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American Popular Culture's View of the Soviet Militia: The End of the Police State?

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Abstract

The now-defunct Soviet Union and the term "police state" have been synonymous for many years, at least from the Stalinist era until, possibly, the Gorbachev era.

KEYWORDS: American, Soviet, police

Articles

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I. INTRODUCTION

The now-defunct Soviet Union and the term "police state" have been synonymous for many years, at least from the Stalinist era until, possibly, the Gorbachev era. Yet for those Westerners to whom the concepts were indistinguishable, the "police" generally signified the *secret* police, that is, the KGB. The Soviet Union had another police force, one more comparable to that known by Americans and other Westerners.

This "non-secret" police force, in the Soviet Union and now in the Commonwealth of Independent States, is called the militia. Although its role in the USSR criminal justice system has, in Western popular culture, been a distant second to that of the KGB, it has recently begun to come into its own. The militia and its personnel have played a part in recent years in most forms of Western media, including film, television, and literature.

In this article, the treatment of the Soviet militia in these different media are explored. After an introduction surveying the nature and role of the Soviet police in the years leading up to and following the abortive August 1991 coup and the dissolution of the Soviet Union, the article will consider the expanding role of the militia in fiction, more specifically, in the genre of detective novels. It will focus on two series of mysteries, the Inspector Rostnikov police procedurals of Stuart M. Kaminsky, and the two novels by Martin Cruz Smith, *Gorky Park* and its sequel, *Polar Star*.

The depiction of the Soviet police in modern film will be addressed next. Two recent movies, *Red Heat* and *Gorky Park*, the film based on the Martin Cruz Smith novel, will be discussed in this context.

The third medium to be considered is television. Its portrayal of

the Soviet police in two recent television programs, *Cops* and *48 Hours*, will be compared with each other and with the treatment accorded the militia in other media.

Finally, the article will address the role of the militia in political cases. In that context, the manner in which Western media have portrayed the Soviet police, and in turn the Soviet criminal justice system, will be considered in light of the nature of the Soviet rule of law in reality.

II. THE ROLE OF THE POLICE IN THE SOVIET CRIMINAL JUSTICE SYSTEM

A. *Recent Changes in the Soviet Union*

This article was begun before the West became so responsive to, if not so freshly aware of, the profound changes rocking the Soviet Union. *Perestroika* and *glasnost* were still newsworthy, but had already moved from illuminating the front pages of the daily news to constituting the daily fare of the consumers of breakfast television. Everyone knew, if not the translations of these words, at least their symbolic representation of the opening of the Soviet Union.

By the time this article was completed, the Soviet Union no longer existed, and Mikhail Gorbachev had been supplanted by Boris Yeltsin, then President of the Russian Federation, and now President of the largest of the Commonwealth's Independent States.

The author of this article briefly questioned whether this topic any longer held any significance: First, if the reformed Soviet Union was no longer a "police state," was any Western impression of the Soviet police in the United States hopelessly outdated? The question was answered for this author by Natan Sharansky, in his July 1989 Introduction to the Vintage Edition of his 1988 autobiography *Fear No Evil*:

[I]n the Soviet Union, everything has changed—and nothing has changed On the one hand, the number of political prisoners has declined sharply. The number of emigrants is quickly growing, and virtually every day the Soviet press uncovers new areas of history, ideology, and politics that can now be criticized. And for the first time since 1917, Soviet elections sometimes provide a real opportunity for voters to choose from among a number of candidates.

On the other hand, there are harsh new decrees and regulations. The dictatorship of the Party, the only party, remains immovable, and the centralization of power in the hands of a single

individual continues to grow.¹

Second, of course, even more changes followed this July, 1989 assessment. Along with the reconstitution of the USSR as the CIS came striking changes in the role of the Communist Party,² one factor considered to be primary in the nature of the rule of law in the CIS. But Sharansky himself seemed aware of the rapid pace with which these changes could be expected: "The more liberal the times, the more history is changed."³ This author nonetheless became convinced that the role of the police in a police state, as examined in Western popular culture, remains a viable topic.

Initially, it should be recognized that the role of the Soviet police during the abortive August 1991 coup was not that of a neutral bystander. The Chief of Police, that is, the head of the Ministry of the Interior, Boris Pugo, was one of the architects, or at least frontmen, of the coup.⁴ Thus, as one commentator notes, the failure of the coup was that much more astonishing in light of the fact that "the men who led the coup had everything going for them: the armed forces, the KGB, the Party, the police."⁵

As will be discussed, the Soviet police shared its authority with, and operated subject to control by, the Committee for State Security (KGB) and the procuracy, the latter functioning as a cross between a prosecutor and an ombudsman. But in the pre-coup months during which Gorbachev turned away from reform and toward the right, the police found themselves with an additional partner in the "fight against crime": the military.

President Gorbachev gave his approval to a joint order . . . announcing that . . . city streets throughout the country would be jointly patrolled by the police and the military, both carrying as-

1. NATAN SHARANSKY, *FEAR NO EVIL* xi (1989).

2. "During the past two years . . . several new laws curtail [party] interference with the courts. One of the laws makes it a crime to pressure a judge to influence the outcome of a case." A.B.A. J., July 1990, at 32. This latter practice is known as "telephone justice, the contacting of judges by party officials concerned about the outcome of a particular case. This . . . problem has become so acute that a standard joke is that there are three kinds of law in the USSR: criminal, civil, and telephone." *Juris*, Summer 1990, at 17 (footnote omitted).

