and



research with you in your capacity as Shcharansky's advocate. We do not seek to interfere with your representation or with any legitimate domestic affairs of the U.S.S.R. We seek merely to meet with you—lawyer to lawyer—and to share with you relevant information to which we have had unique access.

Since Soviet law requires you to present all information favorable to the accused, and since we have critical information favorable to Shcharansky to which you have no access, there is every reason for you to agree to meet with us and no reason why you should be unwilling to receive our important information. We are confident therefore that you will be as anxious to meet with us as we are to meet with you.

Accordingly Professor Dershowitz and I respectfully request an opportunity to come to Moscow at your earliest convenience to meet with you and to brief you on our information and research. Since time is apparently of the essence please respond immediately and indicate whether you would be prepared to receive us at your office. If you respond favorably, as we hope and expect you will, we will make immediate plans to travel to Moscow in the spirit of cooperation and mutual understanding.

Signed, Father Robert Drinan, Member of Congress from Massachusetts.

It has now been exactly 3 months since the cable was sent and there has been no response. There is no conceivable legitimate basis for Advocate Dubrovskaja's refusal to meet with us. We have not asked to intervene in the domestic affairs of another state or legal system; we have merely offered a fellow attorney the work product of our investigation in this country. No reasonable lawyer—truly concerned for the welfare of his or her client—would refuse our offer to travel, at our own expense, to Moscow for the purpose of providing the attorney with admittedly relevant information.

Mr. LEAHY. So to date, you have not received any response from Soviet authorities to your effort to provide legal counsel to your client?

Professor DERSHOWITZ. No; and we sent the cablegram to various addresses. It is impossible that it was not received. We sent it to the Collegium of Advocates to the Soviet Embassy, and to Mrs. Dubrovskaja in person.

Mr. LEAHY. And you are convinced Soviet law has been violated in your client's case?

Professor DERSHOWITZ. There is no doubt that Soviet law has been violated in numerous instances, but here we are speaking about something which transcends law. It relates to the way in which lawyers, members of a common profession, deal with each other. I submit there is hardly a country in the world which would not permit a lawyer to deal with another lawyer. We have not asked permission in this instance to sit at counsel table, to address the Soviet court. We did not even, in this telegram, seek permission to speak with our client, merely to speak with a fellow lawyer and provide documentation and information from people to whom she has no access. The decision, of course, may not have been made by Advocate Dubrovskaja. We cannot hold her responsible. It probably came from higher Soviet authorities. But the bottom line is that the Soviet legal system has refused our good faith offer to provide Shcharansky's appointed advocate with crucial information necessary for his defense. There is every likelihood, therefore, that Shcharansky's trial will replicate the legal charade that resulted in a maximum sentence for Yuri Orlov. The only difference is that Shcharansky faces the possibility of much harsher punishment, the death penalty or 15 years at hard labor.

I will not belabor the obvious fact that Shcharansky is completely innocent of the charges against him. All of his activities took place out in the open. Those of you who met with him and know him can attest to the fact that he was not a clandestine operative; he was the out-front person of the Jewish movement; acting visibly, and openly, and in full view of the Soviet authorities, the Western and Soviet press, and visitors from around the world. As President Carter declared on June 13, 1977:

I have inquired deeply within the State Department and within the CIA, as to whether or not Mr. Shcharansky has ever had any known relationship in a subversive way, or otherwise, with the CIA. The answer is 'no.' We have double-checked this, and I have been hesitant to make that public announcement, but now I am completely convinced that, contrary to the allegations that have been reported in the press, that Mr. Shcharansky has never had any sort of relationship, to our knowledge, with the CIA.

I certainly hope that President Carter, in his forthcoming address, on Soviet-American relationships mentioned in this morning's *Washington Post*, will not omit reference to the Soviet Union's obligation to human rights under the Helsinki accords for the Soviet trial of Shcharansky is a direct slap in the face to the President of the United States, to this Commission, and to the American people. The continued effectiveness of the Helsinki accords has to be put in question, as Mr. Williams indicated; for if the Soviet violations continue, then many Americans will necessarily join in Mr. Williams' suggestion that we indeed renounce our obligations under the Helsinki accords. I would suggest instead of an immediate termination that we begin a period of reassessment. And I would also strongly call for the continuation of representatives such as Arthur Goldberg who speak unequivocally and firmly and will not play politics with human rights and who put it to the Soviet Union directly. That is the kind of statesman we need representing American interests in the enforcement of the Helsinki accords.

Getting back to Mr. Shcharansky for just a remaining moment or two. As Alfred Friendly once put it: Shcharansky's only crime is that he told the truth and, what's worse, that he told it in English.

There will be a trial, because the Soviet Union is now attempting to convince the world that the Stalin-Beria system of justice is gone and forgotten. Solzhenitsyn once described that system as a sewage disposal system. And, of course, sewage disposal systems are not evaluated in terms of due process or justice.

The Soviet Union now claims that its system is different; that the Beria dictum: "just let us have the man and we will find the crime" is no longer the hallmark of the Soviet system. But the Orlov trial and others like it put the lie to the Soviet claims of legality. These kangaroo court proceedings use the facade of the law to mask a primitive brand of simple repression. As the great Lord Coke observed more than 300 years ago: "It is the worst oppression, that is done under colour of justice." And as our own Justice Jackson observed recently: "The most odious of all oppressions are those which mask as justice."

One striking example of the extent to which the Soviet law acts as a mask of justice emerged in recent discussions between Professor Burton Caine and Dean Liacouras of Temple Law School, and Soviet authorities in dealing with the Shcharansky case. They asked their

Soviet academic colleagues how come Shcharansky is held beyond the 9-month limit and they were told that the Supreme Soviet has total authority to change the law and they changed the statutes retrospectively.

We then asked—and I am quoting from an account by Professors Caine and Liacouras—“\* \* \*. how far the power of the Supreme Soviet goes. For example, could the Supreme Soviet decide that instead of bringing Shcharansky to trial, it will execute him? ‘Theoretically, the answer is yes’, they said, and they seemed as startled by their pronouncement as we were. The discussion was chilled by it. In view of the Shcharansky case, how could American business be sure that the Russians won’t change the rules on them, arbitrarily and unilaterally.”

The Soviet Union today stands exposed in the world of public opinion. It must make a choice: either to comply with the basic norms of law regulating the relationship between a powerful state and its dissidents and minorities; or to give up any hope that the world legal community will accept its mechanism for dealing with dissidents and minorities as a genuine system of dispensing justice rather than as a manhole cover for a sewage disposal system. How the Soviet authorities treat Anatoly Shcharansky may prove to be the single most important litmus test of the continued ability of Soviet and American lawyers to work together and, indeed, of Soviet-American trust.

I wish to end my statement on a positive note and with a constructive request of my legal colleagues in the Soviet Union. If the Soviet legal system is truly interested in doing justice in the Shcharansky case, let the trial be an open one. Let his American attorneys attend the trial to work with him and his Soviet advocate. Let us work together on cases of injustice in this country as well. I hereby offer my cooperation in that joint enterprise. I ask only that Anatoly Shcharansky be treated fairly, for I am confident that fair treatment will necessarily result in his release from prison and his freedom to join his wife.

Thank you, Commissioners.

[Professor Dershowitz’s written statement follows:]

TESTIMONY OF ALAN DERSHOWITZ, REPRESENTING ANATOLY SHCHARANSKY, BEFORE  
THE COMMISSION ON SECURITY AND COOPERATION IN EUROPE

Lincoln Steffens once described the great American lawyer Clarence Darrow as “the attorney for the damned.” We who are today speaking on behalf of imprisoned Soviet dissidents are truly speaking of the “damned”. They are our friends and clients; yet we have never met them. They have been convicted by the Soviet Authorities and press even before their trials. They have been imprisoned; yet they have committed no crimes.

It is appropriate that the cases of Shcharansky, Ginsburg, Orlov and the others under consideration today be presented to this Helsinki Commission, since the “crimes” for which these brave men are being imprisoned grow directly out of their heroic efforts to monitor Soviet compliance—and lack thereof—with the Helsinki Accords. It is also appropriate that their cases are being presented to this Commission by lawyers such as Edward Bennet Williams, Ramsey Clark, George Fletcher, and myself, for the one thing that we all have in common is our willingness to criticize our own country’s all too frequent failures to comply with Human Rights in particular cases. At the same time, for example, that I have been working on the defense of Shcharansky, I have been aiding in several aspects of the defense of Johnny Harris, a black defendant facing the death penalty in Alabama, upon whom the Soviet press has very properly been focusing world attention. I think I can speak for all of us when I say that we are gravely concerned with, and would welcome further inquiry into the Harris case, Wilmington 10 case, and any other alleged instances of miscarriages of justice in this country.

Indeed, it can truly be said that the Soviet dissidents about whom we are speaking today are in prison because they tried to do in their country what we,

and thousands of others like us, do in our country every day. It has been frequently observed that Soviet and American citizens have at least two rights in common: they are both free to criticize the United States; and they are both free to defend the Soviet Union. That, unfortunately, is where the similarity ends.

I am here today specifically on behalf of Anatoly Shcharansky, although I would like to place in the record a petition that I helped to prepare and circulate to law professors throughout the United States protesting the trial, conviction and sentence of Yuri Orlov. (Appendix A).

I am speaking here as one of Shcharansky's American attorneys, having received letters of authorization from both Shcharansky's mother in the Soviet Union and his wife in Israel.

I am, unfortunately, a poor substitute for what Shcharansky is entitled to under Soviet law—namely, a vigorous Soviet lawyer advocating his defense in the Soviet Union at the present time, but the few Soviet lawyers who were willing to defend Mr. Shcharansky vigorously have all been systematically disqualified from representing him. He is now without an attorney acceptable to him and his family and seems incapable of obtaining a vigorous defense.

If Shcharansky's defense case cannot be presented to the Soviet investigators and to the Soviet courts, it must be presented in the court of world public conscience. The Commissioners here today are representatives of that court of world public conscience. What we ask from you on behalf of Anatoly Shcharansky is the fair hearing that thus far has been denied us in the Soviet Union.

Let me begin with a brief chronology of the events leading up to Shcharansky's incommunicado detention nearly fifteen months ago.

Shcharansky, a 30-year-old chess master and expert in computer technology, applied to emigrate to Israel in 1972. In July, 1974, he married Natalia Stiglitz in a Jewish religious ceremony. The next day, Natalia left for Israel. During the past three years Shcharansky has served as informal interpreter for many American dignitaries who have met with Soviet dissidents. He was confined several times for short periods during round up detentions.

In May, 1976, a group of Moscow dissidents organized a public action group for the implementation of the Helsinki Agreement in the U.S.S.R. Shcharansky agreed to serve as one of the representatives of the Jewish dissidents in this group. The group, and various of its members, have written and distributed reports and other papers. Shcharansky has been among the signatories of these documents.

On January 22, 1977, an hour long television "documentary" entitled "Buyers (or "Traders") of Souls", was broadcast across the Soviet Union. This program—a summary of which is attached hereto as Appendix B—accused Jews seeking to emigrate to Israel of being part of a "Western-based anti-Soviet conspiracy." It specifically named several dissidents, showing their pictures and giving their addresses. In February, 1977, Shcharansky filed a complaint with the Peoples Court of the Dzershinsky Region of Moscow, seeking a hearing and demanding a retraction of the slanderous information by the television station. (A translation of the complaint is attached as Appendix C.)

On March 4, 1977, *Izvestia* printed the text of a letter allegedly written by Dr. S. L. Lipavsky, a neurologist who had involved himself in the Jewish dissident movement, but—who it now turns out—was probably a KGB Agent under instructions to infiltrate both the Jewish movement and the C.I.A. The letter "confesses" that various Jewish dissidents had conspired with certain American diplomats in Moscow to commit espionage. (A translation of this letter is attached as Appendix D.) Along with the letter, *Izvestia* also ran an article which, in effect, charged Shcharansky, among others, with spying and treason. (A translation of the article is attached as Appendix E.) The American diplomats named were M. Levitsky and Joseph Presel; also named were American newsmen Alfred Friendly, Jr., and George Krinsky. On March 15, 1977, Shcharansky was arrested and has been held incommunicado since.

Since that time, the Soviet authorities have interrogated dozens of witnesses, including many members of the Jewish "Refusenick" Community. Several were threatened with reprisals if they refused to cooperate in providing evidence against Shcharansky.

At the end of February, word was received that the Soviet authorities had appointed a Moscow attorney named Silvia Dubrovskaja to represent Shcharansky. I immediately sought to contact her to offer my assistance in her defense preparations. Since I had interviewed several crucial witnesses to the events underlying the alleged charges who were no longer in the Soviet Union, I had access to important information that was unavailable to her. The following is

the text of a cable sent to Advocate Dubrovskaja on March 6, 1978 by Congressman Robert Drinan.

ADVOCATE SILVIA DUBROVSKAJA, PRESIDUM OF THE MUNICIPAL KOLLEGE  
BARRISTERS OF MOSCOW, MOSCOW (USSR)

I have been informed of your appointment as advocate for Anatoly Shcharansky. As you may know I have spent considerable time with Shcharansky during a visit to Moscow and regard him as a personal friend. I have been following his case with great interest and concern. On several occasions I have been assured by Soviet authorities that Shcharansky will be vigorously represented by an advocate of his choice pursuant to Soviet law.

Professor Alan Dershowitz of the Harvard Law School has been appointed by Mrs. Ida Milgrom, Shcharansky's mother, to represent Shcharansky's interest in the United States. Professor Dershowitz has interviewed numerous witnesses to events relevant to the Shcharansky case who have left the Soviet Union. The testimony and information provided by these emigre-witnesses is obviously not available to you, and yet it may prove crucial to the Shcharansky defense case. Professor Dershowitz and I would very much like to share our information and research with you in your capacity as Shcharansky's advocate. We do not seek to interfere with your representation or with any legitimate domestic affairs of the USSR. We seek merely to meet with you—lawyer to lawyer—and to share with you relevant information to which we have had unique access.

Since Soviet law requires you to present all information favorable to the accused, and since we have critical information favorable to Shcharansky to which you have no access, there is every reason for you to agree to meet with us and no reason why you should be unwilling to receive our important information. We are confident therefore that you will be as anxious to meet with us as we are to meet with you.

Accordingly Professor Dershowitz and I respectfully request an opportunity to come to Moscow at your earliest convenience to meet with you and to brief you on our information and research. Since time is apparently of the essence please respond immediately and indicate whether you would be prepared to receive us at your office. If you respond favorably, as we hope and expect you will, we will make immediate plans to travel to Moscow in the spirit of cooperation and mutual understanding.

Sincerely,

FATHER ROBERT DRINAN,  
*Member of Congress from Massachusetts.*

It has now been exactly three months since the cable was sent and there has been no response. There is no conceivable legitimate basis for Advocate Dubrovskaja's refusal to meet with us. We have not asked to intervene in the domestic affairs of another state or legal system; we have merely offered a fellow attorney the work product of our investigation in this country. No reasonable lawyer—truly concerned for the welfare of his or her client—would refuse our offer to travel, at our own expense, to Moscow for the purpose of providing the attorney with admittedly relevant information. It may well be, of course, that Advocate Dubrovskaja has not herself made the decision to refuse our offer; the decision may well have come from a higher Soviet authority. But the bottom line is that the Soviet legal system has refused our good faith offer to provide Shcharansky's appointed advocate with crucial information necessary to his defense.

There is every likelihood, therefore, that Shcharansky's trial will replicate the legal charade that resulted in a maximum sentence for Orlov. The only difference is that Shcharansky faces the possibility of much harsher punishment: the death penalty or fifteen years at hard labor.

I will not belabor the obvious fact that Shcharansky is completely innocent of the charges against him. All of his activities took place out in the open. He was not a clandestine operative; he was the out-front person of the Jewish movement: acting visibly, openly and in full view of the Soviet authorities, the Western press, and visitors from around the world. As President Carter declared on June 13, 1977:

"I have inquired deeply within the State Department, and within the CIA, as to whether or not Mr. Shcharansky has ever had any known relationship in a subversive way, or otherwise, with the CIA. The answer is "no". We have

double-checked this, and I have been hesitant to make that public announcement, but now I am completely convinced that, contrary to the allegations that have been recorded in the press, that Mr. Shcharansky has never had any sort of relationship, to our knowledge, with the CIA."

As Alfred Friendly, Jr. once put it: Shcharansky's only crime is that he told the truth and, what's worse, that he told it in English.

There will be a trial, because the Soviet Union is attempting to convince the world that the Stalin-Beria system of justice is gone and forgotten. Solzhenitsyn characterized that system as a sewage disposal.

Sewage systems are not evaluated in terms of the due process they accord, or the justice they achieve. The lawyers and judges who function in such a system are sanitary engineers and efficiency experts rather than seekers of truth and justice. Legality is cosmetic, and no real pretense of due process is even attempted. But a new respect for legality has been claimed by the Soviet Union since the death of Stalin. Beria's dictum: "just let us have the man; we will find the crime" is no longer the hallmark of the system. The Soviet Union proudly presents its legal system as one surrounded with fundamental safeguards and due process. Its criminal code and its code of procedure are, in many respects, models of fairness: they provide, *inter alia*, for the defendant's right to a lawyer "according to his own choice; for the defendant's "equal rights in presenting evidence"; and for other important rights essential to a fair trial.

But the Orlov "trial"—and others like it—put the lie to Soviet claims of legality. These kangaroo court proceedings use the facade of the law to mask a primitive brand of simple repression. As Lord Coke observed more than 300 years ago: "It is the worst oppression, that is done under colour of justice." And as our own Justice Jackson echoed more recently: "The most odious of all oppressions are those which mask as justice."

A striking example of the Soviet use of law as a mask of justice covering the reality of naked power was provided in a recent exchange among Dean Peter Liacouras and Professor Burton Caine of the Temple University Law School, and a number of prominent Soviet officials and scholars at the prestigious Institute of U.S.A. and Canada Studies of the Academy of Sciences of the U.S.S.R. The issue involved the continued incommunicado detention of Shcharansky beyond the statutory deadline of December 15, 1977. I quote from Professor Caine's account of the discussion:

In discussing how one finds the law in the Soviet Union, we asked if there is any provision of law in writing authorizing the Presidium of the Supreme Soviet to extend the investigation in the Shcharansky case. All agreed that under Article 97, there was no authority to extend the investigation beyond December 15. We brought the Soviet Code and were prepared to examine any cited reference. We were told that the authority is not in writing: that it was "inherent" on the ground that the Supreme Soviet makes the law and, therefore, can change it. We asked whether this inherent authority could also be exercised retroactively and with respect to a particular criminal defendant. The answer was in the affirmative. The Russian scholars claimed that the President of the United States exercises a similar power in the case of amnesty; that is, the government acts retroactively affecting a particular criminal defendant. We replied that amnesty was precisely the contrary, namely, an instance of an individual having been convicted and punished according to due process of law, but the Executive exercises mercy or clemency to lighten the punishment. There is no power to increase its severity. Although we conceded that the American system of justice is not a necessary model elsewhere, we consider it a fundamental precept of law that retroactive legislation depriving a particular defendant of rights did not meet the minimum norms of civilized behavior.

We asked how far the power of the Supreme Soviet goes. For example, could the Supreme Soviet decide that instead of bringing Shcharansky to trial, it will execute him? "Theoretically, the answer is yes", they said, and they seemed as startled by their pronouncement as we were. The discussion was chilled by it. In view of the Shcharansky case, how could American business be sure that the Russians won't change the rules on them, arbitrarily and unilaterally.

The Soviet Union stands exposed in the world of public opinion. It must make a choice: either to comply with the basic norms of law regulating the relationship between a powerful state and its dissidents and minorities; or to give up any hope that the world legal community will accept its mechanism for dealing with dissidents and minorities as a genuine system of dispensing justice rather than a cover for a sewage disposal system. How the Soviet authorities

treat Anatoly Shcharansky may prove to be the single most important litmus test of the continued ability of Soviet and American lawyers to work together and, indeed, of Soviet-American trust.

I wish to end my statement on a positive note and with a constructive request of my legal colleagues in the Soviet Union. If the Soviet legal system is truly interested in doing justice in the Shcharansky case, let the trial be an open one. Let his American attorneys attend the trial to work with him and his Soviet Advocate. Let us work together on cases of injustice in this country as well. I offer my cooperation. I ask only that Anatoly Shcharansky be treated fairly, for I am confident that fair treatment will necessarily result in his release from prison and his freedom to join his wife.

[Materials submitted by Professor Dershowitz follow:]

#### APPENDIX A

COLUMBIA UNIVERSITY,  
SCHOOL OF LAW,  
New York, N.Y., May 19, 1978.

L. I. BRESHNEV,  
*Chairman of the Presidium of the Supreme Soviet of the U.S.S.R., Kremlin,  
Moscow, U.S.S.R.*

MY DEAR CHAIRMAN BRESHNEV: I have the honor of transmitting to you the protest of American law professors at the shocking denial of fundamental human rights to Professor Yuri Orlov.

Yours respectfully,

ALAN DERSHOWITZ,  
*Professor of Law, Harvard Law School.*

We are dismayed by the trial, conviction, and sentence of Yuri Orlov in Moscow, since we had hoped that developments such as the Helsinki Agreement and the New Soviet Constitution suggested a growing respect for the rule of law and individual rights in the Soviet Union. Reports of the trial reflect a basic denial of even the rudiments of fairness under Soviet law in that the public was excluded except for a few family members and people selected by the government, a record of the trial is being withheld, spectators were not permitted to take notes inside or outside the courtroom, the defendant was denied witnesses on his behalf, the defendant was not shown documents used against him, and the defendant was not permitted to cross-examine witnesses adequately. We protest this denial of fundamental fairness and this mockery of a trial and of justice in the Soviet Union.

*Antioch School of Law*

Edgar Cahn.

*Arizona State University College of Law*

Kenney Hegland, Walter Raushenbush, Charles E. Ares, August Eckhardt, Steven Phillips, Ray Jay Davis, Roy G. Specc, Jr., Winton D. Woods, Jonathan Rose, David Kaye, John P. Morris, Dennis S. Karjala, Willard H. Pedrick, Gary T. Lowenthal, H. H. Bruff, Edward W. Cleary, Robert C. Clark, Arthur W. Andrews.

*Brooklyn Law School*

Leon Wein, Philip K. Yonge, Richard Allan, Jerome Leitner, Richard Farrell, Joseph Crea, Oscar Chase, Nancy Fink, Deborah Schenck, Dusan Djonovich, Gary Schultze, Albert De Meo, I. Leo Glasser, John Romaine, Margaret A. Berger.

*Buffalo School of Law*

Thomas Headrick, David Kochery, James Atleson.

*University of California School of Law, Berkeley*

Justin Sweet, Jesse Choper.

*University of California School of Law, Los Angeles*

Arthur I. Rosett, Theodore Eisenberg, Benjamin Aaron, Norman Abrams, Jesse Dukeminier, Michael R. Asimow, Donald G. Hagman, Kenneth L. Karst, Frederic L. Kirgis, Robert Jordan, Wesley J. Liebler, Richard C. Maxwell, William M. McGovern, Jr., Susan Westerberg Prager, Alison Grey Anderson,

Monroe E. Price, Jonathan D. Varat, Richard A. Wasserstrom, Gary T. Schwartz, Stephen C. Yeazell.

*University of Chicago Law School*

Philip B. Kurland.

*Columbia University School of Law*

Michael I. Sovern, Harold Korn, Harriet Rabb, Willis L. M. Reese, Jack B. Weinstein, William F. Young, Jr., Nina Galston, Peter Swords, Lewis Kaden, Richard B. Stone, Alfred Hill, Walter Werner, Oliver J. Lissitzyn, H. Richard Uviller, Marvin Frankel, Maurice Rosenberg, Louis Lusky, Albert J. Rosenthal.

*University of Connecticut School of Law*

Nicholas Wolfson, Aviam Soifer, Richard Kay, Philip Blumberg, Richard Pomp, Lewis Kurlatzick.

*Duke University School of Law*

Walter Dellinger, Joel Lawrence Fleishman.

*Fordham University School of Law*

Joseph McLaughlin.

*Georgetown University Law Center*

Frank Flegal, Sherman Cohn, John G. Murphy, Jr., Michael Siedman, Samuel Dash, Michael E. Geltner, Larry J. Ritchie.

Herbert S. Miller, Heathcote W. Wales.

*Harvard University Law School*

Alan Dershowitz, Frank I. Michelman, David R. Herwitz, Telford Taylor, George Schatzki, Richard Davies Parker, Douglas H. Ginsburg, Elizabeth Bartholet, Vern Countryman, Bernard Wolfman, Charles R. Nesson, Daniel A. Resnick, Albert M. Sacks, Andrew L. Kaufman, Duncan Kennedy, Lance Liebman, Lawrence Tribe, Charles Fried, Lloyd L. Weinreb, Detlev F. Vagts, Morton J. Horwitz, James Vorenberg, Steven Breyer.

*University of Minnesota Law School*

Steven Nemerson, Marcia R. Gelpe, Robert J. Levy, Roberta K. Levy, Richard S. Frase, Charles W. Wolfram, Laura J. Cooper, Thomas J. Moore, J. Morris Clark, Barry Feld, David P. Bryden, Carl A. Auerbach, Roger Park, Steven Munzer, David Weissbrodt, George Grossman.

*New York Law School*

Margaret S. Bearn, Jeffrey Glen, Joel Martel, Marianne Spraggins, Catherine Sullivan.

*New York University School of Law*

Norman Dorsen, Sylvia Law, Lewis Kornhauser, Diane Zimmerman, John Johnston, James Kirby, Jack MacKenzie, Jack Delancy, Barbara Burnett, Albert Garretson, Daniel Collins, Burt Neuborne, John Slain, Howard Greenberger, Lawrence Tancredi, Julius Marke, Laura Sager, Harry First, Darryl Nicholas, Wayne Outten, David Richards, Thomas Franck, Norman Redlich, Edward Bunder, Roger Gobel.

*Ohio State University College of Law*

Michael John Perry, Keith S. Rosenn, Douglas J. Whaley, Rhoda R. Rivera, Philip C. Sorenson, Phaedon John Kozyris.

*Pace University School of Law*

Robert B. Fleming, Ralph M. Stein, Cassandra E. Joseph, James V. De Marco, Jay C. Carlisle II, Josephine Y. King, Abraham Abramovsky.

*University of Pennsylvania Law School*

Edward Sparer, John Hannold, Alexander Capron, Steven Schulhofer, Howard Lesnick, Regina Austin, Gerald Frug, Paul Bruton, Covey T. Oliver, Louis H. Pollak.

*Rutgers, The State University of New Jersey, School of Law, Camden*

Russel N. Fairbanks, Jay M. Feinman, Nancy J. Moore, Rand E. Rosenblatt, Spanislaw Pomorski, John H. Davies, E. Hunter Taylor Jr., Edward Chase, Barbar Kalzer, Paul Robinson, Peter Arenalla, Jonathan, Mallamud, Sarajane Love, Calvin W. Corman, Jeffrey Davis.



*Rutgers, The State University of New Jersey, School of Law, Newark*

Alexander D. Brooks, Alan Schwarz.

*St. Johns University School of Law*

Thomas F. Shea, Joseph A. Calamari.

*Stanford Law School*

Myron Jacobstein, Paul Goldstein, Robert Rabin, Tony Amsterdam, Gerald Gunther, Yosai Rogat, Charles Halpren, John Henry Merryman, Marc Franklin.

*University of Toledo College of Law*

Lester Brickman.

*University of Utah College of Law*

Robert W. Swenson, John J. Flynn, William J. Lockhart, E. Wayne Thode.

*Saint Louis University School of Law*

Michael Wolff, Roger Goldman.

*University of Wisconsin Law School*

Gordon B. Baldwin, George Bunn, Ted Finman, Marc Galanter, Joel S. Handler, Samuel Mermin, Joseph Thome, David M. Trubek, June Weisberger, Ziegurds L. Zile, James Willard Hurst.

*Yale Law School*

Boris Bittker, Edward Daver, Julius Getman, Guido Calabresi, Dennis Curtis, Stephen Wizner, Joseph Bishop, Ralph Brown, Daniel Freed, Alvin Klevorick, Harry Wellington.

*Yeshiva University, Benjamin N. Cardozo School of Law*

Monrad G. Paulsen, John Hanks, Eva Hanks, Jonathon Silver, Richard D. Hobbet, Joseph Bianco, Richard Wright, Aaron Kirschenbaum, Elliot Weiss, Arthur Jacobson.

ADDITIONAL SIGNATURES ON PETITION RE ORLOV TRIAL

*N.Y.U. Law School*

Harvey Dale, Eleanor Fox, Judith Wexler, Napoleon Bonapart Williams, Milton Wessel, Norman Redlich.

*Harvard*

Jerry Cohen.

*N.Y. Law School*

Dean E. Donald Shapiro; Associate Dean Margaret S. Bearn; Assistant Dean Arnold Graham; Assistant Dean Marshall Lippman; Professors Jeffrey Glen, Joel Martel, Marianne Spraggins, Catherine Sullivan, Sandra H. Johnson, John R. Dugan, F. C. Setaro, Nancy S. Erickson, Edward Samuels, Peter W. Schroth, Nelson Seitel, Kim Lang, Eugene Cerruti, Lung-Chu Chen, Michael Botein, Robert I. Blecker, Janet Tracy, Stephen Newman, Cyril C. Means, Jr., Lucille M. Hillman, Andrew Simak, Jackie Kleiner, James Brook, Miriam J. Haines, and Anthony J. Scanlon.

*Case Western Reserve University*

Dean Lindsey Cowen, Professors Neil Hamilton, Sidney Picker, Melvyn Durchslag, Leon Cabinet, Lewis Katx, Robert Lawry.

*Saint Louis University*

Dennis Tuchler, John Griesbach, John F. T. Murray, Rudolph C. Hasl, Stephen Smith.

*University of Tulsa*

William G Hollingsworth, Associate Professor.

*Hofstra Law School Faculty*

David K. Kadane, Sheila Rush, Stuart Rabinowitz, Lawrence Kessler, Leon Friedman, Alan N. Resnick, Daniel Posin, Abraham P. Ordovery, Aaron D. Twerski, Monroe H. Freedman, Marina Angel, Ronald Silverman, Linda Champ-  
lin, B. C. Agata, Eric Lane.

*Rutgers Law School*

Julius Cohen, Norman Cantor, Eric Neisser, Richard Singer, James C. N. Paul, Paul Tractenberg, Peter Simmons, Dean.

*Hamline University School of Law*

Michael Scherschligt, David M. Corbin, Peter N. Thompson, Larry Bakken, William J. Keppel, Scott Ward, Joseph Edward Olson, Robert L. Mennell, M. Arnold Lyons, James R. Pielemeier, Thomas C. Utter, Cathryn Deal, Douglas McFarland, John E. Weeks, Richard C. Allen, Howard J. Vogel, Len Biernat.

*Boston University*

William B. Harvey, Robert Liberman, Daniel G. Partan, Henry Paul Monaghan, Frances H. Miller, David M. Phillips, Tamar Frankel, Colin S. Diver, Julius B. Levine, Banks McDowell, Jr., Paul A. Wallace, Robert B. Seidman, Austin T. Stickells, Kenneth A. Cohen.

*Washington University*

Susan Frelich Appleton, Assistant Professor of Law; Merton C. Bernstein, Walter D. Coles, Professor of Law; Gary I. Boren, Professor of Law, Kathleen F. Brickley, Associate Professor of Law; Ronald L. Carlson, Professor of Law; William C. Jones, Professor of Law; Patrick J. Kelley, Associate Professor of Law; Steven D. Korenblat, Assistant Dean; Bruce D. La Pierre, Assistant Professor of Law; Samuel H. Liberman, Assistant Professor of Clinical Law; Frank W. Miller, Carr Professor of Criminal Jurisprudence; David J. Newberger, Assistant Professor of Law; Philip D. Shelton, Associate Dean.

*Seton Hall University, The Law Center*

Robert A. Diab, Acting Dean; Harvey M. Sklaw, Arthur R. Pinto, D. Michael Risinger, Wilfredo Caraballo, John B. Wefing, Livingston Baker, William E. Garland, James B. Boskey, Ahmed J. Bulbulia, Lawrence Bershad, Eric J. Byrne.

*Texas Tech University*

Robert P. Davidow, Professor of Law; Bruce M. Kramer, Associate Professor of Law; David C. Cummins, Professor of Law.

*The John Marshall Law School, Chicago*

Fred F. Herzog, Dean, Gerald E. Berendt, Claude E. Carr, Jr., John E. Corkery, Ronald Z. Donsky, Elmer Gertz, Celeste M. Mannon, Milton M. Hermann, Michael G. Heyman, Kenneth Kandaras, Walter J. Kendall III, Jay L. Miller, Robert J. Nye, Michael J. Polelle, Arthur J. Sabin, John H. Scheid, Michael P. Seng, Ronald C. Smith, George B. Trubow.

*University of Hawaii Law School*

Donald T. Weckstein (Visiting Professor), Corey Y. S. Park, Milton Seligson, Julian Gresser, Jon Van Dyke, Williamson B. C. Chang, Carol Mon Lee (Visiting Professor), Charles R. Iris (Visiting Professor), Carl M. Selinger, Richard S. Miller.

*University of Wyoming College of Law*

Catherine E. Mealey, E. George Rudolph, Peter C. Maxfield, G. Joseph Cardine, Frederick T. Chen, M. A. Dieterich.

## APPENDIX B

*"Traders of Souls"*

An hour-long, nationwide TV programme broadcast from Moscow at peak viewing time depicts refuseniks and activists as "soldiers of Zionism inside the Soviet Union" and accuses them of being part of a Western-based anti-Soviet conspiracy. The transmission went out on 22nd January, at 7 p.m.

The Documentary, which dealt with the question of emigration to Israel, took the unprecedented step of naming several activists and showing others carrying out what the programme claimed were "subversive" activities.

Western writers, actors and Nobel Prize winners who have in the past appealed to the Soviet authorities on behalf of Russian Jews were depicted as dupes of Zionist propaganda; and in a transparently anti-Semitic sequence, American and British organisations helping Soviet Jewry were stigmatised as agents of Jewish finance.

One sequence dealing with visitors and tourists who call on Jewish activists charges them openly with "introducing anti-Soviet materials" and suggests possible links with the American CIA.

Jewish circles inside the Soviet Union have reacted strongly to the programme and fear that it may herald a number of prosecutions on trumped-up charges of "anti-Soviet" activity. A correspondent told us: "Much of the material was the inevitable anti-Israeli lies and distortions with items deliberately taken out of context and juxtaposed to present a completely false picture, but far more serious for us was the naming of local activists and showing their pictures right across the Soviet Union as 'traitors' and 'criminals'. This is contrary to civilised law and an open incitement against innocent people".

(The following is a resume of the broadcast. It was entitled "Traders of Souls.") :

The broadcast began with the announcer stating how free the lives of persons of Jewish nationality are in the USSR. They apply for emigration, the officials of the OVIR treat them favourably and 98.4 percentage receive the emigration permits without any trouble. Then they go to the customs office where they are also received with goodwill and where they send off their luggage.

The broadcast includes interviews with some Jews who are preparing to leave. Often these people go to Vienna where, guarded by armed guards, they are taken to Schenau where behind "barbed wire they wait for the selection to Rome or to Israel".

This is followed by a sequence: "Israeli planes bombing Arab villages". A close-up shows wounded and bandaged children who lie on stretchers while the announcer says: "This is what Israel has brought to the Arab world".

The announcer goes on: "A Jew arriving in Israel immediately has to sign a dozen obligations to repay loans, and because he does not know the language he does not know what he has signed. Five months after their arrival the Jews have to sign an obligation that they will serve in the army". Several Jewish families who said before their departure that they will "eat earth, but will not go back", are shown and this is followed by the announcer's voice: "How quickly they become disillusioned and start hounding the thresholds of the Soviet embassies asking permission to go back".

The slums where Soviet Jews live in Vienna are shown and so are the flea markets in Rome where they sell Russian souvenirs. When the announcer explains what all this is, voices are heard: "How much will you give for that?"

Numerous Western Zionist organisations are then shown on the screen, their meetings, speakers agitating the World public opinion on behalf of Soviet Jews and comments are made about the great financial possibilities of Western Jewry. Demonstrations in defense of Soviet Jews that took place in England, the U.S., etc., are presented and Senator Jackson is shown in one of them. Among the demonstrations there is one where persons dressed like Prisoners of Zion appear behind bars shaking their hands in fake chains.

All this is followed by a fat Jew who, after the demonstration, pays out £5 sterling to each of the participants of the demonstration.

Photographs of several individuals are shown: "Writers, actors, Nobel Prize Laureates" while the announcer comments that they had "swallowed the bait of Zionist propaganda".

The camera then returns to the Soviet Union. It shows smiling faces of children while the announcer speaks about the equality of all the nations living in the USSR. Peaceful scenery, towns and villages appear on the screen following his words.

The broadcast then turns to the "brainwashing" of Soviet Jews by the Western Zionists. A certain Levit who came from the U.S. to the Soviet Union (a tourist) is shown several times. He was allegedly caught redhanded in the USSR and admitted that he did not know what he was doing. He admitted that he brought in anti-Soviet literature, had in his possession secret addresses, contacted Soviet citizens and passed on to them material and had also organised a meeting between some Soviet citizens and the American Senator Yates.

Another American is then shown admitting (after having been arrested in Kiev) that he brought with him "anti Soviet materials", and secret addresses and was acting on instructions received from Zionist organizations. He secretly met with Zionists living in the USSR.

The above mentioned Levit is shown saying that he does not exclude the possibility that these organisations maintain secret ties with the C.I.A. and apparently carry out their orders.

A Frenchman is shown, who allegedly tried to smuggle into the USSR some kind of material in his car. Some people who organised a secret meeting in the Synagogue also shown.

The announcer comments on all this by speaking about the "influence of Zionist organisations on the minds of the Soviet youth". He goes on speaking about the way that detente and the positive developments following Helsinki are being exploited by the enemies of the Soviet Union against its interests. He stresses that "this is, of course, an intervention in the internal affairs of the USSR".

Various sport events in which Israeli athletes took part are shown while the announcer comments: "They are also used for Zionist propaganda".

The photograph of the meeting between the Jewish activists from Moscow and the Israeli athletics team who came to the USSR appears on the screen.

The photograph shows Vladimir Slepak embracing with one of the Israelis and the camera slowly goes over all the faces appearing on the photograph. In his comment the announcer goes back several times to the photograph, and asks how was it possible that centres contacting Zionist activists have been created within the Soviet Union.

He adds that all these subversive activities are financed from overseas. For example, he cites that: Yosif Begun of this and that address had received a money transfer from overseas for a certain sum. Boris Tsitlionok has also received such money (an official form of a money transfer appears on the screen while the surname and the address are shown in a close-up). Names of several other people, one from Leningrad, one from Kishinev and Yuli Kosharovsky from Sverdlovsk are cited. [Kosharovsky has not been living in Sverdlovsk for the last five years. Ed.]

The announcer's comment follows: "These people are, in fact, soldiers of Zionism within the Soviet Union and it is here that they carry-out their subversive activities." He then goes on to say that the Zionist propaganda has been trying actively lately to use the Helsinki conference agreements on reunification of families. "Let's see what is really happening here!" says the announcer.

This is followed by an interview with a number of Jewish families boarding a plane in Sheremetlevo airport.

The announcer: "Is all your family leaving?"

One couple: "Yes."

The announcer: "Did you leave any relatives in the USSR?"

The emigrants: "Yes, our parents."

The announcer, speaking to another couple: "Whom are you leaving in the USSR?"

The emigrants: "Our parents."

The announcer comments: "What kind of reunification of families is this, comrades? The parents remain here while the children are going to Israel. This is rather the separation of families rather than a reunification of families."

He continues by saying that the Soviet Union is carrying out the decision of the Helsinki conference fully and quotes the statistics 98.4 percentage of the applicants for emigration received the permits to leave. He says: "The Jews are interpreting the agreement of this conference wrongly and very often instead of the reunification of families there are separations of families."

The broadcast then turned to another subject: The memories of those who left for Israel and "managed to get out of there" to go back to the Soviet Union. The full story of the emigration of the Jewish family from Georgia is shown: "Its members are photographed in the OVIR office, then in the Sheremetlevo airport, then in the airplane on the way to Vienna where they are singing happily Israeli songs. Then they are photographed in Israel where they are all in very poor conditions and where they are singing very sad songs. A number of persons who returned to the Soviet Union are shown and they appeal to the viewers: "People don't leave, you don't know what you are doing!"

The broadcast then turned to the subject of Prisoners of Zion. The announcer claimed that: "The cases of trial of persons of Jewish nationality who had been allegedly convicted of their desire to emigrate to Israel are raised loud to the skies in the West. Let's see what is really taking place." He goes on to cite three cases.

## APPENDIX C

To: the People's Court of the Dzerzhinsky Region of Moscow.  
From: Anatoly Shcharansky.

## STATEMENT OF CLAIM

A television film called "Buyers of Souls" was shown on the 1st programme of the Moscow Television on the 22nd of January. The idea of the film was to discredit the Jews struggling for their right to emigrate to Israel and those representatives of the world public who support this struggle.

The film showed, in particular, several times a photograph depicting some Soviet Jews taking part in a meeting with Israeli athletes in Sept. 1975. At the time when close-ups of the faces of these Soviet Jews were shown on the screen the speaker claimed that the Israeli athletes, with whom these people were meeting, were not athletes at all, but Israeli spies. Many people who saw the film recognized me, many people recognized me in the street and therefore the text about the meeting between the "soldiers of Zionism" (this is what the film-makers called the Soviet Jews fighting for their right to emigrate to Israel) and those whom the film-makers also called—without, any proof—"agents of world Zionism and Western secret services" did not only insult my honour and dignity, but was also a slanderous accusation connected with the Western secret services.

In order to illustrate these activities of the "soldiers of Zionism" the film mentioned a number of meetings between Soviet Jews and Western political leaders. In particular, it mentioned an allegedly illegal meeting with some American Congressmen headed by Sidney Yates that took place at a secret apartment. I was one of the participants of this meeting of American Congressmen that took place in the hotel "Sovetskaya" in the presence of representatives of the press. The American Congressmen had informed the Soviet Embassy in Washington beforehand about their intention to hold such a meeting.

In view of the fact that the demonstration of the documentary film "Buyers of Souls" distributed information that did not correspond with reality and that constituted an insult to my civil honour and national dignity, I request:

1. to accept this Statement of Claim for consideration and to fix a date for the hearing of the case;

2. to issue a decision demanding that the respondent should issue a denial of the slanderous information defaming my honour and dignity and do so in the same way by which this information was distributed.

## APPENDIX D

## OPEN LETTER OF S. L. LIPAVSKY

(Translated text of open letter from S. L. Lipavsky in "Izestia" of March 4th)

To: The Presidium of the Supreme Soviet of the USSR.  
Copy to: The Congress of the USA.  
Copy to: The United Nations Organization.

Open letter from USSR citizen, Candidate of Medical Sciences S. L. Lipavsky.

It was not easy for me to write this letter, but after long and painful thought I arrived at the conclusion that I must do this. Perhaps this open letter will open the eyes of those who are still deluded, who are being deceived by Western propaganda that shouts from the rooftops about the persecution of dissidents" in the USSR and which balloons the so-called question of human rights.

Starting with 1972 I linked my destiny with persons who were denied exit visas for definite reasons based on existing legislation and who started loudly to speculate on the question of civil rights. Although these persons had different views on the forms and methods of their actions they had a single platform and a single leader—American Intelligence and anti-Soviet organizations abroad. Through unofficial channels they systematically received instructions, hostile literature and money. Their activities were supervised by D. Azbel, A. Lerner and V. Rubin. Since I became a sort of secretary to V. Rubin and keeper of archives I was informed of all plans and intended actions which, as I understood later, were designed to damage the USSR's interests.

Already in 1972 I learned that the above-mentioned leadership was closely connected with staff members of the embassies of some foreign powers and correspondants accredited in Moscow. Contacts were most stable with staff members

of the US Embassy, Melvin Levitsky and Joseph Presel, as well as with the American correspondents Peter Osnos, Alfred Friendly, Jr. and some others.

At the flats of V. Rubin and A. Lerner these foreigners and also visiting emissaries of anti-Soviet centres Schmukler, Noon, Manikowski and others discussed and made various recommendations that in their essence were aimed at distorting problems of civil rights and human rights in the USSR.

Through the efforts of foreign correspondents a big hullabaloo was raised about the so-called hunger strikes by V. Rubin and D. Azbel that were portrayed by foreign mass media as a desperate attempt to draw the world public's attention to the "problem" of departure from the USSR.

As a doctor I observed V. Rubin and D. Azbel during their "hunger strike." Thinking most of all about their health, these "martyrs" had regular meals knowing in advance that the foreign correspondents would not let them down.

Various demonstrations in the form of noisy spectacles of protests that were then presented by the Western press as a conflict between dissidents and Soviet authorities, were staged in the same spirit, in collusion with foreign correspondents.

Their main task was to slander the Soviet system, the friendship of the peoples of the USSR to start a clamor about the "absence of democratic freedoms" and to sow national discord. They were not concerned that, on departing for Israel, many deceived Jewish families encountered privations and rightlessness there, that many of them began to flee from the "promised land" and to spread throughout the world. They were guided by the desire to incite emigration from the USSR and the intention to undermine the mainstays of Soviet power. For this reason they advanced various ideas about holding in Moscow unlawful, in effect provocative undertakings, such as ideas to convene an "International Conference of Physicists," an "International Conference on Jewish Culture," etc. Invitations were sent out to prominent foreign scientists, Nobel prize laureates.

Knowing in advance that they were acting in circumvention of State and scientific institutions of the USSR and would not find support from Soviet authorities, the authors of these ideas hoped with the help of foreign correspondents to draw the attention of the world public to the alleged absence of "civil rights" in the Soviet Union and to obstacles allegedly created by the authorities to international scientific and cultural exchanges.

Since these ideas failed to produce the expected results there was a substantial change in the direction of the upper crust's activities. Being alarmed by the prospect of declining interest in them by their foreign masters who have given them considerable material aid, they decided to team up with the so-called "Group for the Observation of the Fulfillment of the Helsinki Accords" headed by Y. Orlov. V. Rubin was introduced into the group and then A. Shcharansky. This idea was presented by foreign correspondents as a step towards the consolidation of persons struggling for "human rights" in the USSR.

To whip up tensions in relations between the United States and the USSR A. Lerner proposed to organize a secret collection of information about Soviet defence institutions and enterprises and under this pretext to convince Western firms to stop supplying technical equipment to the USSR. After his departure from the USSR V. Rubin was to hold relevant consultations on this question in the United States and inform A. Lerner.

A letter from V. Rubin arrived August 1976 through unofficial channels via the American correspondent Osnos. It requested a quicker forwarding of this information so as to start a campaign to put a ban on the sale of American equipment to the USSR. Although there were objections to collecting such information because this would be already obvious espionage, A. Lerner nevertheless instructed A. Shcharansky and others to organize the collection of such information and its dispatch abroad.

It should be stressed that the question of giving Americans the necessary assistance in obtaining intelligence information on scientific-technical and military subject-matter and on political questions was always on the agenda. What was meant was assistance in these matters to CIA members, who were in Moscow under the cover of official posts, and also support for the notorious Jackson Amendment to the act on trade with the USSR.

I will illustrate with my own bitter experience how this intelligence campaign was carried out. After I was introduced to Melvin Levitsky in V. Rubin's flat in 1974 the latter drew my attention to the fact that M. Levitsky was a staff member of the CIA and intimidated with the sufficient clarity about his interest in specific questions.

Realizing that these matters involved espionage I showed caution and this caused M. Levitsky's displeasure. Pressure was brought to bear on me. In January 1975 I received a telephone call from the United States from D. Azbel who by that time had already left the USSR. He intimated that I should fulfill his request and help the person who would contact me. This person turned out to be M. Levitsky. At the meeting in V. Rubin's flat he gave me to read D. Azbel's letter which again repeated the pressing request of assistance to M. Levitsky.

It turned out that the service I was to perform was to persuade one of the top officials of a research institute near Moscow, an old friend of mine, to cooperate with the CIA, so that he would provide important defence information. Judging by the instruction I received from M. Levitsky camouflaged in a special container the Americans were already viewing me as an agent who must fulfill all their instructions.

I found myself in a very difficult situation because espionage and the prospect of becoming a paid agent of American Intelligence contradicted my convictions and intentions. My attempt to limit my ties with staff members of the U.S. Embassy to problems of my own departure abroad did not succeed. The CIA's demands in this question were unequivocal. One of the documents that was delivered over to me in September 1975 through a very secret pick-up spot stated on behalf of the CIA: " \* \* \* Naturally our government is interested in information on the Jewish movement but it is usually better if such information is gathered. We appreciate your concern and participation in this movement but by \* \* \* on the fulfillment of our demands you could with time become more effective in your struggle against the system."

I began to understand that contacts with representatives of the CIA had started acquiring a dramatic turn especially when another staff member of the U.S. Embassy Joseph Presel stated that he had come to the USSR "to shake its foundations" and to maintain ties with dissidents.

Systematic contacts with representatives of American Intelligence \* \* \* to many things. I began to acquire a deeper and more objective understanding of the events into which I was drawn by fate and my own carelessness. That was a grave trial and I am happy to have found a correct decision.

In this connection I would like to state the following: Enemies of Socialists and the Soviet State are deliberately exploiting the so-called question of human rights in the interests of imperialism and world reaction.

I also saw for myself that adventurers and money-grubbers pose as champions of "human rights" with the prime aim of gaining publicity and securing regular earnings abroad by staging provocations and helping forces in the West.

I was witness of constant infighting between A. Lunte, M. Abzel, A. Lerner, for leadership and distribution of means received from abroad. More and more I became convinced that the activities of these hangers-on were doing nothing but damage to the Soviet people and this could not but trouble me.

I did not participate in the second world war because I was a child at the time. I did not see the damage and the suffering spread by facism throughout Europe. But I am sufficiently literate and have enough sense to appreciate the terrible losses suffered in that war by the peoples of the U.S.S.R., including the people of Jewish nationality. Jews are perishing now, too. But this is happening not in the Soviet Union but in the deserts of the Middle East as a result of Israel's aggression. It is not in the Soviet Union but in foreign countries that there live deceived Jewish families which hastened to leave the U.S.S.R. in search of the "Promised Land" but who found humiliation and fear of the morrow.

What I am now writing is not propaganda but the bitter truth that informs, not through newspapers and television reports, but through the cries from the heart coming from distant countries about the destinies of my former compatriots and friends, about how "sweet" their life is.

I would not want to say only that "I have become disenchanted in my past ideas." I would like to state that I will bend every effort to expose the hostile activity of the renegades and traitors to the motherland who have sold out to the CIA. I would like to devote myself to the struggle for the ideals of peace, friendship of the peoples, for socialism.

As to my appeal to the Congress of the United States I would like to ask it once again to investigate why the CIA misinforms its Government to the detriment of the interests of the peoples of the United States and the U.S.S.R., why it serves the foul cause of fanning hatred among nations, why it relies on renegades presenting them as heroes and martyrs.

I also call on the United Nations Organization not to be deceived. The question of civil rights, of human rights, cannot be confused with just punishment of traitors, actual political and criminal offenders. I address this statement to the Presidium of the Supreme Soviet of the U.S.S.R. in order to fulfill my civil duty and to hand over all the documentary materials in my possession related to the questions outlined in this letter.

I publicly renounce my earlier application to leave the U.S.S.R. for Israel because I am convinced that the Soviet Union is my only motherland.

S. LIPAVSKY.

## APPENDIX E

### IZVESTIYA CARRIES "EPILOG" TO FORMER CIA AGENT'S LETTER

Moscow IZVESTIYA in Russian 5 Mar 77 Morning Edition p 6 AU

[D. Morev and K. Yarilov article: "Epilog to S. Lipavskiy's Open Letter: CIA: Spies and 'Human Rights'"]

[Text] Enough has been written recently about the activity of the U.S. Central Intelligence Agency and about the methods to which it resorts to organize subversion and intervention into the domestic affairs of other countries. The [Lipavskiy] letter published today halfway opens another very characteristic page in the chronicle of dirty acts committed by American special services.

S. Lipavskiy's letter-confession offers readers the opportunity to form their own ideas about the path of espionage and treason he was pushed onto by CIA staff members under the cover of diplomatic passports and by anti-Soviet elements wearing the mask of "fighters for human rights" associated with them.

The story began as follows:

In 1972, S. Lipavskiy, previously engaged as chief surgeon in an oblast hospital, received a job in the medical unit servicing the Main Administration of Intercity and International Automobile Transportation. At a reception he met a certain Eduard Shifrin. As if by chance the patient started to sound out the doctor on prospects for Jewish emigration to the "promised land." Later Shifrin got to more practical matters and requested a falsified health certificate: "In Israel, where I intend to go, I would not like to waste money on getting an international drivers license. It is better to get what I can get here for free."

Lipavskiy issued the certificate. Shifrin, as it turned out later, recommended the tractable surgeon to his companions. Before his departure abroad he prudently handed Lipavskiy, like a "relay baton," to T. Galperina who introduced him to that circle of so-called "fighters for human rights."

When, at the beginning, he voiced surprise at the fact that hunger strikes were well rehearsed shows attended by appreciative audiences of Western journalist accredited in the USSR, Galperina exclaimed: "But can't you see that if they go without food and indeed become ill, there will be no one to spearhead our movement. . . ." Galperina and the other "aktivists" unanimously asserted that "the louder the ballyhoo around the affair, the greater their merits to the West" and, naturally enough, the better the prospects for leaving.

The curious episode followed one of the "hunger strikes" performed by V. Rubin who is referred to in Lipavskiy's letter. When the latter proposed telling foreign correspondents that Rubin's health was "in jeopardy," the former immediately accepted the proposal. That same evening various Western radio services savored tales about the "Moscow martyr," while friends arranged a good dinner with wine in Rubin's apartment.

The feats habitually attended by Lipavskiy were actually meetings to work out anti-Soviet actions and instructions. By the way, at one of these meetings, attended by U.S. vice consul, Eileen Nathanson, a certain V. Slepak, after a few extra drinks, showed so much attention to the American lady that his wife started a fight and gave the foreign envoy an honest beating. The U.S. Embassy, for some reason, abstained from making diplomatic representations in connection with the incident.

The troop of Slepakovs, Rubins and others on the CIA payroll made liberal purchases in Berezka stores, and did not mind reselling the items acquired at a profit even within their own circle.

While dealing with the program for subversive actions, D. Azbel and company, in frank conversations with Lipavskiy emphasized that their "platform" had support in the U.S. Congress. In addition to the well-known Senator Jackson, and acting in concert with him, were Boston Congressman Drinan, who is also a



Catholic priest, Florida Congressman Fascell and some others. They volunteered to act as Lipavskiy's personal "guardians," while a branch of the rather well-known B'nai B'rith organization even resolved . . . to adopt the grown-up surgeon.

In the meantime the CIA had already begun to actually use Lipavskiy directly—to gather and pass to Washington espionage information. As his open letter shows, he was engaged in this work by American intelligence officer Melvin Levitsky. It was Levitsky who gave Lipavskiy the CIA recruiting letter containing initial instructions for collection of intelligence information, as well as the methods of secret communications.

Having completed his "mission" in Moscow, Melvin Levitsky is now an expert on Soviet-American relations for the U.S. State Department. It is easy to guess what his present functions are. It is to be noted that First Secretary Joseph Presel now has the same Moscow job and follows the same "pattern." That gentleman never tires of repeating that he has a "special mission" in the USSR. Anyone who has met Presel can confirm that he habitually introduces himself as an "expert on the problems of the democratic movement in the Soviet Union."

Following American intelligence instructions, Rubin warned Lipavskiy that all the talks with foreigners had to be made "with the assistance of special self-erasing notebooks." As the open letter shows, CIA agents were trying to get classified military and scientific-technical information from Lipavskiy. He was provided with detailed written instructions on how to deliver the corresponding information to messengers through hiding places in Moscow and suburban streets. The "employers" paid for it in cash.

Here are excerpts from top secret documents that Lipavskiy handed to the competent organs (the language and style used by American experts on Russian affairs are the responsibility of the authors) :

"We were encouraged by the contents of the envelope and were glad to receive the film which is closer to the information that interests us. Photography is the most effective way of transmitting this sort of information and we want you to continue using this method to supplement your answers to our questions in all possible future cases. Certain 'lists of tasks' to which 'K' has access (particularly high-power klystrons for radar guidance and the operation of communications equipment for submarines) are of great interest to us and we ask you to try to get photographs of more detailed and current secret documents related to one or both fields."

And further :

"In addition, if time and circumstance allow, we need you to transmit more data relative to 'K' and the nature of your relationship with him. Your detailed answers to these questions will greatly help us to understand the situation."

And now we will cite another CIA instruction, called "communication plan" ;

"Please answer in detail all our questions. Please wrap the answers and any other secret documents you have in the same type of waterproof material you used the last time. Put the wrapped material in a dirty cloth bag, just like the last time.

"You should transmit this package on 12 June through the secret 'inscription' pick-up place. To reach the 'inscription' drive along the Yaroslavskiy highway and turn into the Moscow ringroad [MKAD] moving counterclockwise toward Dmitrovskiy highway. Approximately 2.5 km after you cross the Dmitrovskiy highway you will see a parking place on your right marked by a perpendicular road sign with the letter 'P'. This parking place is directly opposite a group of tall chimneys. Turn into this parking place and stop opposite the white and blue sign with the words : 'Please keep parking place clean.'

"Put your bag with the materials on the ground at the base of the right-hand support of the sign as you face it. The bag should touch the base of the support."

We could cite other documentary evidence about what some American Embassy "diplomats" do in the USSR. They are up to their necks in collecting espionage information and recruiting agents from among the "dissidents," so how can they see the real picture of life in our country or normalize interstate relations as envisaged in the Helsinki agreements to which the "zealots of civic rights and freedoms" in America—for different reasons, naturally—so like to refer?

It must be noted that not only some American diplomats, but also a number of Western correspondents accredited to Moscow have this job. In his open letter Lipavskiy mentioned, for instance, Alfred Friendly, Jr., who lives in one of the houses on Kutuzovskiy Prospect, apartment No. 315, and was the NEWSWEEK bureau chief.

His name can be translated into Russian as "friendly." Alas, Friendly breathed hostility and hatred toward everything that is Soviet and in his dispatches he constantly distorted our reality. He only linked those who supplied anti-Soviet slander in return for imported gifts.

Shortly before Friendly left the Soviet Union our editorial board received several letters about the people he tried to process during his trips to Leningrad, Vilnius and other cities. "The nature of the questions asked by that gentleman," wrote reader U., "The conditions under which he made appointments, and the instructional tone raise doubts as to whether Friendly was a real journalist or whether this was just a cover for his other profession?"

This is a legitimate question. The answer can be made easier by one detail from Friendly's biography: He completed the military foreign language school (Russian section) in Monterey, not far from San Francisco. It is known that this educational establishment draws its students from the U.S. Army and special services and trains expert-professionals for work in the CIA, and "Peace Corps," USIS and other similar departments. Judging by everything the magazine NEWSWEEK became the cover for Friendly's activities in Moscow.

In September 1974 a fellow countryman and colleague of Friendly's George Krinsky of *Associated Press*, who was recently expelled from the USSR for activities incompatible with the status of a journalist, took up journalism in Moscow. [paragraph continues]

Before that he had visited Moscow, Leningrad and Novgorod once as a tourist. Even then the range of Mr. Krinsky's interests was quite specific. He often aimed his camera at airfields and other targets, hiding the exposed film under his shirt.

When the request for an entry visa for Krinsky as an AP correspondent was received in Moscow from the United States, the competent organs showed good will and agreed to the U.S. request. In so doing they took into account the noted improvement in Soviet-American relations and the general tendency toward détente. They thought Krinsky would carry out his journalistic duties honestly and conscientiously. But this did not happen.

Krinsky was caught in systematic illegal currency operations. In a state of permanent inebriation he circulated and felt at home in a tenuous company of room traders (fartsovshchiki) and idlers who posed as "political opposition." Leading them, he would bang his fist and demand: "All information only to me!" In a fit of impudence he would shout: "I am responsible for you!"

He boasted to his colleagues that he worked like a horse, while they, knowing George Krinsky's habits well, would call him in disgust "a worn-out work horse." Krinsky did not travel far on the horse he had saddled long ago, despite the sustenance from the CIA feeding trough.

Naturally such behavior not only blatantly contradicts the very concept of professional journalism but also the tenets of the Helsinki Final Act concerning information. The Final Act, as is known, says that the activities of journalists should be directed toward development of mutual understanding among the states which signed the Final Act, and toward further improving relations among them.

Western readers waiting for objective information on life in the Soviet Union are cheated since the interests of the above-named gentleman have nothing in common with journalism. And although such organs of American mass information like, for example, AP, NEWSWEEK and others, are trying to deny that their employees participate in special services, their denials sound unconvincing, to say the least.

Concerning the theme of the exchange of people and ideas now being spread in the West, one can resolutely declare in answer to it: The Soviet Union is prepared to continue to follow the spirit and letter of the Final Act signed in Helsinki at the all-European conference. We expect the same from the Western partners.

### QUESTIONS AND REMARKS

Mr. LEAHY. Thank you. You know my own feelings on the trial from the comments I made to Mr. Williams earlier. Because we are running so far behind our schedule for today, I will yield my time for questions and yield to Mr. Fascell.

Mr. FASCELL. Thank you, Mr. Chairman.

Professor Dershowitz, do you have any contact or similar feelings with your counterparts in Europe as regards Soviet law and proceedings?

Professor DERSHOWITZ. Well, we have a great deal of contact with European lawyers who have also expressed an interest in the *Shcharansky* case. It is ironic, very ironic that several of the lawyers who are prepared to represent Shcharansky in Europe are members of the Communist Party. They are what are called Euro-Communists, Western Communists, who although Marxists, believe in human rights and are prepared to represent Shcharansky. It is extremely ironic that in the United States lawyers on our own left, such as the Lawyers Guild, refuse to play any role in the defense of Soviet dissidents.

I have been informed by the vice president of the Lawyers Guild, Professor Quigley, of Ohio, that his organization will not send an observer to the *Shcharansky* case and will not take a stand against the Soviet Union because too many of their members support the Soviet Union and the Soviet system of justice. I think the action of the Lawyers Guild in this respect is despicable, particularly as measured by the willingness of members of European Communist Parties to be critical of the Soviet Union when it comes to human rights. So the answer is "yes," we have had fairly extensive contact with European lawyers of every stripe of opinion—Communist, and non-Communist, liberal Democrats. There has been no difficulty achieving communication with them, but I can report that they have had the same difficulty in trying to communicate with their clients within the Soviet Union. No lawyer, Eastern or Western, that we know of has seen Shcharansky, has spoken to him, or has spoken to any of these other imprisoned dissidents.

Mr. FASCELL. Is there any serious movement in the legal community, academic, bench and bar, toward taking a strong position with respect to Soviet law and procedures being a total farce?

Professor DERSHOWITZ. Well, there are two levels as to that question and Professor Fletcher will, of course, comment on Soviet law. My understanding of the Soviet law in and of itself is that it is perfectly reasonable. The Soviet Constitution is a model. The Soviet criminal statutes are excellent. There are provisions—

Mr. FASCELL. How about "Catch 22"? Is that legal?

Professor DERSHOWITZ. Obviously, there are provisions which permit the Soviet Union to avoid compliance. We have such provisions in our own laws as well. The difference, I think, is not in the text of the statutes, but in the spirit with which they are followed or not followed, and in the independence of the judiciary. We are blessed, as evidenced by our own experiences in this country, with a relatively independent judiciary, with an independent prosecutorial wing. We have been blessed with such distinguished Attorney Generals as Ramsey Clark who would not prosecute a case if he did not believe in it. The Soviet Union is not so blessed.

Mr. FASCELL. Well let me ask you this, then. How can we reasonably expect any more out of a judicial system in a closed society, notwithstanding the fact that they write beautiful stuff in their Constitution and in their code and what not? How can we expect anything when they have no independence—the lawyers have no independence, the

judges have no independence, the Government's attitude is, you know, why let a few Jews speak up; they might start a revolution, but do not pay any attention to them; so we will shoot them.

Professor DERSHOWITZ. The first job a good lawyer has is in assessing the judiciary and the body before whom he appears. We who have represented Soviet dissidents have made an assessment of the Soviet system. We understand that, although it is a question of power, it must be approached through the mechanism of legality for the following reason.

Mr. FASCELL. But does that not help the charade? What good does it do for you to exercise your best legal talent and all of the best judgment, all the principles of law when you know that the bottom line is that the Soviets are going to ignore all of that anyway and put the guy away? What good does that do?

Professor DERSHOWITZ. Our view is as follows: That although the Soviets will respond only to power, they will sometimes respond to power more easily when the power is exercised through the mechanism of the law for the following reason. The Soviet Union, in recent years, has proclaimed a change in its legal system. They are sending hundreds and hundreds of representatives around the world to speak at conferences, to attend universities—

Mr. FASCELL. Yes, but that is all part of their organized plot. They do that in everything. They do it in law; they do it in medicine; they do it in science; they do it in armaments; they do it in everything.

Professor DERSHOWITZ. That is right. And our response—

Mr. FASCELL. You cannot pay any attention to what they say.

Professor DERSHOWITZ. Well, our response is to play the game on their court, but our own rules. That is, we are prepared to take them at face value and to use what we regard as power politics but to do it through the mechanism of the law. If the Soviet Union does not, in fact, comply with their legalisms, then their pretenses are shown up. We have had some success. It has been limited success. Consider, for example, a case not so long ago, which Professor Fletcher and I were involved in concerning a man named Pinkhasov. We filed briefs in the Soviet Union which showed that their own judge who had then emigrated to Israel had essentially been told in advance what the verdict was going to be. Silently and quietly, Pinkhasov was released shortly after receipt of our brief. We are not certain, of course, that the brief had the impact. We are certain that the brief alone, without threat of further political implications, does nothing. We are not naive enough to assume that filing a brief in the Soviet legal system, like filing a brief in the U.S. Supreme Court, may in and of itself affect the result. Our only point is that to the extent the Soviet Union proclaims its system is one of legality, to the extent it seriously committed itself to, for example, the Helsinki accords, it pays for us to try to focus our efforts through the legal system, at least to the extent of giving them an opportunity to comply. We have to try everything. We are eclectic. We do not know what works. We do not know which little stone will be the one that will cause the accumulation to result in an avalanche. Moreover, we do not expect avalanches. We are satisfied at this point with small victories. We hope the small victories will increase, but of course, if the Commission can suggest any better ways of proceeding, we, of course, would welcome that wisdom.

Mr. FASCELL. No. As a matter of fact, I went into that whole line of questioning to find out what your feelings were on the subject. Frankly, I would come down on that side, too. Total frustration leads nowhere, as far as I can see, and I would just as soon wear them out, too. It may take forever, but I like that attitude, too. It is not only the oriental mind that is inscrutable and it is not only the Asiatic mind that can be devious or has more patience. So we can play that game, as I see it.

There is a vulnerability with the Soviets. They are not supermen, that is for sure, in spite of everything they say and do. They are vulnerable, very vulnerable because they are frightened.

Professor DERSHOWITZ. There is one that seems to be a critical thing that does make an impact—every dissident imprisoned in the Soviet Union has to have an outside representative. In fact, our goal—the goal of a group of lawyers who have been working on this—is to make sure that every political prisoner in the Soviet Union, indeed, perhaps in the world, has somebody somewhere in the world who is responsible for that person. Think of what impact that might have had in other eras in the past where people were destroyed, not as human beings, but as numbers. At least one thing we have accomplished is that we have humanized the process, Mr. Shcharansky is not No. 612843; he is Anatoly Shcharansky. We know what he looks like. We see his wife. We see his lawyer. We know that he is a human being craving for freedom. Mr. Ginzburg is a human being. They are all human beings. And if we have accomplished nothing else, we have humanized the situation and turned it from a problem of numbers to a problem of people.

Mr. LEAHY. Senator Dole? Have you finished, Mr. Fascell?

Mr. FASCELL. I have finished.

Mr. DOLE. I yield to Mrs. Fenwick.

Mr. LEAHY. I was trying to be even and bounce back and forth between both parties.

Mrs. FENWICK. I was struck by what you said about the Lawyer's Guild. Is it possible that we have a group of American lawyers unwilling to interest themselves in these problems? It is in Ohio?

Professor DERSHOWITZ. No, the Lawyer's Guild is a national organization which is attracting a large number of American law students naively to join its membership because it pretends to be a human rights organization. It pretends to be concerned with civil liberties. Yet, it has proved itself to be concerned only with the civil liberties of people on the left and it is concerned about alienating the Soviet Union by intruding itself in any way in these cases. It is a tragedy, but it is a true tragedy.

Mrs. FENWICK. Where are their headquarters?

Professor DERSHOWITZ. New York City.

Mrs. FENWICK. Who is the head of it? Professor Quigley?

Professor DERSHOWITZ. No, a man named Henry DiSuvero is the current president of the organization. Professor Quigley is the vice president.

Mr. LEAHY. If the Congresswoman from New Jersey could just yield for a followup on that.

Mrs. FENWICK. Yes.

Mr. LEAHY. I take it from that, that organizations like the American Trial Lawyers and the American Bar Association have actively gotten involved?

Professor DERSHOWITZ. Many legal organizations have been involved.

Mr. LEAHY. The American Trial Lawyers and the American Bar Association?

Professor DERSHOWITZ. American—

Mr. LEAHY. Or are they out of it the same way as the Lawyer's Guild?

Professor DERSHOWITZ. Oh no, no. Certainly, many active people in the American Trial Lawyers Association and in the American Bar Association have been involved. The American Bar Association recently, for example, sponsored a symposium on human rights in which papers were delivered about the *Shcharansky* case. The ABA's section on individual rights published the proceedings of the Shcharansky tribunal.

Mr. LEAHY. Right, I understand that. But I am just wondering—you mentioned the Lawyer's Guild. I am not familiar with how they are made up, but I am wondering whether—you said as an organization they were not willing to get involved on behalf of the people in the Soviet Union, but how about the American Trial Lawyers—as an organization have they been involved in it? How about the American Bar Association—as an organization have they been involved? I know that numerous members, perhaps of all three of these organizations, had been involved at one time or another. But what about as organizations? Just to make sure—as I say, I am not familiar with the Lawyer's Guild. That is a new one on me. But I am familiar with the American Trial Lawyers; I am familiar with the ABA; and I just want to make sure that they are involved. Have they, as organizations, become involved?

Professor DERSHOWITZ. Well, I know that the Lawyer's Guild, to my knowledge, is the only organization that has declined to get involved. The ABA, I know, is—

Mr. LEAHY. Has the ABA gotten involved as an organization?

Professor DERSHOWITZ. At certain levels, they have certainly been involved. I do not know. I cannot speak to whether or not the ABA has—exactly what it has done. I know the ABA through its offices in Chicago have expressed great interest in these cases and has been seeking information. The same is true of the American Trial Lawyers Association. I can get that information if the Commission is interested.

Mr. LEAHY. I would just be interested because if somebody declines or they do not get involved, the end result is the same and I was just curious.

Professor DERSHOWITZ. But it seems to me that the reason for the declination is important, too. That is, the Lawyer's Guild has become involved in many international matters. They have sent observers recently—

Mr. LEAHY. So has the American Bar Association. And so has the American Trial Lawyers Association.

Professor DERSHOWITZ. Right. And I would be critical if the American Bar Association or the American Trial Lawyers were to selectively refuse to send observers to a trial in the Soviet Union. I do not think they have so done that.

Mrs. FENWICK. Thank you, Mr. Chairman.

I noticed that you said that the system—the Soviet system, the code as written, was not despicable.

Professor DERSHOWITZ. That is right.

Mrs. FENWICK. That it was more the method. But certainly Professor Caine, as quoted in your written testimony which in the interest of time, I presume you skipped, said that when he faced his Soviet counterparts with the question, "Where in the law are you allowed to do these things?" the answer was, "It is inherent because the Supreme Soviet has the power to make the laws. They can do anything they want, just as the President of the United States can declare amnesty." Upon which Professor Caine said, "Yes, but we exercise it in the interest of clemency after conviction in a fair and open trial. Do you mean that tomorrow you could just execute Shcharansky?" We asked how far the power of the Supreme Soviet goes. For example, could they decide instead of bringing him to trial, to execute him? "Theoretically, the answer is yes," they said, and they seemed as startled by their pronouncement as we were. The discussion was chilled by it. Now that is the value of these interchanges—to force them to realize what they are doing. And that is what we discovered at Belgrade—to force them to see what they look like, not just to America and others—to Switzerland and to Austria, and to Belgium, and all the nonaligned countries, too. That is one of the great values of these international meetings.

But I would like to ask you, did you not with Telford Taylor at one time file briefs with the Procurator?

Professor DERSHOWITZ. Yes; we did. Procurator General.

Mrs. FENWICK. Yes. Do you still do that?

Professor DERSHOWITZ. Well, what we did is for a series of cases in which we had been retained by family members, some 22 or 23 cases, we filed extensive briefs, both in Russian and in English. The *Pinkhasov* case, which I mentioned, was one of them. Silva Zalmanson, who fortunately was also released, was another. We have such briefs pending in many cases, including Eduard Kuznetsov and Hillel Butman and gentlemen named Ferderov and Murzhenko. We have heard no responses and right now we are not in the process of filing additional briefs. We will, of course, file briefs in cases as they progress—in the *Shcharansky* case, in Orlov, and in any others which we are asked to do so.

Mrs. FENWICK. I just want one final word. No allegations have been made in this country which I have not tried to investigate, including Harris. I have asked the attorneys general in each State to tell us what the situation might be and I was very happy to see that those two Indians on the west coast were declared innocent in the trial, but also that the delays were entirely due to the request of their own lawyers, although we had been accused of holding them too long without trial. We must be as jealous of our own judicial processes as we are hopeful, if sometimes frustrated and infuriated about the conduct in other countries.

Thank you. Thank you, Mr. Chairman.

Mr. LEAHY. Senator Dole.

Mr. DOLE. I talked to Mr. Williams in the hall as he was leaving. He was suggesting rejection and you are now suggesting reassessment.

I assume that we will probably come back to what we are doing now—focusing more on world opinion, even though as Dante Fascell has said, most of these efforts are, I do not say a waste of time, but without much visible results. Do you have any other suggestions? You talk about reassessment. How far would you go with that? Would you freeze the SALT talks until we had some reaction from Russia?

Professor DERSHOWITZ. Well, I am not in the position where I can really intelligently assess the whole notion of linkage between the SALT talks and détente and human rights in the Soviet Union. Certainly, I think that we have to play the carrot and the stick with Soviet authorities. For example, one of the most successful efforts was done by Columbia University several years ago when the president of Columbia said that unless a particular mathematics professor who was invited would be allowed to come to the United States, there would be no further contact between Columbia and the Soviet academic authorities, but if he was allowed to come, there would be increased contact to the benefit of the Soviet Union and, again whether coincidentally or in direct response to that combination of carrot and stick, the professor was released and is now teaching at Columbia University.

Now there is an enormous difference between using carrots and sticks of an important nature and using the SALT talks. The SALT talks involve the survival of the planet. I am not in a position to be able to intelligently assess whether American interests are best served by continuing the SALT talks, even in the face of continued Soviet repression. I do agree with Mr. Williams that to the extent the SALT talks rely on trust between the United States and the Soviet Union, to the extent that business dealings rely on trust, to the extent that business dealings rely on law, on the ability of the contracting party to be able to be assured that the contract will not be changed retrospectively on him, to that extent, one must look at the lessons of Helsinki and one must understand that the compliance with the Basket Three provisions of the Helsinki accords have been minimal. The most outrageous, the greatest slap in the face has been to arrest and prosecute precisely those people who are—who have been asked to monitor the Helsinki accords. It was almost as if the Soviet Union was deliberately thumbing its nose at the Americans and saying, see, even the Helsinki monitors are not immune from prosecution. What are you going to do about it? Mr. Williams has one suggestion; I have another. I think we all agree that what is needed is continuous monitoring of this process. That it cannot be forgotten. I think it would be a shame if President Carter made a major speech on Soviet-American relationships in which he did not include some reference to these matters.

Mr. DOLE. Have there been any cases where Soviet lawyers have been observers at any trial in this country?

Professor DERSHOWITZ. Very interesting question—yes. The Soviet Union always claims that we are interfering with their rights and yet, of course, they invented the game, well before Helsinki. When Angela Davis was being tried in California for complicity and conspiracy to murder in the courthouse shooting in Marin County, 50-some-odd Soviet academics cabled President Nixon and asked to come to California to observe the trial. To his everlasting credit, President Nixon cabled them back immediately and said seats have been re-



served. You are welcome. Come as observers. Needless to say, they never showed up. Needless to add, Angela Davis, after a very difficult trial, was acquitted.

They have made many efforts to intervene. Now, we have not always behaved up to standard. Recently, for example, the Soviet press asked to interview Mr. Harris in Alabama. I, for one, regret that that interview could not have been arranged. I think it would have been very wise and consistent with our own obligations to human rights to allow a correspondent from the Soviet press to interview Mr. Harris, not to condition the interview on another interview with Shcharansky or Orlov or Ginzburg. But immediately after the request was granted, the American newspapers should have made a similar request to Soviet authorities to interview similarly situated defendants. I think we lost a great opportunity and also I think did not comply with the highest standard of human rights.

Mr. DOLE. Do we have any instance where a Soviet attorney either acted as an observer or interviewed the defendants in this country?

Professor DERSHOWITZ. Well, certainly, Soviet attorneys did interview and speak with Angela Davis at some points in time. And I know that Soviet lawyers have sat in on American trials as they have come to—

Mr. DOLE. Right. The only point I am making is that we aren't asking them to do something that we would not be willing to do in this country.

Professor DERSHOWITZ. By no means. First of all, there would be no way legally to stop the Soviet lawyer who had a visa to be in the city of Washington from attending a session of the Supreme Court or the district court or the circuit court. They are entirely open.

Mr. DOLE. Might they have some difficulty seeing someone who is in prison, though?

Professor DERSHOWITZ. Well, I think that is too bad, and I think to the extent that these regulations can be eased up to permit their access to people who are in prison, it would help our—

Mr. DOLE. Then there is no evidence that I am aware of or that you are aware of, where any lawyer had been denied that right except the correspondent in the *Harris* case.

Mrs. FENWICK. Will the Senator yield?

Mr. DOLE. Yes.

Mrs. FENWICK. I think that Mr. Williams was a lawyer for the spy that was tried in New York and he was very popular with the Russians at the time because he conducted a very vigorous defense. And I believe that a Russian lawyer was allowed to come, although not to plead, not being qualified at the bar.

Professor DERSHOWITZ. I am sure there would be no difficulty with Mr. Williams or anybody else here. Just yesterday I saw the two people in the New York Correctional Institution who are now charged with being Soviet spies. They were freely contacting their American lawyers, and I am sure there would be no difficulty in the American lawyers speaking to the Soviet lawyers. Such prevention of contact between lawyers is unknown in the American system and unknown in most systems in the world.

Mr. DOLE. Thank you. Thank you, Mr. Chairman.

Mr. LEAHY. Thank you.

Professor DERSHOWITZ. Thank you very much, Mr. Chairman.

Mr. LEAHY. Our next witness is former Attorney General Ramsey Clark. Mr. Clark is well known on Capitol Hill. He is a former U.S. Attorney General serving under President Johnson. He has been the author of several books on the American legal system and is currently national chairman of the advisory committee of the ACLU. He is the American legal representative for Prof. Yuri Orlov. I mentioned in an earlier statement when attorney Williams was here, my own feelings that when there is any kind of a trial, there are dual responsibilities that are the same—the responsibility of the defense attorney to determine that his or her client is given the best possible defense, that the law is applied equally and that every defense provided by the law of the jurisdiction or the forum is given. At the same time, there is concomitant duty on the part of the State acting through its prosecutors as its representatives to make sure again that the law is applied fairly, evenly, justly; and that the rights not only of that defendant, but at the same time, of course, the rights of the whole society are protected in seeing that the laws of all the societies are applied the same to all. I mention and reiterate this only because Attorney General Clark, I think, made as hallmark of his stewardship of the Justice Department, the duty that the state has—the United States has—to make sure that the laws are applied fairly, justly and honestly.

While there is always a temptation for prosecutors not to do that, it is a temptation to most prosecutors in this country to resist it, but you, Mr. Attorney General, as chief law enforcement officer of the country, resisted admirably time after time and I applaud you for it.

We look forward to hearing your statement here this morning.

#### STATEMENT OF THE HONORABLE RAMSEY CLARK

Mr. CLARK. Thank you very much, Senator Leahy, members of the Commission.

Let me try to talk unemotionally about the cases of Mykola Rudenko and Oleksiy Tykhy rather than Orlov for several reasons. One is that nearly a decade of experience with this business now tells me that there is an enormous advantage to an individual who happens to be arrested in Moscow or Leningrad. When you get out in the other cities, the ability of world press of world opinion to be informed is exceedingly difficult. I have worked on cases in Rostov on the Don or Sverdlovsk, and no one ever knows about them.

I am concerned, too, about the celebrity quality of so many of these cases. While I hope I ache as humanely for any person whatever his or her status in life who is denied fundamental human rights—to see thousands ignored as a result of our inability to persevere in following events of more than a few celebrities hurts.

Nor can I describe myself as counsel for Messrs. Rudenko and Tykhy. I would like to be. I was asked to be. I tried to be. But this is too important to play games about. I have not been able to talk with them. I have not been able to examine their witnesses personally. I have not been able to get a visa to travel there for the purposes of representing them.

I must say in fairness, I was not treated arrogantly at any time in this case or any other case in the U.S.S.R. Ambassador Dobrynin was

courteous, but said he could only request permission for a visa and was courteous in saying finally he could not get it. He told me, if I wanted to get a visa, I had better get our Ambassador in Moscow to talk to Roman Rudenko or somebody like that who had more direct authority. But never have I been successful in getting permission to enter the Soviet Union for purposes of representing a person accused of a crime.

These two men, Rudenko living in Kiev and Tykhy in a little town outside of Donetsk, early on became concerned about the observance of the Final Act of the Helsinki accords.

Now I consider it some evidence—rather substantial evidence actually—that when a country attacks those who are seeking to examine its observance with a contract, that nation is either embarrassed about or does not want to fulfill the contract. And here Rudenko and Tykhy were subjected to searches and finally in February of last year, in their separate towns and homes, these two men were arrested, because they wanted to observe whether their country violated its agreement.

Shortly after their arrest, because word gets in and out—by phone, by courier, tourists and all the rest—I had requests to try to represent them. Immediately I had to say that that is hard to do. My ability to be effective depends upon my ability to act like a lawyer, to investigate, to confer with experts in Soviet law, to have translators and all that would be necessary to the effective assistance of counsel, so for God's sake, do not rely on me. I may not get in. Do everything you have to do to save the people for whom you are concerned.

I wrote Ambassador Dobrynin on the 3rd of April and asked for that full range of authorization and permission that would be necessary to provide effective assistance of counsel. I talked with him on the phone several times after writing.