3. SHARANSKY, *supra* note 1, at xii.

4. See, e.g., VLADIMIR POZNER, *EYEWITNESS: A PERSONAL ACCOUNT OF THE UNRAVELING OF THE SOVIET UNION* 22 (Random House 1992).

5. *Id.* at 214.

sault weapons and, where and when necessary, backed up by armored vehicles. This measure, [the Soviet people] were told, should be understood as a special effort on the part of the law-and-order forces to combat crime in the streets.⁶

Along with the promise and limited realization of widespread reform came widespread crime.

People became less secure, not more so. Crime suddenly shot sky high, reaching a level unheard of before in the Soviet Union. Muggings became common, along with a host of other violent crimes. People began to fear the evening streets, steel doors became the craze as citizens looked for ways to protect their homes from murderous thieves.⁷

Indeed, in a poll taken in January 1991, "the desire for less democracy and more law and order had increased by a startling 19 percent," from twenty percent in November 1990 to thirty-nine percent in January 1991.⁸

During 1990, the KGB was working to consolidate its power and undermine Gorbachev. In October of that year, the KGB head Vladimir Kryuchkov announced great success against organized crime. "Having thus demonstrated the KGB's efficiency as the nation's top crime fighter, Kryuchkov made his move: To successfully combat organize crime, he said, the KGB must legally be charged with that duty. Laws had to be passed specifying the concrete status of the KGB and the police."⁹

In the months leading up to the coup, the KGB had a great stake in fostering the impression that the Soviet system was in grave jeopardy. "[T]he idea of danger was very much part of the siege mentality, which had . . . been carefully nurtured by the KGB: The greater the threat to the system and its leaders, the more the KGB was necessary."¹⁰

Under Gorbachev, it was hoped that with the diminished role of the KGB would come a strengthening of the rule of law in the Soviet Union. But even after the elimination of Article VI of the Soviet Con-

6. *Id.* at 165.

7. *Id.* at 126.

8. *Id.* at 171.

9. POZNER, *supra* note 4, at 111.

10. *Id.* at 118.

stitution, which enshrined the Communist Party of the Soviet Union as the country's leading force, the Party continued to hold sway over every aspect of Soviet life. "Departization," or diminution of the Party's influence,¹¹ was not so easily achieved: "[A]s long as the Party continued to have a presence in the workplace, in the armed forces, in the police and the KGB, in short, everywhere, Article VI continued to exist, if not in letter, then certainly in spirit."¹²

While the role of the police in the republics of the CIS is still too new to be definitively gauged, there are several key elements to be noted. First is the evolving role of the KGB in Russian life, including crime control. In an article describing the soaring human rights complaints being filed in Russia, it was noted that people have more faith in voicing their complaints because "the KGB is clearly no longer as repressive as it once was."¹³ At one juncture, Russian President "[Boris] Yeltsin ordered the merger of the KGB and Interior Ministry into a security organization that many feared would crack down on critics of his harsh economic reforms."¹⁴ The measure was struck down by Russia's Supreme Court, but a KGB representative,

predicted that another powerful security agency will have to be created to strengthen the government's hand. "Society is too unstable. There are processes raging, nationalism, crime, unrest . . ." [The KGB spokesman] dismissed concerns of repression and said the reformed KGB is not the old, oppressive KGB. "We have unbuttoned our shirts to let people see us," he said. "We cannot do wrong now because people are watching."¹⁵

But it is premature at best to expect overwhelming reform on the part of the KGB. "The old KGB and the new KGB are the same people under different bosses,"¹⁶ according to a Russian journalist.

Second, the dissolution of the Soviet Union has seen an increase in crime,¹⁷ nationalism,¹⁸ and anti-Semitism.¹⁹ It remains to be seen how

11. *Id.* at 209.

12. *Id.*

13. Juan O. Tamayo, *In Russia, Freedoms Spur Rights Complaints*, MIAMI HERALD, Feb. 10, 1992, at A1.

14. *Id.*

15. *Id.*

16. *Id.*

17. Juan O. Tamayo, *Crime Flourishes Alongside Freedom In Russia's Cities*, MIAMI HERALD, Jan. 22, 1992, at A1.

18. David Hancock, *Russian Jew Finds U.S. No Refuge*, MIAMI HERALD, Jan.

the police are used to control and contain the rising crime and, in particular, hate crime, and whether the result will be an increase in repressive measures to the detriment of the rule of law.

B. *Nature and Origin of the Soviet Militia*

By way of background to the media treatment of the militia, a short introduction to the nature of the police²⁰ in the Soviet Union pre-dissolution is helpful. As stated above, what we as Westerners think of as the police was called the militia in the USSR.

In the Soviet Union (as in most other East European countries) the police [was] called "militia," a name which goes back to the times when a popular militia was formed to replace the police of the *ancien régime*. In the language of Soviet newspapers "police" [had] a distinctly unfriendly ring and [was] used only with reference to bourgeois police.²¹

The militia operated under the jurisdiction and authority of the Ministry of the Interior.²² The Supreme Soviet of the Soviet Union established the parameter of the police's authority in a 1973 decree, "[o]n the basic duties and rights of the Soviet militia in protecting pub-

11, 1992, at A1; see also James Carney, *Russia Yeltsin's Enemies: Communists, Ultra-Nationalists, Rival Reformers and Disgruntled Soldiers Are All Breathing Down the President's Neck*, TIME, March 9, 1992, at 32-34; Ken Gluck, *Dissatisfied Russians Turning To Nationalism*, MIAMI HERALD, March 2, 1992, at A11.