There is an ability in places like Kiev or Donetsk to commence a trial without anybody knowing about it. I find this from past painful experience and one of the key requests I made of the Ambassador was if he had any word, any indication of the commencement of trial or its imminence, to let me know immediately. And actually on occasion, he has been able to do that. Before the Leningrad skyjacking trial of December, 1970, he called me to say that he had heard that the trial was about to begin. It was quite helpful.

Here the trial began in late June of 1977, without me knowing about it and I was doing everything I could to find out. You do not feel like much of a lawyer when you have not seen your client yet or discussed the defense and there he is being put to trial in a place you cannot even find. They tried the two together and they tried them beginning about June 20 in a little town 70 to 90 kilometers north and a little west of Donetsk called Druzhkivka. The trial was in the back end of an abandoned factory. As far as I could tell, the trial was conducted in the Ukrainian language, but it was described as broken Ukrainian by the four or five reports we have about the trial itself.

We do have to be analytical. I have tried to study this thing for many years now. I read back through the transcripts of the Moscow purge trials and all. It is so puzzling. Why do they do this? Why do they go to all this investigation? Why do they bring these witnesses in from all around? Why do they put them on the stand and ask them questions and have them say things? What is the point?

They have their traditions. We have ours. It is very difficult to transpose ourselves. There is a serious quality about these trials and we are too prone to assume we know all the facts.

I tried to represent Eduard Kuznetsov in 1970. To me, that is the most painful of all cases. We have his book "Prison Diary" now—an incredible testament to human courage and strength.

I have to tell you frankly, and it is an important observation. It may reflect on my intelligence, but I was very skeptical that there was any basis to the allegation that he had planned to skyjack an airplane at Smolny Airport. I thought it was fabricated entirely. That was my gut reaction to it. How do you know? You are sitting over here. It looks awfully suspicious, does it not? It happens just before an international conference at the Hague on skyjacking when people are beating the table talking about the death penalty. It looked like a setup and it was several years before I learned that distress and a sense of injustice had caused a group to actually talk about escape by air. The way they talked about it is informative, too. Some said, "Let us skyjack an airplane and get out of here. We want to go to our homeland." Someone said, "That is dangerous; you might hurt somebody that is innocent." Somebody said, "That is right. We could not do that." And finally they came to know of a small plane at Smolny and they talked about trying to get to the airport and get the plane early in the morning and fly low across the Baltic to freedom, as they saw it.

But, of course, they were more heavily infiltrated than we had been infiltrating some groups here, so they did not get within miles of the airport before they were all arrested.

It is not a crime really, in my judgment, any more than in my judgment, it was a crime for Father Philip Berrigan and Elizabeth McCallister and others to write letters about grabbing somebody like Henry Kissinger. The idea that they would actually formulate and commit such a plan was absurd and the Government knew it.

Rudenko and Tykhy, through the trial, from all we can determine, retained—and this is a marvelous testament—their composure and purpose. You read back through Dostoyevsky's reporting of trials in his volume, "The Diary of a Writer," and you read the strength of some of the defendants in the Moscow purge trials and you see that somehow or other through all of that, and the much more sophisticated forms of psychological torture that we have now, defendants knew what they thought. Rudenko and Tykhy knew who they were, where they were and they said what they believed. They were interrupted and they were treated more than discourteously. But there was resistance and belief uttered. They were not broken. Tykhy asked for 4 to 6 hours for his summation. And he made his statement. That is courage. The trial was no way to break them.

We should not kid ourselves about the terror of these trials. Analogies are odious, as the poet said, but we had better not fantasize about these trials. You go to a Pass Court trial in South Africa and you will see someone with black skin shaking uncontrollably in chains, his case tried in 1½ minutes in a language he cannot understand, believing he will never see his family again. That is different. We need to look at that, too. They may not be signatories here, but they are not irrelevant.

We can look at cases like West Germany. I testified in Hamburg last Monday in the prosecution of Kurt Grunewald.

What does it mean when you threaten to sentence a lawyer to 5 years in the penitentiary for representing someone you do not like; when you deny people the right to counsel; when you hold a lawyer like Croissant without bail months and months pending his trial. You may not like the defendants. Who does like them—the Baader-Meinhof gang? But if you believe in the rule of law and the right to effective assistance of counsel, then you do not put the lawyers in jail for this, without any allegation that they did more than try to keep the government from breaking the spirit of their clients. That is the charge of a 125-page indictment against the lawyers, that they supported defendants in a hunger strike and things like that. It is awfully important that we keep perspective here.

As soon as I heard about the convictions of Rudenko and Tykhy, I filed an appeal. As had sometimes been true in the past, I did not know the proper court for sure—I did not even know the Articles they were charged under. We did not know the Articles Eduard Kuznetsov was charged with violating for months. Finally in the Rudenko-Tykhy trial, I assumed it was Article 62 of the Ukrainian Code. I was not quite sure what court to appeal to because of jurisdictional discrepancies that occur in most systems. As an illustration, Kurt Grunewald was tried in the Federal court in West Germany; Croissant in a State court. So I filed in all the courts. Why not? You may feel a little foolish not knowing which court to go to, but sometimes that is the best you can do.

We filed petitions and wrote letters to the collegiums of lawyers and—

Mr. DOLE. May I interrupt? When you say file, did you actually file? How did that work?

Mr. CLARK. Well, you file the best way you can. I used a return receipt requested and I have the returned receipts, but I cannot tell who signed for sure, what authority they had or what they did with the paper after—

Mr. FASCELL. You do not know where you filed, but you filed.

Mr. CLARK. Sometimes you can recognize the acknowledgment. The collegiums of lawyers acknowledgments nearly always inform you. You know, it is just a return receipt. But it tells you that the papers probably got there. I filed the same document with a cover letter in Ukrainian, in Russian, and in English. In Moscow I filed in Russian and in English. I sent copies to Roman, Rudenko and sometimes to political leaders on the theory that they ought to know directly what someone outside the country thinks about what seems to be going on inside the country.

#### QUESTIONS AND REMARKS

Mr. LEAHY. Does Rudenko have this available to him—to at least attempt to file in court? I mean, at some point, is he going to know what court he is in by being there?

Mr. CLARK. Mykola Rudenko?

Mr. LEAHY. Yes.

Mr. CLARK. Well, you cannot tell. The materials that we have gotten from the trial—I may have 30 pages of notes that people made, often from recollections after they got outside. I have the impression that no one was ever able to get word to him that his family had tried to get me to help him before the trial.

Mr. LEAHY. I see.

Mr. CLARK. Sometimes you realize they know your name. There is no question that his wife, who testified, knew my name and uttered my name in the hearing, if these materials that come back which purport to be notes made by people who were in the trial are accurate.

Mr. LEAHY. So your experience in that regard is consistent with that of Mr. Williams who had the same problem?

Mr. CLARK. Yes, that is true. Although I have had defendants who have been informd and have received papers.

Mr. LEAHY. Also, like Professor Dershowitz here, you just cannot and there are at least a significant number of instances where somebody, either within the family or friends or otherwise have retained American counsel to at least assist in the defense, realizing they are not going to be the ones who are going to conduct the defense during the trial directly, but at least assist in the defense and yet, the defendant has never known that this has happened and it is conceivable that both the court and whatever assigned counsel or retained counsel in the Soviet Union also are not aware of it.

Mr. CLARK. That is conceivable. It is even conceivable, though I think we have to stretch our imaginations, that the defendants heard of it and chose to reject it. Who knows?

Mr. LEAHY. But certainly no such rejection came back to you?

Mr. CLARK. That is right. I have never heard one.

Mr. LEAHY. So that we end up in a most frustrating sort of shadow boxing here in a way that you obviously are willing to spend whatever energy is necessary. Others have testified before our Commission and are willing to. But in many, many instances, we never know if that has ever gone to a point where it is going to do any good for the defendant being represented—either good in the sense that they know of it, have available to them materials from someone in the United States that might be helpful, or having it presented in any way where a court might take an objective view of it and let it aid in their defense.

Mr. CLARK. You not only do not know whether it will be helpful; you do not know whether it will be harmful. Someone might take offense and say we will show these characters. Who are they to be messing around with our system? We will try him tomorrow and hang him before sunset.

Mr. LEAHY. Could you expand just a bit on that, Mr. Clark, and I will certainly yield to anybody anytime to direct another question. But let me ask you if you would expand on that—again, I go back to my own experience with Mr. Shcharansky when I talked with him, and I asked him as did others the same question: Are we creating more of a problem for you? This is basically what we asked. We are all perfectly willing to make statements on your behalf. We are perfectly willing to make them there in Moscow because at some point, no matter how annoyed somebody might get with us, we would go out and get on that big, beautiful, silver and blue U.S. Air Force plane, settle back and fly in comfort to Andrews, compliment ourselves on what good boys and girls we have been, and the blow that we struck for freedom around the world by stating either on the steps of the Hotel Rossiya or in Red Square or in Brezhnev's office or whatever, our commitment to human rights.

Now, I am not in any way denigrating my colleagues or myself, but it is a little bit easier for us to do that, clutching in one hand a statement of human rights and in the other hand a diplomatic passport, knowing we are going to come out. And it is very easy for any one of us to stand on the floor of the House of Representatives or the floor of the Senate and state what bad folks the Soviets are. And I do not doubt the sincerity of any of us who do it. I have done it and everybody else has.

But again, we can then go back to our comfortable homes in Friendship Heights, McClean, Potomac, or wherever and again compliment ourselves on what a wonderful job we have done.

But is that helping? Is that helping or is that hurting? Now, Mr. Shcharansky told me that he preferred—no matter what the consequences might be to him or to those he was representing—that we continue to say it; that we continue to keep the pressure on. And I admire his bravery in that regard because I tend to think that he has felt the heavy hand of retribution become even heavier because of what we have tried to do to help. I admire his courage in encouraging us to continue with our statements. But are we helping or hurting?

Mr. CLARK. The question in the individual case is one that must always, where possible, be made by the individual. Now within the Soviet Union—and I have visited there many times going back to 1946—and at least since 1970, I have not met a person in jeopardy who had not long since decided that his hopes in life were so terribly frustrated that he would take the risk or some actually thought, the protection, of outside support. I should tell you that in many other countries I have seen people too frightened to risk that, too frightened to meet other than secretly and imploring you never to mention their names. So this is not a universal condition.

It is important that the individual make that choice where possible, but often they cannot. They are incommunicado when the decision has to be made. It is not a decision for family ideally; it is a decision for the individual.

Now strategically, in terms of the hope for world peace, I think there are two important risks: one is a piousness. It is too easy for us to focus on one system, the Soviet Union, and be very self-righteous, ignoring the fact that our prisons are full of poor blacks, that Philip Berrigan is in Allenwood Prison today, and we have just convicted in Arlington, Va. Mr. Humphries and Mr. Truong and they face serious sentences under the Espionage Act. Things are not perfect here.

We have a high obligation because we are the hope for freedom, in my judgment—to insist on high principles here first.

The other and even more dangerous risk is politicalization. For people to pick a single nation and set of cases, painful and anguishing as they are and focus disproportionately on them as human rights violations can be a disservice. I have spent months at a time in torment over these cases. The frustration arising from the inability to get your hands on them is enormous. But to focus unilaterally on a single country and its violations and ignore equal and very often greater violations is a disservice to human rights. I certainly have to disagree profoundly with Mr. Williams' observation that he has never seen such a barbaric or uncivilized procedure as the U.S.S.R.'s procedure. He has not looked around. There are some governments that shoot you before

the trial and we know it. That does not justify the Soviet system, which is in processing principle, as Earl Warren calls it, an abysmal failure. But to politicize the issue of human rights by picking countries that you do not like and beating them about the head and shoulders with their cases while ignoring human torture and summary execution in countries that you identify with politically is a great disservice to the cause of human rights.

Mr. LEAHY. I agree with that and that is why I say I hope that we are not in a situation where we can all come out with the pious platitudes on the floor of the Congress which look very nice to our colleagues, which certainly look great in press releases back home, and are wonderful for the various groups that have developed in this country to protest what is happening in the Soviet Union. I admire the work of those groups because, in many instances, some of the things I have heard about I never would have heard of other than through them. But I would hope that we would not, having done that, feel that now we have struck the greatest blow for human rights and freedom throughout the world. Because everyone of us in Congress, in doing it, do it at absolutely no risk to ourselves in protesting to what is going on in the Soviet Union. We do it at no risk to ourselves.

Mr. CLARK. It is politically advantageous.

Mr. LEAHY. We do it at no inconvenience other than the time we take to go on the floor. And what I hope is that those of us who are willing to spend time on this, that we know the best way to accomplish what will really be effective, not only to promote human rights, but effective in the Soviet Union. Certainly to promote human rights within the United States, but also on those countries that we consider allies where human rights are violated, we do not lose sight of them, too.

But on the subject of the hearing today, I, like all the other members of the Commission, am willing to do anything we can to help the people within the Soviet Union. I just want to make sure that in doing that, that we are doing things that can really help them and do not just fall into other areas that might make us or some of our supporters feel good. What I hope is that in all these hearings that each one of the witnesses, yourself and others, can give us as much insight into those things where we can effectively help these people who we all agree need help.

Mr. CLARK. Let me say two things in response to that. First, I think we should never blink at tyranny, so where you see it in the Soviet Union, you speak out. Hopefully you do so in a rational and constructive way.

I have seen, on many occasions, development of world opinion causing the most powerful governments around to do other than what they would have chosen to do if left alone. The Edward Kuznetsov trial is an illustration. He was given the death penalty. World anguish spoken from the Vatican and spoken from leaders throughout the world, religious, political and otherwise, in my opinion, caused the Soviet Union to commute the sentence. They did it quickly. We saw commutations of the death penalty after the Burgos trials in Spain by Franco—we have seen amnesties and commutations in Turkey and Chile and many other places. But it is particularly the direct and constant repetition of attacks on each other alone for human rights viola-



tions between the two great powers that do not include balanced treatment of other nations, particularly allies, that do not condemn more serious violations by other nations, that do not include world-wide scrutiny and examination and worldwide opinion for human rights everywhere which may bring us the greatest of all denials of human rights—war.

Mr. LEAHY. Mrs. Fenwick?

Mrs. FENWICK. I must confess I do not agree with a great deal of what has been said just lately. Perhaps this Commission is not as famous as we would like it to be, but it was established to monitor compliance with the Helsinki accords and that meant the 35 signatory nations. And I do not want to parade my own life—I am sure you are not interested in it—but there is not a country in this world—almost—that I have not written to on behalf of some human being in trouble. This is not a political action, attention-getting gimmick. But we are specifically charged with concern for those signatories of the Helsinki Accords and if you had come to every meeting of this Commission, you would have heard without exception every single one of the people testifying before us saying just what Professor Dershowitz said—the process is humanizing. Otherwise, the people are just lost numbers in a long list. The only way we can help is to do what they ask: Publicize, publicize the names of people. The only defense they have is to be recognized as human beings and not numbers. And when we do this, it is not because we are looking for political advantage. There are no advantages in it. It is because we know we have a responsibility to those human beings. The world has sat by too long, not paying attention when people are suffering. Certainly we ought to do what we can about Cambodia; certainly we ought to do what we can about every country in the world when there are terrible sufferings. But to say that we have to be careful here and that we should be reserved in our concern for these people—I cannot bear it. What else have they got?

For example, you present a world in which there is no absolute justice and, of course, you are right. And maybe it is all shades from pale gray to deep black. But there is a difference. As I understand it, you did not fool the German people when you asked for a visa and went there. Did you? You told them you were going to be interested in those trials of those lawyers? As I understand it, you were allowed to talk to them and were allowed to be present at the trial? Now, that is the difference. It is not everything, and maybe they never should have been brought to trial under that law, and maybe the law is a bad law, but I cannot believe that we must be so delicate as to refuse to do anything about what is happening in the Soviet Union, and in the other countries behind the Iron Curtain, because there are some other injustices somewhere else.

Now, we did the other day vote, and so did I vote, to set up an institute that would study these human rights all over the world, not just confined to the Helsinki Pact, as we are by legislation confined. We are moving beyond it. But the thing I very much resent—and this is not the first time I have heard it—is that it is awfully easy for us to make these politically advantageous remarks and go home. I happen to live on South Capitol Street and not in a suburb. But that is, I think—

Mr. LEAHY. I consider that I live in Vermont.

Mrs. FENWICK. In Washington, when you speak of whatever the suburbs were that you were speaking of. It is not easy to go home to South Capitol Street or to New Jersey where I do reside and remember all these names, but at least we remember them. And I think that is the least we can do. We cannot stand by, as we did during the whole Nazi era, without saying a word.

Mr. LEAHY. Will the Congresswoman yield?

Mrs. FENWICK. Yes.

Mr. LEAHY. I hope that you have not misinterpreted anything that I have said. I do not think that anybody here has suggested being either careful or reserved. In fact, quite the opposite. If I had considered myself a careful or reserved person in this issue, I never would have made the effort to meet with Mrs. Shcharansky prior to going to Moscow. I never would have made the effort to—

Mrs. FENWICK. I was not rebuking you—

Mr. LEAHY. No; no. Please let me finish—to carry letters to her husband, nor would any of the rest of us who have been there, at the beginning of our meeting, realizing that it might well jeopardize a number of other meetings that we had set up with everyone from Mr. Brezhnev on down in the Soviet Union, make as our first, as our first item of business to meet with Mrs. Shcharansky and others. What I am saying is, neither I nor anybody else on this Commission, with all our other duties, would take the time to serve on the Commission if we felt it was only an empty gesture. I do not think that you would, Mrs. Fenwick; I do not think Mr. Fascell would; I know certainly that I would not.

But what I am—what I was saying—and asking Mr. Clark, and asking the question of others, not only today but I have asked the same question time and time again here, is, what do we do to make sure that we have the most effect? If having the most effect is to make statements on the floor, fine. I will make statements on the floor. If having the most effect is to go to the Soviet Union and to meet with others, fine. Then I will do that. If the most effect is to meet with the Ambassador from the Soviet Union, fine, again.

But what I want to make sure of is that when we are expending this energy that what we are going to do is accomplishing what we want. One, to improve human rights among all signatories, ourselves included, to the Helsinki accords; second, when we are stating that we are taking efforts to help particular people within the Soviet Union or any other country, that what we do is indeed helping to the extent that we possibly can know that it is helping. That is why I mentioned earlier the talks with the Soviet dissidents in the Soviet Union. We heard very clearly that, whether it helped or hurt, they wanted us to continue our statements, primarily because it reminded the Soviets and others that they had not been forgotten; that there were people watching them. So that is not being careful or reserved.

Let us not kid ourselves. It is still—and we discussed the people whose human rights are being violated, whether it is in a jail in the United States or a jail anywhere in the country—that they have to be looking at what is happening from an entirely less comfortable perspective. Any Member of Congress or any member of a national organization or any member of the bar, admirable as the work might be of everybody within those organizations, I think that is something that none of us can forget. None of us can forget or should forget.

And all our efforts, whether the efforts of the bar, efforts of the national organization—and I have worked to support such efforts in both of them—or efforts within the Congress—again I have worked to support those efforts—let us not forget. When we look at perspectives, we look with the perspective from this side of the bars—a lot different from looking from inside the cell out. And let us look always at what is going to be the most effective in accomplishing what we all agree on here.

Mrs. FENWICK. We have to be guided, I think, by those who know, I do not think I have missed a hearing of this Commission, and uniformly that has been the answer.

Mr. LEAHY. That is why I keep asking the question.

Mrs. FENWICK. Thank you, Mr. Chairman.

Mr. LEAHY. Mr. Clark, having said that, I am going to have to, unfortunately, leave in a couple of minutes, but our real chairman will then take over. I am sorry, Mr. Clark, go ahead.

Mr. CLARK. I wanted to conclude about the trials of Rudenko and Tykhy. They were, of course, convicted and, of course, given the maximum sentences; 7 years strict regime for Rudenko followed by 5 years exile; and 10 years strict regime for Tykhy because of a prior conviction and 5 years exile.

It is, I think, clear and I cannot see the possibility of new facts altering my judgment, that more than a dozen fundamental human rights guaranteed by the declaration—the Universal Declaration of Human Rights—the International Covenant, and by the Soviet Constitution, the Ukrainian Criminal and Criminal Procedure Codes, were violated in their cases and that they are serving brutal prison sentences for seeking to exercise fundamental human rights.

However, far from urging an abandonment of the Helsinki accords, I would urge much greater efforts to seek their fulfillment. It has been several milleniums now since the Tables of the Law were brought down from Mt. Sinai and still we find high priests and low peasants and emperors and slaves, violating each of the Commandments. The Sermon on the Mount has been frequently violated by Christian peoples for nearly 2 million years now.

It has been 189 years since we adopted the Bill of Rights to our Constitution and still police and prosecutors and courts often deny those rights. It has been 30 years since the hope that was offered by the Universal Declaration of Human Rights was spread across the world. It is less than 3 years since the Final Act from Helsinki. We have to work awfully hard and constructively to seek the fulfillment of what is promised there. In my judgment, to walk away from the Helsinki accords is to leave us with nothing but the hope of the superior capacity for violence. First, that is not the American credo. Our strength is the strength of our freedom. And second, with present technology it promises the destruction of the planet.

Mr. LEAHY. Thank you, Mr. Clark. I think you will find that surely the members of this Commission, and I suspect probably all of us, agree with you on that. You stated far more eloquently what I tried to say when asked the same question in Vermont last week. I wish I had heard your statement before. I would have just quoted back verbatim because it could not—with proper credit, yes—because it could not more closely parallel my own thinking.

We are privileged to have you here. And I will yield to my two colleagues and I apologize for having to leave.

Mr. FASCELL. Thank you very much, Senator.

Mr. Clark, let me just touch on a couple of things you have touched on that concern me too: perspective and celebrity status, just to use shorthand. I do not like celebrity status either because it leaves so many people out, but is there any other answer? If you are going to go to the court of last resort, to use an old cliché, the court of world opinion, you do so because that is the only place you can make a case, if, indeed, you can even make a case there because I have never yet figured out what is news. It is only the guy who writes it who makes it news. So you are kind of at the mercy of a pencil as to whether or not you are making news and, therefore, whether or not you made the case. How do you do that if you are going to try to help people, if you see something wrong—if you do not identify the individual and you do not identify the case, only because there are 100,000 other people in the same boat who deserve equal consideration and you cannot give it to them. Should we deny Ginzburg and Shcharansky and Orlov and Tykhy and Rudenko—deny them because they have become celebrities because they had guts enough and brains enough to form an organization to monitor the Helsinki accords?

Mr. CLARK. No; you try to support them as best you can and you do not argue with actuality. We live in a society where whether you are a soccer player or a politician or movie star, celebrity is the road to public identification. But behind the celebrity, somehow or other, we have got to realize what Saroyan tried to tell us when he spoke of statistics as involving one soul at a time as valuable as yours or mine. There are—it is proper to say—over 100 minorities in the Soviet Union—some include millions of individuals.

Mr. FASCELL. Agreed.

Mr. CLARK. Ukrainians range far above 3 million Jewish people who are perhaps the most severely persecuted. Somehow or other we have to help the world see and comprehend that. Otherwise we risk the ability of a government to manipulate world opinion when all the focus is on a single person or a handful by crushing hundreds or thousands of others simultaneously with what appears to be a benevolent or charitable gesture toward one or several. Indeed, as is the case sometimes, too, a government may punish the celebrity more harshly because he happens to get caught up in that moment in history and internal need while they actually loosen up on others—I am not suggesting that is happening now, but I have seen it happen, I think.

So it seems to me that while we have to recognize actuality and deal with celebrities as they come, that we really have to go far beyond the few who become famous. We have to strain always to go far beyond those few individuals.

Mr. FASCELL. I agree with that. I have no quarrel with that.

Mrs. FENWICK. May I, Mr. Chairman?

Mr. FASCELL. Yes, Mrs. Fenwick.

Mrs. FENWICK. You know, it is interesting that you brought up celebrities. Clive Barnes came to one of our hearings and he mentioned the same thing. He said, "Yes, we were able to get out the dancers Valery and Galina Panov because they were so famous. We rallied entire ballet corps from Australia to England to San Francisco. But it

is the people left behind." I agree with you. A garage mechanic anxious to rejoin his wife—I wrote for 6 months, repeatedly, about him. They do get out sometimes, but if it were not for these fine organizations, we would not even know their names. I would not have known about Mr. and Mrs. Zlotver for whom I used to request two visas, but now only one because she died. You must at least get the names.

It is not that we try to focus on the celebrities, but the names we do know become the celebrities in a sense. That is our problem. But you know—

Mr. CLARK. Our celebrities are created usually long before they get here.

Mrs. FENWICK. Yes; but you know what I mean. Their names become familiar because they are repeated in the press.

Mr. CLARK. Yes.

Mrs. FENWICK. And it is very difficult to know how to do more than just try to chip away at a monolith.

Mr. CLARK. Well, you do all you can. There are techniques and systems. I have urged for many years now that we try to reach far beyond Moscow and Leningrad because I have seen repression far greater outside Moscow and Leningrad, because government can act with greater impunity there.

Mrs. FENWICK. We heard that, too. In Odessa, they tear up a letter right in front of you, whereas they do not in Moscow. They let you see it. We have heard the same thing at our hearings. You are right.

Mr. CLARK. So what we have to do is try to reach out in all the ways that you do—all the travel, all the lines of communication, everything you can do. You have got to keep building. It does not mean that you abandon the Shcharanskys. For God's sake, that would be unbearably inhuman. But you have to go far beyond that.

Mrs. FENWICK. As far as you can, right?

Mr. CLARK. Yes.

Mr. FASCELL. Now the other part of my question, just to be sure. I thought I understood you, but I wanted to be sure that the record was amplified and sufficiently so that I did really understand you. And that is on the question of picking on a country you do not like. You know, there is enough for all of us to do everywhere. Obviously we are together on the fact that when you and I see something wrong, you spend a great deal of your life trying to correct it. And I think all of us need to do that and I think it is unfortunate in a way that there is so much emphasis on the Soviet Union, but I do not know that that can be avoided. I do not know that you can pick on anybody else in the same way that you can pick on the Soviets. They just happen to be nice and big and handy and juicy in terms of press. And it is one of the things that they have got to live with. I do not see any way around that, do you? I mean we can take on all the others and I think we should—for example, in our own jurisdiction, we are concerned as Mrs. Fenwick said, with the signatories of the Helsinki accord. Now for those that are not within the accord, well we could have lawyers—and we do—running all over South America and Africa and Asia and the USA and every place else, because we do have problems everywhere. I have no quarrel with that. I think that needs to be done, but within our own Government the mechanism for human rights resides right now in the Department of State because that is the way Congress chose to do it. We did focus specifically, from an operational

standpoint, on creating that input into the decisionmaking process, making human rights criteria a factor, not the factor, but a factor in the formulation and the implementation of U.S. foreign policy. I think that was important. I think that is a step forward, myself. We created an Assistant Secretary of State for that purpose, notwithstanding the people who had a very strong opinion to the contrary. And there is now the beginnings of a system—an awareness that allows us to look at all other countries outside of the signatory countries.

But that is just of recent vintage, that is, since Kissinger left. So, you know, we are feeling our way and we are trying to maintain perspective and we are trying to reach beyond, as I see it. But I do not know any way right now to get the lamplight off of the Soviet Union event though on a scale of 0 to 10, you might put their human rights at 4 or 5 and others that you could just pick right off the top of your head down at the bottom of the list. We cannot change our focus.

So, while agreeing with you on perspective, I think we have got to take these other things into account also.

Mr. CLARK. Let me make a comment or two about that. You have to work within your legal parameters, obviously. I suggested that when I began, but within those parameters, you can observe that there—

Mr. FASCELL. Oh, sure.

Mr. CLARK [continuing]. Are acts outside that need to be examined and looked at, and your parameters have to be looked at in the context of human rights generally, too. Otherwise, you have no base or standard.

Mr. FASCELL. Agreed.

Mr. CLARK. And you cannot make the world safe for hypocrisy. When we ignore violations of human rights in the Philippines or in Iran and attack the Soviet Union on these grounds we politicize human rights. If I had to choose between being a political prisoner, it is not a happy choice, in the Soviet Union or in Iran or in the Philippines, right now I would choose the Soviet Union. I am not saying your Commission has jurisdiction to study Iran or the Philippines, but I am saying that our very credibility can be undermined if we discriminate. Our motives become questionable if we do not uniformly and fearlessly, without regard to affinity or consanguinity, protest all violations of human rights. It does not matter whether your mother came from Ireland—if they are bombing the children, you speak out. And I think we have that obligation.

I disagree with you, I believe, on the focus on the Soviet Union. I have worked with Amnesty International for many years—and I think you can bring a focus on Argentina, for example, where human rights violations are staggering—all you have got to do is start examining the facts and making them public.

Mr. FASCELL. Agreed.

Mr. CLARK. Human torture makes a good press, sadly. So it is a question of where you put your effort. And I am not saying you should take all effort off the Soviet Union. I do not think for a minute you should. But I do think this. It should be fair, true, and balanced. In a world where there are two powers and conflict between them represents a greater threat to survival than among any others, it becomes important for us not to just single them out for this sort of criticism. We have to be as tough with General Park—there is no use going

through the long litany of all the countries—as anybody else. Otherwise use of human rights is strategic, not human. Take our denial of military aid on the basis of violations of human rights and you finally get down to one little country—Nicaragua. And we have fiddled around with military aid even there. So I think we have an obligation to be far more evenhanded to be credible and not to be carried away and do something that will be harmful.

I also think it would be very helpful and very important to stimulate other countries and particularly Eastern European countries, as an illustration, to new commitments, to new speaking out for human rights. If it is just this Government shouting at the Soviet Government, however outrageous the violation of rights, we risk something that has to be avoided.

Mrs. FENWICK. Mr. Chairman.

Mr. FASCELL. Mrs. Fenwick.

Mrs. FENWICK. We have been given money by the Congress—tax money—to do a certain thing which is to monitor compliance with the Helsinki accords. That is what our mandate is. Now that does not absolve us from the responsibility outside the work of the Helsinki Commission to take an interest in all the other injustices that you have outlined. I suppose Don Fraser and I sign letters every other week to Mr. Park. That does not stop me or activities in other areas, in Taiwan or the Philippines. But as a member of a congressional commission one must operate under the mandate that has been given.

Mr. CLARK. You voted on the mandate and it was a good mandate because the Helsinki accords are an entity within themselves.

Mrs. FENWICK. It was my bill. I like to think it is good.

Mr. CLARK. Yes; it is good.

Mrs. FENWICK. I would like to make a correction. I thought that institute had been voted because I voted for it, but apparently it was defeated. I am told—

Mr. FASCELL. It was knocked out of the House bill, but we are still working on it.

Mrs. FENWICK. We are still hoping for it, in the conference, but I did vote for it and hope it passed.

Mr. CLARK. It would not hurt to look at West Germany. It would not hurt to look at England on the Agee case and determine—

Mrs. FENWICK. We can do it individually, but not through the Helsinki Commission.

Mr. FASCELL. Yes; we can.

Mr. CLARK. West Germany?

Mrs. FENWICK. Yes; we can. Yes; we can.

Mr. CLARK. England on the Agee case; Belgium on the Agee case. Did the CIA have anything to do with that? Those are good questions to ask.

Mrs. FENWICK. The secrecy law—

Mr. CLARK. It shows a balance. It shows a concern that is uniform for human rights.

Mrs. FENWICK. That is right. That is right. We could in West Germany. If you could furnish us some material for that—we have no evidence and perhaps you could give us some.

Mr. CLARK. Within the last month, look at the June 10th issue of *Saturday Review*, there is a story on authoritarianism emerging in Germany.

Mrs. FENWICK. I read it.

Mr. CLARK. And on anti-Semitism and all the rest. Look at *Time* magazine two or three weeks ago, a long story. The press is full of it, but I will get you what I have.

Mrs. FENWICK. I do not call that evidence. I read it with great interest.

Mr. CLARK. No, but it is cause for inquiry.

Mrs. FENWICK. And I kept it. Yes, indeed. I would like to have more information. Did you tell West Germany that you were going, and you were interested in these trials? Did you have trouble getting your visa?

Mr. CLARK. You do not need a visa for West Germany.

Mrs. FENWICK. Oh, I see.

Mr. CLARK. But I had no trouble. You see, that is one of the ironies, the lawyers were denied the right to represent their clients. These were the lawyers themselves being prosecuted for seeking to defend unpopular clients.

Mrs. FENWICK. Did you speak to them?

Mr. CLARK. Oh, yes. I stayed in the home of one of them. One of them is in jail pending his trial.

Mrs. FENWICK. Were you able to attend any trial that you wanted to go to?

Mr. CLARK. I testified for 4½ hours.

Mrs. FENWICK. You did?

Mr. CLARK. Yes.

Mrs. FENWICK. You were allowed to? Did they call you as a witness and you were allowed to testify?

Mr. CLARK. The court finally agreed to pay travel—it is not clear whether they are going to pay from the home in Hamburg or from New York. I rather suspect the former, but it will be interesting to see.

Mrs. FENWICK. Do you mean there is a chance that West Germany might pay you to testify against them?

Mr. CLARK. I was an expert of sorts. There is a chance they are going to pay something, whether it is car fare in town or what.

Mrs. FENWICK. Give us whatever materials you have got anyway.

Mr. CLARK. OK.

Mrs. FENWICK. Thank you.

Mr. FASCELL. I think your point is well taken as far as examination is concerned in terms of being constant. If we are going to do the job and have some credibility—this Commission has been trying to do that—not only in examining others, but also in examining their own shortcomings. That is where it has to begin.

Thank you very much, Mr. Clark. I appreciate it.

Mr. CLARK. Thank you.

Mr. FASCELL. Our next witness is Prof. George Fletcher, professor of law at UCLA Law School, an expert on comparative legal systems, and other matters, particularly in the Soviet Union.

We would be delighted to hear from you, Professor. Give us an overview on Soviet law, particularly as it applies to the political cases.

#### STATEMENT OF PROF. GEORGE FLETCHER

Professor FLETCHER. Thank you, Mr. Chairman and members of the Commission.



In view of the discussion of the situation in West Germany, I should say that I am primarily an expert on West German criminal law and criminal problems, but my charge today is to speak on the situation in the Soviet Union.

Mr. FASCELL. You can tell us about West Germany, too, if you want to.

Professor FLETCHER. I think the two relate. My particular focus on the Soviet Union is to analyze the system of criminal law and procedure as it relates to other Western European systems, because the basic structure and organization of the system is an outgrowth of the European mode of trial.

There are three aspects of the Soviet criminal system that warrant our attention. First, the substantive criminal law and the inclusion of particular offenses that are useful in prosecuting dissidents; second, the organization and structure of criminal prosecution; and third, the Soviet's violation of their own laws and prosecution of persons regarded as political enemies.

Before I turn to a discussion of these three things, I should like to enter an important qualification. Nothing that I have to say this morning pertains to the treatment of the average citizen in a routine criminal case—larceny, assault or rape, homicide. It is entirely possible that in these routine cases, the Soviet system works as humanely and fairly as our own.

At least one can say that the process in these cases closely resembles procedures used in continental jurisdictions such as France and Germany. At least in important respects. I will pinpoint the differences later.

The defendant is charged under a criminal code that resembles other western criminal codes. The trial superficially resembles trials in the West. There is no jury. The two lay assessors sit with the judge in hearing the case and in deciding the defendant's guilt or innocence. The prosecution is represented by the Procuracy. Defense counsel is typically present. Counsel is obligatory in capital cases and in situations in which for reasons of physical defects or mental incapacity the defendant is not able to defend himself. There might also be a civil plaintiff such as is characteristic of French procedure, and there might be a civil respondent which would usually be an organization that is concerned about the implications of the criminal case for its own operation.

Even in these typical cases, however, there are two features of the Soviet trial that would surprise American observers. First, the judges have at their disposal a dossier of evidence compiled by the pretrial investigator. American judges and jurors begin the trial without knowing anything about the case. Soviet judges, like their counterparts in France and Germany, know the entire case of the prosecution before the trial begins. The counterbalancing advantage for the defendant and his lawyer is that the defense also knows the entire case of the government before the trial begins. Indeed, one of the basic rights in the Soviet system is that the entire file or dossier be made available to the defendant before the beginning of the trial. And I should say that on the basis of our interviewing scores of people involved in the Soviet legal process, my impression is that that right prescribed by the Code is strictly observed. There are some problems

about taking notes from it, but the right of access to the dossier is strictly observed, as far as I can tell. The only way that the prosecution's case can be learned in the United States is through voluntary disclosure at the preliminary hearing or by a motion for pretrial discovery.

The second surprising feature of the Soviet trial is the informality generated by the presiding judges conducting the interrogation of witnesses. There is none of the ritual that we associate with the common law trial, lawyers examining and cross-examining witnesses on the stand. The judge asks the witness a question, perhaps the prosecution interjects a question, and defense counsel might request that he have the privilege of asking a question. If the judge chooses, he can confront the defendant on the spot with the witness' testimony and ask him whether he agrees or disagrees. The implication of this informal proceeding is that the defendant himself participates much more in a Soviet than in an American trial. He has no privilege not to testify and, indeed, the entire proceeding is designed to dignify the defendant's own comments about his guilt or innocence. One of the fundamental rights guaranteed by the Soviet Code is that the defendant should have the last word at the trial.

These comments about the typical case provide a background for understanding the special features of Soviet law which lend themselves to the political purposes of the Soviet regime. The Soviet Code contains an array of crimes and flexible definitions that are useful in cases against people regarded as politically deviant. The most important of these crimes are, one, possessing anti-Soviet literature; two, anti-Soviet activity, which can be committed simply by a group effort to publish and disseminate anti-Soviet literature; three, hooliganism, which in effect covers any deviant behavior disapproved of by the authorities; and, parasitism, which punishes the failure to have an officially approved mode of earning a living. These four crimes are regularly applied to certain activities—to activities that typically go unpunished in western democracies. The use of these four crimes against dissenters might be termed the lenient mode of repression, for the possible penalties range from a maximum of 1 year for ordinary hooliganism to 7 years for possessing anti-Soviet literature.

In the early seventies, the authorities seemed to rely more heavily on the charge of possessing anti-Soviet literature. Today the emphasis appears to have shifted to parasitism and hooliganism as the means for prosecuting Jews who have applied for emigration and then lost their jobs.

Later I shall return to the way in which the use of these charges is facilitated by certain practices that are illegal even under Soviet law.

To repeat, these four crimes represent a mild response to dissident behavior. The harsher response is reflected in crimes coupled with the possibility of the death penalty. Treason, section 64, is the foremost example. But the death penalty is also a possibility in cases involving stealing or attempting to steal state property in large quantities. Both provisions were invoked in the first Leningrad trial in December 1970, against the leaders of the group that sought to hijack an airplane and escape to the West.

Treason is defined so vaguely that it encompasses illegally leaving the country or staying abroad to the detriment of the governmental

integrity of the U.S.S.R. Attempting treason or even preparing to commit treason can be punished as severely as the consummated offense. Let me repeat that point. That is, the Soviets do not recognize the general distinction between attempting crimes and preparing to commit crimes. They are both equally subject to liability and it is possible to impose the full penalty for merely preparing to commit a crime.

Now one thing that is rather interesting in the Soviet literature on this particular point. Soviet scholars discussed the question, "Should there be penalties for merely preparing to commit crimes?" They are very adept at citing authority from other countries, pointing out the analogies between such crimes as possessing weapons and their own doctrine of liability for preparation. And, indeed, a careful comparative analysis would show that on the substantive level, the Soviet law is not as bad as it looks. It can be given a bad slant, but that leaves out the careful comparative analysis.

Let me turn to some procedural questions which I regard as important in understanding how the system can be mobilized against the Helsinki watchers.

The most important feature of the system procedurally is the position of the procuracy in determining the fate of criminal suspects. The procuracy has no precise analogue in Anglo-American law. The institution encompasses the functions of criminal investigation, prosecution at trial, determining the rights of the suspect prior to trial, and supervising the overall legality of every criminal conviction. The chief procurator is at once attorney general, grand jury, and judge. The quasi-judicial role of the procuracy is particularly important prior to trial. In most Western legal systems, the pretrial rights of the accused are guaranteed, safeguarded by a requirement that the suspect be brought before a judge or an independent magistrate as soon as possible in the process of arrest and investigation.

If the suspect is going to be held in confinement pending trial, most Western systems require that the decision be made by a judicial officer. Not so in the Soviet Union. The procuracy itself exercises this judicial authority in ordering pretrial detention. In the ordinary case, pretrial detention should not last longer than 2 months. This rule, however, applies only in the undefined category of the ordinary case. In so-called exceptional cases, the period of preventive detention can be extended for an additional 7 months. The status of officers in the hierarchy of the procuracy is reflected in their relative authority to extend the period of pretrial detention. Only the procurator general of the U.S.S.R. can decree the pretrial term of 9 months.

That these pretrial decisions are made in the procuracy rather than the courts is not simply a matter of one official exercising authority rather than another. If pretrial detention is decreed by the court, the process of decision can approach a formal hearing in which all parties are heard. If the decisions are made in the administrative privacy of the procuracy's office, there need be no public or even semipublic explanation of the grounds for pretrial detention, nor is there any judicial check on the duration of pretrial detention.

We have heard several examples today of instances in which the 9-month limit was violated. In the second Leningrad trial, the detention lasted 11 months, and we know about the *Shcharansky* case

and the dubious practice of the Supreme Soviet intervening with a special decree to extend the pretrial detention.

The nature and conditions of pretrial detention in the Soviet Union are particularly harsh, for the accused has no right to see a lawyer or even his family until the procuracy announces that it has concluded the investigation and it is prepared to bring the case to trial.

At the end of the investigation, the accused may avail himself of legal representation and both he and his lawyer may examine the dossier.

The Soviet Constitution guarantees the right to a defense, but what this means during the pretrial investigation is that the accused is entitled to reply to the charges against him and in addition, the investigator is required to examine both incriminating and exculpatory aspects of the case. In other words, according to Soviet doctrine, the procuracy fulfills mainly the offices of the investigator and the procuracy—fulfills both the functions of accusation and of defense.

The quasi-judicial authority of the procuracy is reflected further in the decisions reached to terminate criminal prosecutions. If the procuracy reaches the conclusion that the accused is guilty of a specific charge, it turns the case over to the trial courts. If the trial courts decide that there is insufficient evidence to convict, it can take one of two measures: It can remand the case for further investigation by the procuracy or it can decree an acquittal. If it remands the case for further investigation—a procedure that is totally unknown in our system of justice—

MR. FRIENDLY. Excuse me, Professor. Can that occur before the trial, even during the court's examination of the procurator's submission?

Professor FLETCHER. Even after the trial.

MR. FRIENDLY. But it can occur before?

Professor FLETCHER. Sure. Before the trial, the court makes a determination whether to go ahead with the trial, and after the trial it can decide, "Well, we do not have enough evidence to convict, but we are not sure that we should acquit, and, therefore, we will remand for further investigation."

MR. FRIENDLY. But when they accept the submission before trial, is there then a fairly heavy presumption of guilt?

Professor FLETCHER. I will turn to that question. If it remands the case for further prosecution—for further investigation—the procuracy again takes control of the case and continues the investigation. But even if the court acquits the defendant, the procuracy still retains control over the case for it must decide whether to appeal the acquittal to a higher court. In the Soviet system, as in France and Germany, and even Israel, the prosecutor has the right to appeal acquittals.

If the acquittal is upheld by the Supreme Court, the accused may reach a point of temporary safety, provided that the procuracy does not assert new evidence against him. Even acquittals upheld on appeal can be reopened for prosecution on the basis of newly discovered evidence. The only limitation on the procuracy's authority to reopen an acquittal for further prosecution is the statute of limitations for the offense. That is, the reopening is not treated any differently from the initial prosecution. Both are bound by the statute of limitations.

The practical implication of these rules is that in the final analysis, it is not the courts, but rather the procuracy that decides whether

the process of investigation and prosecution comes to an end. According to the Code of Criminal Procedure, the courts are the only agency in the system entitled to officially declare a defendant guilty. Soviet lawyers are proud of this provision for it implies that the procuracy cannot officially label anyone as guilty. The less visible weakness of the Soviet system is that the courts are powerless to protect an individual from continued investigation and prosecution even after an acquittal.

The statute of limitations which varies from 1 year to 10, provides some protection, but the code itself provides a number of techniques for circumventing and tooling the statute of limitations, particularly in serious cases.

The point of this analysis is to demonstrate that the Soviet system of criminal justice is an essentially administrative rather than judicial system. The important decisions are made by the procuracy, not the courts. And the decisions are made not in public or in semipublic courtrooms, but in the private chambers of the procuracy. There is admittedly some controversy about these matters among Soviet lawyers and I wish to stress that point very strongly. It is a major mistake to think of the Soviet system as a monolithic system with everyone thinking the same way—either within the legal system or in the universities. There is an extraordinary amount of controversy about Soviet law and about particular institutions, and this controversy is published freely in the Soviet journals, perhaps on the assumption that people who read Russian can generally be trusted and, therefore, there is no danger, or something of that sort. I do not know, but the information is readily available and some of it is extremely heated and intense, with strong political overtones.

One of the issues that has been debated intensively in the last few years is precisely this question as to exactly what the role of the courts should be relative to the procuracy. And the issue of the presumption of innocence or the presumption of guilt that you raised, Mr. Friendly, lies at the core of that controversy. Strogovich struggled in the fashion of a liberal Western lawyer to strengthen the position of the courts. One of the primary doctrines for doing so is the presumption of innocence, which is a way of saying, "Look, even though the pretrial investigator has concluded that the defendant is guilty, we are going to treat him as though he is innocent at the beginning of the trial."

Mr. Strogovich, it turns out—even though he has held out for this liberal view about the role of the courts—is still one of the most widely respected professors in the Soviet Union. He just published another article in the last few months in which he argued for a novel view concerning the role of defense counsel in criminal cases. The question he put in the article was: "How do you decide, how do you assess the efficacy of defense counsel in the criminal case? Do you say the counsel is good because his motions tend to be agreed to by the presiding judge or should there be some other standard?" And Strogovich explicitly rejected the idea that an effective counsel is one who is successful at court; that counsel has an obligation to fight for an acquittal even though he might not be successful. That is an illustration of the kind of controversy that takes place.

The opposing position generally favoring procuracy is urged by those who stress the role of the Communist Party in guiding the

administration of justice. It is widely thought that the procuracy is more under party control than under the courts.

I have several points here on inconsistencies and internal violations of Soviet law, which are contained in my statement. I think you might wish to read them at your leisure. And we have heard a number of other points made this morning on precisely that.

Mr. FASCELL. We will put the entire statement in the record, Professor.

Professor FLETCHER. Thank you. May I just make one modest suggestion? I have heard a number of times about possibilities of effective action with regard to Helsinki Watchers.

Mr. FASCELL. Go ahead.

Professor FLETCHER. One technique that would be extremely effective, in my opinion, would be the possibility of libel actions brought in the United States against the Soviet news agencies. One of the major techniques used in the Soviet Union in preparing a case for trial is systematic defamation of suspects prior to the beginning of the trial. This happened in the *Shcharansky* case, the *Orlov* case—it is a widely known technique in the Soviet Union.

Under the existing statutory immunity provisions in the Federal Code, it appears that it might be possible to bring a libel action against *Tass* or *Novosti*, particularly *Novosti*. But there was a recent case on that which held that the statutory immunity provision did apply to *Novosti*, on the theory that this is a governmental agency and the general exception of doing commercial activity in the United States did not apply.

One question that might well be considered is whether the legislation on statutory immunity in this country should discriminate in favor of the Soviet press and provide greater immunity from libel action than can be maintained against *DeMonde* or *DieVeldt* or other newspapers that might engage in libel.

It seems ironic that the fact that the newspapers are controlled by the state and can be used as an expression of state policy should lead to favorable treatment in American actions for libel. You see, the potential of libel action on behalf of people defamed in the Soviet press is very significant, because it means that there would then be ways in which to litigate some of the questions of guilt or innocence in a neutral tribunal.

Mr. FASCELL. Professor Fletcher, Mrs. Fenwick and I are going to have to go answer this roll call, but I know there are several questions that need to be asked and I see Mr. Friendly is about to do that. So we will take our leave and let him continue with this—he and Mr. Oliver.

Let me express my appreciation to you for taking the time to give us your testimony on Soviet law. It has been very helpful to me, certainly for a lot of reasons—probably the first time I have been exposed to it. The procurator's system which judges guilt and has no termination point is a fascinating theory of law, but to me, the whole system seems to be simply—and I will say this in seriousness and without attribution of any kind of motive on the part of the Soviets—the whole system is a glossover. It is a nothing. It is nil.

But it is interesting. That is the way they do it. In other words, they devised a whole system of guards and procedures and people to get at what they want anyway and have some semblance of humanity.

That is the way it reads to me, just briefly, and it may be because I am prejudiced. I do not know. It may be one of the reasons why I will never get in the Soviet Union. They still do not like me. But anyway, thank you very much.

[Professor Fletcher's written statement follows:]

STATEMENT OF GEORGE P. FLETCHER, PROFESSOR OF LAW, UNIVERSITY OF CALIFORNIA, LOS ANGELES, TO THE HELSINKI COMMISSION

I should like to present to you a picture of Soviet criminal law that, to the maximum extent possible, should be free of parochial bias. At the same time it is important that we focus on those aspects of the Soviet criminal system that lend themselves to the suppression of political dissent.

There are three aspects of the Soviet criminal system that warrant our attention: first, the substantive criminal law and the inclusion of particular offenses that are useful in prosecuting dissidents; second, the organization and structure of criminal prosecutions; and third, the Soviet's violation of their own laws in prosecuting persons regarded as political enemies. Before I turn to a discussion of these three themes, I should like to enter an important qualification. Nothing I have to say pertains to the treatment of the average citizen accused of larceny or assault. It is entirely possible that in these routine cases the Soviet system works as humanely and fairly as our own. At least, one can say that the process in these cases closely resembles procedures used in Continental jurisdictions, such as France and Germany. The defendant is charged under a criminal code that resembles other western criminal codes. The trial superficially resembles trials in the West. There is no jury, but two lay assessors sit with the judge in hearing the case and deciding the defendant's guilt or innocence. The prosecution is represented by the procuracy. Defense counsel is typically present; counsel is obligatory in capital cases and in situations in which for reasons of physical defects or mental incapacity, the defendant is not able to defend himself. There might also be a civil plaintiff joined in the proceedings and a civil respondent appearing for the defense.

Even in these typical cases, however, there are two features of the Soviet trial that might surprise American observers. First, the judges have at their disposal a dossier of evidence compiled by the pre-trial investigator. American judges and jurors begin the trial without knowing anything about the case. Soviet judges, like their counterparts in France and Germany, know the entire case of the prosecution before the trial begins. The counterbalancing advantage for the defendant and his lawyer is that the defense also knows the entire case of the government before the trial begins. Indeed, one of the basic rights in Soviet systems is that the entire file or dossier be made available to the defendant before the beginning of the trial. The only way that the prosecution's case can be learned in the United States is through voluntary disclosure at the preliminary hearing or by submitting a motion for pre-trial discovery.

The second surprising feature of the Soviet trial is the informality generated by the presiding judge's conducting the interrogation of witnesses. There is none of the ritual that we associate with lawyers' examining and cross-examining witnesses on the stand. The judge asks the witness a question, perhaps the prosecution interjects a question, and defense counsel might request the privilege of asking a question. If the judge chooses, he can confront the defendant on the spot with the witness's testimony and ask him whether he agrees or disagrees. The implication of this informal proceeding is that the defendant himself participates much more in a Soviet than in an American trial. He has no privilege not to testify, and indeed the entire proceeding is designed to dignify the defendant's own comments about his guilt or innocence. One of the fundamental rights guaranteed by the Soviet code is that the defendant should have the last word at the trial. These comments about the typical case provide a background for understanding the special features of Soviet law that lend themselves to the political purposes of the Soviet regime.

#### 1. SUBSTANTIVE LAW

The Soviet code contains an array of crimes and flexible definitions that are useful in cases against people regarded as politically deviant. The most important of these are the crimes of (1) possessing anti-Soviet literature (sec. 70), (2) anti-

Soviet activity, which can be committed simply by a group effort to publish and disseminate anti-Soviet literature (sec. 72), (3) hooliganism, which in effect covers any deviant behavior disapproved by the authorities (sec. 206), and (4) parasitism, which punishes the failure to have an officially approved mode of earning a living (sec. 209). These four crimes are readily applied to the activities that typically go unpunished in Western democracies. The use of these four crimes against dissenters might be termed the lenient mode of repression, for the possible penalties range from a maximum of one year for hooliganism to seven years for possessing anti-Soviet literature. In the early seventies, the authorities seemed to rely more heavily on the charge of possessing anti-Soviet literature; today the emphasis appears to be on parasitism as a means for prosecuting Jews who have applied to emigrate and then lost their jobs. Later I shall return to the way in which the use of these charges is facilitated by certain practices that are illegal even under Soviet law.

To repeat, these four crimes represent a mild response to dissident behavior. The harsher response is reflected in crimes coupled with a possibility of the death penalty. Treason (sec. 64) is the foremost example. But the death penalty is also possible for stealing or attempting to steal state property in large quantities (sec. 93). Both provisions were invoked in the first Leningrad trial in December, 1970, against the leaders of the group that sought to hijack an airplane and escape to the West. Treason is defined so vaguely that it encompasses illegally leaving the country or staying abroad to the detriment of the governmental integrity of the U.S.S.R. Attempting treason or even preparing to commit treason can be punished as severely as the consummated offense, and therefore preparing to leave the country illegally is potentially subject to the death penalty.

It is important to note that under Soviet procedure the use of the death penalty is totally discretionary. There are no guidelines for the death penalty in a case of treason. Whether the death penalty is permissible for stealing a large amount of state property depends on the elastic issue whether the amount stolen is a "large amount."

## 2. PROCEDURAL ISSUES

The second feature of the Soviet system that facilitates the prosecution of dissidents is the position of the procuracy in determining the fate of criminal suspects. The procuracy has no precise analogue in Anglo-American law. The institution encompasses the functions of criminal investigation, prosecution at trial, determining the rights of the suspect prior to trial, and supervising the overall legality of every criminal conviction. The chief procurator is at once attorney general, grand jury, and judge. The quasi-judicial role of the procuracy is particularly important prior to trial. In most Western legal systems, the pre-trial rights of the accused are guaranteed by requiring that the suspect be brought before a judge or an independent magistrate as soon as possible in the process of arrest and investigation. If the suspect is going to be held in confinement pending trial, most western systems require that a judicial officer make that decision. Not so in the Soviet Union. The procuracy itself exercises this judicial authority in ordering pre-trial detention. In the ordinary case, pre-trial detention should not last longer than two months. But this rule applies only in the undefined category of the ordinary cases. In so-called exceptional cases, the period of preventive detention can be extended for an additional seven months. The status of officers in the hierarchy of the procuracy is reflected in their relative authority to extend the period of pre-trial detention. Only the Procuror-General of the U.S.S.R. can decree the pre-trial term of nine months.

That these pre-trial decisions are made in the procuracy rather than in the courts is not simply a matter of one official's exercising authority rather than another. If pre-trial detention is decreed by the courts, the process of decision can approach a formal hearing in which all parties are heard. If the decisions are made in the administrative privacy of the procuracy's offices, there need be no public, or even semi-public, explanation of the grounds for pre-trial detention. Nor is there any judicial check on the duration of pre-trial detention. We know that the nine-month limit was exceeded in the Second Leningrad Trial in 1971 and Anatoly Shcharanskyy is now serving his fifteenth month in pre-trial detention. In Shcharanskyy's case, the procuracy's exceeding the nine-month limit is supposedly justified by a special decree of the Supreme Soviet that superseded the code of criminal procedure.

The nature and conditions of pre-trial detention in the Soviet Union are particularly harsh, for the accused has no right to see a lawyer or even his family



until the procuracy announces that it has concluded the investigation and it is prepared to bring the case to trial. At the end of the investigation, the accused may avail himself of legal representation and both he and his lawyer may examine the dossier prepared by the procuracy.

The Soviet constitution guarantees the right to a defense, but what this means during the pre-trial investigation is that the accused is entitled to reply to the charges against him and, in addition, the investigator is required to examine all aspects of the case. In other words, according to Soviet doctrine, the procuracy fulfills both the functions of accusation and defense.

The quasi-judicial authority of the procuracy is reflected further in the decisions reached to terminate criminal prosecutions. If the procuracy reaches the conclusion that the accused is guilty of a specific charge, it turns the case over to the trial courts. If the trial court decides that there is insufficient evidence to convict, it can take one of two measures. It can remand the case for further investigation by the procuracy. Or it can decree an acquittal. If it does the former, the procuracy again takes control of the case and continues the investigation. But even if the court acquits the defendants, the procuracy retains control, for it must decide whether to appeal the acquittal to a higher court. If the acquittal is upheld by the Supreme Court, the accused may reach a point of temporary safety—provided that the procuracy does not assert new evidence against him. Even acquittals upheld on appeal can be reopened for prosecution on the basis of newly discovered evidence. The only limitation on the procuracy's authority to reopen an acquittal for further prosecution is the statute of limitations for the offense. The practical implication of these rules is that in the final analysis, it is not the courts, but the procuracy that decides whether the process of investigation and prosecution comes to an end.

According to the code of criminal procedure, the courts are the only agency in the system entitled to declare a defendant officially guilty. Soviet lawyers are proud of this provision, for it implies that the procuracy cannot officially label anyone as guilty. The less visible weakness of the Soviet system is that the courts are powerless to protect an individual from continued investigation and prosecution, even after an acquittal. The statute of limitations, which varies from one year to ten, provides some protection against procuracy, but the code itself provides a number of techniques for telling or circumventing the statute of limitations, particularly in more serious cases.

The point of this analysis is to demonstrate that the Soviet system of criminal justice is essentially an administrative rather than a judicial system. The important decisions are made not in public or semi-public courtrooms, but in the private chambers of the procuracy. There is admittedly some controversy about these matters among Soviet lawyers. Some widely respected Soviet professors, notably M. Strogovich, have struggled for decades to strengthen the position of the courts relative to the procuracy. But the opposing position favoring the procuracy seems to be urged by those stressing the role of the Communist Party in guiding the administration of justice. It is widely thought that procuracy is more under Party control than are the courts.

### 3. INTERNAL VIOLATIONS OF SOVIET LAW

The Soviet system, as I have outlined it, is well suited to the realization of political objectives as well as to efficiently, and perhaps fairly disposing of routine cases that do not threaten the regime. But to make matters even easier, the Soviets occasionally violate even their own laws in ways that do not seem essential to their political objectives. In pointing out these violations, I do not wish to call into question matters of statutory interpretation. We are not in a position to second-guess the meaning that Soviet lawyers confer upon vague standards such as "anti-Soviet activities." If Leon Uris's "Exodus" or a Hebrew grammar is deemed "anti-Soviet" in nature, we might deplore the lack of respect for free speech, but we cannot accuse the Soviets of internal inconsistency. The violations I have in mind are cases in which Soviet courts violate the letter as well as the spirit of their own well-defined laws. I have already mentioned the violation of the nine-month limit of pre-trial detention. Here are some other examples:

1. The Soviet code of criminal procedure section 301 requires that all evidence considered in reaching a verdict of guilty be heard at the judicial hearing. The corollary of this precise rule is that the judgment may not be based on evidence in the dossier that is not read publicly at trial. Yet we know in fact that in numerous anti-Zionist prosecutions based on the possession of anti-Soviet literature, the dossier contained a statement by the government censor identifying

the seized literature as anti-Soviet and yet neither the censor's statement nor any other evidence on the issue was heard at trial.

2. Prosecution is based on the theory that the failure to take an available job is a violation of the Soviet work ethic and therefore a form of immorality that ought to be punished as a crime. The procedures for prosecution require that a warning first be issued to the suspected parasite and that he have thirty days to find employment. The difficulty in the case of many Jews who have applied for exit visas is that they are fired from their ordinary jobs and cannot find surrogate employment. If they then seek to sustain themselves by tutoring privately and by accepting gifts from abroad, they are subject to prosecution as parasites. A case in point is Iosif Begun, who was convicted of parasitism in March 1977, and exiled to Siberia. The issue here again is not whether we agree or disagree with the substance of this law, but whether it is internally consistent for prosecuting a man for not having a job when he cannot receive the kind of job the Soviet authorities find acceptable.

### QUESTIONS AND ANSWERS

Mr. FRIENDLY. Professor, you can go on about the libel problem and the provisions of the Statutory Immunity Act, as they were amended in 1976—were they not?

Professor FLETCHER. Yes.

Mr. FRIENDLY. Yes. The first query: assuming that the act were reamended to expose Soviet news agencies—as under that most recent decision, they are not—to prosecution in American courts, who would have standing to bring a suit on behalf of a defamed Soviet citizen?

Professor FLETCHER. The easiest cases would be those of people like Avital Shcharansky, Mrs. Shcharansky—who was also defamed in the same article—who could hire a lawyer in the United States or any other country.

Mr. FRIENDLY. But in that case—let us say Mrs. Shcharansky brought the charges—then the issue if you could get to the issue to be clarified—would only affect her?

Professor FLETCHER. Right.

Mr. FRIENDLY. I would not have standing to sue on behalf of anyone but myself.

Professor FLETCHER. Yes; but then the only problem is obtaining authorization, from the injured party himself in the Soviet Union. Particularly if the suspect is defamed prior to incarceration, then I do not think that poses any particular problem. The fact that the suspect would be in the Soviet Union or would be a Soviet citizen would not prevent an action for defamation in the United States. Under the conflict of laws, the applicable law, let us say, would be California law if the defamation occurs there, or wherever the plaintiff happens to be. If the plaintiff is in the Soviet Union, he can still sue under California law, provided the defamation occurs in California.

Mr. FRIENDLY. Is there—I have forgotten now the cite for the *Volpin* case that you were referring to.

Professor FLETCHER. Right, and I have it here. (443 Fed. Sup. 849, 1978.)

Mr. FRIENDLY. Is there any air in that decision as far as the question of the immunity of *Novosti*?

Professor FLETCHER. One part of the decision that I did not understand is why the plaintiff relied exclusively on the clause that would have established an exception of sovereign immunity on the basis of

activities external to the United States that had an impact in the United States. The plaintiff did not rely upon the clause that recognizes an exception for commercial activity conducted in the United States. The assumption in the opinion somehow seems to be that *Pravda* and *Izvestia* are not making money off the sale of newspapers in the United States and I do not understand that.

Mr. FRIENDLY. I do not either, but I have a guess because I talked a little bit to the lawyer and the people who are interested in the case and they had a problem, I think, in establishing proof of earnings. They were very worried what would happen, in fact, if that issue came up. But then they did not address it in discovery; they just knew it was going to be hard to prove. And it would be hard to prove short of subpoenaing the records of the distributor and proving that he paid money back to *Izvestia* and *Pravda* for sales of the papers. Those papers mostly come in by mail and the distribution is very—distribution on news stands, for better or worse—is very small. And I think that was a sort of physical or real tangible problem that they thought about and did not solve in bringing the case.

Professor FLETCHER. This is something I intend to explore further. Your impression is that the distributors retain all the proceeds from the sales?

Mr. FRIENDLY. First of all, the distribution is done largely by mail directly from the Soviet Union rather than—I am sorry—it comes in by bulk here and then, I think, it is distributed and put in the mail by someone here. We do not know where the money goes.

Professor FLETCHER. In cases of home subscription?

Mr. FRIENDLY. Yes.

Professor FLETCHER. It is also sold at newsstands.

Mr. FRIENDLY. But the problem was to find out where enough copies went and who got the dough. I just do not think that the lawyers went to the issue.

Professor FLETCHER. Right. I think it is something that requires investigation.

Mr. FRIENDLY. But if, under the exception that does exist in the law, in the statute as it stands now, you can show that there is commercial activity, would that provide an exception under which the immunity is waived or waivable?

Professor FLETCHER. That is right. That is my impression from the statute.

Mr. FRIENDLY. I have a defamation of character suit pending in the Soviet court, and it has been suggested to me that I should try and transfer it to an American one, but it is against *Literaturnaya Gazeta*, which maybe sold 10 copies in the United States, if that many.

Professor FLETCHER. Well, I am not so sure of the number of copies.

Mr. FRIENDLY. Neither am I, but I do not want to use this hearing to get private legal advice.

Could I ask a question that Mrs. Fenwick left, which was about the right of the defendant to command witnesses once the trial itself has begun.

Professor FLETCHER. The defendant has no right to call witnesses. The defendant only has the right to request the presiding judge at the trial to call the witness.

Mr. FRIENDLY. And the denial of that request is not a subject for appeal as a matter of procedural error?

Professor FLETCHER. No. It is a discretionary matter for the trial judge. This whole issue of whether or not the parties have the authority to introduce evidence on their own has been a matter of long-standing debate in all legal systems. The Germans finally reformed their system to permit parties to introduce evidence without the approval of the presiding judge. But the Soviets retained the traditional practice which gives the presiding judge total discretion for full authority over the determination of when witnesses are to be called.

Mr. FRIENDLY. Did the Italians not make similar reforms 5 or 6 years ago?

Professor FLETCHER. That is possible. I am not entirely sure of that.

Mr. FRIENDLY. I know they did on pretrial detention, but whether it went to that issue in the courts there, I do not know.

One of the issues that is raised in the staff study that is part of the record in this hearing is the one you raise, too—the question of the courts' familiarity with the procurator's pretrial investigations (see Appendix, p. 115) I think the document that the Moscow Group prepared on the Orlov trial and fired off the day that the trial ended alleged that the court spent only 3 days in examining the 58 volumes of investigative materials collected over those 15 months. In fact, that is probably inaccurate, is it not? The court may very well have or should have, under some Soviet procedure, familiarized itself with those volumes before the actual trial had begun?

Professor FLETCHER. Of course.

Mr. FRIENDLY. Another issue that is raised in the staff study is the purpose of trials, particularly political ones, in the Soviet Union and the idea of their educational nature. There is—aside from legal considerations—an overriding or very strong social purpose to a trial, both in whatever it does for a defendant when he is convicted, and in what it does for the society in exemplifying conduct which should be punished. Is that found in Western European systems that are similar and is that not a fair observation about Soviet trials in general?

Professor FLETCHER. That the trial or the conviction—

Mr. FRIENDLY. The trial itself is meant to have an educational role, both on the participants and on the society to which it is reported, when it is reported.

Professor FLETCHER. I think that that is true to the extent that judges conducting trials, both in Germany and France and certainly in the Soviet Union, feel no inhibition about lecturing the defendants in the course of the trial about their behavior. That the judge would just sit back and act as a referee for the trial—this idea is totally foreign to the system. The judge frequently intervenes in a didactic, moralistic way and speaks directly to the defendant, sometimes assuming that the defendant might be guilty.

Mr. FRIENDLY. It happens here, too.

Professor FLETCHER. Sure.

Mr. FRIENDLY. But there is a presumption in Article II of the—I guess it is the RSFSR Code of Criminal Procedure—that says criminal proceedings “must facilitate the strengthening of socialist legality in the prevention and eradication of crimes and the education of citizens

in the spirit of undeviating execution of Soviet laws and respect for rules of socialist communal life." Is that kind of an admonition found in similar Western European codes?

Professor FLETCHER. That attitude, I think, is found universally—that one of the functions of a trial process and conviction is to instill general obedience to the law. I do not think that is a peculiarly Soviet phenomenon. You find it in the Model Penal Code in the United States as well.

Mr. FRIENDLY. The staff study suggests that in political cases, at any rate, that presumption rather often skews the conduct of the trial as an evidentiary process. You are saying that even if it does, it is not unique to the Soviets?

Professor FLETCHER. That is interesting. What is the argument presuming that it would skew the evidentiary process because here the focus on this purpose would—

Mr. FRIENDLY. By taking the presumption of guilt that the court may have even before the trial begins or at the beginning of the trial, and then, particularly in the *Orlov* case, using it as a pseudo show trial with the collusion of the press.

Professor FLETCHER. Let me say, as a general matter, I think it is not entirely accurate to refer to a presumption of guilt. One can talk about an operative presumption of guilt, but certainly no Soviet lawyer would describe the proceedings as a presumption of guilt and, in fact, on the question of whether or not the defendant gets the benefit of the doubt on disputed issues, Soviet law is nominally superior to American law. On questions of the insanity defense and self-defense and provocation in these matters that might be raised in defense, Soviet law explicitly provides that doubt will accrue to the benefit of the suspect, whereas it is still the law in many American jurisdictions that with regard to these defensive issues, the defendant must prove the defense of issue, by preponderance of the evidence.

Mr. FRIENDLY. You did not read the last pages of your statement about what happens to the nominal presumptions, the nominal rules when it is a political issue or a political person on trial, particularly under Articles 70 or 190.

I think—I am not sure whether it was Professor Dershowitz or Mr. Williams who said, "Search as you may, you will not find an acquittal under Article 70." The Commission has heard that before. I do not know if that proves anything—maybe the investigations are always very, very good.

Professor FLETCHER. Yes, you see, I think that it is—and it is not entirely fair to fault the Soviet system on the ground the pretrial investigators do their work carefully. All American prosecutors aspire to the same ideal. They all say we will not bring anyone to trial unless we believe he or she is guilty. This is the ideal of the Soviet pretrial investigation as well. And it may be that they simply do their work more carefully. From the fact that there is a high rate of conviction at trial, one cannot infer foul play.

There is another problem of foul play and illegality in the section 70 cases. That is that the courts did not follow a very important rule in the Code of Criminal Procedure, section 301, which is inserted in the code in order to counteract the effect of having a pretrial dossier. The rule is common to France and Germany, both of which use the dossier system, and the rule requires that all incriminating evidence

that is going to be used in the judgment to support the conclusion of guilt must be read at the trial. It cannot be relied upon as part of the dossier, as secret evidence, not disclosed at trial. That is explicit.

What happens in the section 70 cases—it did not happen in the *Sinyavsky-Daniel* case precisely, but it happened in the beginning with the anti-Zionist trials. The judges stopped reading the documents from the dossier, identifying the literature as anti-Soviet. We know from interviews of people charged under section 70 that they saw their dossier; they saw the statement by the governmental censor in the dossier that this particular book, Leon Uris's "Exodus," a Hebrew grammar, or whatever it might have been, was identified as anti-Soviet literature. And then the question comes, well, was that document read at trial? No. In no case was the document read at trial because to read the document at trial would give the opportunity to reply and to discuss the question whether this is, in fact, anti-Soviet.

So the courts proceeded on the assumption that a censor's determination prior to trial that the literature was anti-Soviet, an ad hoc determination about this particular book, was sufficient in order to support the conviction.

MR. FRIENDLY. Assuming you could argue that Article 301 had been violated in a given trial, would you argue that in as grounds for reversal in the appeal?

PROFESSOR FLETCHER. That is difficult to argue. You could argue that perhaps there should be a new trial in which the proceedings are followed.

MR. FRIENDLY. But where would you make the argument?

PROFESSOR FLETCHER. In our briefs, the arguments were made as a claim for reversal, but in the briefs that Taylor, Dershowitz, and I submitted, the emphasis was not on Soviet techniques for pretrial review. The emphasis was more on the hope that the demonstration of all of these illegalities would induce some response by the procuracy.

I have to add a point about the nature of pretrial review in the Soviet Union. I said that the procuracy was in charge of examining the legality of all convictions under Soviet law. This means that after the first appeal, and a determination on the first appeal, the case shifts again to the procuracy and all requests for further review go to the procuracy. So one simply sends a petition saying this case is not in conformity with Soviet law and if you are concerned about regularity and consistency in the enforcement of socialist legality, then something should be done about this case.

But the notion of why or when you deserve a reversal, or what is reversible error does not exist in the same sense.

MR. FRIENDLY. Does it exist, though, in what we know of actual practice in ordinary criminal cases? Do we know that it does exist in practice?

I know of one political case that was reversed basically by a letter-writing campaign from Vladimir Prison. It was reopened, reexamined, and an intriguing Chinese defector was finally let out of Vladimir Prison and back to what passes for normal life. But that is the only case I now know of.

Do you know of others? I know of one other rape-murder case in Moscow that was retried after a conviction and an acquittal was obtained.

Professor FLETCHER. On the basis of the prosecutorial supervision or on the basis of—

Mr. FRIENDLY. No; on the basis of new evidence, I think.

Professor FLETCHER [continuing]. Or on the regular appeal. Well, of course, that happened in the first Leningrad trial, where on the appeal the penalties were lowered—particularly the death penalty was lowered.

Mr. FRIENDLY. Do we know that it happens with purse snatchings or burglaries or anything like that?

Professor FLETCHER. Oh, yes. I think that there are frequent cases in which there are objections and one particular area that I have researched is the area of conviction, where the defendant has claimed self-defense and frequently there is an objection from the procuracy that self-defense is a good thing and, therefore, you ought not to convict people who rely upon self-defense. And this has led to many reversals and criticism of the trial courts.

Mr. FRIENDLY. One issued raised in the Moscow Group's document about the Orlov trial was the sanctity of the last word and the claim that that was denied to Orlov at his trial and that he was constantly interrupted.

Professor FLETCHER. Well, he did speak.

Mr. FRIENDLY. He did speak, but what the document says is:

The judge also interrupted the defendant's last word. Orlov said, "You should be ashamed for interrupting me. This after all is the final statement the law permits me." Even after this, interruptions deprived him of the opportunity to speak unhindered.

It does not say that he did not finish, but that he was constantly interrupted.

Where does the concept of the sanctity of the last word come from and how sacrosanct is it? What role does it play in the normal case?

Professor FLETCHER. In the normal case, one of the functions of the last word is to determine whether or not the defendant wishes to throw himself on the mercy of the court, whether he shows repentance, and this obviously affects the sentencing. There is no division in the process between the guilt or innocence phase and the sentencing phase. They are all part of the same hearing, and therefore, the last word has this ambivalent function, partly as designed to dignify the defendant and say, "Look, now you can exercise your position as an autonomous person, make your last statement." But it is very clear that there is an expectation that the defendant should show repentance if he wishes a lighter penalty. So there is an ambivalent function to the last word in that respect.

Mr. FRIENDLY. And again, nothing indicates that the denial of the last word could be the basis—on some precedent—grounds for reversible error. I mean, if you were filing a brief on the basis of this evidence, could you say Orlov did not get his last word and, therefore, an error was committed. Therefore, this trial should be held again. Would you get anywhere with that argument?

Professor FLETCHER. Well, I do not think interruption would be very strong grounds. Let me say a word on that. One of the major differences between the European mode of trial and the American mode of trial is that the Europeans do not know anything about court reporting. They do not have court reporters.

Mr. FRIENDLY. Nowhere in Western Europe?

Professor FLETCHER. No; what they have is someone who writes down a protocol, a stylized protocol of the proceeding. But they do not have these court reporting machines that take down everything verbatim, and where there is no practice or interest of taking down everything verbatim.

Now, one of the consequences of this system of trial is that it is difficult to speak unimpeded. The only person who is really entitled to speak without someone interrupting him is the judge. Because if someone starts speaking too quickly and the secretary is not able to take down a stylized version of the testimony, then it is a frequent practice to interrupt the witness and say, "Would you repeat that; would you slow it down a little bit."

Interruptions—you see, this is part of the general informality of European proceedings. Being interrupted is just part of the process, and I do not want to in any way suggest an apology in the *Orlov* case, but as a form of background to this process, one has to look into the nature of the interruption and what the context of the interruption was and so forth. But it happens very frequently. And I have seen some cases in Western Europe in which I was frankly shocked by the pattern of interruption.

Mr. FRIENDLY. What happened to the protocol? Is it available to a convicted defendant as a tool to use in his appeal either to a higher court or the procuracy?

Professor FLETCHER. Right. The protocol functions like the American transcript, but it is a stylized version of the evidence taken, and not everything is written down in the protocol. The judge's questions, for example, are not written down. So it is difficult then to maintain an appeal on the ground that the questions were prejudicial or that the questions were biased. What is written down is the testimony that is taken in court and that provides factual foundation for the judgment. So dissidence between the written judgment by the judge and the protocol is a basis for appeal.

Mr. FRIENDLY. I have just one more question based on the staff study, which is the use of what is called the *dopusk* or clearance in political trials. It does not seem to be covered by any published Article of the Code of Criminal Procedure or anything else.

Professor FLETCHER. Right.

Mr. FRIENDLY. Do you know the origins and uses of it?

Professor FLETCHER. Yes; this is a matter of our great fascination for all of us because there does seem to be such a clear gap between the published rules and actual practice. I have learned more about it recently. There is no doubt that the system of the *dopusk* works. In practice, only people who have special authority from the collegium of advocates are permitted to appear in what are called special cases.

Now, as I understand it, the lawyer who is put on this recommended list does not always know that he has been given this—what is really a function equivalent to a security clearance. He goes to inquire, whether or not he may appear in the case, and then he is told whether he is on the list or not. I heard this from Yuri Lury who was the lawyer for Kuznetsov and had the *dopusk* in that case and in many others. But he did not know until he inquired one day whether he was authorized to appear in special cases.



Now for some strange reason that I do not understand, the Soviets persistently deny the existence of the *dopusk*. I do not know why they do that. I had a debate recently in San Francisco with another Orlov, who was the chief judge of the RSFSR Supreme Court. He was here on a mission sent by the ABA.

He and the Deputy Administer of Justice were there speaking on problems of criminal justice. We had a formal presentation and then afterwards, I took him aside and we got along rather well and I asked him, I said, "Just between you and me, does the *dopusk* exist. Why is there such a problem in admitting that the *dopusk* is used?" And he smiled and he said, "Well, what we have to say is that certain lawyers are recommended for these cases." And so this notion of being recommended—*dopusk* comes from the right to be permitted. So certain lawyers are recommended by the collegium of advocates and that, at least in the United States, Judge Orlov was willing to concede.

Mr. FRIENDLY. But it is clear that it does play a very special role in political prosecutions?

Professor FLETCHER. Well, it is only designed for political prosecutions.

Mr. FRIENDLY. Can we leap from that to the conclusion that there is one law for ordinary criminal cases and another—at least procedure and perhaps law—for political cases? The only thing that I think we have pinned down that is unique is the *dopusk*.

You pointed to the violation of Article 301 in most of the Article 70 cases. Anything else?

Professor FLETCHER. That is a systematic phenomenon of political cases. It is obvious that to prevent attention it might be used for longer periods of time as a covert technique of punishment in political cases, but that could happen in other cases as well. And it is not endemic to the political case. It could be a short period of confinement.

I must admit that I cannot think of any other features of the case that would be characteristic of *dopusk* which is significant.

Mr. FRIENDLY. Could I—

Professor FLETCHER. There are some patterns of courtroom openness that tend to be violated more regularly, but my Russian colleagues with whom I raised this question point out to me that there is a clear provision of the Code—and they are right—which provides the opportunity for semi-secret or semi-closed trials where there is some risk of disclosure of state secrets and that protecting state secrets is an officially recognized justification for closing the trial.

Now that is not what happened in the Orlov trial. In the Orlov trial, they had the audience packed with handpicked observers. So they cannot rely just on that.

Mr. FRIENDLY. Indeed, they have done that in ordinary traffic trials.

Professor FLETCHER. Right.

Mr. FRIENDLY. Since the staff study does make a rather strong summary conclusion, which I will read to you, I would like to ask a favor of you. The summary conclusion of the staff study says:

It is evident that those guarantees against arbitrary arrests and unfair trial, both substantive and procedural, have been repeatedly violated in the persecution and prosecution of the 22 human rights activists. The violations uncovered range from improper conduct of pre-arrest house searches through illegally prolonged pre-trial detention to unlawful denial of the rights to a defense at the trial.

Now it is perfectly conceivable that the staff study has overstated the case. Can we impose on your expertise and ask you to read it and write a comment on the study itself. Would you have time to do that?

Professor FLETCHER. Sure; I would be glad to do that. I would not in any way want to suggest that that is not a fully accurate study.

Mr. FRIENDLY. We are not—the members of the staff—are not lawyers. We had the help of a number of lawyers, including some very experienced Soviet ones, but the more advice we get, the better off we are.

Professor FLETCHER. Right. I would be glad to do that.

Mr. FRIENDLY. Are there any other questions?

Mr. OLIVER. I just wanted to ask one question.

Professor Fletcher, you apparently have a lot of contact with your Soviet colleagues. Is there any indication that they are embarrassed by the abuse of their legal system in these political trials? Is there any evidence that they resist this sort of thing? Is there any evidence that they protest within their own system to try to prevent this sort of thing from occurring?

Professor FLETCHER. That is a very good question. Let me respond in this way: I think that there is something about the Soviet legal psychology that is fundamentally different from ours. That is that the Soviets seem to believe that there is, in fact, an important distinction between the ordinary case and what they call the exceptional case. And this terminology appears in the codes all the time. It relates to extending pre-trial detention and so forth.

The theory is that exceptional cases simply fall outside the ordinary norms of legality. The Western liberal attitude is that exceptional cases are the litmus paper test for the civility of the entire system. The way we determine whether our guarantees work is to subject them to the strain of the exceptional political case.

The Soviets do not share that attitude at all. I think they have a lot of trouble understanding why we put so much emphasis on the exceptional case as the truth stone of the entire operation. Their attitude is well, we have to look at the ordinary case and how the system works in the ordinary case.

There are a few exceptional cases. But that is just the way it is. When we had this debate in San Francisco with Ossetrov who is the Deputy Minister of Justice, at one point he turned to me and he said, "I cannot understand why you people are so concerned about Scharansky. This is just one person. Why do you get so exercised about one suspect? You see, it is just one person." This notion of glorifying the individual case as the symbol of justice in the entire system is something that most of them do not seem to share. So, therefore, they are not embarrassed; they compartmentalize the exceptional political cases, something that does not really test the integrity of the entire system and they see that there are other tests for whether the system as a whole operates well.

I think that is a very important distinction to keep in mind in trying to understand their frame of reference.

Mr. OLIVER. Are they concerned at all with whether or not their laws are in conformity with international law or international treaties to which they are a party?

Professor FLETCHER. Oh, yes, I would think. I mean, I have not put to them questions specifically of that sort, and really cannot give a detailed answer in response to that, but surely, they are concerned about it.

Mr. OLIVER. Do you think the kind of attention that is being called to these apparent violations of their own law and apparent violations of international law serve any useful purpose?

Professor FLETCHER. Which violations of international law are you speaking of?

Mr. OLIVER. I am talking about the declarations of political and civil rights, which has the force and effect of a treaty now. It has the force and effect of international law and they are a signatory to that.

Professor FLETCHER. Which provisions in particular?

Mr. OLIVER. Well, there are a number of provisions which—I do not have the exact citations here.

Mr. FRIENDLY. The most opposite one is probably Article 19 of the International Covenant on Civil and Political Rights that does give the right to free expression and then conditions it by adding:

The right, therefore, may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary.

(a) For respect of the rights and reputations of others;

(b) For the protection of national security or of public order (*ordre public*) or public health and morals.

The question that has been raised a lot in Commission hearings and in other documents—I think at Belgrade, too—is what Article 19 means and to what extent in political trials, particularly Article 70 and Article 190 trials, is the Soviet Union violating the undertaking that it gave when it ratified the Covenant. That is, the language of Article 19 is not as ringing as it might be.

Professor FLETCHER. The term “public morality” is an exception, but I think the most charitable interpretation from their point of view would be that some of anti-Soviet literature is to them what obscenity is to many people in the United States and it does threaten public morality as they conceive it.