19. Hancock, *supra* note 18, at A1; Gluck, *supra* note 18, at A11.

20.

[T]here may be said to be two police forces in the Soviet Union: the state security police, or KGB; and the "ordinary" police, or militia. There is also a third type of Soviet police function, the so-called People's Patrols (*Druzhiny*), or auxiliary police. In their present form the People's Patrols have existed since 1958, and are empowered by the 1960 R.S.F.S.R. Statute to perform, *inter alia*, the following tasks: maintain public order; combat petty crime (a responsibility shared with the ordinary police, courts and Procuracy); enforce traffic regulations; and combat the neglect of children.

H.J. BERMAN, *JUSTICE IN THE U.S.S.R., AN INTERPRETATION OF SOVIET LAW* 286-87 (1976).

21. I ENCYCLOPEDIA OF SOVIET LAW 520 (F.J.M. Feldbrugge ed. 1973) [hereinafter ENCYCLOPEDIA].

22. *Id.*

lic order and fighting crime.”²³

The decree consists of ten articles, and is considered the “most general All-Union enactment concerning the Soviet police.”²⁴

Article six of the decree establishes the duties of the militia, related to “either the maintenance of public order or the fight against crime.”²⁵ In sixteen points,²⁶ the duties are listed, including the following “public order” categories: “traffic control, measures against public drunkenness, implementation of the internal passport system, control of arms, explosives, etc., providing strongarm assistance to other governmental agencies (where required) and, generally, aid to the population and the authorities in cases of natural disasters.”²⁷ The points also list the militia’s responsibilities for crime control, including “measures to prevent crime, arresting suspects, criminal investigation, . . . [and] various practical activities in the execution of criminal penalties and administrative supervision of released prisoners, former recidivists”²⁸

Militia authority for administrative supervision was governed by the Regulations on Administrative Supervision by Militia Organs,²⁹ which established three categories of people subject to administrative police supervision,

persons who have been recognized as “especially dangerous recidivists”; persons who have served a sentence for a serious crime and who have not shown that they have bettered themselves during their sentence; and persons who, after having served a sentence for a serious crime, frequently violate public order and have not heeded a previous police warning.³⁰

Under this jurisdiction, the militia has broad authority to impose restrictions on persons falling within any one of these three categories, including the power to “place such persons under house arrest, limit their freedom to travel outside the . . . city, forbid their presence in specific places, or require them to report once or several times a month

23. *Id.* at 739.

24. *Id.*

25. *Id.*

26. ENCYCLOPEDIA, *supra* note 21, at 739.

27. *Id.* at 739-40.

28. *Id.* at 740.

29. VED. VERKH. SOV. SSSR (July 26, 1966).

30. *Id.*

at the police station."³¹ The penalty for disobeying such militia order is an administrative fine imposed by the people's judge.³²

The decree provided for police responsibilities, authority and rights. The powers of the militia, as set forth in Article seven, included "checking passports, entering buildings and houses, ordering people to appear at the police office, imposing fines, photographing and fingerprinting suspects, arresting or detaining suspects of drunks, taking measures to ensure the safety of traffic, and requisitioning means of transport." The police were also entitled, in limited specified circumstances, to carry and make use of firearms.³³

The organization of the police was based on a 1962 decree of the USSR Council of Ministers, entitled "Regulations on the Soviet Militia."³⁴ The internal organization of the police was structured "along military lines; police discipline is regulated by disciplinary police regulations issued by the governments of the Union republics."³⁵

At the top of the organizational pyramid is the Chief Department of the Militia within the USSR Ministry of Internal Affairs. There are militia departments within the republican ministries of internal affairs (except the RSFSR); at lower levels the police constitute[d] by far the most important branch of the internal affairs departments; the head of the latter department and the police chief are one and the same person³⁶

The internal organization of the police consisted of the following sections: regular, or uniformed section; the criminal investigation section; the section for the "struggle against theft of socialist property"; the section in charge of internal passport; the motor vehicle section; sections for training and administration; and a section for prosecution and preliminary investigation.³⁷

C. *Role of the Militia in Criminal Investigations*

The militia shared its responsibility for participation in criminal

31. *Id.*

32. *Id.*

33. *Id.*

34. ENCYCLOPEDIA, *supra* note 21, at 521.

35. *Id.*

36. *Id.*

37. *Id.* at 522.

investigations. Soviet criminal procedure codes drew a distinction between those crimes which are serious enough to warrant a formal "preliminary investigation," and those minor offenses investigated by mere "inquiry."³⁸ In general, the less serious offenses were investigated by the militia. However,

[e]ven in instances in which a preliminary investigation is to be conducted, the police normally perform[ed] certain initial investigatory actions before transferring the case to an investigator (e.g., formal commencement of a criminal case, search and seizure, detention and interrogation of a suspect, and interrogation of witnesses). This is also called an inquiry.³⁹

The major difference between the two types of investigations was the greater extent of due process protections afforded the more serious crimes—those commenced by preliminary investigation rather than inquiry.⁴⁰

The primary responsibility for most criminal investigations lay with the designated "investigator."⁴¹ This investigator supervised the section for criminal investigation within the Office of the Procuracy. This is contrasted with those crimes which are not so designated in the Code of Criminal Procedure, and which therefore become the responsibility of the militia.