Mr. FRIENDLY. The only thing there, is that at least between, I think, 1974 and the first arrests in 1977, there have been almost no arrests under article 190. What was a very common tool is—I would not say rusting on the shelf—but it has not been used. And that may be partly in answer to Mr. Oliver’s question, that there is some concern about the international image that they acquire from those prosecutions. Nobody since Sinyavsky and Daniel have been tried for publishing abroad. There has been other extra legal punishment for it, but not that again.

Professor FLETCHER. That is an interesting point. I would think that it is generally more embarrassing for the advocates of a particular legal system to be caught in violation of their procedural rules than to be charged with overly broad substantive interpretations. Substantive interpretations tend to be a matter of domestic law. Each state has its own interpretations. But the procedural rules are always more precisely defined and when there is a clear violation of the procedural rules, well, that is very difficult to explain. Or where there is some kind of clear contradiction in the criminal process as there is in some

of the parasitism cases where the defendant cannot find a job and yet he is prosecuted for parasitism.

Mr. OLIVER. Well, we have run far over our time. We want to thank you very much, Professor Fletcher, for your testimony and for being with us today.

Professor FLETCHER. It was my pleasure.

Mr. FRIENDLY. Thank you very much.

Mr. OLIVER. Thank you.

[Whereupon, at 12:50 p.m., the hearing was concluded.]

## Statements and Letters Submitted for the Record

POMERANT & DEVLIN,  
BARRISTERS AND SOLICITORS,  
*Toronto, Ontario, Canada, June 7, 1978.*

DEAR CHAIRMAN FASCELL: Thank you for your letter of May 25, 1978.

I am more than pleased to submit to the Commission a written statement in respect of the recent trial of Matusevych and Marynovych, both members of the Ukrainian Public Group to Promote the Implementation of the Helsinki Accords, one of the many groups in the Soviet Union which has attempted in the past and which continues to monitor the implementation of the final agreement signed in Helsinki in 1975 by some 35 nations, including the United States, Canada and the Soviet Union.

As you are probably aware, both Matusevych and Marynovych were tried in Vasylikiw, a small town south of Kiev, the trial lasting eight days from March 22 to March 29, 1978. Until the trial, both Matusevych and Marynovych were detained in custody for approximately eleven months, without being informed of the charges against them, without being able to freely communicate with their relatives and friends and without legal counsel throughout this period. Unfortunately, because of the manner in which Matusevych and Marynovych were tried, the information available to us is incomplete and somewhat scanty. As is usually the case in trials of high profile dissidents, the trial is commenced with little or no warning to the accused or interested parties, the trial takes place in a rather small courtroom packed with "representatives of the Soviet people".

We are informed by our sources that in the cases of Matusevych and Marynovych, unlike the recent trial of Yuri Orlov, even the relatives of the accused men were not permitted to attend the trial and the wives of both men could simply wait outside the courtroom to await certain conviction.

It is our understanding that Matusevych refused to testify at the trial and as a result of this refusal, was removed from the courtroom and tried in absentia. Matusevych moreover was tried without representation by counsel because he refused to retain the court appointed lawyer to act for him. Matusevych's belief that he would be tried by a kangaroo court was unfortunately confirmed in the case of Marynovych, who attempted to speak out during his trial.

During the trial, whenever Marynovych attempted to speak out in his defence, he was prevented from doing so by loud outbursts by the spectators in the courtroom, by their derisive laughter which seemed to be encouraged by the prosecutor. Moreover, both prosecutor and the presiding judge frequently joined in on these outbursts. The presiding judge made no attempts to contain any of these outbursts and interruptions and indeed, when Marynovych attempted to defend his actions by relying on those rights and guarantees set out in the constitution of the Ukraine itself, the United Nations' Declaration of Human Rights and the Helsinki Agreement, he was prevented from doing so by the presiding judge.

Both Matusevych and Marynovych were convicted of several offences and both received a seven year term of imprisonment and a five year term of exile.

It is obvious from even the scanty reports which we received and have been able to confirm, that the trial of both Matusevych and Marynovych failed to comply in any way with those rights set out in those international courts which Marynovych so appropriately cited in his defence. The actions of the Soviet Union revealed by the trial of these two dissidents has been repeated on several occasions since their trial, including the highly publicized trial of Yuri Orlov. The denial of these basic freedoms and rights which we had all believed to have been confirmed and protected by the Helsinki Accords during the trial of Matusevych and Marynovych is shocking and augurs poorly for the fate of those dissidents such as Anatoly Shcharansky (whom I also represent), Alex Ginsburg and numerous other Helsinki monitors.

I would appreciate the opportunity if it could be arranged, to make further, more detailed submissions, both in writing and orally, to you with respect to these two brave persons. In addition, if the occasion arises, I would be equally anxious to submit on behalf of Shcharansky, detailed representations with respect to his current plight.

Yours sincerely,

JOSEPH B. POMERANT, Q.C.

---

SMITH, ELY, DELUCIA, BRUINOOGUE,  
SMORODSKY, SHERIDAN & SULLIVAN,  
*Rutherford, N.J., June 7, 1978.*

DEAR CONGRESSMAN FASCELL: I am in receipt of your letter dated May 25, 1978, wherein you requested that, I present a statement to the Commission on Security and Cooperation in Europe relating to the violations of the Helsinki Accords by the Soviet Union. Unfortunately, your letter only recently came to my attention since I was away on a lengthy business trip. As such, I am unable at this time to forward to your office as detailed a statement as I would have wished.

As you may know, I am an associate member of the Helsinki Accords Legal Defense Committee (hereinafter referred to as HALDC). HALDC is an ad hoc committee of attorneys from various countries whose purpose is to promote world peace by monitoring the observance of the Helsinki Accords by the signatory nations. Among the members of HALDC are Ramsey Clark, Esq., Edward Bennett Williams, Esq., Melvin Wulf, Esq., Burton H. Hall, Esq. and Joseph Pomerant, Esq., (of Canada).

Although the Belgrade Conference has only recently ended, one of the signatory countries, the Union of Soviet Social Republics, continues to blatantly violate the provisions of the Final Act. On March 26, 1978, M. Matusievych and M. Marynovych were tried in the Ukr. S.S.R. and convicted of allegedly criminal offenses and sentenced to imprisonment for terms of seven years and five years exile. Shortly thereafter, Peter Vins was tried in Kiev for parasitism and sentenced to a one year prison term. Jurij Orlov was recently tried in Moscow and received a sentence of seven years prison and five years exile. A Shcharansky and A. Ginsberg still await trial in Moscow and L. Lukianenko awaits his fate in a prison in Kiev, General Grigorenko was permitted to travel to the United States for health reasons but has been stripped of his Soviet citizenship and declared an enemy of the State. These most recent repressions follow in close order the trial of M. Rudenko and R. Tykhy who were sentenced on July 1, 1977 to severe prison terms; seven years prison and five years exile for Rudenko and ten years prisons and five years exile for Tykhy.

This list can go on and on. All of these individuals have one thing in common—they were members of the Helsinki Monitoring Groups in Kiev, Moscow or other locations within the U.S.S.R. and it is believed that it is for their participation in these monitoring groups that they are being persecuted.

On numerous occasions, the members and attorneys of HALDC have attempted to intercede on behalf of these prisoners. Time does not permit for me to describe in this letter the various efforts undertaken by the individual attorneys of HALDC on behalf of these prisoners. As such, I would like to request the opportunity to present in the future detailed statements to the Commission of Security and Cooperation in Europe as to the various efforts that have been undertaken by HALDC.

I have worked very closely with Mr. Burton Hall, Esq., and have cooperated with him in the preparation of the various defense efforts on behalf of Oleksander Serhiyenko. At this time, I would like to join with him in his statement which I understand he is presenting to the Commission pursuant to its request.

Very truly yours,

MYROSLAW SMORODSKY.

---

LONDON, ENGLAND, *June 1, 1978.*

DEAR MR. FASCELL, Thank you for your letter of the 25th May. Unfortunately, I have no time to draft a special statement to you, so I enclose the documents which I used in Orlov's Defence.

If I can be of any further help, please do not hesitate to contact me.

Yours sincerely,

JOHN MACDONALD.

THE ORLOV DEFENCE,  
London, May 15, 1978.

#### THE CHARGE

Yuri Orlov is charged under Article 70 of the R.S.F.S.R. Criminal Code with—"Agitation or propaganda carried on for the purpose of subverting or weakening the Soviet regime . . . or the circulation of slanderous fabrications which defame the Soviet State."

It is complete defence to a charge under Article 70 if the matters published are true or if the persons publishing them believed them to be true.

Details of the charges are not yet available because Shalman, the Soviet Lawyer appointed to assist Orlov prepare his defence, has refused to tell Mrs. Irina Orlov what they are. This is a gross breach of his professional duties.

The statements which Orlov made in the year preceding his arrest which annoyed the Soviet Authorities most were the reports which he published into abuses of human rights in the Soviet Union. It is likely therefore that the case against Orlov is based on these reports, because if they are not it will be clear that monitoring the Helsinki Declaration is not against the law.

#### ABUSES OF HUMAN RIGHTS—THE ORLOV REPORTS

In the reports which Yuri Orlov signed he drew the attention of the Soviet Government to the following abuses of human rights in the U.S.S.R. contrary to the provisions of the Helsinki Declaration:

- (1) Prisoners are tortured as a matter of policy through hunger, cold and lack of sleep.
- (2) Sick prisoners are forced to work and are deprived of medical help.
- (3) People who have completed prison sentences imposed by the law are prevented by administrative action from living in certain areas and are forced to live apart from their families.
- (4) Prisoners of conscience who are sane are confined in psychiatric hospitals, often in the same wards as violent patients.
- (5) Sane people are forcibly treated with drugs they do not need and are not given the correctives to those drugs.
- (6) Patients in psychiatric hospitals are treated in an inhumane and degrading way.
- (7) It is official policy to destroy the culture and tradition of people like the Crimean Tatars who were evicted from their land in 1944 and forced to live in Central Asia. The cruellest persecution is directed to those who try to return to the Crimea. The Authorities destroy their houses with bulldozers, men are not given work and even families with many children are driven from their homes and left without a roof over their heads.
- (8) Christian believers are persecuted for practising their religion and not allowed to emigrate. In particular:
  - (a) Parents are deprived of their parental rights;
  - (b) Believers are sacked and relegated from skilled to unskilled jobs;
  - (c) Children who believe are mocked by their teachers in front of their classes;
  - (d) Children are expelled from school for practising their religion;
  - (e) Mothers are denied child benefits;
  - (f) Believers are compelled against their consciences to perform military service;
  - (g) There is a ban on charitable activity.
- (9) Workers condemned to poverty are not allowed to emigrate. (See for example the case of Leonid Sery below).
- (10) Letters are not delivered and telephones are tapped and cut off.
- (11) Discrimination against Jewish people and in particular the break-up of an international seminar on the Jewish culture.

#### THE DEFENCE

The statements contained in the Orlov Defence establish that what Orlov said was true. He drew attention to abuses of human rights which do exist in the Soviet Union today. His reports far from being a slander of the Soviet State were designed to bring the practice of the Soviet Government into line with the declaration which Mr. Brezhnev signed at Helsinki in 1975.

The statements in the Defence will be supplemented by oral evidence to be given at the Institute of Physics on Monday, 15th May.

## SUMMARY OF THE EVIDENCE

*1. Torture through hunger, cold, and lack of sleep*

*Bukovsky.*—In punishment cells the conditions are worse. You are kept in solitary confinement in a room which is about 2½ square metres. The only light is from a small bulb in a deep niche in the ceiling.

At night time you sleep on wooden boards raised a few inches off the ground without any mattress or blankets or pillow. You are not allowed to have any warm clothing in punishment cells, any warm clothing you have is taken away from you. Often there is no heating at all in winter. It is so cold that you cannot sleep at all. You have to keep jumping up and run round your cell to keep warm.

At 6 o'clock in the morning your wooden bed is removed and there is nothing for you to do for the rest of the day, no newspaper to read, no books, no pen or pencil or paper—nothing.

In solitary confinement prisoners get a specially reduced diet. This is part of the punishment. This happened to me in Vladimir prison in 1976 after Mr. Brezhnev had signed the Helsinki Declaration. On alternate days I had nothing to eat or drink except a small piece of coarse black bread and some hot water. On the other days I had two meals. In the middle of the day some watery soup with a few cabbage leaves, some grains of barley, sometimes 2 or 3 potatoes. Most of the potatoes were black and bad. In the evening I had gruel made from oatmeal or some other cereal, a piece of bread and several little fishes called Kilka. They were rotten and however hungry I was I could not eat them. That was all.

Diets in prisons and camps are laid down in the Home Ministry's administrative instruction number 0225.

*Amalrik.*—When I was put in the punishment cell my usual clothes were taken away and I was made to wear specially thin clothes. There were no books. You were not allowed to smoke. I was given warm food only every other day and then it was of very poor quality. On the other days I just had bread and water.

When I was in the punishment cell in prison there was some heating, but there was no window and it was like living in a stone bag. In the punishment cell in camp the heating was very low and there was a window, but it had no glass in it, so that the intense cold came right into the cell. It was impossible to sleep. You had to keep moving about all night in order to keep warm.

*2. Sick prisoners*

*Bukovsky.*—When I was first arrested I was very healthy, but after I had been in prison I too suffered with stomach ulcers and cholecystitis. This did not make any difference to the way I was treated. I was still put in the punishment cell on a reduced diet.

I was in the same cell with Yakov Suslensky, who suffers from a heart condition. He is referred to in document 17. He had a severe heart attack in an isolation cell. He was not taken out of isolation. After we had protested he was moved, but to another isolation cell. After he came out of isolation he had a stroke. This was in March 1976.

*Amalrik.*—In camp the medicines are very poor and very few. In the camp where I was, there was one doctor who was not well qualified, one male nurse and one female nurse. Their objective was to see that people go to work.

*3. Former prisoners*

*Amalrik.*—All former prisoners face restrictions. In most cases when you come out of prison or camp you are not allowed to return to the place where you used to live, or to the place where your family is living. You are sent to a place where it is difficult to find somewhere to live, and very difficult to find work of the kind for which you are qualified. Usually former prisoners are placed under administrative surveillance. This means that you are subject to a curfew, you cannot visit public places, you have to register with the militia once a week, and at any moment your home is liable to be searched by the militia.

*4, 5, and 6. Psychiatric abuse*

Leonid Plyusch and Natalya Gorbanevskaya describe their experiences in special psychiatric hospitals. (Plyusch pages 38 to 41 of the Defense) (Gorbanevskaya at pages 46 to 48 of the defence).

Both were confined with violent patients. Both were given drugs. Plyusch was not given correctives. Gorbanevskaya was given the wrong correctives. Both describe the inhumane and degrading way patients were treated.



Dr. Marina Volkhanskaya states that sane people were detained and given drugs in the Leningrad psychiatric hospital where she was a doctor (pages 34 and 35 of the Defence).

At the hearing Mrs. Plyusch will describe her visits to the hospital where her husband was detained, Plyusch's condition and the changes she noticed in him. Dr. Gerry Low Beer, the consultant psychiatrist who examined Plyusch the day after he came out of hospital, will state that he is completely sane and should never have been detained.

#### 7. *The Crimean Tatars*

Mrs. Khodorovich helped to prepare the report on the Crimean Tartars. She will give evidence at the hearing about the way in which the report was compiled. General Grigorenko will describe the conditions he has seen when people tried to return to the Crimea.

#### 8. *Religious persecution*

The Group annexed to their report on the Pentecostals the dossier entitled "Come out of Babylon my people." A summary of this dossier is on page 62 of the Defence.

They also asked Lidiya Voronina to visit the Pentecostal Communities on the Pacific Coast. Lidiya describes her experiences on page 66 of the Defence and will expand on this account at the hearing. She says:

"The Community numbers about 100 people. They find it difficult to find jobs for which they are qualified. Their children are mocked at school and beaten up, and teachers do nothing to stop this. While I was in the village I saw children who had been beaten up because they are believers and I talked to one boy who had had his arm broken.

Most of the Pentecostals have large families, but even mothers who have ten or twelve children do not get the benefits to which they are entitled.

I also observed for myself the way in which the Pentecostals are ostracised by other people living in the village.

In Nakhodka I was also able to see for myself the way in which the Community suffered. I was shown one house at the bottom of a hill which had no roof. I was told that it had been the home of Goritoy and that the roof had been destroyed by members of the Komsomol rolling stones down on top of it."

Lyudmila Alexeyeva describes how she found that Catholic school children at Vilnius had been expelled for going to Mass (pages 53 and 54 of the Defence).

#### 9. *Workers condemned to poverty and not allowed to emigrate*

Lyudmila Alexeyeva confirms the facts set out in Leonid Sery's letter. Sery writes:

"I work as a lathe operator in the ship repair works of the Ilicer Sear Fishing Port . . . my wife doesn't work because our children are young . . . after all the necessary purchases and payments we have left 15-20 roubles for food per person a month. Therefore we are constantly hungry and the weaker children as a result keep getting sick . . . Help us, don't allow us to die of gradual starvation. Let our leaders be shamed, that their workers are not in any condition to feed their families . . . help us please to leave."

#### 10. *Interference with letters and telephones*

Valentin Turchin and Lyudmila Alexeyeva will give evidence about the arbitrary interference with their telephones and mail. Their evidence can be confirmed by phoning Moscow.

#### 11. *Discrimination against Jewish culture*

Rabbi Nachum Rabinovitch describes in his statement (page 96 of the Defence) how the seminar on Jewish Culture to which he was invited was suppressed by the Authorities.

#### NOTICE OF APPEAL

To: The Supreme Court of the R.S.F.S.R., College of Appeal, Criminal Division  
From: John MacDonald, Q.C., 12 New Square, Lincoln's Inn, London WC2, acting on the instructions of Irina Valitova.

In the case of: Orlov, Yuri Feodorovich, sentenced by the Moscow City Court on the 18th of May 1978.

On the 18th of May 1978 the Moscow City Court pronounced Orlov guilty under Article 70 of the Criminal Code of the R.S.F.S.R.

The Court imposed seven years of deprivation of freedom in a strict regime corrective labour camp as punishment for Orlov. As an additional punishment the Court sentenced Orlov to five years exile after completion of his main punishment.

The Court found Orlov guilty of systematic distribution of slanderous fabrications defaming the Soviet state and social system during the period between 1973 and 1977, with the purpose of undermining the Soviet State.

Under Soviet law I submit that Orlov's conviction is not justified.

No evidence submitted before the Court indicates that Orlov had the intention of undermining or weakening the Soviet State when he published the documents specified in the charge.

Not one of the documents urges the overthrow of the Soviet State. The entire aim of these documents is to pursue the observance of those democratic guarantees contained in the internal law of the Soviet Union and accepted by the Soviet Union under international declarations and agreements which it has signed.

The establishment of a direct intention to undermine or weaken Soviet authority is an indispensable requirement under Article 70 of the Criminal Code of the R.S.F.S.R.

Even if it had been established that inaccuracies or mistakes existed in some documents which had been signed by Orlov, this would not be a sufficient ground for convicting him not only under Article 70 of the Criminal Code of R.S.F.S.R. (which requires direct intention to undermine or weaken Soviet authority), but also under Article 190 of the Criminal Code.

All the documents included in the charge were carefully researched and prepared by persons living in the Soviet Union and Orlov sincerely believed that the information contained in them was correct.

A conviction under Article 190 is only possible in cases when the person charged with this crime knew beyond doubt that the information published was false and he deliberately used it for slanderous purposes.

The existence of a direct intention to distribute doubtful or insulting information known to the defendant to be such beforehand is an essential part of any charge under Article 190 of the Criminal Code of the R.S.F.S.R.

The lack of direct intent to impart false information makes it impossible to convict under this article.

In his address to governments and parliamentarians of countries which signed the Final Act of the Conference on Security and Co-operation in Europe, Orlov stated the aim which lay before him as member and leader of the Group monitoring the Observance of the Helsinki Agreement. The aim was "to collect, investigate and inform corresponding governments of violations of the human rights provisions contained in the Final Act".

The aim pursued by Orlov was to promote the observance of the Helsinki Accords in the USSR. This intention cannot be seen as criminal. Even these considerations gave me both the basis and the right to appeal to the R.S.F.S.R. Supreme Court to revoke the sentence of Orlov, Yuri Fedorovich, and to drop the Orlov case altogether.

Besides, Orlov's sentence should be revoked in accordance with the requirements of Article 342 of the Code of Criminal Procedure of the R.S.F.S.R.

(a) There are important violations of the Code of Criminal Procedure. Namely:

(i) The judge prevented Orlov from questioning witnesses who had been summoned to court in accordance with the indictment. Therefore, their evidence should have been inadmissible.

(ii) The court interrupted Orlov during his final statement.

(iii) The people in the courtroom ridiculed Orlov.

(iv) The judge forbade Orlov to read aloud the documents of the Public Group to Promote Observance of the Helsinki Accords.

(v) Further violations will be described in an additional complaint.

(b) *The pre-trial investigation and trial were not objective and incomplete.*

(i) The court refused all Orlov's requests that additional witnesses be summoned.

(ii) E. Bonner, Vladimir Slepak and Malva Landa who, together with

Orlov have signed the documents on the basis of which Orlov is being charged, were not called as witnesses, although they desired to do so. Their testimony was directly relevant and they were in attendance outside the Courtroom.

# APPENDIX

---

## SOVIET LAW AND THE HELSINKI MONITORS

June 6, 1978

(Prepared by the staff of the Commission on Security and Cooperation in Europe)

### I. INTRODUCTION

#### BACKGROUND

Between February 3, 1977 and June 1, 1978, twenty Soviet citizens active in the defense of human rights in five different Republics were arrested and imprisoned; two others, traveling abroad on Soviet passports, were stripped of their citizenship and denied the right to return to the U.S.S.R. All are members of the Public Groups to Promote Observance of the Helsinki Agreement in the U.S.S.R. (the Soviet Helsinki Watch) or, in the case of two men, of its subsidiary Working Commission to Investigate the Abuse of Psychiatry for Political Purposes.

The twenty-one men and one woman are being punished under a variety of different criminal charges. Their "crime," however, is identical: political dissent, expressed in the non-violent, open effort to spur Soviet authorities to implement the human rights and humanitarian undertakings of the August, 1975 Final Act of the Conference on Security and Cooperation in Europe, known as the Helsinki accord.

#### INTENT OF THE STUDY

The following study by the staff of the U.S. Commission on Security and Cooperation in Europe examines the workings of Soviet law and criminal procedure as applied in these cases of political dissent. It discusses the guarantees of Soviet law, including international covenants ratified by the U.S.S.R., against arbitrary arrest and unfair trial and compares those to the practices used against the Helsinki Watchers.

#### SUMMARY CONCLUSION

From the study it is evident that those guarantees—both substantive and procedural—have been repeatedly violated in the persecution and prosecution of the twenty-two human rights activists. The violations uncovered range from improper conduct of pre-arrest house searches through illegally prolonged pre-trial detention to unlawful denial of the rights of the defense at the trial.

This pattern of official conduct toward free, but dissenting political expression is not new in the Soviet Union. In the treatment of the Soviet Helsinki Watch, however, it has been systematic and can be termed, without question, a gross and intentional violation of both the pledges in the Final Act and the safeguards promised by the Soviet Constitution, Criminal Codes and Codes of Criminal Procedure.

#### THE HELSINKI INGREDIENT

In signing the Final Act with 32 other European nations, the U.S. and Canada, the Soviet Union added a new dimension to its obligations to its own citizens and invited new international scrutiny into its fulfillment of those obligations. Though the Final Act is not a treaty, but a declaration of high-level political intent and thus has no binding force, it effectively linked a number of discrete pledges—respect for sovereignty, territorial integrity, human rights and international obligations and cooperation in economic, scientific, humanitarian, educational and cultural matters—together as common aspects of common security. The implementation of these pledges by any one signatory became the proper concern for all.

Principle VII of the Final Act's introductory Declaration on Principles Guiding Relations between Participating States injected the special promise of "respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief." Through it the Soviet Union and all the signatories pledged to "promote and encourage the effective exercise of political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development." Principle VII also reaffirmed that respect for human rights "is an essential factor for the peace, justice and well-being necessary to ensure the development of friendly relations and cooperation . . ." among the signatories. Moreover, it bound them to "act in conformity" with the United Nations Charter and the Universal Declaration of Human Rights as well as to "fulfill their obligations" under such instruments as the International Covenants on Human Rights.

Finally, in Principle VII, the signatories said that "they confirm the right of the individual to know and act upon his rights and duties in this (human rights) field." Under that mandate, Soviet citizens became the first to establish a private watch on their government's own violations of the Final Act. Since the first Public Group was set up in Moscow, May 12, 1976, four others have followed in Ukraine (November 9, 1976), Lithuania (November 25, 1976), and Georgia and Armenia (both in April, 1977). In all, 58 Soviet citizens have enlisted as members of the Groups or of their subsidiary—the Psychiatric Working Commission—and affiliate—the Christian Committee for the Defense of Believers' Rights in the USSR.

#### SOVIET AND INTERNATIONAL LAW

In non-binding terms, the Final Act protects such individual and collective action. The Soviet Constitution, adopted October 7, 1977, protects such endeavor as a matter of fundamental law.

Article 51, for example, gives citizens "the right to associate in public organizations that promote their political activity," just as Article 50 guarantees "freedom of speech, of the press, and of assembly, meetings, street processions and demonstrations." Article 49 assures "every citizen" the "right to submit proposals to state bodies and public organizations for improving their activity, and to criticize shortcomings in their work." It says flatly: "Persecution for criticism is prohibited." Further, Article 57 establishes that "respect for the individual and protection of the rights and freedoms of citizens are the duty of all state bodies, public organizations, and officials."

Of course, these Constitutional promises are set in a context of civic responsibility as well. Thus, Article 59 specifies that "citizens" exercise of their rights and freedoms is inseparable from the performance of their duties and obligations. Citizens of the USSR are obliged to observe the Constitution of the USSR and Soviet laws, comply with the standards of socialist conduct, and uphold the honor and dignity of Soviet citizenship." Moreover, the right to associate is granted "in accordance with the aims of building communism" and freedom of speech, press, etc. are to be exercised "in accordance with the interests of the people and in order to strengthen and develop the socialist system."

Inevitably, the rights and companion obligations of Soviet citizens come into conflict, the sort of clash which is regulated by law and courts of law in other societies. As this study demonstrates, however, conflicts of political opinion are too often resolved in the Soviet Union in an illegal and extra-judicial fashion, with the weight of the state overwhelming the right of the individual.

This pattern occurs despite the extra obligations the Soviet Union has assumed under international agreements. In ratifying the International Covenant on Civil and Political Rights October 16, 1973, for example, the USSR gave its provisions the status of domestic law.

Article 19 of the Covenant states flatly in its first paragraph that "everyone shall have the right to hold opinions without interference." In presenting in paragraph two the "right to freedom of expression . . . to seek, receive and impart information and ideas of all kinds, regardless of frontiers, . . ." however, the third paragraph of Article 19 conditions the exercise of free expression on "special duties and responsibilities." The right "may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights and reputations of others; (b) For the

protection of national security or of public order (ordre public), or of public health and morals."

In considering the conflict between free expression as sought by the Helsinki monitors and the Soviet law used to punish them, outsiders are entitled to wonder how the Groups' documentation of Helsinki accord violations could endanger national security or public order. Although the issue has been skirted in the actual trials of the seven Group members already convicted of "anti-Soviet agitation and propaganda," the presumption in that law—Article 70 of the RSFSR Criminal Code—is that the slander must be disseminated with the intent to subvert the state. Such has not been the intent or the practice of the Helsinki monitors, certainly not in the American legislative understanding of subversion as an attempt at violent overthrow of the government or in the everyday concept of subversion as secretive, conspiratorial activity to supplant one regime with another.

#### THE WORK OF THE HELSINKI WATCH

Far from assaulting Soviet rule, the Public Groups set out from the beginning only to call it to account. In announcing its formation, the Moscow Group proclaimed that its "aim . . . is to promote observance of the humanitarian provisions of the Final Act" and its "first goal is to inform" signatory heads of state and "the public about cases in direct violation" of Principle VII and the provisions of Basket III on human contacts, information and cooperation in culture and education. The members declared that they "proceed from the conviction that the issues of humanitarianism and free information have a direct relationship to the problem of international security."

By the time the Ukrainian Group was formed six months later, its members were prepared to emphasize in their first announcement the "extremely difficult obstacles" facing those who "attempt to collect, on the territory of Ukraine, information about violations of human rights and to pass this information on to the public . . ." In their first Declaration, however, the Ukrainians stressed, "In its activity the Group is guided not by political, but by humanitarian and legal considerations." It made information on violations its "prime objective" and posited the strengthening of international law as a prerequisite for "a real relaxation of international tensions."

Similarly, the Lithuanian Group announced its aim "to promote the observation and fulfillment of the humanitarian articles of the Final Act" and simultaneously released its first two reports—on the arrests of two men for distributing and printing religious literature and on the exiling of two popular Catholic bishops.

Since those first announcements and reports, the work of the Groups has been consistently directed at documenting alleged violations of the Final Act and at disseminating its reports to the widest possible public. For the first few months, the Moscow Group sent copies of all its reports by registered mail to the embassies of CSCE states in Moscow as well as to Soviet President Leonid Brezhnev. Since none of the registered mail copies got through to their non-Soviet addressees, however, the Group took to delivering copies in person when possible and enlisting the aid of others in getting the material delivered outside the Soviet Union.

The CSCE Commission has received nearly 300 such Group documents. Their range and variety is extensive, from single-page appeals for public support of recently arrested members to extremely lengthy listings of names and addresses of over 1,000 Soviet Pentecostals seeking to emigrate, of Ukrainians imprisoned for their political beliefs, and of titles of books and manuscripts confiscated in house searches of Group members and their families and associates. The majority of the documents has been translated into English and published in three different collections by the Commission.

An early Moscow Group report—Number 2—simply listed the names and (former) telephone numbers of would-be emigrants whose telephones had been disconnected after they had applied to rejoin family members abroad. The same topic was the subject of Moscow Document 25, reporting as well the effort of a Pentecostalist in Nakhodka to send a Christmas telegram to President Carter. The telegram was rejected by the post office because the message supposedly discredited the Soviet regime.

Other recurring concerns have been the treatment of would-be emigrants—individuals workers complaining of economic conditions, Jews and Germans seeking forms of repatriation, devout Christians attempting to leave religious persecu-

tion—and of ethnic minorities—Crimean Tatars and Meskhis seeking to return to lands from which Stalin deported them; Lithuanians, Armenians, Georgians and Ukrainians protesting infringements on their cultural identity and heritage. Occasionally, the complaints have been couched in strong, polemical rhetoric; more often, they are dry, factual accounts of distant and recent history, giving dates, names and statistics with the citation of many different supporting sources.

In sum, the work of the Helsinki Groups has been well within the mainstream of Soviet dissent as it has developed since the first public demands in December, 1965, for an open trial of the writers Andrei Sinyavsky and Yuli Daniel, convicted in 1966 of anti-Soviet agitation and propaganda for writings of fiction and literary criticism published under pseudonyms abroad. Their trial was closed, but its proceedings were reported in detail in a book prepared by Aleksandr Ginzburg—a volume for which he was arrested in 1967. His trial in turn was documented by Pavel Litvinov, arrested for his efforts in 1968.

The Helsinki Groups represent a continuation and a broadening of that basic tradition. Speaking of all Soviet dissent, Andrei Sakharov observed in January, 1977, "Our main goal as well as our only weapon is public discussion, based on accurate information as complete as possible." In the prosecution and persecution of the Helsinki monitors, as discussed in detail in this study, Soviet authorities have acted to block that goal and blunt that weapon. To do so, they have violated their own laws and procedures and dishonored their international commitments.

#### THE FATE OF THE HELSINKI WATCHERS

A companion report to this one gives biographies of 58 members of the Public Groups to Promote Observance of the Helsinki Agreement in the U.S.S.R. and its affiliates. For purposes of easy reference, the 20 Group members who have been convicted in the last year or are now awaiting trial are:

##### *Moscow*

Aleksandr Ginzburg—arrested February 3, 1977; awaiting trial on a possible charge of anti-Soviet agitation and propaganda (Article 70 RSFSR CC).

Yuri Orlov—arrested February 10, 1977; convicted May 18, 1978, anti-Soviet agitation and propaganda (Article 70); sentenced to seven years in strict regimen labor camp and five years in exile.

Anatoly Shcharansky—arrested March 15, 1977; awaiting trial on a possible charge of treason (Article 64a).

Malva Landa—convicted May 31, 1977 to serve two years internal exile for arson (Articles 99 and 150), setting fire to her own apartment; released under a general amnesty in January, 1978.

Feliks Serebrov—arrested August 22, 1977; convicted October 12, 1977, falsification of documents (irregularities in his work documents not usually punishable under Soviet law) after the statute of limitations had expired (Article 196); sentenced to one year in a strict regimen work camp.

Aleksandr Podrabinek—arrested March 15, 1978; awaiting trial on a possible charge of circulation of anti-Soviet fabrications (Article 190-1).

Vladimir Slepak—arrested June 1, 1978; awaiting trial on a possible charge of malicious hooliganism (Article 206 RSFSR Criminal Code).

##### *Ukraine*

Mykola Rudenko—arrested February 5, 1977; convicted July 1, 1977, anti-Soviet agitation and propaganda (Article 62 UKSSR CC); sentenced to seven years strict regimen labor camp, five years exile.

Oleksiy Tykhy—arrested February 5, 1977; convicted in July 1, 1977, anti-Soviet agitation and propaganda (Article 62) and illegal possession of firearms (Article 222), for an old rifle Tykhy claims was planted; sentenced to 10 years special regimen labor camp and five years exile.

Myroslav Marynovych—arrested April 23, 1977; convicted March 29, 1978, anti-Soviet agitation and propaganda (Article 62); sentenced to seven years strict regimen camp and five years exile.

Mykola Matusevych—arrested April 23, 1977; convicted March 29, 1978, anti-Soviet agitation and propaganda (Article 62); sentenced to seven years strict regimen camp and five years exile.

Levko Lukyanenko—arrested December 12, 1977; awaiting trial.

Pyotr Vins—arrested February 21, 1978; convicted April 6, 1978, parasitism (Article 214-1); sentenced to one year in a standard regimen labor camp.

*Georgia*

Zviad Gamsakhurdia—arrested April 7, 1977; convicted May 19, 1978, anti-Soviet agitation and propaganda (Article 71 GSSR CC); sentenced to three years in labor camp and two years exile.

Merab Kostava—arrested April 7, 1977; convicted May 19, 1978, anti-Soviet agitation and propaganda (Article 71); sentenced to three years in labor camp and two years in exile.

Grigory Goldstein—arrested in January, 1978; convicted March 20, 1978, parasitism (Article 234-1); sentenced to one year in a standard regimen labor camp.

Viktor Rtskhiladze—arrested January 25, 1978; awaiting trial.

*Lithuania*

Viktoras Petkus—arrested August 24, 1977; awaiting trial under a possible charge of anti-Soviet agitation and propaganda (Article 68, LithSSR CC).

*Armenia*

Shagen Arutyunyan—arrested December 23, 1977, convicted January 18, 1978, resisting a representative of authority (Article 218 ArmSSR CC); sentenced to three years standard regimen camp.

Robert Nazaryan—arrested December 23, 1977; awaiting trial.

Two other members of the Helsinki Monitoring Groups, Tomas Venclova (Lithuania) and Major General Pyotr Grigorenko (Moscow and Ukraine), have been stripped of their Soviet citizenship while visiting abroad on temporary visas. Venclova, who had accepted a one-year teaching assignment at the University of California, was informed of the June 14, 1978 Supreme Soviet Decree on August 23, only after the end of the Belgrade Conference's preparatory meeting. Similarly, the decree stripping Grigorenko of his citizenship while he was in the U.S. for medical care was announced after the close of the main Belgrade meeting on March 8, 1978, although it had gone into effect nearly a month before.

## II. THE CHARGES AGAINST THE HELSINKI WATCHERS

### LEGAL AND PROCEDURAL BACKGROUND

In the Fundamentals of Criminal Legislation of the U.S.S.R. and the Union Republics, the tasks of Soviet criminal law and procedure are defined: the protection of the state, socialist property, the person and rights of citizens, and the socialist legal order. The republican codes of criminal law and criminal procedure, statutes, decrees, edicts, regulations, and judicial opinion form the legislative and administrative basis for the implementation of these tasks. A large system of legal institutions including the police, the Committee for State Security (KGB), the Ministry of Justice, the Ministry of Internal Affairs, the procuracy, the courts and the legal profession actually enforce the criminal law and procedure.

The Soviet system of preliminary investigation, indictment, trial, judgment and appeal is similar to both that of pre-revolutionary Russia and of most continental European systems. It provides for the investigation of major crimes by an impartial official who examines the accused and the witnesses and prepares the materials on which the indictment is based. At the trial, the prosecutor—known as the procurator—is required to prove the charges contained in the indictment on the basis of the evidence contained in the record of the preliminary investigation. The fact that the accused admits his guilt does not eliminate this requirement; such an admission is to be weighed with the other evidence in the case.

However, according to Professor Harold Berman in his authoritative work, *Soviet Criminal Law and Procedure* (p. 68), behind this European character, "... there lies a peculiarly 'Soviet' quality in the trial proceedings, as well as in the proceedings prior to trial—a quality that has persisted through the five decades of Soviet history. This quality manifests itself in the provisions for participation of representatives of 'social organizations' in criminal proceedings, as well as in the provision for two laymen (people's assessors) sitting as co-judges in the three-judge trial court."

The most notable difference between European and Anglo-American criminal law and its counterpart in the Soviet Union is the fact that actions not considered criminal in the West are punishable as crimes in the USSR. Another noted specialist in Soviet law, Professor Leon Lipson, in a discussion on political pros-

ecution, observes: "... it would be over-simple just to point to bad administration of good laws: even with a more enlightened and humane caste of officials in the public prosecutors' offices (procuracy), security-police (KGB), and administration of penal institutions (Ministry of Internal Affairs, MVD), and even with a genuinely independent and impartial judiciary, Soviet legislation would permit the state to imprison, for rather long terms, persons who in other countries would be thought to be no more than active citizens."

#### TYPES OF CHARGES

The charges leveled against the various members of the Public Groups to Promote Observance of the Helsinki Agreement in the USSR fall into two broad categories: those of an overtly political nature and those with an element of common criminality.

##### *Political charges*

This category includes Article 70 of the RSFSR Criminal Code and the corresponding articles in the republican criminal codes, 62 of the Ukrainian, 71 of the Georgian and 68 of the Lithuanian, anti-Soviet agitation and propaganda, under which Yuri Orlov, Mykola Rudenko, Oleksiy Tyhky, Myroslav Matusevych, Mykola Marynovch, Zviad Gamsakhurdia and Merab Kostava have been convicted and with which it is anticipated that Aleksandr Ginzburg, Viktoras Petkus and Levko Lukyanenko will be charged. This provision, introduced in the 1960 revision of the RSFSR Criminal Code differs only slightly from the provisions on counter-revolutionary agitation and propaganda which were applicable in earlier periods of Soviet history. According to Professor Berman (p. 81):

"Its scope is sufficiently broad to include the circulation, or indeed the mere possession, of literature containing statements defamatory of the Soviet political or social system. However, a direct (subjective) anti-Soviet intent is required: in the words of a Soviet commentary, 'a person is guilty of violating Article 70 only if he knows or foresees that his acts can produce in other persons a hostile attitude to Soviet authority or instigate them to commit particular, especially dangerous crimes against the state, and he desires such result of his acts'. Another Soviet commentary puts the matter in these terms: 'To be guilty under Article 70 the actor must have a desire to undermine or weaken Soviet authority, and in case of possession of anti-Soviet literature such possession must be for the purpose of using the literature in the future to accomplish that desire.'"

The crime of anti-Soviet agitation and propaganda is punishable by up to 10 years deprivation of freedom and up to 5 years in exile.

Article 190-1 of the RSFSR Criminal Code, under which Aleksandr Podrabinek, arrested in Moscow May 15 during the Orlov trial, is likely to be charged, is also a political crime, introduced into the criminal code in 1966 after the trial of writers Andrei Sinyavsky and Yuli Daniel. Like Article 70, Article 190-1 makes it a crime to circulate statements known to be false which are defamatory of the Soviet system. However, there need not be the intent to subvert or weaken Soviet authority. The mere possession of defamatory statements is not punishable under Article 190-1 although the preparation of such statements is. Article 190-1 carries a maximum punishment of three years deprivation of freedom.

Professor Berman (p. 83) compares Articles 70 and 190-1:

"The wording of both Article 70 and Article 190-1 is so broad that it is possible in practice to catch almost any strong expression of political dissent within the ambit of either. . . . It may be that Article 70 is more apt to be applied to those who advocate fundamental change in the Soviet political structure such as the granting of independence to national minorities (Ukrainians, Latvians, etc.), while Article 190-1 is more apt to be applied to those who advocate change within the existing political structure (e.g., more freedom of speech, greater protection of civil rights, etc.). Judging, however, from unofficial eyewitness reports of political cases, it is at least almost as easy to convict under Article 70 as under Article 190-1, . . . since an anti-Soviet intent may be inferred from the defamatory character of the statement. Moreover, the argument that the accused believed the defamatory statement to be true—which is theoretically a complete defense under both Article 70 and Article 190-1—has been ineffectual in practice, except possibly as a basis for commitment to a psychiatric hospital. Soviet courts will apparently not admit that any sane Soviet citizen can honestly make a statement attacking the Soviet political or social system."