The section for prosecution and preliminary investigation is concerned with those aspects of the police functions which involve the police directly as a part in criminal proceedings, i.e. either as a "reporting" agency . . . or as "investigator . . .," in those cases where the preliminary investigation is not conducted by investigators from the *Prokuratura* [procurator] or the State Security.⁴²

Thus, the preliminary investigation will be commenced by an investigator in the procurator's office, based on information from the militia. "The investigator may perform investigatory acts himself or may delegate them to other agencies, typically the police."⁴³

Throughout the course of his investigation, the investigator com-

38. *Id.* at 190.

39. ENCYCLOPEDIA, *supra* note 21, at 191.

40. *Id.*

41. *Id.*

42. *Id.* at 527.

43. *Id.*

piles a dossier which details the progress of his investigation.⁴⁴ "The dossier, which often includes several hundred pages, is then made available to the prosecution, defense, other parties and the court before trial"⁴⁵

After the conclusion of the preliminary investigation, the dossier is submitted to the office of the procurator, along with, when warranted, a "conclusion to indict." The ultimate decision to prosecute then rests wholly within the province of the procurator.⁴⁶

A Soviet defense attorney, in her 1982 book, *Final Judgment*, describes the division of labor in a criminal investigation as follows:

[A] lengthy preliminary investigation [preceding trial was] conducted by bodies that are organizationally independent of the courts. These are the procuracy, the police, the Ministry of Internal Affairs, and—in cases that fall within the competence of the security services—the KGB. Police work of course include[d] both preventing crime and making inquiries to identify suspects once a crime has been committed.

Soviet police, like all police forces, [ran] a network of undercover agents and maintain[ed] covert observation of known malefactors and the criminal underworld in general. *The main work in unraveling crime, however, [was] done by officials of the investigatory departments of the procuracy, the Ministry of Internal Affairs, and the KGB.* They can initiate or discontinue investigations, and they ha[d] complete authority to conduct all necessary investigations.⁴⁷

Another commentator describes the police powers as falling into two categories,

criminal procedural powers and others. Police powers in criminal procedure are enumerated in arts. 89-101 and 117-124 of the RSFSR Code of Criminal Procedure. The most important is the power to arrest Outside the sphere of criminal procedure the police [were] given a number of powers by a variety of enactments such as the power to arrest in specific instances, to impose on-the-

44. ENCYCLOPEDIA, *supra* note 21, at 527.

45. *Id.*

46. *Id.*

47. DINA KAMINSKAYA, *FINAL JUDGMENT* 51 (Michael Glenny trans. 1982) (emphasis added).

spot fines, to commandeér means of transport, etc.⁴⁸

Thus, in what we normally think of as police work, the militia operated either together with or subordinate to two bodies: the procuracy, whose investigators conduct preliminary investigations in the more serious offenses, and the KGB in what are considered political crimes. The militia may function as part of the procuracy (for the more serious crimes) or independently of the procuracy (for the more minor crimes). In reality, however, the militia are always subordinate to the office of the procurator.

While this might seem to minimize the role of the militia to a great extent, this does not suggest a cavalier disregard for the political pedigree of those who would serve in the militia. "Recruiting for the police force is done with special care to ensure political reliability and candidates are screened by Party . . . bodies."⁴⁹ As Kaminsky's series of novels suggests,⁵⁰ the odd candidate of questionable "political reliability" nonetheless might manage to slip through the nets.

Adherence to the dictates of the police, which, as discussed in the context of the television documentaries on the Soviet police, seems to be an area needing improvement, is controlled by,

a system of sanctions against the persons who disobey the police instructions or obstruct the performance of such duties. Resisting a police officer . . . in the execution of his duties in connection with the maintenance of public order entails the penalties provided by art. 191-1 of the RSFSR Criminal Code.⁵¹

The provisions of the Criminal Code which protect the life of police officers extend to allow for the death penalty for an attempt on an officer's life, "the only provision in the RSFSR Criminal Code with a mandatory capital sentence."⁵²

48. ENCYCLOPEDIA, *supra* note 21, at 522.

49. *Id.*

50. *See infra* notes 81-108 and accompanying text.

51. ENCYCLOPEDIA, *supra* note 21, at 522; Art. 191-1 UK RSFSR.

52. ENCYCLOPEDIA, *supra* note 21, at 522-23. *But see* FLA. B. NEWS, November 15, 1989, at 17 (Soviet attorney Anna Meschanskaya, interning with the Palm Beach County, Florida Public Defender's Office, stating that in the USSR, "there are some 47 articles in our criminal codes which have the death penalty . . .").

D. *Role of the Procuracy in Police Supervision*

In a sense, the entire Soviet criminal justice system functioned at least nominally under the auspices of the Procuracy, or *Prokuratura*.⁵³

The Procuracy, or *Prokuratura*, [was] one of the Soviet system's 4 branches of government. It [was] a state organ fulfilling the constitutional function of supervising exact compliance with the laws of the Soviet Union. As opposed to all other state organizations, which are in principle organized on the basis of double subordination . . . , the *Prokuratura* [was] organised on a clearly centralist basis and its subordination is hierarchical from the bottom upwards⁵⁴

The *Prokuratura* had its origins in the Union republics as early as May 28, 1922,⁵⁵ and all subordinate procuracies of, for example, the Union republics and autonomous republics were within the jurisdiction and supervision of the Procuracy of the Soviet Union.⁵⁶ After the office was used during the Stalin regime "to blindly execut[e] the instructions of the security forces [KGB]," regulations were issued fortifying the role of socialist legality in the operations of the Procuracy, and minimizing the potential for abuse of power.⁵⁷

In many cases, though, the role of procurator as neutral ombudsman, or guardian of the legal system, may be illusory. According to one account by a woman working on behalf of Soviet political prisoners in the 1970s: "The Soviet legal system has a unique element, the *procurator's office*, which is theoretically supposed to see that the laws are correctly applied and that justice is administered. In reality, however, the procurator's office is part of the penal apparatus itself, thus rendering the prisoner defenseless and without rights."⁵⁸

The Procuracy was led by the Procurator General of the Soviet Union, appointed for a five year⁵⁹ term by the Supreme Soviet. He ap-

53. ENCYCLOPEDIA, *supra* note 21, at 545. *But see infra* text at subsection IIE.

54. ENCYCLOPEDIA, *supra* note 21, at 545.

55. *But see* ABRAHAM, *THE JUDICIAL PROCESS* 293 (4th ed. 1980) (the procuracy was "conceived by Czar Peter the Great in 1722 and revived by Lenin after a five-year lapse in 1922.").

56. ENCYCLOPEDIA, *supra* note 21, at 546.

57. *Id.*

58. IDA NUDEL, *A HAND IN THE DARKNESS: THE AUTOBIOGRAPHY OF A REFUSENIK* 41 (1990) (emphasis in original).

59. KONST. SSSR art. 167; *see* ABRAHAM, *supra* note 55, at 293 (Procurator

pointed Union republic procurators for five year terms, who in turn appointed lesser procurators for their own five-year terms.⁶⁰ Procurators generally possessed higher legal education, and the powers of the Procurator General included an ability to initiate legislation and seek legal interpretation by the Presidium of the Supreme Soviet.⁶¹

The responsibilities of the procuracy for supervising the militia included supervision of arrests, searches, seizures, and procedures relating to internal passports (identity certificates). The procuracy also had jurisdiction over any citizen complaints relating to actions of the militia.⁶² As discussed above, investigators in the Office of the Procurator conducted the preliminary investigations of more serious crimes, while the militia operate subordinately to—and under certain circumstances, separately from—the office of the procurator in conducting inquiries of more minor offenses.

E. *Role of the KGB in the Criminal Justice System*⁶³

The Committee for State Security, or KGB,⁶⁴ was, along with the procuracy and the militia, assigned the responsibility for criminal investigation, and supervision of criminal investigations otherwise assigned the procuracy and militia in cases affecting state security.⁶⁵

Most descriptions of the KGB duties in Soviet sources contain the following elements: the protection of the security of the state; the fight against spies, saboteurs, traitors and foreign agents; the fight against political crimes (crimes against the state); the protection of

General is appointed for a five-year term). *But see infra* note 161 and accompanying text (discussion on seven-year term for Procurator General); *see also* ENCYCLOPEDIA, *supra* note 21, at 546.

60. ABRAHAM, *supra* note 55, at 293.

61. *Id.*

62. ENCYCLOPEDIA, *supra* note 21, at 548.

63. For more extensive discussion of the role of the KGB in political cases, see *infra* notes 139-63 and accompanying text.

64. The original secret police was the Cheka, established in 1917, and was succeeded in 1922 by the GPU, or State Political Administration. The NKVD (People's Commissar of International Affairs) took over in 1934. In 1946, the NKVD became the MVD (Ministry of Internal Affairs), and the KGB assumed the responsibility over national security. BENET, READERS ENCYCLOPEDIA 179 (3rd ed. 1987).

65. ENCYCLOPEDIA, *supra* note 21, at 600-01.

the border of the USSR; [and] the protection of state secrets

. . . .⁶⁶

The KGB was given authority by virtue of its police duty for "some investigative functions in criminal procedure."⁶⁷ In certain cases with security aspects, which extended to smuggling, mass demonstrations, and illegal entry into or exit from the USSR, KGB investigators actually conducted the investigation themselves, rather than supervising militia or procuracy investigators. Determining which cases involve security aspects, however, is a subject given to much exposition in both fictional and nonfictional treatments of the Soviet criminal justice system.⁶⁸

F. *Police and the Criminal Code*

The role of the primary bodies of criminal investigation in the Soviet Union—the procuracy, the militia and the KGB⁶⁹—was governed by Codes of Criminal Law and Criminal Procedure implementing the "Fundamentals of Criminal Procedure of the USSR and the Union Republics," and the Fundamentals of Criminal Legislation of the USSR and the Union Republics," along with the 1977 Brezhnev Constitution.⁷⁰ The Criminal Codes and Codes of Criminal Procedure in exist-

66. *Id.*

67. *Id.*

68. See *infra* notes 139-63 and accompanying text (discussion on reforms regarding political crimes).

69. UPK RSFSR, art. 3 (delegating the "Duty of Initiating Criminal Cases and Detecting Crimes" to the court, procurator, investigator, and agency of inquiry); see also UPK RSFSR, art. 20 (the role of the Procuracy); UPK RSFSR, art. 29 (role of the militia).