The most serious and the only capital offense facing Group members is set out in Article 64 of the RSFSR Criminal Code—treason. It is expected that Anatoly Shcharansky will be brought to trial on this charge. Article 64 sets the death penalty or ten-to-fifteen years' deprivation of freedom plus exile for two to five years for acts "intentionally committed by a citizen of the USSR to the detriment of the state independence, the territorial inviolability, or the military might of the USSR". Specifically, espionage, transmitting state secrets to a foreign state, rendering aid to a hostile foreign state, going over to the side of the enemy, conspiring to seize power and defecting are considered treasonous acts.

### *Criminal charges*

Among those charges carrying no overt political overtones is Article 209-1 of the RSFSR Criminal Code—"malicious evasion of performance of decision concerning arrangement of work and discontinuance of parasitic existence," otherwise known as "parasitism". Parasitism is a charge commonly leveled against human rights activists who have lost their jobs or been expelled from school because of their activism and cannot find other employment. Two young Public Group members, Pyotr Vins and Grigory Goldshtein were convicted under Articles 214-1 and 234-1 of the Ukrainian and Georgian Criminal Codes, respectively, the corresponding parasitism articles in the republican codes. The maximum sentence for this crime is one year's deprivation of freedom.

Helsinki Group members have been accused of a number of other crimes. Conviction under Articles 99 and 150 of the RSFSR Criminal Code, for negligent destruction of state or social property and of personal property, brought Malva Landa two years of internal exile, after a fire broke out in her Moscow apartment. Oleksiy Tykhy was accused and convicted of illegal possession of firearms under Article 222 of the Ukrainian Criminal Code and Shagen Arutyunyan was sentenced in January, 1978, to three years deprivation of freedom under Article 218 of the Armenian Criminal Code for resisting a representative of authority. Feliks Serebrov was convicted under Article 196 of the RSFSR Criminal Code—forging documents—and received a sentence of one year's deprivation of freedom.

Most recently, Moscow Group member Vladimir Slepak was arrested on June 1, 1978, after hanging a banner from the balcony of his apartment which declared his family's desire to emigrate. Slepak, who first applied to emigrate to Israel eight years ago and whose son lives there now, will apparently be charged under Article 206 of the RSFSR Criminal Code with "malicious hooliganism". The term "hooliganism"—which refers to a notorious Irishman living in London during the nineteenth century—was, according to Professor Berman, popularized by Russian legal scholars before the revolution as a characterization of "lawless, disorderly and purposeless misconduct". It was, however, not introduced into the criminal code until 1922. According to Professor Walter Connor, in his *Deviance in Soviet Society: Crime, Delinquency and Alcoholism*, it was and is the most frequently committed crime in the U.S.S.R.

Article 206 defines "malicious hooliganism" as any intentional act violating public order and expressing "clear disrespect for society" which is committed with "exceptional cynicism or special impudence". It is punishable by up to five years deprivation of freedom.

## III. INITIATION OF A CRIMINAL CASE, INQUIRY AND PRELIMINARY INVESTIGATION

### INITIATION OF A CASE AND INQUIRY

Article 108 of the Soviet Code of Criminal Procedure provides the following grounds for setting a criminal case in motion:

1. Declaration and letters of citizens;
2. Communications of trade union and Communist Youth League organizations, people's guards for the protection of public order, comrades' courts, and other social organizations;
3. Communications of institutions, enterprises, organizations, and officials;
4. Articles, notices, and letters published in the press;
5. Giving oneself up;
6. Direct discovery of indicia of a crime by an agency of inquiry, investigator, procurator, or court. A case may be initiated only in instances when there exist sufficient data indicating the indicia of a crime."

It is most likely that the fourth item provided legal justification for the start of criminal proceedings against two Moscow Group members, Anatoly Shcharan-

sky and Aleksandr Ginzburg. Articles appeared in the Soviet Press on March 4 and 5, 1977 accusing Shcharansky of treasonous activities in collusion with U.S. diplomats and journalists alleged to be C.I.A. agents. It appears likely that the authorities used these articles as the pretext for starting a preliminary investigation—under Article 64 (treason)—against him since ten days later, on March 15, Shcharansky was arrested. He has been held in the KGB's investigative prison, Lefortovo, ever since.

Similarly, a letter appeared in *Literaturnaya Gazeta* on February 2, 1977 in which a former cell-mate accused Aleksandr Ginzburg of illegal currency dealings and anti-Soviet activities. The next day, February 3, 1977, Ginzburg was arrested. Although the formal charge against him has not yet been made known, he could be charged under Article 88, violations of rules for currency transactions, and/or Article 70, anti-Soviet agitation and propaganda.

Under Article 109 of the Code of Criminal Procedure, either the police, the KGB or a judge can initiate a criminal case within 10 days of the receipt of a declaration or communication as cited above. In most instances, according to Dina Kaminskaya, an experienced Soviet criminal defense attorney, either the police or the procuracy start such proceedings. Under Article 112 of the CCP, their action takes the form of a decree indicating the time, place, the person drawing it up, the reason and grounds for initiating the case and the article of criminal law believed to be violated. This decree establishes the framework within which an inquiry is conducted. Article 121 of the CCP provides that the inquiry must be completed within 10 days of the date the case was initiated, but it enables the procurator to prolong the inquiry up to a month and, in "exceptional cases" even longer. It is during this period that the "agencies of inquiry"—either the police or KGB—perform what Article 119 of the CCP terms "urgent investigative actions" such as interrogations, detentions, searches and seizures.

It is at this stage in the case that the procedural rights guaranteed to persons of crimes are frequently violated. Under Soviet law, (Procedural Code Articles 20, 52, 123 and 150), suspects must be informed of their rights—to give explanations, submit petitions, appeal decisions—and must be presented with an accusation before interrogation. They cannot be compelled to testify against themselves.

However, during the inquiry stage, a person can be summoned for interrogation, told that the person responsible for the crime has not yet been determined, and be compelled to give testimony which can later be used against him should he become accused. Not only is such compulsion in violation of the RSFSR Code of Criminal Procedure but also of Article 14 of the International Covenant on Civil and Political Rights:

3. In determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(g) Not to be compelled to testify against himself or to confess guilt.

#### PRELIMINARY INVESTIGATION

As soon as the inquiry or the "urgent investigative actions" are complete, Articles 119 and 124 of the CCP provide for the case to be transferred to an investigator and what is known as the preliminary investigation begins.

According to the nature of the crime, the preliminary investigation may be conducted by investigators of either the procuracy, the KGB, or the Ministry of Internal Affairs (MVD). Of those crimes of which the Helsinki Group members have been or are expected to be accused, only Articles 64 and 70 of the RSFSR Criminal Code, treason and anti-Soviet agitation and propaganda, respectively, are, by law, to be investigated by the KGB. The others, Article 196 (forging of documents), Article 99 (negligent destruction of state or social property) and Article 150 (negligent destruction of personal property), are to be investigated by the MVD, while Articles 190-1 (slander or defamation of the Soviet State) and 191 (resisting a representative of authority), are investigated by the procuracy under provisions of CCP Article 126.

A preliminary investigation is not obligatory under Article 209-1, the crime of parasitism, for which 2 Helsinki members have been convicted. (The 2 Group members, Grigory Goldshtein of Tblisi and Pyotr Vins of Kiev, were convicted under the corresponding articles of the republic criminal codes—Article 234-1 of the Georgian and Article 214-1 of the Ukrainian).

For the most part, Article 127 of the CCP gives the investigator a free rein to conduct the preliminary investigation and full responsibility for it. The procurator, however, oversees the legality of the investigation and must authorize certain acts, such as searches, and arrests, performed by the investigator.

### *Searches and confiscation of property*

The investigator is empowered by Article 167 of the CCP—without the sanction of the procurator—to seize documents and articles of significance to a case if he knows precisely where they are and who has them. If the investigator believes that articles or documents of significance to a case may be in someone's possession or on some premises, he may conduct a search to find and remove such material. However, Article 168 of the CCP requires that a search must be authorized by the procurator.

CCP Article 169 also provides that such searches must be witnessed by an observer and "if possible" by the affected person or a member of his family, and CCP Article 171 stipulates that only those articles having direct relation to the case may be removed. Further, CCP Articles 176 and 177 require that a record and description of those materials seized during a search must be compiled and that a copy of that record must be given to the person at whose home the search has taken place. In addition, CCP Article 169 establishes that the person whose home is being searched and any witnesses must be informed of their rights to be present during the entire search and to make statements for entry into the record of the search.

According to the testimony of Moscow Group members, these provisions were repeatedly violated during the January 4, 1977, searches of the apartments of Yuri Orlov, Aleksandr Ginzburg, Lidia Voronina and Lyudmila Alekseeva. (Cf. Volume Two—June 3, 1977—of the CSCE Commission translations of USSR Helsinki-Accord Monitors' Reports, pp. 7–19.) Books officially published in the Soviet Union and therefore presumably not of an anti-Soviet nature, were confiscated in Orlov's apartment; blank Helsinki Watch stationery was seized from Alekseeva; personal funds (Soviet rubles), photos and correspondence were taken from Ginzburg; and the searchers in Voronina's apartment not only took personal letters she was keeping for Anatoly Shcharansky but, she reported, "described the confiscated documents in such a way as to make it impossible to identify them at a later date."

Similar violations of procedural safeguards were repeated two months later during searches carried out in connection with the investigation of Shcharansky himself. The Moscow apartments of refuseniks Aleksandr Lerner, Mikhail Kremen, Dina Beilina, Ida Nudel, and Boris Chernobilsky were searched on March 4, 1977. According to reports printed by the Union of Councils for Soviet Jews in "The Case Against Anatoly Shcharansky" (December, 1977), papers and materials confiscated during the searches were not properly identified in the record, the protests of those searched were not entered into the record, and the individuals witnessing the search—who had been brought along by the investigator—signed the record without reading it. A month later, the apartment of Shcharansky's parents was searched and, despite the law's limitation on removing only articles which related to the case, the investigators confiscated the originals and copies of the diploma, birth certificate and marriage license of Lidia Voronina, Shcharansky's friend.

Reports from the Ukrainian Group describe waves of searches before and after the arrests of five Group members, Oleksiy Tykhy and Mykola Rudenko. (on February 5, 1977) Mykola Matusevych and Myroslav Marynovych, (April 23, 1977) and Levko Lukyanenko (December 12, 1977). The manner in which these searches were conducted also reveal violations of procedural safeguards established under Soviet law. Thus, to start the search of Group member Oksana Meshko's apartment in December, 1976, Investigating Officer Pankov of the Kiev procuracy broke a window and climbed in. Investigator Pankov did not confiscate only materials having a direct relation to the case, rather, he took all handwritten or typed materials he found, or, to quote Officer Pankov, "all the trash". During a search of Group member Ivan Kandyba's apartment in December, 1976, a copy of the Universal Declaration of Human Rights was confiscated. When the investigators searched the home of Matusevych's parents-in-law on February 5, 1977, the mother, Anna Sushan, fainted. As a result, the search was conducted without the presentation of a warrant and without a record of the proceedings.

According to CCP Article 181 there are specific procedures for conducting a personal search. Such searches may be conducted without a separate warrant, only if there is reason to think that someone is concealing on his person articles or documents which may be of significance for the case. During the house search of the Rudenko apartment, Raisa Rudenko, her son Yuri, and Group member Oles Berdnyk were subjected to rough personal searches without any special personal

search warrants. Similar violations have twice occurred during the personal search of the 72-year-old Group member, Oksana Meshko.

#### *Interrogation of witnesses*

According to Article 72, the investigator may summon "any person who may have knowledge of any circumstances to be established in a given case" to give testimony. The witness under CCP Article 72, "shall be obliged to appear when summoned, . . . to give truthful testimony; to communicate everything known to him about the case and to reply to questions put to him." Refusal to give testimony or giving false testimony is punishable under Articles 181 and 182 of the RSFSR Criminal Code by as much as a year in jail or as little as a 50 ruble fine or "social censure."

A record must be kept of the interrogation of a witness—and "as far as possible", it shall be recorded word for word. After the interrogation, the witness is to read the record and attest, by signature, to its accuracy. CCP Article 160 gives the witness the right to correct the record and to make additions and specifically obliges the investigator to enter any corrections or additions in the record.

A witness interrogated on May 10 and 12, 1977, in connection with the case against Anatoly Shecharansky, Professor Mark Azbel, reported in the Union of Councils publication that there were attempts to change his answers and that he, therefore, refused to sign the record of interrogation. During the interrogation of Azbel, as well as those of two other Jewish scientist-refuseniks, Victor Brailovsky and Veniamin Fain on May 11 and 13 and May 12 and 16, respectively, the witnesses were alternately threatened with imprisonment and cajoled to testify by promises of emigration visas, in obvious violation of Article 179 of the RSFSR Criminal Code which makes it illegal for an investigator to compel someone to give testimony.

On January 12, 1977—before the arrests of any Helsinki Group members—Lyudmila Alekseeva was called in for questioning by the Moscow procuracy. In violation of procedural safeguards, Mrs. Alekseeva was not informed of the nature of the case under investigation, only that it was #46012/18-76. Therefore, she refused to answer any questions put to her.

According to reports from the Ukraine, all members of the Ukrainian Public Group have been subjected to questioning by the KGB and the procuracy. On Christmas Eve, 1976, Mykola Rudenko received an urgent telegram supposedly from relatives in the city of Kommunar'sk. When he arrived there, he was subjected to many hours of interrogation by the KGB. On September 23, 1977 Ivan Kandyba was picked up on the street and taken to local KGB headquarters for questioning. After he refused to make a public denunciation of the Group, KGB General Poluden first swore at him and then, trying another tactic, promised him a residence permit for Lvov.

Members of the Lithuanian Helsinki Group have also been repeatedly summoned for questioning. In the last 6 months, 72-year-old poet Ona Lukaskaite-Poskiene, has been questioned three times. Her most recent interrogation session occurred on April 14, 1978, at which time it was suggested that she publicly renounce her Group activities.

In short, interrogation has been used repeatedly against Helsinki monitors not just to gather evidence—even improperly—but also to intimidate and attempt extra-judicial cajolery.

#### *Arrest and detention*

CCP Article 127 empowers the investigator to detain and interrogate persons suspected of committing crimes in accordance with the provisions of Articles 122, 123 of the Code of Criminal Procedure; that is, when a person is caught "red-handed" in the act of committing a crime, when eyewitnesses indicate the person as one who has committed a crime, when obvious traces of a crime are discovered as a result of a search, or when there is reason to believe the person will escape. However, CCP Article 89 applies more liberal grounds for detaining a suspect in cases for which the punishment is deprivation of freedom. If there exist sufficient grounds for supposing the accused will "hide, . . . hinder the establishment of truth or . . . engage in criminal activity" he may be subject to "confinement under guard."

The time limits on both the preliminary investigation and the period of detention—"confinement under guard"—are defined in law. The former is limited in ordinary cases to two months; the procurator of the region may extend this period by another two months. The maximum time period, however, is vague—the

procurator of the Republic or the Procurator General of the USSR may "in exceptional circumstances" prolong the period for preliminary investigation indefinitely.

The period of time a suspect may be detained is more clearly defined. CCI Article 97 provides that:

"Confinement under guard in connection with the investigation of a case may not continue for more than two months. Only by reason of the special complexity of the case may this period be prolonged up to three months from the day of confinement under guard by a procurator of an autonomous republic, republic territory, region, autonomous region, or national area, or by a military procurator of a military region or fleet, or up to six months by the RSFSR Procurator or the Chief Military Procurator. Further prolongation of a period of confinement under guard may be carried out only in exceptional instances by the USSR Procurator General for a period of not more than an additional three months."

Thus, although the investigation may continue, nine months is the maximum period of detention permissible under Soviet law.

However, in the cases of at least six Helsinki watchers this provision of the law has been violated. In Moscow, Group leader Yuri Orlov was held for 15 months before being brought to trial and Anatoly Shecharansky and Aleksandr Ginzburg have been held 14 and 15 months, respectively, awaiting trial. In Ukraine, Group members Mykola Matusevych and Myroslav Marynovych were held eleven months before being tried in March of this year. Two Georgian Helsinki watchers, Zviad Gamsakhurdia and Merab Kostava were also held more than a year before their trials—from April 1977 to May 1978.

Apparently, the sanction for extending the term of preliminary detention beyond the legal limit of nine months is established by unpublished decrees, issued on an individual basis, by the Presidium of the Supreme Soviet of the USSR. Although the Presidium is empowered by Article 122 of the Soviet Constitution to amend existing legislative acts "when necessary" and, under the Constitution's Article 123, to "promulgate decrees and adopt decisions", nowhere in either the Constitution or in any published legislation is the Presidium or any other body specifically authorized to prolong the period of preliminary confinement.

The practice is, therefore, not only not provided for in published law; it also violates the Code of Criminal Procedure and may, in itself, be considered a crime: Article 178 of the RSFSR Criminal Code makes arrest or detention known to be illegal, punishable by one year of either correctional tasks or deprivation of freedom or dismissal from office.

During this period of preliminary confinement, as a matter of practice but not of law, the accused can be denied the right to have visitors, to send or receive letters or telephone calls, or to have any contact with family or friends. The procurator has the discretion to hold suspects literally incommunicado, and as demonstrated above, for an indefinite time. In addition, the right of the accused to counsel does not apply until the investigation is almost complete. In fact, the accused may not even be informed of the charges and evidence against him until the near completion of the preliminary investigation—in the case of some Helsinki watchers, after a year or more in prison—despite the guarantee in Article 9 of the International Covenant on Civil and Political Rights that:

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

#### *Presentation of accusation and interrogation of suspect*

Once the investigator has gathered what CCP Article 143 calls "sufficient evidence to provide a basis for presenting an accusation of the commission of a crime", a decree to prosecute the person as the accused is rendered. Under CCP Articles 145, 146 and 147, the accused is summoned by the investigator for a compulsory appearance. The investigator is obliged to announce to the defendant the formal decision to prosecute and under CCP Article 148, to explain "the

nature of the accusation", that is, the articles of the Criminal Code allegedly violated, including indication of the time, place and other circumstances of the alleged commission of the crime. The accused is then interrogated by the investigator. At the beginning of the interrogation, CCP Article 150 requires the investigator to ask the accused for an admission of guilt. Then, the defendant is questioned, in detail, about each point of the charge.

A record of the interrogation is drawn up, and procedures similar to those applicable during the interrogation of witnesses are to be observed. CCP Article 151 provides that the testimony entered should be, "as far as possible," word for word; the accused has the right to demand additions and corrections to the record; and the accuracy of the record must be attested to by the signature of the accused.

When presenting the accusation, the investigator is obliged to explain to the accused his rights as provided in CCP Article 46: the right to know what he is accused of and to give explanations concerning the accusation; to present evidence and submit petitions; to become acquainted with all the materials in the case; the right to defense counsel after the completion of the preliminary investigation; the right to participate in the trial and to appeal decisions; and the right to have the "last word" at the trial, that is, to make a final statement.

Although the formal presentation of the accusation, in many instances, immediately precedes the completion of the preliminary investigation, the investigator may continue to interrogate witnesses, conduct expert examinations and searches until he has compiled all necessary information. If, during the preliminary investigation, grounds for changing or adding to the accusation are found, then CCP Article 154 obliges the investigator to present a new accusation to the defendant and conduct another interrogation based on this change.

#### *Completion of preliminary investigation*

Once the investigator feels he has sufficient evidence, CCP Article 201 requires him to announce to the accused that the investigation is completed. At this point, the same article gives the defendant the right to examine all the evidence and materials of the case both on his own and with a defense counsel of his choice.

Since the accused—in the cases of the Helsinki watchers, at least—is barred from outside contact during his imprisonment, it is difficult for him to name a particular lawyer. According to Ms. Kaminskaya, investigators often inform the relatives of the accused that the defendant requests a certain attorney or that he entrusts the relatives to choose the lawyer. However, CCP Article 201 allows the accused or his relatives only five days to find a lawyer, after which the investigator is empowered to choose the defense counsel. In addition, although without basis in the law, in cases in which the investigation has been conducted by the KGB, the attorney must have a *dopusk*—a special clearance granted by the KGB—which relatively few lawyers have. Thus, although Article 158 of the Soviet Constitution grants the defendant the right to legal assistance, the right freely to choose one's counsel is not guaranteed, and often in practice not honored. In the cases of Group members Rudenko and Tykhy, at least, defense lawyers were assigned by the investigator, despite the assurance in Article 14 of the International Covenant on Civil and Political Rights that everyone has the minimum right "to defend himself in person or through legal assistance of his own choosing." (Emphasis added.)

After counsel has been summoned he and the defendant are presented with all the materials of the case, including films and tape recordings, in order for them to familiarize themselves with the evidence. The lawyer and the accused can familiarize themselves with the details of the case both on their own and together. CCP Article 202 obliges the investigator to provide the opportunity for the two to meet alone so that the issues of the defense can be discussed.

Both the defendant and his attorney are also allowed under CCP Articles 201 and 202 to copy information from the materials of the case yet, in practice in political cases, the lawyer cannot remove his notes from the prison. According to Ms. Kaminskaya, defense lawyers in political cases—those requiring KGB clearances—are forced to leave their notes with the investigator, although in all other cases—even closed-door proceedings meant to protect a defendant's or witness' privacy—lawyers can take their notes home with them.

After the attorney and defendant have acquainted themselves with the materials of the case, they are entitled by CCP Article 204 to petition the investigator to conduct additional interrogations or gather supplemental materials in

order to augment the preliminary investigation. The investigator is not required to grant the petition, but the fact that it was filed must be included in the record of the case.

Once the defendant and his counsel have signed a notice to the effect that they have been allowed to familiarize themselves with the materials of the case, they are not permitted to see each other or be in contact again until the trial date is set. The law does not provide for the accused to consult an attorney during this period.

The preliminary investigation is formally complete when the investigator draws up what CCP Article 199 calls a "conclusion to indict"—an indictment—and under CCP Article 207, refers the case to the procurator. The indictment contains the methods, motives, circumstances, time and place of the crime; evidence confirming the existence of the crime and guilt of the accused; any mitigating or aggravating circumstances; arguments advanced by the defense and the results of verification of these arguments; information concerning the personality of the defendant; and the articles of criminal law covering the crime. Under CCP Article 205, the indictment must contain reference to pages of the file of the case. In addition, under CCP Article 206, the investigator attaches to the indictment a list of the names and addresses of those persons he believes should be called upon to testify in court.

The procurator, who has supervised the legality of the investigation since its inception, is obliged by CCP Article 214 to take action on the indictment within five days. The procurator is also responsible for determining whether the crime actually took place, whether the accusation is founded on the evidence, and whether the conclusion to indict has been drawn up in conformity with the Code of Criminal Procedure. Most significantly, the procurator is required to verify whether the "preliminary investigation has been conducted thoroughly, completely, and objectively" (emphasis added). Professor Harold J. Berman in his authoritative 1972 study, *Soviet Criminal Law and Procedure*, has observed (p. 53): "The Soviet system of procedure prior to trial purports to secure an indictment only after an impartial investigation; the indictment therefore carries more weight, psychologically at trial" (than an indictment in an American court—Ed.).

If the procurator confirms the indictment, the case is referred to the court in whose jurisdiction it lies. The procurator is obliged under CCP Article 217 to inform the accused of this confirmation, and from this point on all petitions and complaints in the case are referred to the court.

#### IV. COURT PROCEEDINGS

"In the USSR, justice is administered only by the courts," according to Article 151 of the USSR Constitution. The present structure of the Soviet court system is three-layered: people's courts, regional courts, and Supreme Courts. A case may be tried at any level of the court system from the people's court to the USSR Supreme Court. The majority of cases however—both criminal and civil—is dealt with in the people's courts.

#### ADMINISTRATIVE SESSION

Once the procurator has referred a case, the court—usually the chairman—examines the statement of formal charges—the indictment—and decides whether the case will be accepted. If he notes any obvious inconsistencies with the law he can reject the case and return it to the procurator. If, however, all seems in order, the chairman signs the indictment and designates a judge to handle the case. Any judge from the region may be assigned. However, in practice, according to Ms. Kaminskaya, there is a select group of judges who preside over political cases and those cases investigated by the KGB. In fact, the larger courts—such as the Moscow municipal court—in addition to the two offices every court has in order to handle civil and criminal cases, have a special office for political cases. Allegedly, the special office only handles cases for which a *dopusk* is necessary, but in practice, according to Ms. Kaminskaya, any political case, regardless of clearance, may be handled by this office.

CCP Article 221 requires the judge to whom a case is assigned to decide within 14 days whether or not the case will be tried. The judge may decide this on his own, but in cases involving minors, capital crimes, or when the judge disagrees with the findings of the procurator, the court is to hold an administrative ses-

sion—a hearing—with the participation of two people's assessors, the procurator and others (such as a defendant applying for provisional release or further investigation) summoned by the court.

In accordance with CCP Article 222, there are nine issues that must be addressed by the judge or the court in administrative session when resolving the question of bringing the accused to trial. These include whether the case is within the court's jurisdiction; whether the criminal procedure has been observed; and whether the accused should be released, if in custody. Probably the most important issue in political cases, according to Ms. Kaminskaya, is the determination of whether the act of which the suspect is accused actually constitutes a crime. She says, "This major point is quite important in political cases because once the court decides that a certain act is considered criminal, and the accused does not deny performing a certain act, then this session is actually deciding a person's guilt."

If the judge or the court in administrative session determines that there exist sufficient grounds, a decree to bring the accused to trial is issued. At this point, the organizational questions such as the time and place of the trial, whether to permit the defense counsel selected by the accused or whether to appoint defense counsel, and the participants in the trial—witnesses and experts—must also be resolved, in accordance with CCP Article 228.

Once the trial date has been set, the court is obliged by CCP Article 237, to give a copy of the indictment to the accused and, at this point, the services of defense counsel are again made available to the defendant. The defendant and his lawyer are allowed once more, in accordance with Article 236 of the RSFSR Code on Criminal Procedure, to become acquainted with and copy information from the documents of the case.

The trial, under CCP Article 239, must begin no later than fourteen days after the decision to bring the accused to trial is formally rendered, but may not begin until three days after the defendant has been given a copy of the indictment, according to CCP Article 237.

#### TRIAL

##### *Impartiality of judge*

According to CCP Article 243, the judge presiding over the trial shall take "all measures" to insure a "thorough, complete and objective analysis of the circumstances of the case," to establish "the truth, eliminating from judicial examination all that does not have a relation to the case," and to secure "the educational influence of the trial." The objectivity of the trial under Article 243 may be limited by its very requirement that the judge conduct the trial in a manner which insures its educational influence.

Article 240 of the Code of Criminal Procedure sets out the requirement that the judge and the people's assessors examine first-hand all the evidence of the case. They must "interrogate persons brought to trial, victims and witnesses, hear opinions of experts, view real evidence, and publicly disclose records and other documents." Conclusions based on someone else's examination of a witness, for example, are not permissible. The judge must have direct personal contact with each witness. CCP Article 301 dictates that the judgment may be founded only on evidence which has been considered at the trial.

CCP Article 245 grants all the principals in the trial—defendant, and defense counsel, as well as procurator and (where applicable) plaintiff—equal rights in presenting evidence, participating in the analysis of evidence and submitting petitions. However, in political cases, these rights are routinely not observed. According to Ms. Kaminskaya, "It would not be an exaggeration to say that in political cases, the court and the procurator act according to an earlier coordinated plan in which the defense and the accused participate simply as 'show' elements of observing democratic norms of the courts. . . ."

##### *Testimony of defendant and witnesses*

The presiding judge must, according to CCP Article 278, open the trial by stating and, if necessary, explaining to the accused the charges against him and asking him whether or not he admits his guilt. An admission of guilt in Soviet criminal procedure is not the same as a plea of "guilty". According to Berman (p. 48n) the latter, in English and American law, results in a verdict of guilty usually followed by a hearing on the sentence without trial. In the USSR, the accused does not "plead" at all; he is asked at the beginning of the trial whether or not he acknowledges his guilt, but his answer is only evidentiary and has no bearing on the procedure. CCP Article 77 provides that an acknowl-



edgement of guilty may not serve as the basis of the accusation unless it is confirmed by all the evidence in the case.

The presentation of evidence normally begins with the questioning of the defendant by the court after which the accused undergoes cross examination by the prosecutor—the procurator—and the defense counsel, according to CCP Article 280. Under the same provision, the judge is allowed to question the defendant “at any moment” of the trial. Witnesses are then called and, under CCP Article 282, they are warned of their responsibility to tell the truth. Although they are not required to take an oath, witnesses must sign a statement attesting to the fact that this responsibility was explained. Witnesses are interrogated by the court, the procurator, the defendant and his counsel. A witness is not admitted to the courtroom before his appearance to testify, according to CCP Article 283, apparently so that he may not hear any prior testimony.

Since CCP Article 46 grants the defendant the right to “participate in the judicial examination in the court of first instance”—the trial—and CCP Article 283 grants the accused the right to question witnesses, it is apparent that Soviet law in this regard, at least, was violated in the May, 1978 trials of Zviad Gamsakurdia and Merab Kostava. According to *Agence France Presse* reports of May 19, 1978, the court refused to call any of the witnesses requested by either defendant.

Nearly a year before, according to an unofficial record of the June, 1977 trial of Rudenko and Tykhy, the latter specifically requested that a person by the name of Andros be called as a witness, however, this request was denied. Again, in May 1978, Irina Orlov told Western reporters and the Moscow Group that the list of witnesses presented by her husband at his trial was rejected on the first day of the trial. No defense witnesses were permitted to testify at the Orlov trial.

#### *Examination of evidence*

CCP Article 69 defines evidence in a criminal case as “any factual data on the basis of which . . . the agencies of inquiry, investigator, and court establish the presence or absence of a socially dangerous act, the guilt of the person who has committed such act, and any other circumstances that are of significance for the correct resolution of the case.” Another Article, 291 of the RSFSR Code of Criminal Procedure, requires that such evidence used during the trial be “presented to the person brought to trial and to defense counsel.” The rights of the defendant in this regard are further bolstered by the provisions in CCP Article 46 that allow him “to become acquainted with all the materials of the case”, “to present evidence”, and “to participate” in the trial.

Despite those guarantees, at the recent trial of Yuri Orlov in Moscow on charges of anti-Soviet agitation and propaganda, the defense was not allowed to view at least one piece of evidence—a film—submitted to the court. In Ukraine, during the trial of Rudenko and Tykhy, according to a document published by the Committee for the Defense of Soviet Political Prisoners, “The Rudenko-Tykhy Trial Record,” evidence was submitted that had not been part of the materials of the case at the completion of the preliminary investigation and, apparently, at least one defendant, Tykhy, had not had the opportunity to view this evidence prior to the trial.

#### *Public character*

According to Article 157 of the Soviet Constitution: “Proceedings in all courts shall be open to the public. Hearings *in camera* are only allowed in cases provided for by law, with observance of all rules of judicial procedure.”

The public nature of hearings and trials is further guaranteed in Article 18 of the RSFSR Code of Criminal Procedure: “The examination of cases in all courts shall be open, except in instances when this contradicts the interests of protecting a state secret.” In addition, CCP Article 18 provides that judicial proceedings may be closed in juvenile cases or those of a sexual or private nature.

Valery Chalidze, a Soviet legal specialist in U.S. exile, notes in *The Soviet Court and Human Rights* that “in common criminal cases the public character of proceedings is more or less observed.” Yet in the trials of the Helsinki monitors this safeguard has been almost uniformly violated. At the Moscow trial of Yuri Orlov last month, only Orlov's wife and sons were allowed to attend. Despite the fact that scores of friends and supporters showed up, they were all turned away under the pretext that there was no room in the courtroom, and several

were arrested and sentenced for "hooliganism" outside it. A U.S. diplomat sent by the Embassy in Moscow to observe the trial was kept out of the court for the same reason although he had arrived at the courthouse hours before anyone else.

In Ukraine, during the trial of Mykola Rudenko and Oleksiy Tykhy last summer, not only were friends and relatives kept out of the courtroom, but they did not even learn of the trial until it was in its fifth day in a commercial building in a small town far from the defendants' homes. Tykhy, according to the unofficial trial record mentioned above, commented on the "openness" of his trial: "The first trial (in 1957 on charges of counterrevolutionary acts—Ed.) was closed. This one is open. However, I believe that this is not a chance 'public'. Just as it is no mere chance that my relatives appeared in the courtroom only on the sixth day of the trial." The more recent trial of Ukrainian Group Members Mykola Matusevych and Myroslav Marynovych in March 1978 followed the same pattern; neither family nor friends were admitted to the courtroom.

Soviet jurists tend to excuse these gross violations of criminal procedure by focusing on the "educational" purpose of criminal proceedings as described in Article 2 of the Code of Criminal Procedure: "Criminal proceedings must facilitate the strengthening of socialist legality, the prevention and eradication of crimes and the education of citizens in the spirit of undeviating execution of Soviet laws and respect for rules of socialist communal life." [Emphasis added.]

According to Chalidze:

"The thesis about the educational role of the law and the court is an essential element of Soviet legal doctrine. Great importance is attached to it, and in the attitude of Soviet court officials towards safeguarding the principle of public court procedure one can notice much greater concern for assuring the educational role of a court session than for protecting the defendant's right to open trial. A Soviet jurist writes: 'To achieve the required educational impact of court proceedings during a homicide trial the composition of the court audience is important. Of course, it is impossible to prevent the presence in the court of close relatives of the defendant and the victim or limit their number in some way. If the court visitors consist predominantly of these persons, then there is always the danger, first, that they will spread incorrect information about the trial, with the result that other citizens will be misinformed. Secondly, the educational impact of the court procedure is considerably diminished. Therefore, if need be, the judge must take measures to assure the presence of public representatives at the court and, consequently, the correct interpretation of the trial among other citizens.'"

Those "representatives of the public" in attendance at the trials of the Helsinki watchers were not casual observers there by chance. In the Rudenko-Tykhy trial which took place in the isolated Ukrainian town of Druzhkivka, many of those admitted to the courtroom were staying at the same hotel as the judges and security personnel. According to the Committee for the Defense of Soviet Political Prisoners' publication, "This indicates that they (the public) had been brought in from elsewhere especially for the trial . . ."

In Orlov's case, press reports indicate that the spectators admitted to the courtroom were permitted to taunt and insult Orlov—shouting "Traitor!" and "Spy!"—in violation of the spirit, at least, if not the letter of CCP Articles 26 and 63 which call for the observance of order during a trial.

#### *Defense counsel*

CCP Article 19 guarantees the right of the accused to defense. The law provides, in CCP Article 47, for the participation of a defense counsel in the court proceedings. Yet, in the cases of several Helsinki watchers, as discussed in an earlier chapter, the defense counsels assigned were not of their choosing. Although CCP Article 50 provides for the accused to dismiss his counsel at "any moment in the conduct of a case", in the cases of at least two Group members, Rudenko and Tykhy, this right was denied. Tykhy, according to an unofficial court record, remarks: "Now about my right to defense. I was refused the right to have the lawyer assigned to me by the President of the International Association of Democratic Lawyers (a foreign attorney who volunteered to defend Tykhy—Ed.) to defend me. I was refused the right to have my son defend me. Instead I was appointed a 'defense counsel' against whom I am forced to defend myself. Both this defense counsel and the court pay no heed to my dismissal of him, which constitutes a violation of Articles 45 and 46 of the Criminal Pro-

cedure Code of the Ukrainian SSR." (Articles 45 and 46 of the Ukrainian CCP correspond to Articles 47, 48 and 50 of the RSFSR CCP.)

### *Language of the trial*

That the court proceedings will be conducted in the language of the "majority of the local population" is guaranteed by RSFSR CCP Article 17 and by Ukrainian CCP Article 19. This provision of law was violated in at least one trial—again that of Rudenko and Tykhy—as reported in "The Rudenko-Tykhy Trial Record." According to the defendant, Tykhy: "All my complaints were answered in Russian . . . (and) the record of the proceedings is being kept in Russian."

### *Last word*

After the evidence in the case has been examined and once all the witnesses have testified, according to CCP Articles 294 and 295, oral arguments by the participants in the trial are heard. At this point, the prosecutor and the defense counsel put forward their final arguments. Each speaker is allowed the opportunity to rebut what has been said by others in final arguments.

The defendant, in accordance with CCP Articles 46 and 297, is also guaranteed the right to have what is known as the "last word". By law, this speech should be the last one heard by the court before it retires to consider the case. The court may not limit the duration of this speech nor may questions be put during it. The court has the right to stop the speech only if the defendant "touches on circumstances clearly having no relation to the case." Thus the "last word" of the accused may not be interrupted by the court or anyone else. Immediately after hearing the last word, the court retires to a conference room in order to arrive at a judgment in accordance with CCP Article 299.

During Orlov's trial, however, according to his wife, the judge interrupted the defendant during his final statement, in violation of CCP Article 297, and allowed spectators in the courtroom to hinder Orlov's speech by calling out and shouting during it.

In the case of Ukrainian Group member Oleksiy Tykhy, the presiding judge frequently interrupted Tykhy while he was making his final statement, in violation of Article 319 of the Ukrainian CCP (the same as 297 RSFSR CCP) and even went so far as to adjourn the proceedings in the middle of a sentence.

## V. SENTENCING

### THE COURT'S INDEPENDENCE

Article 155 of the Soviet Constitution provides that: "Judges and people's assessors are independent and subject only to the law." This guiding principle is likewise reflected in the Basic Law on Court Organization and the Criminal Codes of the USSR and Union Republics. Article 16 of the RSFSR Criminal Code states for example, that "In administering justice in criminal cases, judges and people's assessors shall be independent and subordinate only to law. Judges and people's assessors shall decide criminal cases on the basis of law in conformity with socialist legal consciousness under conditions excluding outside pressure upon them."

According to experts on Soviet law, however, judges' actual independence from state and party organs is limited by the procedural and organizational character of the judicial system. State control of judicial figures is imposed at several levels beginning with judges' and assessors' elections to office.

As with candidates for other public offices, Soviet judges are nominated for election by party organs and can be recalled by their "electorate" before the expiration of their five-year terms. Those who wish to remain in their posts beyond one term must be renominated by the party, which considers candidates' previous job performance in awarding nominations.

In addition, all judges in the Soviet Union are members of the Communist Party and subject to its directives, including the statute which binds members to "implement firmly and undeviatingly party decisions." Failure to do so carries the threat of expulsion and a corresponding loss of professional status.

At another level, the USSR Ministry of Justice, and the corresponding republic ministries, are charged with the exercise of organizational control over the courts, directing the work of cadres of court organs, inspecting the organization of their work, etc. According to Dina Kaminskaya, this supervisory function includes the responsibility to conduct six-month reviews of the sentences handed down by individual judges. If sentences deviate from legal or party norms, the judge in question may be subject to recall.

While the court's two lay members, the people's assessors, are not formally subjected to the same strictures as their professional colleague, Valery Chalidze, in his 1975 ABA pamphlet, *The Soviet Court and Human Rights*, reports that practice has shown that the people's assessors usually yield to the judge's greater authority. The method of electing public assessors may also play a certain role in guaranteeing their fidelity to this higher authority, inasmuch as Article 19 of the Basic Law on Court Organization provides that they be selected, not by secret ballot, but in open meetings of "workers, employees and peasants held at their place of work or residence, and by servicemen in their army units." People's assessors are likewise subject to recall before the expiration of their two year term.

#### THE DECREE OF JUDGEMENT

##### *Determining the verdict and sentence*

After hearing the evidence and summations in a trial, the judge and assessors meet *in camera* to reach their judgment. CCP Article 301 requires that verdicts be "legal and well-founded" and based "only on evidence which has been considered at the trial." Thus, even before the court begins its deliberations, Helsinki monitors, who have been denied the right to call witnesses in their defense, as was Yuri Orlov, for example, are placed at a disadvantage.

Under CCP Article 303, the first task facing court members is the determination, of "whether the act which the person brought to trial is accused of committing has taken place" and "whether such act contains the elements of a crime and exactly which criminal law provides for it." The resolution of these questions has assumed particular importance in the trials of Helsinki monitors charged under Article 70, which presumes a defendant's intent to subvert the Soviet regime by disseminating materials of an anti-Soviet nature. The court must, therefore, decide not only whether the materials in question were indeed "slandorous fabrications which defame the Soviet state and social system" but also whether the purpose of their dissemination was the subversion of the Soviet state. If such intent is not present, a defendant may be punishable instead under Article 190-1 of the RSFSR Criminal Code. For example, Yuri Orlov, while not denying that he had assisted in the compilation of the Group Documents used as evidence against him, maintained that he had done so for humanitarian purposes, not to subvert the state.

Only upon determining that a criminal act has been committed and under which law it is punishable does the court judge the guilt or innocence of the accused. If the defendant is found guilty, the court members then decide what sentence to impose, taking into consideration whether the guilty party is a recidivist (second-time offender), or whether there are any mitigating or aggravating circumstances surrounding the case. For individuals sentenced to deprivation of freedom, the court decides the term of the sentence and the camp or prison regimen to be imposed.

Under Article 21 of the RSFSR Criminal Code, there are 11 types of punishment which may be applied to convicted persons. These include deprivation of freedom (incarceration), exile to a particular place, banishment from one, or social censure. The type of punishment to be imposed for a specific crime is established by the Criminal Code provision covering that crime. Thus in passing sentence, the court is normally empowered to determine only the length of sentences, and whether any supplementary punishments provided in the code, such as exile or fines, should be added to the primary sentence.

Deprivation of liberty (incarceration in a corrective labor colony or prison) with an additional sentence of exile has been the most common form of punishment imposed on Helsinki monitors convicted on political (as opposed to purely criminal) charges. Terms of imprisonment range from one to 15 years. In addition, the supplementary punishment of exile, a 1962 innovation in Soviet criminal justice, serves to extend, for a period of two to five years, the maximum terms for all the "especially dangerous crimes against the state" (Articles 64-73), with which most Helsinki monitors have been or can be expected to be charged.