70.

In reaction to "the indefiniteness encouraged by Stalin and his heirs" the 1958 fundamental principles of criminal law were designed to usher in a more clearly defined concept of social danger. [T]he Fundamentals had to be followed by detailed criminal codes in each of the republics before the full sweep of the reform could be determined, and this occurred only in 1960 and thereafter. Since the state and military crimes were still defined solely by the federal government, the codes of the republics merely incorporated in their entirety the 1958 statutes on those subjects, but the specifications of other offenses and the penalties to be applied were left to the local leaders, guided as usual, by the Communist Party members among them who saw to the preservation of considerable but not complete uniformity. Within two years after adoption of the Fundamentals, criminal

tence in the Gorbachev presidency dated back to the Khrushchev era, and for the most part reflect a reformist jurisprudence following the Stalinist period of repression.⁷¹

Moreover, before dissolution the Soviet Union was struggling with proposed reforms⁷² in their criminal justice system, chiefly relating to due process protections in the area of criminal procedure.⁷³ One commentator notes that "[t]he academic reformers in Moscow now seek to introduce the 'principle of adversarialness' into the new codes to be adopted in the next year or two."⁷⁴

Many of the proposed changes were aimed at reducing the likelihood of bureaucratic interference, or "telephone justice," in the criminal justice system.⁷⁵ Previously, judicial decisions under party-ap-

policies veered again towards the more severe. As campaigns were conducted to eradicate various types of crime, amendments to the Criminal Code were introduced to increase flexibility by offering a wider range of punishment.

J.M. HAZARD, W.E. BUTLER & P.B. MAGGS, *THE SOVIET LEGAL SYSTEM: THE LAW IN THE 1980's* 149 (Parker School of Foreign & Comparative Law Columbia University 1984).

71. G. Fletcher, *In Gorbachev's Courts*, N.Y. REV. OF BOOKS, May 18, 1989.

72.

Laws also have been adopted extending greater rights to criminal defendants, offering protection against bureaucratic abuse, and establishing freedom of the press and the right to assembly. But, as of late August, no final action had been taken on legislation for the right to freedom of religion, to form political groups and to emigrate.

S.B. Goldberg, *A More Perfect Union Part I: A Lawyer in Moscow*, A.B.A. J., Oct. 1990, at 62.

In March, the party finally capitulated to a constitutional amendment of Article VI of the Soviet Constitution, eliminating the party's monopoly on the country's leadership. Some months earlier, Gorbachev appointed a group of scholars, party officials and legislators to write a new constitution. The hope is that, unlike its three predecessors, the new constitution will prescribe actual rights and powers rather than simply state policy. No one, however, expects to see a new constitution anytime soon.

Id. Gorbachev has become a firm advocate of the concept of a "law-based state," lessening the power of the bureaucracy. *Id.* at 60.

73. "Subjects of reform include the role of defense attorneys [and] the number of acquittals . . ." *Justice Soviet Style*, JURIS, Summer 1990, at 17 [hereinafter *Justice*].

74. *Justice*, *supra* note 73, at 16.

75. "In 1989 several laws were passed to strengthen the judiciary and address party interference, or telephone justice—when a call from a party official decides a case." *Id.* at 60.

pointed judges were viewed as too susceptible to this type of interference.⁷⁶ Chief among the proposed changes was a measure that would increase the power of defense attorneys by accelerating their entry into a case. "Under the current code, a Soviet lawyer is permitted to see his or her client only at the end of the preliminary investigation."⁷⁷

Under the proposed change, defense counsel would have access to their clients before the preliminary investigation is concluded. Commentators seemed to agree both on the likelihood of this change being effected, and on the extent to which this change would benefit the Soviet criminal justice system.⁷⁸

Other proposed reforms included abolishing the death penalty and increasing the number and authority of "lay assessors," juror-like civilian participants in trial decision-making.⁷⁹

III. PORTRAYAL OF SOVIET POLICE IN AMERICAN POPULAR CULTURE

The purpose of this article is to survey, in an admittedly anecdotal manner, the Western *opinion* of Soviet police. In order to achieve this purpose, this article addresses the treatment accorded Soviet police in American popular culture. Three media are considered: fiction, television, and film.

With regard to fiction, this article discusses primarily two series of novels: first, the series of Soviet police procedurals by Stuart M. Kaminsky and second, the two novels by Martin Cruz Smith, *Gorky Park* and its sequel, *Polar Star*.

The television shows discussed in this article are two programs devoted to the Soviet police. The first was an episode of the Fox Network's show "Cops." To date, it has aired twice, once in 1989 and once in 1990. The other program on the Soviet police was an episode of the

76. *U.S. Justice Opens Eyes of Soviets*, MIAMI HERALD, April 8, 1990, at 13. The problem "has become so acute that a standard joke is that there are three types of law in the USSR: criminal, civil, and telephone." *Justice*, *supra* note 73, at 17.

77. *Justice*, *supra* note 73, at 17.

78. E.g., Slobogin, *The Soviet Legal System*, FLA. B.J., July/August 1989, at 31; see also Osakwe, *Modern Soviet Criminal Procedure: A Critical Analysis*, 57 TUL. L. REV. 439 (1983) (referring to the current climate of resistance to criminal justice reform).

79. Slobogin, *supra* note 78, at 32; see also Osakwe, *supra* note 78, at 590 (referring to other suggested areas needing reform).

CBS series, "48 Hours," taking place in two cities in the Soviet Union.

Finally, the third category is the Soviet police in the movies. In this category, the article discusses both the feature-length film of Martin Cruz Smith's novel, *Gorky Park*, and the somewhat lighter Arnold Schwarzeneger vehicle, *Red Heat*.

The approach or goal of this article is twofold: first, to contrast the differing styles of presentations regarding Soviet police and second, to assess the extent of accuracy in American representation of Soviet police. With regard to the former, it demonstrates how the varying genres of American culture differ in their depiction of Soviet police more by the viewpoint of the author or artist than by the nature of the genre. The "parallax," therefore, is generated by the idiosyncratic style of Stuart Kaminsky, for example, as opposed to Martin Cruz Smith, rather than by the choice of television, for example, over fiction.

With regard to the second goal, the article at two intervals considers the issue of accuracy: first, by assessing the works of the media against the backdrop presented in the section preceding this analysis and second, by considering the media portrayals in the context of political investigations.

A. *Soviet Police in American Detective Fiction*

1. Introduction

Several recent works of Western fiction have taken one of the most fecund genres of modern popular culture, the mystery, or more specifically, the detective novel,⁸⁰ and transplanted the characters to the Soviet Union. It is the purpose of this article to analyze some of these novels, and evaluate the significance and influence of the Soviet setting in these works and on the genre itself. The article focuses primarily on the seven Inspector Porfiry Rostnikov police procedurals by Stuart M. Kaminsky,⁸¹ and on Martin Cruz Smith's *Gorky Park* and *Polar Star*.

80. This article has, where possible, skirted the realm of another mystery fiction terrain, that of Soviet spy novels penned by Western as well as Eastern authors, and focuses instead solely on fiction about police investigation rather than espionage adventures. The distinction was not always possible to maintain. Letter from Carol Brener to the author (July, 1990) (owner of New York, New York mystery bookstore, Murder Ink.).

81. STUART M. KAMINSKY, *THE MAN WHO WALKED LIKE A BEAR* (1990); STUART M. KAMINSKY, *A COLD RED SUNRISE* (1988); STUART M. KAMINSKY, *A FINE RED RAIN* (1987); STUART M. KAMINSKY, *RED CHAMELEON* (1985); STUART M. KAMINSKY,

2. The Inspector Rostnikov Series

Over the last ten years, Stuart M. Kaminsky has written seven novels in the series of Soviet police procedurals featuring Inspector Porfiry Rostnikov. In chronological order, they are: *Death of a Dissident* (1981); *Black Knight in Red Square* (1984); *Red Chameleon* (1985); *A Fine Red Rain* (1987); *A Cold Red Sunrise* (1988); *The Man Who Walked Like A Bear* (1990) (hereinafter "*Bear*"); and *Rostnikov's Vacation* (1991).

a. Kaminsky's Characters

Like most police procedurals, *Bear* takes up several cases on the plates of the Soviet militia detectives featured in the series, Inspector Porfiry Rostnikov and his two assistants, Emil Karpo (alias "The Vampire") and Sasha Tkach. Kaminsky offers the following description of his chief protagonist, Inspector Rostnikov:

Porfiry Petrovich Rostnikov was, with good reason, known to his colleagues as the Washtub. There was nothing imposing about the fifty-seven-year-old man with one good leg and one very bad one, but Rostnikov had his passions—his books, his wife and son, his job, his weights.⁸²

The younger of Rostnikov's two assistants is Sasha Tkach:

Sasha was usually successful with reluctant witnesses. He was handsome if a bit thin and looked much younger than his twenty-nine years. His hair fell over his eyes, and he had an engaging habit of throwing his head back to clear his vision. He also had a rather large space between his upper teeth, which seemed to bring out the maternal response in most women . . .⁸³

Witnesses might be disposed to confess to Rostnikov's other associate, Emil Karpo, but for quite different reasons, having more to do with terror than with maternal instincts:

Karpo was over six feet tall, lean, with dark, thinning hair and pale

BLACK KNIGHT IN RED SQUARE (1984); STUART M. KAMINSKY, DEATH OF A DISSIDENT (1981).

82. STUART M. KAMINSKY, THE MAN WHO WALKED LIKE A BEAR 7 (1990).

83. *Id.* at 26.

skin that contrasted with the black suit he wore. He looked corpse-like, and his dark eyes were cold and unblinking. When he spoke, his voice was an emotionless monotone [T]wenty years of fanatical pursuit of enemies of the state had earned him the nickname of the Vampire among his colleagues. The name seemed particularly appropriate when a peculiar look crept into Karpo's eyes, and at those moments even those who had worked with him for years avoided him.⁸⁴

Some insight into what these novels tell us about western perceptions of the Soviet police is afforded by comparing the Rostnikov books with a series of American police procedurals. There is repeated indication that Stuart Kaminsky patterns his work to a large extent on the paradigmatic police procedurals by Ed McBain, the so-called "87th Precinct" novels. Kaminsky makes frequent references⁸⁵ to these novels; Inspector Rostnikov is a self-styled fan of the pseudonymous McBain's detective fiction.