In setting a deprivation of freedom sentence, the court must also decide which camp or prison regime (conditions of imprisonment) to impose. There are four grades of corrective labor camp regimen: standard, intensified, strict and special; and two prison regimens: standard and strict. Each regimen (from standard in camps to strict in prisons) provides progressively more severe con-

ditions of confinement, with prisoners assigned to regimens on the basis of the degree of seriousness of their crime and their previous criminal records.

According to Article 24 of the RSFSR Criminal Code, terms in standard camp regimens are served by first-time male offenders who are sentenced for petty crimes or for serious crimes that carry a sentence of three years or less. Several of the Helsinki monitors tried on criminal charges, including Pyotr Vins (one year for parasitism), and Shagen Arutyunyan (three years for resisting arrest) have been sentenced to the standard camp regimen.

The second class of camp regimen, intensified, holds male first-time offenders convicted of serious crimes that carry a penalty of more than three years imprisonment.

A note to the 1969 version of Article 24 of the RSFSR Criminal Code, identified serious crimes as those including murder, rape, robbery, assault and battery, and others. (Article 24, as amended in 1977, now provides no guidelines for determining what constitutes a serious crime.) No Helsinki monitors are eligible for internment under this regimen.

Most convicted Public Group members have been assigned to strict regimen labor colonies, which provide harsher conditions than standard or intensified camps, and which are reserved for political offenders convicted of especially dangerous crimes against the state (Articles 64-73) or prisoners who have served previous sentences under other regimens. Thus, by its imposition of harsher regimens Soviet law provides that political prisoners receive more severe penalties than individuals convicted of violent crimes such as murder and rape. Of 12 Helsinki monitors already convicted, three—Yuri Orlov, Mykola Rudenko, and Feliks Serebrov (although the latter was convicted on criminal charges)—have been sentenced to terms in strict regimen camps. In addition, four other Group members, Myroslav Marynovych, Mykola Matusevych, Zviad Gamsakhurdia and Merab Kostava are thought to have been assigned to such regimens.

Special regimen camps are reserved for individuals who have been declared "especially dangerous recidivists" or, according to Article 65 of the RSFSR Code of Corrective Labor, have a death sentence commuted. Oleksiy Tykhy of the Ukrainian monitoring group is currently serving his 10 years sentence under the special regimen, a decision that was probably influenced more by his status as a second-time political offender, than by his conviction under a second charge (Article 222 UKSSR CC, illegal possession of firearms). Aleksandr Ginzburg, as another second-time political offender may also be sentenced to a special regimen camp, as may Levko Lukyanenko (Ukraine) and Viktoras Petkus (Lithuania).

#### *Recidivists*

As is evident, Soviet criminal justice metes out particularly harsh punishment to individuals the court deems to be particularly dangerous recidivists. Article 24-1 of the RSFSR Criminal Code provides that especially dangerous recidivists include persons previously convicted of "especially dangerous crimes against the state" (Articles 64-73), robbery, some forms of intentional homicide, making or passing counterfeit money, stealing of state or social property on a particularly large scale, aggravated rape, and other charges. In lieu of confining recidivists to the harsh conditions of a special regimen camp, the court may decide to stiffen sentences by assignment to the even harsher conditions of prison regimens. As a rule, only recidivists and prisoners transferred from labor camps as a disciplinary measure serve sentences in prisons, where conditions are particularly severe, (see below). Recidivists are furthermore not eligible for conditional early release. For violations of camp or prison regulations, moreover, they face harsher disciplinary measures than first offenders.

In determining the type of regimen under which a sentence to deprivation of freedom is to be served, the court is accorded some discretionary power by Article 24 of the RSFSR Criminal Code which states in part: "Depending on the character and degree of social danger of the crime committed, the personality of the guilty person, and any other circumstances of the case, the court may, with an indication of reasons for the decision taken, assign deprivation of freedom to convicts not deemed especially dangerous recidivists in correctional labor colonies of any type other than colonies of special regimen . . ."

Although the thrust of this Article is directed toward granting courts the right to assign lesser conditions of punishment than those proscribed by law, courts have been known to utilize their discretionary powers to sentence political offenders to harsher regimen camps than otherwise required. This has been

particularly true in cases where persons sentenced under Article 190-1, "Circulation of fabrications known to be false which defame the Soviet state and social system," and who would normally be assigned to standard regimen camps have been sentenced to the strict regimen.

#### *Other forms of punishment*

Although most Helsinki monitors have been sentenced to deprivation of freedom with an additional term in exile, the court may impose exile alone as the primary punishment in some cases. A member of the Moscow Public Group, Malva Landa received a term of two years in exile for arson, setting fire to her own apartment. That she was sentenced to exile, under an article which permits a term of imprisonment, is indicative of the traditionally more lenient attitude Soviet courts take toward female offenders.

The court may also decide, under Article 58 of the RSFSR Criminal Code to confine "persons who have committed socially dangerous acts while not in their right minds or who have committed such acts while in their right minds, but who, before judgment is rendered . . . have contracted a mental illness depriving them of the possibility of realizing the significance of their actions or of controlling them . . ." to special or general psychiatric hospitals. Article 59 reserves special psychiatric incarceration for persons, "who by reason of (their) mental condition and the character of the socially dangerous act (they have) committed represent a special danger for society."

These articles of the Soviet criminal code have often been used by courts to impose psychiatric confinement on persons who, by Western standards, are sane. In such cases, the mental illness has consisted of a person's espousal of opinions considered to be anti-Soviet, opinions which apparently no sane Soviet citizen could hold. Although this form of "punishment" has not yet been imposed by courts in cases against Helsinki monitors, two members of the Georgian group, Gamsakhurdia and Kostava, reportedly spent part of their preliminary confinement in Moscow's Serbsky Institute, a special psychiatric hospital known for its treatment of dissidents. Another Helsinki monitor, General Pyotr Grigorenko was committed to a special psychiatric hospital in the late sixties as a result of his activities in defense of Crimean Tatars and others. Levko Lukyanenko of the Ukrainian Group is reported threatened with psychiatric incarceration.

The court is also charged with determining the length of sentences, taking into consideration 'aggravating' or 'mitigating' circumstances surrounding the case. For individuals charged with political crimes, one of the factors apparently influencing the length of sentences is the defendant's attitude during trial. Helsinki monitors who have maintained their innocence throughout the court proceedings against them (as have Orlov, Tykhy, Rudenko, Matusevych and Marynovych) have been sentenced to at least seven years in labor camps and five years in exile. Those who have acknowledged guilt, as Gamsakhurdia and Kostava reportedly did in Georgia, have accordingly been sentenced to lighter terms. The Georgian case demonstrates another consideration which may influence the court. Although Gamsakhurdia was the more prominent and presumably the more serious offender, he allegedly expressed regret for his actions, which Kostava did not. The two men received identical sentences.

If a defendant is charged with more than one crime, Article 303 of the RSFSR CCP instructs the court to consider each charge separately. In the case of Oleksiy Tykhy, who was accused of illegally possessing a firearm, in addition to anti-Soviet agitation, the court imposed a sentence of confinement in a labor camp for 10 years.

#### *Legal action taken against Helsinki monitors outside the courts*

In addition to instituting court proceedings with corresponding sentences of imprisonment or exile against Helsinki monitors, the U.S.S.R. Supreme Soviet has acted to strip two Group members, Tomas Venclova and General Pyotr Grigorenko, of their citizenship. This action has proven a convenient mechanism for ridding the country of troublesome Group members who have managed to obtain visas to travel abroad, but it is an action that is currently not subject to court proceedings.

Compared to the 1936 version, the new Soviet Constitution concentrates more attention on the issue of citizenship. Article 59 obliges citizens "to observe the Constitution and laws, comply with the standards of socialist conduct and uphold

the honor and dignity of Soviet citizenship." In Article 62, citizens of the USSR are "obliged to safeguard the interests of the Soviet state and to enhance its power and prestige." While Article 33 states that "the grounds and procedure for acquiring or forfeiting Soviet citizenship are defined by the Law on Citizenship of the USSR", Article 121 charges the Presidium of the Supreme Soviet of the USSR with the sole authority to "grant citizenship of the USSR and rule on matters of the renunciation or deprivation of citizenship. . ."

Originally, the 1938 Law on Citizenship allowed for forfeiture of Soviet citizenship either by a sentence of a court or by an executive decree of the Presidium. However, the Fundamental Principles of the Criminal Legislation of the USSR, promulgated in 1959 and still in effect, no longer even mention the judicial sanction. That part of the Citizenship Law was formally repealed by a decree in 1961. The loss of citizenship by an executive decree of the Supreme Soviet remains very much a part of the Soviet legal scene.

Although Article 33 of the Constitution claims that the "grounds . . . for forfeiting . . . citizenship" are found in the Law on Citizenship, nowhere in the legislation are the offenses specified which could justify such punishment. Indeed, the decrees revoking the two Helsinki monitors' citizenship have not detailed the acts which have made such recourse necessary. They have rather presented vague charges, as in the case of General Grigorenko, who was accused of "systematically committing acts which are incompatible with Soviet citizenship and by his conduct causes harm to the prestige of the USSR."

#### *Announcing the verdict and sentence*

Having reached decisions on the defendant's guilt or innocence and sentence, the members of the court draft the decree of judgment to be read in the courtroom. Article 314 of the RSFSR CCP requires that every decree of judgment include a description of the case and the basis for conviction. It must also under Article 314 of the RSFSR CCP, indicate the verdict, the sentences (including the assigned regimen of camp or prison), whether the guilty party has been declared an especially dangerous recidivist, and whether the sentence may be suspended. In addition, the decree must indicate how much time is to be deducted from the length of the sentence to compensate for pre-trial confinement. Article 47 of the RSFSR CCP provides that one day of the term of imprisonment shall be deducted for each day of pre-trial detention; in the case of exile each day of preliminary detention cuts the term by three days. The decree of judgment must also indicate the procedure and time limit for appealing the court's decision.

In the courtroom, the presiding judge proclaims the judgment and the defendant is either released or remanded for transfer to his place of punishment. The convicted or acquitted person must be provided with a copy of the judgment decree no later than three days after judgment is proclaimed.

#### APPEAL

The Soviet Union has a dual system of appeal—cassational and supervisory. The former covers all cases in which the sentence has not yet been executed and the latter, when it has.

A cassational appeal must be filed within seven days of the day the judgement is announced, in accordance with CCP Article 328. There is a limit of one such appeal—known as a cassational protest if brought by the procurator—to each party. Those eligible to file such an appeal are the defendant, defense counsel, the plaintiff and the procurator. However, in cases originally tried in the republican Supreme Court or in USSR Supreme Courts, the judgements are final and may not be appealed, in accordance with CCP Article 325.

Appeals "by way of supervision" may be brought for cases tried in any court. However, a supervisory appeal may only be brought by the procuracy or by the officials of high courts, according to CCP Article 371. Thus, beyond the first level of regional cassational appeal, no defendant may appeal to a higher court unless the procurator at that court level agrees that the case should be reviewed.

A cassational appeal is, in effect, a second trial of the case. The appellate court "verifies the legality and the well-founded nature of the judgement" according to CCP Article 332, by examining the materials in the case. In such a proceeding, new written testimony may be presented, in accordance with CCP Article 337. The procurator and defense counsel under CCP Article 335 are also accorded the right to present arguments, and, the defendant and witnesses may be permitted to testify. A court must consider a case on cassational appeal within ten days from the receipt of the case, according to CCP Article 333.

In a supervisory appeal, CCP Article 337 requires that the case must be considered within fifteen days of its receipt. The court considers questions both of fact and of law, but it confines itself to the record of the case. Under the same article, the defense counsel or the defendant may only appear if summoned by the court, although the procurator participates in the proceeding.

There is a third, little-used form of appeal: what is known as reopening a case on the basis of newly discovered circumstances. The grounds for reopening a case in this way are enumerated in CCP Article 384: false evidence on which the sentence was based; criminal abuse of their functions by the judges who delivered the judgement, and any other freshly ascertained circumstances which prove the innocence of the accused or his participation in a crime either more or less serious than that for which he was sentenced.

No convicted Helsinki monitor has had his conviction overturned or sentence changed on appeal.

#### *Execution of the judgment*

According to Article 356 of the RSFSR CCP, a judgment takes legal effect upon the expiration of the appeal period or after consideration of the case by a higher court. The court which decreed judgment is responsible for sending an order to execute the judgment to the agency responsible for its execution. In most cases, the Ministry of Internal Affairs (MVD), which administers Soviet prisons and labor camps, is the department involved.

Before the court issues its order for execution of the judgment, however, it must, under Article 360 of the RSFSR CCP, grant close relatives the right to meet with the convicted person. Under Soviet law, this meeting in most cases represents the first opportunity relatives will have had to meet with the prisoner since his arrest. Mrs. Irina Orlov has reported to Western newsmen, however, that she has not yet been allowed to meet with her recently sentenced husband, an action her lawyer has termed a violation of CCP Article 360.

After the judgment enters into effect, the administration of the institution of preliminary confinement must inform the convicted person's family where he is being sent to serve his sentence. The prisoner is then transferred to the appropriate labor colony, prison or place of exile.

## VI. PUNISHMENT OF POLITICAL OFFENDERS

### CORRECTIVE LABOR THEORY

In theory, Soviet corrective labor legislation has a two-fold purpose; to punish individuals for offenses they have committed, and to reform and reeducate offenders.

According to official writing on the subject (p. 8 of the *RSFSR Commentary to the Corrective Labor Code*), the penalty aspect of any sentence is considered secondary to and, along with labor and educational activity, a means of furthering reform—the primary goal of Soviet corrective labor legislation. This logic asserts that “subjecting a person to unpleasant conditions, deprivations and even suffering . . . his punishment forces him to mull over his fate and to avoid committing acts that lead to such punishment”.

This principle is a not uncommon basis for much of the penal correctional legislation in the world. What distinguishes Soviet corrective labor legislation, however, is that its implied goal with regard to political prisoners, particularly those like the Helsinki monitors, is to force them to change their views on political and moral issues. In this respect, Soviet corrective labor legislation is contrary to international rights standards (set out in part in the Helsinki accords), which guarantee freedom of conscience and belief. Article 19 of the International Covenant on Civil and Political Rights, for instance, guarantees “everyone . . . the right to hold opinions without interference.”

Another important tenet of the corrective labor legislation of the USSR is stated in Article 1 of the Corrective Labor Code of the RSFSR: “The execution of a sentence shall not aim at inflicting physical suffering or degrading human dignity”. That this principle is not stated as an absolute, i.e., “shall not inflict. . .”, is explained by Soviet commentators as a recognition that the mere deprivation of an individual's freedom in itself causes a certain degree of moral and physical suffering. On the other hand, the actual application of Soviet corrective labor legislation, particularly with regard to the amount of food prisoners receive, seems in some respects to cause a degree of suffering far out of proportion to the unavoidable consequences of mere incarceration.



## CORRECTIVE LABOR LEGISLATION

Penal conditions in the Soviet Union are established by four sets of legislation and instructions. The first of these, the Fundamentals of Corrective Labor Legislation in the USSR and Union Republics, was issued by a decree of the Supreme Soviet of the USSR in November, 1969, to replace the mass of previous legislation and subsequent, superceding regulations issued by the MVD, during and after the Stalin era. The Fundamentals which establish the principles of the Soviet penal system serve as the basis for the second major body of corrective labor legislation, the individual republic codes which delineate the specific provisions of corrective labor legislation in each republic. While the codes may differ slightly in formulation from republic to republic, they are identical in substance and the articles cited below are taken, for the sake of simplicity, from the RSFSR Code. The third group of regulations governing penal conditions are instructions issued by the Council of Ministers of the USSR and the republics but are, for the most part, treated as classified documents and not available even for lawyers advising clients. The final group of regulations includes those issued by the Ministry of Internal Affairs (MVD), which is largely responsible for the daily administration of the penal system. Again many of these instructions are subject to restricted distribution, with even the prisoners whose lives they govern barred from seeing them. This practice in effect makes prisoners dependent on camp and jail administrators for any knowledge of their rights and obligations under Soviet law.

## TYPES OF PUNISHMENT

To date, the Soviet Helsinki monitors have been sentenced to two forms of punishment, exile and incarceration. Exile, under Soviet law, can be applied as a primary (as in the case of Malva Landa) or supplementary (Orlov, Rudenko, Tyhky, Marynovych, Matusevych, Gamsakhurdia, and Kostava) punishment. Sentenced to exile, an individual is required to take up residence in a location, (usually Siberia) specified by the MVD, usually in consultation with the KGB. The 'prisoner' must register with the local MVD office,—the police station in most areas—and take up residence under that office's surveillance, including formal weekly registration with the police and secret observation by neighbors and informers. In political cases, a sentence of exile is normally imposed in addition, to a term of confinement and is served upon release from a labor colony. One Moscow Helsinki monitor, Malva Landa, however, did receive a two-year exile sentence on criminal arson charges, but was freed under an amnesty after eight months.

*Regimens of confinement*

As mentioned above, persons sentenced to deprivation of freedom serve their terms under one of four corrective labor colony regimens or in standard or strict prison regimens. The regimens differ in the degree of punishment inflicted upon the prisoner as well as in the rights he is accorded. The material provisions of prisoners also become progressively harsher from regimen to regimen.

Standard regimen camps, in which Helsinki monitors Pyotr Vins, Grigory Goldshtein and Shagen Arutyunyan are currently serving their sentences, provide prisoners with the most lenient conditions. Inmates live in barracks-type dwellings and receive more and better quality food than under other regimens. In addition, they enjoy a broader variety of rights, ranging from permission to receive three short visits (up to four hours) and two long visits (up to three days) per year; to the right to send an unlimited number of letters. Prisoners under this regimen are also entitled to spend up to seven rubles from their personal accounts a month on additional foodstuffs and personal items. (These accounts consist of not less than ten percent of the funds earned at hard labor during imprisonment, with the bulk of a prisoner's wage assessed to pay his maintenance.) After he has served half his sentence, the inmate also is accorded the right to receive three five-kilo packages (usually containing foodstuffs) per year. Certain types of high calorie or particularly nutritional foods are not permitted prisoners. For example, packages may include margarine, but not butter. Moreover, prisoners on good behavior and who have demonstrated an "honest attitude toward work," may be granted further rights upon completing half their terms. Practice has shown, however, that political prisoners, with the few exceptions of those who have collaborated with camp authorities, seldom benefit from such provisions.

In intensified regimen camps living conditions are much the same as under the standard regimen, but with additional restrictions on prisoners' rights. In these

camps, prisoners may receive two short and two long visits each year, may send no more than three letters a month and are permitted to spend six rubles a month in the camp store. Upon serving half their sentence inmates are entitled to receive two five-kilo packages a year.

Offenders sentenced for "especially dangerous crimes against the state" (Articles 64-73)—the category of offenses used or likely to be used against most Helsinki monitors—must serve their terms in strict regimen camps. There, prisoners not only receive reduced food rations—estimated by Amnesty International at 2,600 calories a day—but are limited to five rubles a month for additional food purchases. The World Health Organization says a very active man needs a daily diet of 3,100 to 3,900 calories. Inmates are entitled to two short visits and one long visit each year and may mail only two letters a month. They may receive one five-kilo package a year after serving half their sentence.

The harshest camp regimen—and the one to which the Ukrainian Helsinki monitor Oleksiy Tyhky has been sentenced and to which Aleksandr Ginzburg could be sentenced—is called special regimen. Prisoners are confined to cells and provided with especially poor nutrition, an estimated 2,100 calories a day. In addition, Article 37 of the RSFSR Corrective Labor Code singles out these prisoners for particularly harsh labor, such as dangerous copper or uranium mining. Prisoners assigned to such work have frequently complained that basic safety procedures are disregarded. These prisoners have the right to receive only one short and one long visit each year and to send one letter a month. They may spend up to four rubles each month for supplementary food supplies and upon serving half their sentence are entitled to receive one large package a year.

Conditions for those held in prisons are characterized by a further curtailment of prisoner's rights. In prisons individuals were not, until recently, required to work at hard physical labor, but the low nutritional standards (2,100 calories or less a day) maintained in prisons effectively vitiated any benefits of this policy. Amnesty International reports, however, that since early 1975 prisoners have been required to engage in some physical work, which further aggravates the hardship of prison life. Inmates on a standard prison regimen are entitled to two short visits per year; are permitted to spend up to three rubles in the prison store; and may mail one letter a month. Article 70 of the RSFSR Criminal Law Code tacitly recognizes the harshness of the strict prison regimen in its stipulation that prisoners should spend no more than six consecutive months under such conditions. Strict regimen prisoners are permitted to spend up to two rubles a month on foodstuffs and personal items and to mail a letter every other month. They are furthermore deprived of the right to receive any visitors.

#### *Prisoners' material provisions*

For those Helsinki monitors sentenced either to corrective labor colonies or to prisons, hunger is likely to be a constant companion. Although Article 56 of the RSFSR Corrective Labor Code stipulates that "convicted persons shall receive food to sustain the normal functioning of the human body", Amnesty International has found that other Soviet sources recognize the validity of using hunger as one means of prisoner control. According to an official Soviet corrective labor textbook: "Proceeding from the punitive content of the punishment and the necessity of using it in order to obtain the goals of public deterrence and corrective education, Soviet corrective labor legislation to a certain extent utilizes the daily material maintenance of prisoners as a means of gaining the goals established in Article 20 of the Fundamentals of Criminal Legislation of the USSR and Union Republics." Article 20 defines the purposes of punishment as: "correcting and reeducating convicted persons in the spirit of an honorable attitude toward labor, of strict compliance with the laws, and of respect toward socialist communal life." The same Article again states, however, that "punishment shall not aim at inflicting physical suffering or degrading human dignity."

Thus a contradiction is apparent between the stated principles of Soviet criminal and corrective labor legislation and the application of this legislation in practice. Prisoners are not to be subjected to unusual suffering, but hunger is to be used as a means of forcing a change in their behavior patterns. For the Helsinki monitors, this will mean that hunger can be used to encourage them to recant their previous culpable activity, i.e., urging compliance with the Helsinki accord.

This leverage is applied in a number of ways. Not only are prisoners in different regimens provided with different amounts and quality of food (a practice not

provided for by law, but widely reported by Soviet prisoners), but camp and prison administrators are broadly empowered to limit prisoners' diets further. Camp or prison inmates can be put on reduced diets for "systematic and malicious" underfulfillment of work norms, a measure whose application is left entirely to the discretion of the camp administration. As a result, prisoners are often caught in a "Catch-22" situation.

The low nutritional level of their diets renders them physically incapable of fulfilling high work quotas, which in turn makes them subject to further disciplinary reductions in their already inadequate rations. According to Konstantin Simis, a recently exiled Moscow jurist, this system causes particular hardships for political prisoners who are largely unprepared for the physical requirements on hard labor in the camps.

The administration may further restrict inmates' food intake by two means: deprivation of a prisoner's right to receive his next food package; or the deprivation of his right to purchase his monthly quota of additional foodstuffs at the camp store.

The camp administration's unrestricted ability to deprive prisoners of their food rations highlights two problems of the Soviet penal system which prisoners characterize as the most severe. These are the contradiction between the content of the published corrected labor legislation and secret internal regulations governing daily camp and prison life; and the wide discretionary powers enjoyed by administrators in implementing these regulations.

According to Aleksei Murzhenko, an inmate of the Mordovian labor camp to which Mykola Rudenko and Oleksiy Tykhy have been confined, "There is an enormous gap between the content of legal norms and their application in practice. This gap is not merely a function of the administration's tyranny, ignorance or disregard for the law, but is also a product of the directives issued by organs responsible for implementing the law. These often contradict not only the spirit, but the letter of the law . . . How does one resolve the contradiction between the self-proclaimed humanitarian content of corrective labor legislation and the inhumanity of individual articles and directives? The administration doesn't even seek a resolution. It only metes out punishment. It is merciless and unscrupulous." The administration's harassment of political prisoners is reported to be particularly severe. They are the ones most frequently singled out for deprivation of visiting and purchasing rights, confiscation of mail and packages, reduction of rations and repeated, often illegal, confinement to special punishment calls. Only those who collaborate with camp or prison authorities are likely to escape such measures.

In addition, attempts by prisoners to utilize their legal right of appeal to higher authorities are likely to result in increased harassment by the administration. Although appeals of this nature have sometimes been successful in effecting general improvements in camp conditions, few prisoners are willing to take the personal risk involved.

#### ADDENDUM—EXTRA-JUDICIAL REPRESSION OR HARASSMENT

##### INTRODUCTION

In a society in which power is concentrated in one ruling class, in this case the Communist Party of the Soviet Union, a wide range of methods of extra-legal and extra-judicial reprisals is available to the state for use against dissenters. In the USSR, such reprisals range from the bugging of telephones and anonymous threats to slanderous articles in the press and "hooligan" attacks on dark streets. In Soviet society where the state is the only employer, pressures against an "unruly" citizen extend also into the economic sphere: people can be demoted, fired, not allowed to work in their chosen professions, or even black-listed from any kind of employment.

A central role in the execution and coordination of such campaign of extra-legal and extra-judicial methods of reprisal is played by the Committee for State Security, better known as the KGB. Although all government organizations are in one way or another subordinate to the Party, in practice that is not true of the KGB. One might say that the KGB is more equal than any other institution in the Soviet apparatus with the possible exception of the Central Committee of the Party. Since 1918, there has been an implicit policy that the KGB can give orders to any agency or institution, to the press or to an academic institution and such orders will be followed without question. Even the procuracy follows KGB instructions.

However, in the Soviet system, only the courts and the procuracy are given the power to administer any methods of reprisal and investigation of people who allegedly break Soviet laws. The KGB is not given such power, though it is given legal authority to investigate what are considered "especially dangerous crimes against the state."

The hand of the KGB in campaigns against a dissident can be distinguished in several ways. Often they take the form of a long and systematic orchestration of various methods of repression to frighten the dissident, to intimidate his family, friends, and colleagues. Thus actions can be and often are directed not only against the political activist, but also against his social and emotional milieu.

At other times, the KGB likes to wrap its actions in a cloak of legality. For example, when KGB agents threaten an activist with trial for anti-Soviet activity, they refer to an executive order of December, 1972 which no outsider has even seen, defining such acts as within the area of KGB jurisdiction. In any case, as former Moscow jurist Konstantin simis noted, this directive is completely illegal: under the Soviet legal system, only a court can decide what is and is not "anti-Soviet activity."

#### INTERFERENCE WITH POSTAL AND TELEPHONE COMMUNICATION

Probably due to the expanding contacts of Soviet citizens with the outside world, Soviet authorities issued a decree in 1972 stating that "The use of the telephone for purposes contrary to state interests and to public order is forbidden." This decree in effect legalized the already widespread system of tapping telephones of anyone in dissident circles. There are many signs of a bugged phone: It is frequently out of order, international calls are either disconnected or made inaudible by buzzing or other types of jamming. Mrs. Elena Bonner and her husband Dr. Andrei Sakharov often have such troubles with their telephone. Another frequent blocking tactic comes from Moscow telephone operators claiming that a party is not answering even when the caller abroad may briefly hear the voice of the person he is trying to reach speak in puzzlement at the other end of the line.

By tapping a telephone, moreover, the KGB cannot only monitor telephone conversations, but also install devices for a 24-hour listening post on any given apartment with a telephone. Numerous anecdotes among Moscow dissidents point to such wide-spread daily monitoring.

Telephones used to communicate with the West or just with other dissenters are also frequently disconnected in reprisal. This has happened to Public Group members Yuri Orlov, Vladimir Slepak, Aleksandr Ginzburg, Zviad Gamsakhurdia, Mykola Rudenko; to many Jewish refuseniks; and to unorthodox writers like Vladimir Voinovich.

Another effective way of monitoring and hindering communication between dissidents and of preventing information about them from reaching the outside world, is by the inspection and non-delivery of letters and telegrams. When, for example, Moscow Group member Vladimir Slepak, went on a hunger strike in 1975, he did not receive a single one of the 4,000 telegrams the Moscow Group reported were sent him by American well wishers. After Malva Landa returned from her internal exile in Siberia, in a public statement on March 20, 1978, she said that many letters and several telegrams she sent from exile never reached the addressees and that many important letters had never reached her either.

In an appeal dated November 1, 1977, Mrs. Mykola Rudenko (wife of the imprisoned leader of the Kiev Helsinki Group) states that she has not received a single letter from her husband and that her letters also do not reach her husband, although according to Soviet law a prisoner has the right to receive letters while in camp (Rudenko was sentenced to 12 years of imprisonment in July, 1977). Indeed, one letter which Rudenko wrote to his wife was returned to him because it was written in Ukrainian.

These examples bear witness to the widespread violation of the right guaranteed under the Soviet Constitution to the inviolability of the mails. There is one significant restriction on the guarantee of this right, however. Under Article 174 of the Code of Criminal Procedure of the Russian SFRS, "the impounding of correspondence and its seizure at postal and telegraph offices may be carried out only with the sanction of a procurator or in accordance with a ruling or decree of a court." The formulation of this article states that such confiscation of correspondence is justified under law only in connection with a specific case currently under investigation or in the courts.

## SURVEILLANCE

While telephone tapping can constitute an effective method of secret surveillance on a home, an individual's movements about any Soviet city can also be watched by noting the number of his car or taxi and reporting it to the nearest traffic control point. Such traffic control points are located at certain intervals in every city and can transmit such information further. Travelers by bus, tram or subway can easily be followed by agents on foot, either demonstratively or unobtrusively.

Demonstrative surveillance aims at intimidation. It may continue days, weeks or even months. Not only does such surveillance harass the dissident, it also has the effect of isolating him from the people around him, friends he fears to visit in order not to involve them in his trouble. Lydia Voronina, in testimony before the CSCE Commission on June 3, 1977, spoke of the behavior of KGB agents assigned to Shcharansky: "Mr. Shcharansky was under constant surveillance by the Soviet authorities day and night . . . when [I] met with Shcharansky, [we] were followed by two cars, each with four men in it . . . and four people across the street held [tape] recorders."

Fifteen days after the formation of the Moscow Group, Professor Yuri Orlov in an appeal mentioned that his footsteps and those of several other Group members were dogged by the KGB. In a letter dated December 19, 1977 to Andropov, Head of the Soviet KGB, Aleksandr Podrabinek of the Psychiatric Commission, pleads that the KGB provide its agents with skis so that they no longer have an excuse to order him to stop cross-country-skiing on a Sunday afternoon.

## THREATS AND WARNINGS

Intimidation can and does take the forms of anonymous threats, sometimes by phone and sometimes by letter. In the Ukrainian Public Group's report on Christmas repressions (December 28, 1976), for instance, Mykola Rudenko told of receiving a note saying, "We will kill you." Two days after the formation of the Ukrainian Group, people threw rocks through the windows of Mykola Rudenko's apartment, hitting Oksana Meshko (appeal from Raisa Rudenko, November 1, 1977).

Different threats come in official form as well, in the formal warnings many Helsinki monitors received from KGB officers or from the procuracy to stop their "criminal" activity or face arrest and prosecution. For example, three days after the formation (May 12, 1976) of the Moscow Group, Professor Yuri Orlov, its leader was picked up on the street and taken to the Cheremushkin Borough Offices of the KGB in Moscow. There Orlov was told that in accord with the Decree of December 25, 1972, he might be subject to arrest unless he stopped his "criminal" activities. On the same day, the international service of TASS issued a statement in which the Group was described as an attempt by dissidents to cast doubt on the Soviet fulfillment of its international obligations and to disrupt detente. Similarly, one year after the formation of the Christian Committee to Defend the Rights of Believers in the USSR, Father Gleb Yakunin and Viktor Kapitanchuk were called in to the offices of the KGB on December 16, 1977 and told to stop their activities in the Committee or face criminal prosecution.

Such official warnings to stop "criminal" behavior are not limited to the dissidents, but also sometimes extend to their families. In November and December, 1976, Malva Landa's son was called in for discussions with KGB officers who advised him to persuade his mother to cease her activity in the Helsinki Group, "warning" him that otherwise he might be dismissed from his position as a teacher of physical education.

Aleksandr Podrabinek, a member of the Working Commission to Investigate the Abuse of Psychiatry for Political Purposes, faced a variant on this theme of official warnings. On December 1, 1977 he was shoved into a car and taken to the KGB Moscow headquarters on Dzhherzhinsky Street where he was told he had 20 days in which to emigrate to Israel or face arrest. Furthermore, Podrabinek was told that he had to emigrate together with his father and his brother Kirill, that an invitation from relatives in Israel and money for an exit visa were not needed and that travel expenses would be provided. Towards the end of December, 1977, Kirill Podrabinek was arrested and in March, 1978 was sentenced to two-and-a-half years in labor camp for owning a harpoon and bullets which Kirill claims were planted by the KGB at his place of work during a search on October 10, 1977. Aleksandr Podrabinek was himself arrested on May 15, 1978 and has reportedly been charged under Article 190.

## SLANDER

Another method of reprisal is the spreading of slanderous rumors. For example, in 1976 about 25 people in Moscow received packages from Vienna, containing writings against Dr. Sakharov's wife, Elena Bonner, a member of the Moscow Group.

Sometimes dissidents are falsely accused of criminal acts such as hooliganism, theft, currency speculation, arson, or rape. Such accusations have a dual purpose—they can serve as the basis for bringing someone to trial, and they can ruin a person's reputation. Such accusations serve also to mask the fact that dissidents are being called to account for their political beliefs.

Amnesty International, in its External Report of January, 1978, detailed the workings of such a technique in the case of Moscow Group member Malva Landa:

"The criminal proceedings which eventually resulted in Malva Landa's being sentenced to exile related to a fire which gutted her flat in the town of Krasnogorsk near Moscow on December 18, 1976. Malva Landa subsequently described the circumstances of the fire and her views on its causes in a lengthy detailed *samizdat* report on her trial in May, 1977. In connection with the fire she was eventually sued for property damages and tried on criminal charges ("causing damage" to public and private property) which ostensibly bore no relation to her human rights activities. She herself maintained that persons unknown had caused the fire and that it was part of an elaborate plan to bring her to trial on account of her human rights activity. According to Malva Landa's account, she had left one room in her flat and gone briefly to the kitchen and the bathroom. She heard "a noise like an explosion" and as she ran back to the room she noticed that the door to the flat was "half-open," a circumstance which at the time she assumed had been caused by the force of the explosion. She found a blaze in the room. When she tried to extinguish it with water the flames only spread faster. She ran out for help, calling "FIRE." However in the staircase a young man, a stranger, took hold of her and held her until the fire brigade came, thus preventing her from continuing her efforts to fight the fire or obtain immediate assistance. At this stage, she said later, the fire could have been easily extinguished.

"When Malva Landa asked the young man who he was he refused to identify himself and said that it was 'none of her business'. He said that he had been passing by the street and had gone into her apartment block after he saw the flames. Malva Landa in her subsequent account rejected this explanation, saying that there was no way at this stage that the fire could have been visible from the street. During the police investigation of the fire Malva Landa insisted that the police launch a search for this stranger. However, he was never located. In spite of this and of Malva Landa's account of his role at the time of the fire, the prosecution said later at her trial that the stranger had acted "solely to save her life.

"Malva Landa also drew attention in her accounts to the fact that firefighting personnel arrived at the scene of the fire at least one half hour after they had been called. They gave the explanation that they had twice been given the wrong address for the fire, a fact Malva Landa disputed since her address is prominently located. When they did arrive, she said, they fought the fire slowly and ineffectively. The net result was damage much greater than would have been caused if she had been allowed from the outset to obtain assistance from her neighbours. The flat of one of her neighbours was also damaged."

## PUBLIC VILIFICATION

Public vilification of well-known dissidents is another tactic which has been frequently employed by the Soviet authorities against members of the Public Groups. Another member of the Moscow Group, Aleksandr Ginzburg, was accused of currency speculation by Aleksandr Petrov-Agatov in an article in the *Literary Gazette* of February 2, 1977, one day before Ginzburg's arrest. In the same letter, Petrov-Agatov also accused Ginzburg of immorality and drunkenness and attacked the personal life of Yuri Orlov.

Radio Liberty discussed the public treatment of Georgian Group members in a May 15, 1978 report, as follows:

"Two months after the Georgian monitoring group was formed on January 4, 1977, the authorities suddenly stepped up their campaign against Gamsakhurdia and Kostava as a prelude to their arrest. A series of virulent attacks was made

on them in the republican media. Gamsakhurdia was the chief target. An editorial article in *Zarya Vostoka* on March 23, 1977, described him as an extortioner who traded on the memory of his father. It also accused him of direct links with Radio Liberty, a charge that Gamsakhurdia refuted in "A Statement to the Press" two days later . . . And, in an article in the literary paper *Literaturni Sakartvelo* of April 1, 1977, the Patriarch of the Georgian Orthodox Church and three other leading church dignitaries, in the church's first public reaction to Gamsakhurdia's charges, spoke indignantly of his meddling in the church's affairs and of the way he had discredited its good name on the international scene. According to them, every Georgian who knows Zviad Gamsakhurdia, knows that this pseudo-intelligent man is a hopeless hooligan, a well-trained blackmailer and provocateur."

Similarly, two months after the formation of the Armenian Group, a member of the group, Robert Nazaryan, was attacked in the *Sovetskian Aiastan* of June 5, 1977. In this article, entitled "False Prophet," Nazaryan's religious convictions were mocked (he is a deacon of the Armenian Apostolic Church), followed by attacks on his personal life. He has since been arrested.

#### DETENTIONS

Many different types of restraints can be imposed on the freedom of movement of a Soviet citizen. Such restraints can range from house arrests to total isolation from the outside world—as has been true of the pre-trial investigation periods of all still imprisoned Soviet Helsinki Watchers.

A frequent type of detention is house arrest. On December 21, 1976 an 18-hour long house search was conducted at the apartment of Vladimir Slepak, a member of the Moscow Public Group. A Moscow Group document of December 27, 1976, notes that six days after the search Slepak was still under house arrest, threatened by KGB agents waiting outside the door to his apartment, warning him that an attempt to leave would bring formal arrest.

Sometimes, a dissident is detained for several hours or several days in a local militia station. For example, when Aleksandr Podrabinek went from Moscow to the remote Ukrainian village of Druzhovka to try to attend the trial of Tykhy and Rudenko, the local militia incarcerated Podrabinek for three days. According to Article 122 of the Code of Criminal Procedure of the RSFSR, a suspect can be held without specific charges from the procuracy for no more than 3 days. Thus, in December, 1977, Ambartsum Khlgatyan, member of the Armenian Public Group, was held for 3 days and then, apparently, released while two other Group members in Yerevan were jailed to await trial. If authorities wish to detain someone for 15 days, they can level a charge of "petty hooliganism". The procedure for "deciding" such cases is simple, and can be decided by a judge in 15 minutes. All the judge has to do is to read the protocol drawn up by the police, hear the testimony of the policeman and the accused, and then declare his decision. On December 8, 1977, an action of this type was taken against Pyotr Vins when he was on his way to Moscow to collect documents for emigration. He was beaten at the Kiev railroad station by police and then put under administrative arrest for 15 days for "disobeying the police". The police themselves told Pyotr's mother that they had beaten her son because he refused to submit to a personal search. Vins had insisted that the police must present a warrant.

#### REPRISALS IN THE AREA OF EMPLOYMENT

Soviet authorities can exercise almost absolute control over the employment possibilities of Soviet citizens. In dealing with members of the Helsinki Watch, they have used this control on occasion for measures of extra-legal reprisal.

Feliks Serebrov, for example, joined the Working Commission to Investigate the Abuse of Psychiatry For Political Purposes in January 5, 1977. A month later the Dawn factory where he had worked for three years demoted him to a job with lower pay.

During a house search at the apartment of Professor Orlov in Moscow, the KGB confiscated documents assembled by Georgian activist Viktor Rtskhiladze with 8,000 signatures from the Meskhi, a Georgian ethnic minority, requesting resettlement to Georgia from the Central Asian regions to which they had been deported under Stalin. Two months after this confiscation—and one month before the announcement of the formation of the Georgian Helsinki Group which he joined—Viktor Rtskhiladze was fired as head of the Georgian Culture Ministry's Inspection Unit for the Preservation of Historical Monuments.

Georgian Group founder, Zviad Gamsakhurdia, also suffered for his activism even before the Group came into being. On April 1, 1977, he was expelled from the Georgian Union of Writers and the same day, at a meeting of the administration of Tbilisi State University, (where Gamsakhurdia used to teach) claims were made that he had "carried out the tasks of foreign intelligence services." Such public denunciations of dissidents at meetings of present or former colleagues often accompany expulsions from jobs and/or professional organizations.

Many former political prisoners, even after completing their entire terms, are barred from working in their professions. These restrictions apply to such Ukrainian Public Group members as the lawyers Levko Lukyanenko and Ivan Kandyba.

Very often, former political prisoners who are deemed to have been "especially dangerous state criminals," are charged under Article 70 of the RSFSR Criminal Code or its equivalent in the other republic codes. So far, eight members of the Helsinki Public Groups—Rudenko, Tykhy, Marynovych, Matusevych (Ukraine) Orlov, (Moscow) Gamsakhurdia and Kostava (Georgia)—have been sentenced under Article 70. The likelihood of these people again being permitted to work in their chosen professions—even after serving 12 years of prison and exile—is slim.

---

UNOFFICIAL RECORD OF THE TRIAL OF GEORGIAN HELSINKI WATCHER GRIGORY GOLDSTEIN, TRANSLATED AND DISTRIBUTED BY THE STUDENT STRUGGLE FOR SOVIET JEWRY

Indictment of Grigory Abramovich Goldstein, accused under Article 234 Part I of the Criminal Code of the Georgian Republic. Criminal Case N 2021, February 28, 1978:

On January 18, 1978, in Leninsky district department of the Ministry of the Interior of the city of Tbilisi, criminal case N 2021 was initiated accusing Grigory Abramovich Goldstein under Art. 234 Part I of the Georgian Criminal Code. The inquest proved that Grigory Abramovich Goldstein was found healthy and that the officers of the Leninsky department many times warned him to find a job. Goldstein has not been engaged in a publicly useful work since December of 1971 and lived a parasitic life. In August of 1977, Goldstein was warned in the Leninsky department to find a job but up until now he does not work (page 57 of the case file).

Grigory Goldstein worked at the Tbilisi branch of the All-Union Institute of Metallurgy named after Mendeleev. He worked there as chief of a laboratory from December 8, 1971 up until the moment he voluntarily quit the job. After that, he did not work anywhere (see page 24 of the case file) despite the fact that he was warned many times to find a publicly useful job in accordance with the Decree of the Georgian Supreme Soviet dated November 5, 1975. Besides from October 24 through November 20, 1977, the Leninsky department several times appointed Goldstein to work at a scientific institute as a designing engineer and on November 20, 1977 as a physicist but he resolutely refused to take the appointment and does not work up till now, thus maliciously violating the Decree of the Georgian Supreme Soviet and committing a crime under Article 234 Part I of the Georgian Criminal Code (see pages 19, 25, 20 of the case file). Goldstein himself wrote regarding the appointment issued to him on October 24, 1977 that he refused to take it (see pages 19, 20 of the case file). Goldstein resolutely refused to testify as a suspect or an accused, did not sign the warrant of prosecution because he considered himself innocent (see a procurator Act about this, page 51 of the case file). However, the crime which he has committed was confirmed by the testimonies given by witnesses Birkaya, Huhunashvily, Rogaya, Kordzadze as well as by the materials of the file N 2021 (see pages 38-41, 55-58).

Witness Birkaya testified that defendant Goldstein lived in the district where Birkaya works and that Goldstein had been warned many times to find a publicly useful job. Besides, Birkaya twice appointed Goldstein to work but Goldstein maliciously refused to be employed (see pages 38-39 of the case file).

Witness Huhunashvily testified that he was a volunteer servicing the region of inspector Birkaya. In that capacity Huhunashvily was present when Birkaya warned Goldstein and appointed him to work, but the latter maliciously declined these proposals and continued to evade any employment (see pages 40-41 of the case file).



Witness Rogava testified that he was chairman of the dwelling cooperative where Goldstein lived and in that capacity was present when officers of the Leninsky department many times warned Goldstein to find a job though the latter did not follow their instructions (see pages 55, 56 of the case file).

Witness Kordzadze testified that Goldstein lived next door to him and that is why Kordzadze was present many times when officers of the Leninsky department warned Goldstein to commence employment which he evaded (see pages 57-58 of the case file).

In his personal statement (see page 19) Goldstein does not deny that because of his personal reasons he has not worked for a long period of time.

Thus: Grigory Abramovich Goldstein, born in 1931 in the city of Tbilisi, a citizen of the U.S.S.R., a Jew, a college graduate, not a party member, not previously tried, not involved in a publicly useful work, registered to live in Tbilisi, Octyabrskaya Str., Microregion 2, building 2, apt. 63—is accused of evading a publicly useful work despite many warnings of the Leninsky department of the Interior, and of living a parasitic way of life for a long period of time, i.e., committing a crime provided by Article 234 Part I of the Georgian Criminal Code.

The inquest is completed and in accordance with Article 36 of the Georgian Criminal Procedure Code. The case is to be considered in the district court of Leninsky district of the city of Tbilisi.

Inquestor of the Leninsky department of the Interior. A. Utrutashvili

#### THE TRIAL OF GRIGORY GOLDSTEIN—MARCH 20, 1978—AN OFFICIAL RECORD

Scene: Leninsky district court of the city of Tbilisi. Composition of the court: Presiding judge—Nakashidze; people's assessors—Nadirashvili Vartishvili; secretary—Gaazova. On March 20, 1978, the court in open session considered a criminal case of G. A. Goldstein accused under Article 234 Part I of the Georgian Republic Criminal Code.

Presiding judge reads the solicitations by Goldstein dated March 17 and 16. Then the court withdraws to make decisions on the solicitations and upon return, the presiding judge reads out that the court decides to decline all the items of the solicitations except the item to invite Gershgorin as well as members of the medical profession to testify. Goldstein protests the denial of the majority of his solicitations and demands to enter his protest into the records of the trial. In addition, Goldstein makes another protest in writing dated March 18, 1978. Nakashidze attaches the protest to the case file without reading or commenting on it, then he reads out the indictment and declares to Goldstein that the court appoints a defense counsel—Nikolayeva (a member of the juridical consultation office of Leninsky district of the city of Tbilisi) because Goldstein has been denied an Israeli lawyer and Goldstein has not been granted the five day period of time to find a lawyer himself. Goldstein protests against the denial of an Israeli lawyer and rejects an appointed Defense counsel. Nikolayeva leaves the court room. Nakashidze asks Goldstein if he can prove that he is a citizen of Israel. Goldstein answers that copies of the certificate were sent to him several times but were intercepted by the KGB. Goldstein declares that he had presented to the court cables from the Israeli Ministry of Foreign Affairs confirming that copies of the certificate were sent to him by registered letters. Nakashidze rejects consideration of these cables and asks if Goldstein pleads guilty. Goldstein answers that he pleads innocent.

Nakashidze begins to interrogate the witnesses. The first to testify was Khukhunashvili—an officer of the district precinct. In addition to his testimony in writing, Khukhunashvili declares that he thinks Goldstein has not been working during two years—since the time when militia began to bring him the summons. Goldstein asks the witness: "Do you know that the militia began to bring the summons since August 19, 1977?" Khukhunashvili answers: "Perhaps Goldstein has not been working since August 19." Presiding judge asks Khukhunashvili if the militia dealt with the matter before that. Khukhunashvili answers: "I don't know. Perhaps inspector Birkaya knows. I was ordered to bring the summons and so I did." Goldstein: "In your testimony you wrote that you had handed to me orders to work at appointed places twice. Was it really so?" Khukhunashvili keeps silent in response but presiding judge helps him with a leading question: "You are confirming your testimony, aren't you?" Khukhunashvili: "Yes, I am." Goldstein protests that the presiding judge forces the witness to commit perjury.

The presiding judge summons another witness—Rogava. Goldstein asks Rogava: "On which grounds did you write in your testimony that I evaded publicly useful work since December 1971?" Rogava: "I haven't testified that." The presiding judge discovers that Goldstein was given an incorrect translation into Russian of Rogava's testimony in Georgian. The translator who was present at the trial makes another translation and hands it to Goldstein who sees that the new version of the translation actually does not differ from the previous one. Goldstein asks Rogava: "How did you know that I evaded publicly useful work?" Rogava: "While being employed, one must submit a certificate from the housing office. I am chairman of the housing cooperative, Goldstein did not take such a certificate from me." Goldstein asks: "Does the witness know what the term 'publicly useful work' means?" Presiding judge invalidates the question, orders the witness not to answer and warns Isai Goldstein to restrain from expressing his indignation. Grigory Goldstein: "What is Rogava and does he consider himself a scientist?" The presiding judge invalidates the question and orders Rogava to refrain from answering it. Goldstein protests and demands to enter upon the records his question—whether scientific-pedagogical work is publicly useful. Presiding judge enters this in the record of the trial. Goldstein: "Does Rogava know that I evade scientific-pedagogical work?" Rogava: "I think you do not work pedagogically and I do not know if you work scientifically."

Interrogation of witness Kordzadze. The witness mixes up his testimonies and contradicts what he wrote during the preliminary investigation. Presiding judge helps him with leading questions and Goldstein protests: "It is clear to me that the presiding judge prompts Kordzadze on how to answer. I demand that this be entered in the records." Presiding judge shouts at Goldstein and the latter protests again: "Kordzadze was never present when I was ordered to find a job." Kordzadze: "That is true, but militiamen told me that there was a rumor Goldstein did not work and the militia was going to enter a caveat" (to warn him about the necessity of finding a job).

Interrogation of Gershgorin. Presiding judge interrupted Gershgorin several times when the latter described Goldstein's publicly useful work—his scientific-pedagogical work. Presiding judge declares that it has nothing to do with the case.

Interrogation of the doctors (polyclinic N 2 of Leninsky district) who issued a faked certificate about Goldstein's health. The chief doctor of the polyclinic who was chairman of the commission which issued the certificate—Georgadze—and chief of the therapeutic ward Chugaya have not come to the trial. Only surgeon Gigaury and neuropathologist Khutzishvily have come.

Goldstein protests against the word "examined" used by the presiding judge referring to what happened on January 17, 1978 in the polyclinic where Goldstein was brought in handcuffed. Dr. Gigaury: "For the first time I saw Goldstein on January 17, 1978. Chief doctor Georgadze called me in to his room and told me to examine Goldstein there. Goldstein refused to be examined and declared that he did not suffer anything." Goldstein: "How many years has Dr. Gigaury been working?" Presiding judge declines the question. Goldstein: "Did Dr. Gigaury hear me say anything about my health?" Dr. Gigaury: "Yes, I did." Goldstein: "This is a falsehood. Perjury. How often does Dr. Gigaury decide a person's condition of health judging merely by his appearance?" Dr. Gigaury: "Never. When examining a person, it is necessary to ask him to take his clothes off." Presiding judge: "Why did you reach a medical conclusion without examining him?" Dr. Gigaury keeps silent. Presiding judge prompts: "Perhaps, because he told you he was healthy." Dr. Gigaury: "yes." Goldstein protests the promptings.

Interrogation of neuropathologist Khutzishvily: "Goldstein refused to be examined and I concluded that he was healthy judging from the way he moved and sat." Goldstein: "Did Dr. Khutzishvily sign on January 17, 1978 that I refused to be examined?" Dr. Khutzishvily: "Yes, I did." Goldstein: "Who else signed the Act?" Dr. Khutzishvily: "I don't know. After I signed, I went out." Goldstein: "Did I say anything about my health?" Dr. Khutzishvily: "No, you did not. You said that you did not wish to be examined."

Then, Grigory Goldstein testifies. The presiding judge keeps interrupting him sometimes crying: "There is a political layer in your testimony. You pour falsehood and filth on state power bodies. Don't try to make a political trial of your case." Then the presiding judge orders Isai Goldstein forced out of the courtroom

and does not allow Grigory Goldstein, to complete his speech. Grigory Goldstein protests.

The presiding judge begins to question Goldstein but the latter refuses to answer unless the former will let him complete his testimony. But the presiding judge enters in the trial record that Goldstein refuses to testify.

Protesting against the partiality of the presiding judge, Grigory Goldstein challenges him but the people's assessors reject the challenge. Goldstein challenges the whole composition of the court but his challenge is rejected. Though the presiding judge did not let Goldstein read his testimony to the end, he entered the text into the trial record. Goldstein is told to make a defense speech. He pleads innocent and that is why he refuses to make such a speech. He is told to make his last statement and he reads it in Hebrew. On the demand of the presiding judge he translates it into Russian.

Sentence is declared.

There was no prosecutor at the trial. The district militia officer Birkaya, who officially "discovered the parasite Goldstein" was also absent (guilty of committing a crime, Birkaya has been removed from his office and a case is initiated against him). Presiding judge Nakashidze took the brief for the prosecution. The courtroom was full of KGB men (e.g., the plain-clothes men who used to follow the Goldstein brothers). There were also a lot of men in militia uniform.

#### SENTENCE

In the name of Georgian Republic People's Court of the Leninsky district of the city of Tbilisi, with presiding judge Nakashidze and people's assessor Nadrashvily and Vardisashvily, having considered the case of Grigory Abramovich Goldstein (Tbilisi, microregion 2, korp. 2, apt. 63, a Jew, a citizen of the USSR, a college graduate, not a party member, not tried before, a bachelor, does not work anywhere) accused of committing a crime provided by Art. 234 Part I of the Georgian Criminal Code, the court has found that:

As a medical commission stated, Grigory Abramovich Goldstein is healthy. However, since 1971, he has not been engaged with a publicly useful work and has been living a parasitic life. Goldstein intentionally did not try to procure employment, though he was warned many times by officers of the precinct to find a publicly useful work and give up his parasitic way of life. Despite the fact that his district department of the Interior had entered a caveat about the necessity of becoming employed, he has not been working up until now.

Goldstein worked in Tbilisi's branch of the Mendeleev Institute and quit the job voluntarily on December 8, 1971. Since then, he has not been working anywhere. The Leninsky department of the Interior discovered that Goldstein had been warned many times on the grounds of the Decree of the Georgian Supreme Soviet Presidium issued on November 5, 1975 about the necessity of being engaged in a publicly useful work, but he intentionally and maliciously evaded a publicly useful work and had not been working anywhere since 1971. Goldstein was issued an order to work in a scientific research institute as an engineer-physicist, but he resolutely rejected the proposed offices and declined to follow the order, thus brazenly violating the Decree and continuing his parasitic way of life.

Goldstein testified at the trial that in December, 1971, he applied to be dismissed from Tbilisi's branch of the Mendeleev Institute where he had been working as a laboratory chief because he had applied to corresponding bodies for permission to leave the country for Israel. However, during this period of time, he was teaching mathematics and physics to children of his acquaintances.

Having analysed the case file, the court has decided that Goldstein is guilty of living a parasitic way of life. That has been proved by the following facts:

During the preliminary investigation, Goldstein testified that in December, 1971 he applied to be dismissed from Tbilisi's branch of the Mendeleev Institute because he had applied to the corresponding bodies for permission to leave for Israel and because he became an Israeli citizen. Defendant Goldstein also testified that during that period of time he was not working at a Soviet Enterprise but was only teaching mathematics and physics to children of his acquaintances free of charge.

Witness Khukhunashvily testified that he was a volunteer-officer of the Leninsky department of the Interior of Tbilisi and serviced the district of inspector Birkaya. Khukhunashvily confirmed that he was present when inspector Birkaya warned Goldstein to become employed and issued him an order to (work at a

certain) job. Yet Goldstein maliciously evaded publicly useful work and did not heed the order.

Witness Rogava testified that he had worked with Goldstein and also that he was chairman of the dwelling cooperative where Goldstein lived. Rogava testified that he had been present when officers of the district department of the Interior warned Goldstein to find a job, but Goldstein did not do what was demanded.

Witness Kordzadze testified that he lived in the same building with Goldstein and worked with Goldstein till 1971, when the latter quit his job and ceased working anywhere from that time to the present. Militiamen inquired about Goldstein so as to hand him an order to procure a job.

Witness Gershgorin testified that he was acquainted with Goldstein and had asked the latter to teach mathematics and physics to his son. Goldstein also taught mathematics and physics to other children. Gershgorin did not pay for the lessons because Goldstein refused to take money.

Witnesses Gigaury and Khutzhishvili testified that they were doctors of the Leninsky district polyclinic. On January 17, Goldstein was brought to the polyclinic by militia. In the room of the chief doctor of the polyclinic, doctors of all specialties were gathered and it was proposed to Goldstein to undergo medical examination. However, Goldstein resolutely refused to, and declared that he was suffering no pain.

The case file documents have proved that Goldstein was officially warned to give up his parasitic way of life (August 19, 1977). However, Goldstein refused to heed the warning, and the corresponding Act was drawn up. Goldstein was ordered twice to a job as an engineer-constructor and as an engineer-physicist, but Goldstein rejected the proposed jobs correspondingly signing the reversed side of the order.

The Court has decided that these actions by Goldstein were correctly qualified as provided by Art. 234 Part I of the Georgian Criminal Code. Guided by Art. 303 of the Georgian Criminal Procedure Code, the court convicts Grigory Abramovich Goldstein as guilty of committing the crime provided by Art. 234 Part I of the Criminal Code and sentences him to one year of imprisonment in a labour correction colony of general regime.

Restriction measure taken against Goldstein—signature not to leave the city—should be switched over to keeping him in custody.

TIBILISI, GEORGIAN SSR, USSR

MARCH 16, 1978.

To: Presiding judge of the People's court of the Leninsky district of the city of Tibilisi.

#### SOLICITATION

As my case N 2021 under Article 234 Part I Georgian Criminal Code is to be considered, I ask:

1. To require for and to enter upon the records the certificates about my incomes since 1967 till 1971 (Tibilisi branch of the Union institute of metrology, Tibilisi University, Georgian Polytechnicum and the Tibilisi branch of the Union telecommunications college).

2. To request for and to enter upon the records a certificate about the official minimum living standard in the USSR since 1972 until 1977.

3. To invite as a witness L. Gershgorin (Tibilisi 380059, Digomsky massiv, kvartal 7, building 7, apt. 45).

4. To allow me to hire an Israeli lawyer because I am an Israeli citizen.

5. To query the Polyclinic N 2 of Leninsky district of Tibilisi about the grounds on which the polyclinic issued a certificate about my health.

GRIGORY GOLDSTEIN.

#### SOLICITATION

MARCH 17, 1978.

As my case N 2021 under Article 234 Part I of the Georgian Criminal Code is to be considered, I ask:

1. To require for and to enter upon the records the answer by Leninsky district Procurator to my application which read: "I ask you to confirm in writing your oral statement that the certificate about my health was issued by doctors of the Polyclinic N 2 of the Leninsky district of Tibilisi merely by judging my appearance."

2. To invite as witnesses the members of the medical commission who had issued the faked certificate: Chief doctor Georgadze, chief of the therapeutic ward Chigua, neuropathologist Khutzhishvily, surgeon Gigaury (polyclinic N 2 of Leninsky district of the city of Tbilisi).

3. To find and enter upon the records the Act drawn up in the room of the Chief doctor of the polyclinic N 2 on January 17, 1978, which I was brought into in handcuffs, about my refusal to undergo medical examination. The Act was signed by militiamen of the Leninsky district and by doctors of the polyclinic.

GRIGORY GOLDSTEIN.

#### PROTEST

MARCH 18, 1978.

On March 16, 1978, I was handed a copy of the Indictment by which I am accused of a parasitic way of life (criminal case N 2021).

Paragraph 2 page 3 of the indictment reads: "In his own application, Grigory Goldstein does not deny that for his own personal reasons he was not engaged in publicly useful labour during a long period of life" (see case file page N 19).

Page N 19 of the case file is a standard form of assignment to a job filed by the Tbilisi Bureau of employment, and on the back side of the form there is an inscription: "I, Grigory Abramovich Goldstein, reject the assignment because I have sent a complaint dated October 27 to Chairman L. Brezhnev."

Thus, page N 19 does not prove at all that I have denied anything. In the case file, there is no document about whether I admit that I am not engaged in publicly useful labour. Moreover, I have always been engaged in publicly useful labour: scientific and pedagogical work I testified about to the Procurator. I also wrote about this to Procurator General Rudenko (application dated February 26, 1978).

Paragraph 1 page three of the Indictment reads: "that witness Kordzadze testified the following: "G. Goldstein is my neighbor and I was present many times when he was warned by officers of the Leninsky department of the Interior. Actually, Kordzadze lives in another section of the building and he was never present when I was warned by the militia. On March 18, 1978, I asked Kordzadze how he testified, and he answered that he merely wrote what investigator Utrutashvily dictated to him.

The malicious falsehoods used as references to my own statements, and perjury committed by the inquestor, demonstrate the prejudice and illegality used in my case.

I demand that my case be investigated once more and that a prosecuting investigator should be appointed.

I demand that witness Kordzadze should be punished for perjury and that investigator Utrutashvily should be punished for coercing perjury.

GRIGORY GOLDSTEIN.

From: Convict Grigory Goldstein, Investigation  
Isolation Ward N I, Cell N 69.

To: City Court of Tbilisi.

#### FINAL APPEAL

MARCH 22, 1978.

On March 20, 1978, I was convicted by the People's Court of the Leninsky district of Tbilisi under Art. 234 Part I of the Georgian Criminal Code and sentenced to one year in a labour correction colony of general regime—case N 20-21, January 18, 1978, Leninsky department of the Interior of the city of Tbilisi.

The Decree by the Georgian Supreme Soviet issued on November 5, 1975, provides that: to live on what has not been earned and to evade publicly useful labour is punishable under Art. 234 of the Georgian Criminal Code.

However, the trial has not proved that I lived on what I had not earned. Besides, my continuous scientific theoretical work as well as tutoring children of my acquaintances free of charge in mathematics and physics are undoubtedly useful to the public.

The trial being conducted prejudiciously, I challenged first presiding judge Nakashidze and then the whole composition of the court. But both challenges were declined.

I consider the decision of the Leninsky people's court as wrong and unjust.

I ask for reconsideration of the decision and cancellation of the sentence.

GRIGORY GOLDSTEIN.

MARCH 25, 1978.

To: Procurator of the Georgian SSR from the brother and mother of Grigory Goldstein, sentenced on the 20th of March, 1978 to one year in a labour correction camp and now kept imprisoned in the Detention Cell N 1 of the Ministry of the Interior of the Georgian SSR.

## COMPLAINT

The sentence for our brother and son (case number 1/168, Leninsky District People's Court, March 20, 1978) reads: "Goldstein intentionally and maliciously evaded a publicly useful work and had not been working anywhere, living a parasitic life since 1971. He taught physics and mathematics to his friends' children but received no money for lessons. Witness Gershgorin testified that he was acquainted with Goldstein and had asked the latter to teach mathematics and physics to his son. Goldstein also taught mathematics and physics to other children."

Judge Nakashidze, who pronounced the sentence, intentionally and maliciously failed to show in the sentence the testimony of Goldstein and witness Gershgorin—that all these years G. Goldstein has been involved with his scientific and theoretical work. He had his works published during the period of official unemployment.

According to Article 13 of the Criminal Code of the USSR and the Republics, a sentence must be grounded on proofs. All doubts, if they are not proved, must be looked upon in favor of the accused.

The trial proved only two facts:

1. Grigory Goldstein has been officially unemployed since 1971.
2. Grigory Goldstein turned down a job offer (only one, not two, as it stated in the sentence). This job, which was classified, would have prevented him from emigrating to Israel.

These two facts are obviously not enough to state that Grigory Goldstein "Has intentionally and maliciously evaded publicly useful work and lived a parasitic way of life."

Isn't scientific work and teaching mathematics and physics publicly useful?

In the Decree of the Georgian Supreme Soviet Presidium issued on November 5, 1975, which Judge Nakashidze referred to, we read: (quotation) "If a person who is able to work evades publicly useful work and lives on an unearned income, he is condemned to be living a parasitic way of life."

However, Judge Nakashidze completely ignored Grigory Goldstein's means of income. Judge Nakashidze ignored the proofs of the accused that he had received a very high salary before his resignation. The minimum monthly salary in the USSR is now 70 rubles since November of 1977 and it was 60 rubles before. The accused's salary each month had been 400 rubles for many years. An objective judge would have had to admit that the accused had been living on his earned income.

Every honest person must realize that the sentence does not reflect reality as: (a) the sentence has not been proved by the evidence examined by the court and (b) the court did not take into consideration some details which could have affected the court's decision. They are: (a) Grigory Goldstein's scientific activity and his works published during the period of official unemployment. Besides, the maximum penalty of one year in a labour correction camp does not reflect the seriousness of the "crime," which is that Grigory Goldstein had not worked for several years in official Soviet employ. (b) The court also ignored the personality of the accused, who had worked for seventeen years and was awarded for his outstanding work. He has published eleven scientific works which are currently being used in the USSR and, in addition, he has six inventions.

On the grounds of all the above, we appeal to you, citizen procurator of the Georgian SSR, to protest against this unjust and unlawful sentence of the Leninsky District People's Court in Tbilisi and to send the case to the Court of Appeals to have it reexamined and dismissed.

At the same time, we ask you to issue an order to release Grigory Goldstein from Detention Cell Number 1.

MALKA GOLDSTEIN,  
ISAI GOLDSTEIN.

March 27, 1978. Isai Goldstein went with a copy of this complaint to the KGB. This complaint was turned down but he was told (orally) that the institute where Grigory Goldstein had been offered a job was classified. They added: "But he could have had something which is not secret in this institute."

TIBILISI, GEORGIAN SSR, USSR, *January 4, 1978.*

To: Chairman of the Presidium of the USSR Supreme Soviet L. Brezhnev.

#### STATEMENT

My family and I applied to go to Israel for the first time in December, 1971, but up until now we have been given only groundless oral refusals. In September, 1977, we renounced Soviet citizenship and submitted all necessary papers to OVIR of the Georgian Ministry of the Interior but up until now have not received an answer. In November, 1972, the Israeli Government granted us Israeli citizenship; however, the USSR does not accept our Israeli citizenship. During the last six years we have been exposed to continuous persecutions by the KGB. Lately, I (a Jewish refusenik and a member of the Georgian Helsinki Group) have been exposed to criminal actions committed by the KGB, the Ministry of the Interior, and the Department of Justice of the Georgian Republic. On December 6, 1977, I was illegally crossed out in the house register. Yet I still had the registration inscription in my passport. Immediately, I complained to the Ministry of the Interior of Georgia claiming to resume my registration in the housing office. On December 30, 1977, a Notary of the 3d State notary office of Tibilisi, where I wanted to draw up some documents, asked me to leave with her my papers and my passport for some days. She said: "To draw up any paper for the Goldsteins we are to consult the KGB."

I no longer get surprised that the Soviet law often does not apply to the Goldsteins, and that is why I left the papers and my passport with notary. On January 3, 1978, she returned to me the documents and my passport in which . . . there appeared a stamp dated October 2, 1977 and confirming my discharge from the house register. The notary explained that just after I left her my documents, a KGB-man Kikuradze came to her, took my documents and returned them a few hours later. Thus the Minister of the Interior answered my request to resume my illegally annulled registration to live in the house—a KGB-man and notary Chumburidze in company with the Chief of the district department of the Interior Museridze have committed this roguery.

As a result, I am deprived of natural human rights because the Soviet Law prohibits one from moving, and to become employed if he is not registered to live in a house; he is considered an indictable vagabond.

Unfortunately, the above actions committed by the KGB, the Ministry of the Interior and the Ministry of Justice of Georgia are incompatible with Article 4 of the new Soviet Constitution which claims that "Soviet state and all its bodies act on the basis of Social legality, provide law and order and guard society's interests as well as the rights and the freedoms of the citizens."

I ask to renounce my Soviet citizenship and that I be issued a certificate to live in the USSR as an Israeli citizen forced to stay in this country.

ISAI GOLDSTEIN.

TIBILISI, GEORGIAN SSR, USSR, *February 7, 1978.*

To: Procurator of Leninsky district of Tibilisi M. Georgobiani.

#### COMPLAINT

In my complaint dated February 8, 1978, I asked you to annul the assignment to a job drawn up by the district department of the Interior on January 19, 1978. In the complaint, I referred to your oral explanation on February 7, 1978, that the assignment contradicted another one drawn up by the same department of the Interior the same day January 19, 1978 to the fact that I had no internal Soviet passport. You were absolutely right to say that those who had neither a passport nor a registration to live in a house could not be employed.

In your answer dated February 24, 1978 (N4/68), you did not respond to the merits of my complaint but declared "Leninsky department of the Interior was correct to warn you that you should register to live and find a job."

I inform you that:

1. Militia did not warn me to register in a house. In the police charge sheet dated January 19, 1978, it is stated that instead of my passport, I produced a copy of a certificate and a copy of the inventory of my registered letter which I sent to L. Brezhnev on January 5, 1978.

2. Militia drew up an illegal act to the fact that I allegedly refused to take an assignment to work in the Tbilisi electrotechnical institute.

3. I was discharged from the house register by KGB-man Kikuradze and the precinct chief Museridze illegally. They had neither informed me nor asked my consent. Moreover, they backdated the discharge.

I also inform you that:

1. I turned many times to militia-major Museridze and to deputy minister of the Interior Kavsadze to resume my registration to live in Tbilisi. They promised to do this if I would leave the house cooperative. Having no possibility to fight with the illegalities I am exposed to, and considering it even senseless for one striving to leave the USSR, I applied on February 25, 1978 to the cooperative board to renounce the cooperative. Chairman of the cooperative Rogava stated that the processing of my renouncement would take several months. Thus, now I have been illegally deprived of my registration to live in Tbilisi and the registration has not yet been resumed despite the fact that I fulfill the demands of the authorities.

2. With my passport returned from the Presidium of the USSR Supreme Soviet and with the assignment drawn by militia, on March 7, 1978 I appeared in the Tbilisi electrotechnical institute. Director of the institute Lekashvily resolutely refused to employ me firstly because my registration to live in Tbilisi had been annulled, and secondly because as he put it: "The institute does not need employees and we did not ask the employment bureau to send people to us . . . I wonder whether your assignment is a fake," and he took an all round view of the paper and the military stamp on it. We talked at the control post of the institute and Lekashvily explained that it was prohibited to enter the institute without a KGB security clearance form because of the secret regime of the institute.

I have no clearance by the KGB and would rather be imprisoned than become involved in a secret work because since December, 1971, I have been refused an exit visa on the grounds that I allegedly had access to secrets of the Tbilisi metrology institute when I worked there.

Lekashvily refused to put it down in my assignment form that he would not employ me although he had to fill out the corresponding form.

On the basis of the above, I ask you: (1) To annul the assignment issued on January 19 to militia to work in the Tbilisi electrotechnical institute, (2) to confirm that Director of the Tbilisi electrotechnical institute Lekashvily refused to employ me and also refused to register this in writing.

ISAI GOLDSTEIN.

#### THE TRIAL OF PYOTR VINS—A MOSCOW HELSINKI WATCH GROUP DOCUMENT

The trial of Ukrainian Helsinki Group member Pyotr Georgievich Vins, originally scheduled for March 26, 1978, was moved to April 6, 1978, under the pretext of "unavailability of a vehicle with which to transport the defendant to the trial."

The trial took place on April 6, 1978 at the Podpolsky District People's Court in Kiev. N. A. Shafransky acted as the defendant's attorney.

P. G. Vins (born in 1956) was charged under Article 214 of the Ukrainian Criminal Code: "Hostile evasion of an official order to find employment and to stop a parasitic existence."

#### CIRCUMSTANCES OF THE TRIAL

Pyotr Draga, a friend of P. Vins, was arrested a week before the trial on March 31, and sentenced to 15 days' detention for use of foul language and violating social order.

Valery Nadiuk, a witness for the defense scheduled to give testimony on the unlawful firing of Vins, was arrested at his home on a trumped-up charge of petty larceny on the morning of April 6 (the day of the trial); he was detained



until the end of the trial. (V. Nadiuk had been hired to fill the position Vins had lost on the pretext of a "reduction in staff.")

On April 6, from 8 a.m. on, (that is, 2 and a half hours before the trial), the militia and KGB cordoned off the block and stopped traffic on the street in front of the Podpolsky District People's Court.

KGB "extras" had been called in to fill the courtroom ahead of time and no one was allowed to come near the entrance. Ye. Aleksandrov of the KGB, in charge of the militia stationed there, was present and dressed in the uniform of a militia captain. None of Pyotr Vins' friends was allowed into the courtroom on the pretext that there were no seats, which was an obvious lie.

Pyotr Vins' mother and grandmother at first refused to enter the courtroom, demanding that all relatives and friends be allowed in. In response, the KGB and militia pushed all those who had gathered at the door down the stairs.

Vins' sisters, Liza and Natasha, were allowed into the courtroom, followed by his mother and grandmother. Once in, the sisters tried to hand the presiding chairman a statement, but KGB men forcibly blocked them from doing so and literally dragged them off to the prisoner's room after which they were driven to the Shevchenkovsky district militia station. The mother and grandmother, who had made an attempt to defend their children, also were thrown out of the courtroom. The mother was crushed in the door and her arm was hurt.

N. Mamsikova, a friend of Vins, managed to get into the courtroom during this confusion. For a while, she was the only person among Vins' friends and relatives who was allowed to sit in on the trial from the very beginning. Mother and grandmother were allowed in later.

In protest of the authorities' arbitrary actions, Vins' friends composed a statement for the presiding chairman and collected signatures. At this time, the militia and the KGB seized A. Tverdokhlebov, a witness for the defense who had come to the trial from Moscow, and V. Malenkovich, Candidate of medical sciences. The two were taken to the Pechersk district militia station where they were held until 7-8:00 that evening. Ya. Borodovsky, who had walked out of the courtroom to find a sedative for Vins' Mother, was also taken to the militia station. Several times the KGB tried to detain G. Tokaiuk, a friend of Vins, but Baptists in the area prevented this.

In this manner, authorities succeeded in preventing not only many of Vins' friends from attending the trial, but barred witnesses for the defense as well.

During the trial, Pyotr Vins was brave and composed. He refused to testify on the grounds that the whole trial was unlawful. Vins' mother, a defense witness, answered the judges' questions.

Eight prosecution witnesses testified during the hearing. They were mostly drunkards who had been prepared for the role. Such statements as: "I saw him carousing," "He was a good dresser," "He walked around with a little bag," etc., served as justification of the charges.

The attorney N.A. Shafransky indicated the many circumstances (cf. the "Petition" and "Appeal"<sup>1</sup> in the supplement) which proved the nonobjective nature of his testimony and trial investigation, and demanded that Vins' case be stopped for supplementary investigation. The court rejected this request.

During the recess before the reading of the sentence, the KGB tried to detain Mamsikova, but Vins' mother got in the way. Neither the mother, nor Mamsikova were present when the sentence was read. Only the grandmother was in the courtroom at that time.

The sentence: one year in a general regimen corrective labor camp (the maximum punishment under this Article.)

Pyotr Vins gave his "last word." He said that the KGB had threatened him with reprisals even a year earlier, and now the threat had been carried through. P. Vins noted that, after the death of his grandfather Pyotr Yakovlevich Vins in camp in 1943, after the persecution of his grandmother, Lidia Mikhailovna Vins (she had been exiled to Siberia for 3 years in camp in 1964), and, finally, after the repeated convictions of his father, Georgi Petrovich Vins (now, after camp, 5 years of exile), he, Pyotr Vins, finds himself on the bench of the accused. This is a logical continuation of those repressions to which the Vins family has been subjected over the generations.

On April 12, attorney N. A. Shafransky sent an appeal to the Kiev Municipal Court; this followed his April 6, petition to the Podpolsky District People's Court.

Robert Mills, U.S. Consul in Kiev, was apprised of all these events.

<sup>1</sup> These two documents are available at the CSCE.

AN APPEAL IN THE MATTER OF MYKOLA DANYLOVYCH RUDENKO AND OLEKSIY  
IVANOVYCH TYKHY

The Defendants, Tykhy and Rudenko, were apparently convicted by an unknown tribunal sitting secretly in a closed factory building in the remote Ukrainian provincial town of Druzhkivka, 70 kilometers northwest of Donetsk. Their offense was to exercise fundamental human rights of free thought, belief, speech, press, association and assembly. Their sentences were severe: seven years strict regime imprisonment for Mr. Rudenko and ten years for Mr. Tykhy followed by five years exile for each.

This document seeks to preserve and to perfect Defendants right to appeal and upon reversal of the conviction, to obtain a fair trial if legal charges are brought against either Defendant.

The Ambassador of the U.S.S.R. to the U.S.A., Anatoliy F. Dobrynin, the Procurator General of the U.S.S.R., Roman A. Rudenko and the Collegiums of Advocates of Kiev City and of the Donetsk Oblast were notified of an agreement to provide legal advice and counsel to the Defendants on April 3, 1977. An illustrative copy is attached. Then and on various dates thereafter information and assistance essential to the preparation of a defense was requested. None has been forthcoming. To date there has been no response admitting that Defendants are in custody, specifying any charges against them, identifying any court, prosecutor, proceedings, appointed counsel, trial date or other information. There has been only the awesome and inscrutable announcement of conviction and punishment.

Defendants have been denied their right to present a defense and the effective assistance of counsel.

Because the government has failed and refused to reveal information about the Defendants, their arrest, custody, charges against them, their physical or mental condition or the date and place of trial, only certain facts are known.

Defendants were arrested without service of any notice or warrant in February 1977. They have been held incommunicado from family, friends and counsel since their arrest. They have been subjected to cruel and degrading treatment in custody. Neither they, their family, friends or counsel were informed of the charges against them before the trial. No opportunity to consult with counsel of their choice, to prepare a defense, to produce or compel witnesses or evidence in their behalf, to effectively confront and cross examine witnesses against them was afforded. A closed and secret trial began without notice apparently on June 23, 1977 with the Defendants helpless to defend themselves. After learning the trial had begun, friends and family were denied the right to enter the building in which the trial was held with a few exceptions the last day or so.

On June 30, 1977 a public announcement was made that the Defendants were guilty as charged and sentenced to the maximum punishments provided. The nature of the charges and substance of the evidence has not been disclosed. So far as can be known it consists entirely of opinions expressed in writing and associations among people of shared belief whose only purpose was to monitor observance of human rights and communicate findings to the world.

The proceedings have violated the Constitution of the USSR, the Criminal and Criminal Procedural Code of the Ukrainian SSR, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Final Act of the Conference on Security and Cooperation in Europe (Helsinki Accords).

Among the protected rights violated are the following:

- Freedom of thought, opinion and expression.
- Freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.
- Freedom of peaceful assembly and association.
- Equal protection of the law.
- To equality before the law as persons belonging to national minorities.
- To life, liberty and the security of persons.
- To respect for human rights and fundamental freedoms.
- To effectively exercise civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential to his free and full development.
- To be treated with humanity and with respect for the inherent dignity of the human person when in custody.
- Not to be subjected to degrading treatment or punishment.
- Not to be interrogated with the use of threats, drugs or physical or psychological torture.

To a fair and public trial by an independent and impartial tribunal at which he has all the guarantees necessary for his defense.

Upon proper arrest to be fully informed and have family, friends or counsel fully informed of the charges against him and the reasons for his arrest.

To a prompt hearing to determine the validity of his arrest.

To have adequate time and facilities to prepare his defense.

To obtain and communicate with counsel of his choice.

To examine witnesses against him and to call and examine witnesses in his behalf.

Upon conviction Defendants have the further right of appeal to a higher tribunal. So that this right may be meaningful, permission to represent the Defendants at the present stage of the proceedings is again requested. To be effective this will require issuance of a visa and other documents required to enter the USSR and travel to all places necessary to confer with Defendants, their families, friends, Soviet attorneys and authorities. A detailed statement of the acts each Defendant is alleged to have committed, the nature and identification of the evidence supporting the allegations and the laws those acts are claimed to violate will be required. A copy of all process and pleadings filed in the proceedings and a verbatim transcript of the testimony and documents offered or admitted at the trial are also necessary. Finally an appellate schedule that affords a reasonable opportunity to prepare and present the appeal is essential.

Respectfully submitted in the interest of justice July 7, 1977.

RAMSEY CLARK.

APRIL 3, 1977.

His Excellency, ANATOLY F. DOBRYNIN,  
*The Ambassador of the Union of Soviet Socialist Republics,*  
Washington, D.C.

MY DEAR MR. AMBASSADOR: At the request of their family or friends, I have agreed to give legal advice and counsel to:

1. Dr. Yuri Orlov, residence Moscow, Profsoyuznaya 102, Korp. 7, Apt. 1; arrested in Moscow on February 10, 1977; believed to be held in Lefortovo Prison, Moscow.

2. Mykola Danylovykh Rudenko, residence Kiev, 84, Koncha-Zaspa, 1, Kv. 8; arrested in Kiev on February 5, 1977; believed to be held in prison in Donetsk.

3. Oleksuy Inanovykh Tykhy, residence Khutir Izhevka, Donetska obl. Konstantinivsky r-n; arrested in his home on February 5, 1977; believed to be held in prison in Donetsk.

All three are active supporters of observance of the Helsinki Accords and it is believed they were arrested for this reason.

In order to provide effective counsel to these three persons if they are not released immediately, I respectively request your assistance in obtaining the following:

1. The present release from detention of each of the named men, based on their individual promise not to leave the jurisdiction of the court, or on the personal surety of their families. Article 89, RSFSR, Code of Criminal Procedure.

2. Permission for defense counsel to represent them at the present stage of the proceedings. Article 22, Fundamental Principles of Criminal Procedure, subject to the discretion of the Procurator General.

3. A visa and any other documents required to enter the USSR and travel to all places necessary to confer with the named persons, their families, friends, Soviet attorneys and potential witnesses.

4. A detailed statement of the acts each named person is alleged to have committed, the nature and identification of the evidence supporting the allegations and the laws those acts are claimed to violate.

5. A schedule of future hearings, trial dates, or other proceedings so that I may timely provide effective counsel.

Since leaving office as Attorney General of the United States I have been regularly involved in human rights cases around the world. You will recall our previous communications in 1970, 1971, 1972 and 1975 regarding cases in your country. In my country I have been chief counsel for such defendants as Craig Morgan, President of the student body at Kent State University indicted after the murder of four students there by National Guard; Charles Parnasalica,

defendant in indictment number 1 for murder after the Attica Penitentiary rebellion; Ruchell MaGee, co-defendant with Angela Davis in the Marin County Courthouse case; Father Philip Berrigan, indicted for conspiracy to kidnap Dr. Henry Kissinger in the Harrisburg Seven case. Abroad I have counselled and observed in trials in Chile (Air Force officers indicted after the golpe of September 1973); Spain (the "Carabanchel trial" of Marcellino Camacho and nine others indicted for organizing workers); South African Pass Court trials (criminal enforcement of apartheid); United Kingdom (the Philip Agee, former CIA agent, deportation case) and others.

I believe international lawyers working for human rights can help fulfill these rights and improve understanding and good relations among peoples and nations. I agree with Benito Juarez, the Mexican revolutionary and President that "a respect for the rights of others is peace." It is for these reasons that I have agreed to advise and counsel Orlov, Rudenko and Tykhy.

I can be reached by phone in New York at area code 212-989-6613 or 488-3237. I will deeply appreciate any assistance you can give me.

Sincerely,

RAMSEY CLARK.