In his right hand, Rostnikov held a paperback copy in English of Ed McBain's *The Mugger*. He had read the book five years earlier and about four years before that. It was time to reread [sic] it Rostnikov read: "For as the old maid remarked upon kissing the cow, it's all a matter of taste." He had read the line before but for the first time he thought he understood the joke and he smiled slightly, appreciatively. Americans were most peculiar. Ed McBain was peculiar, including in his police novels pictures of fingerprints, maps, reports, even photographs. Delightful but peculiar.⁸⁶

It is reasonable to infer from such references, as well as from the nature of the Rostnikov books, that these allusions are not gratuitous. One is then led to wonder what is the significance of setting a police procedural in such an unlikely location. Given that the police procedural is one of the most formulaic, not to say rigid, among the detective genre, it is likely that the reader is being consciously steered toward comparing the two examples—one set in a fictitious Eastern metropolis, and one in an all too identifiable Moscow.

Kaminsky is not a newcomer to detective fiction or to inventive locales. His outstanding serio-comic mysteries featuring private investi-

84. *Id.* at 29-30.

85. See, e.g., STUART M. KAMINSKY RED CHAMELEON 13 (1985).

86. STUART M. KAMINSKY. A COLD RED SUNRISE 8-9 (1988).

gator Toby Peters are set in the Hollywood of the 1930s and '40s, and mix fictitious characters with real personalities from the era, ranging from the actors playing munchkins in the 1939 film⁸⁷ "The Wizard of Oz"⁸⁸ to Eleanor Roosevelt⁸⁹ to Albert Einstein⁹⁰ and, most recently, to maestro Leopold Stokowski.⁹¹ Each of the books in the series appears meticulously researched, accurately (or at least, to this layperson, credibly) depicting Los Angeles in the pre-war and then World War II years.

In some ways, Peters and Rostnikov resemble each other. Physically, at least, neither cuts an imposing figure. Rostnikov, a.k.a. "The Washtub," is described as "a short, squat man in his fifties with a non-descript Moscow face."⁹² Toby Peters, too, is in his fifties, his nose broken too many times (usually by his older brother, Leo), his body pummeled by too many battles and too many bullets.

Still, the Toby Peters books could not, by any stretch of imagination or critical hindsight, be classified as political or ideological; the only evident philosophy is Peters' insouciant equanimity toward his rather feckless, almost accidental ability to wrest victory from a series of missteps that could only charitably be characterized as an investigation.

Inspector Porfiry Rostnikov bears a passing resemblance to Peters, né Tobias Pevsner, only in the fatalism both characters share. Inability or unwillingness to "get with the program" is, in Peters, a former police officer, comic companion to his iconoclastic, out-of-step haplessness. In Rostnikov, where "the program" is not Soviet criminal law but political, usually KGB, directive, this divergence from convention is deadly serious, and both cause and symptom of his disagreement and disfavor with the Soviet government.

The System, in Toby Peters' books, may be said to be represented by Peters' estranged brother, police lieutenant Leo Pevsner. Although Peters frequently, humorously, is subject to physical violence at his brother's hands because of Peters' sarcastic, provoking attitude, the penalty for straying is far more dangerous for Rostnikov and his fam-

87. Kaminsky's "day job" is as a professor and chair of the Division of Film at Northwestern University where he teaches film history, criticism, and production.

88. STUART M. KAMINSKY. *MURDER ON THE YELLOW BRICK ROAD* (1977).

89. STUART M. KAMINSKY. *THE FALA FACTOR* (1984).

90. STUART M. KAMINSKY. *SMART MOVES* (1986).

91. STUART M. KAMINSKY. *POOR BUTTERFLY* (1990).

92. STUART M. KAMINSKY. *A COLD RED SUNRISE 8* (1988).

ily. It has proven capable of resulting in his ostracism, the threat of exile to Siberia, and his son's military assignment to Afghanistan.

The degree of levity in tone is not the most notable distinction between the two series, though it is consistent with what most sets the two apart. In the Toby Peters' books, Peters' chief antagonists are the objects of his criminal investigations, the assorted miscreants whom he has been charged with identifying or capturing. His only obstacles are his own ignorance or faulty methodology, although a hard-of-hearing landlady and a lethal dentist friend, the latter with whom he shares office space, are occasional impediments to his success. His brother is more irascible than intractable, and Leo's partner, Phil, often serves to pave the way to cooperation between Toby and the police.

For Rostnikov, the perpetrators of the various crimes which he is charged with investigating are often the least of his worries. Much in the books is concerned with Rostnikov's machinations and maneuverings aimed at eluding or bypassing his superiors. If Rostnikov occasionally acquires a political agenda, along with his assigned role of investigator, it is motivated by a stalwart compulsion to survive and to protect his family.

Rostnikov would never be more than a chief inspector in the MVD, a position higher than might be expected of him considering his inability to control his tongue, his frequent impetuosity, and his politically hazardous Jewish wife—a wife who had no interest at all in either religion or politics. Fortunately, Rostnikov had an ambition; he was politically uninterested. His job was to catch criminals and occasionally punish them at the moment of capture. Usually, however, the game—and he saw it as a game—ended when he caught the criminals and turned them over to the procurator's office for justice. It didn't matter to Rostnikov whether the law was reasonable or not. The criminals knew the law and knew when they were violating it.⁹³

Rostnikov is never seen as a cavalier subversive, one who, at odds with the regime, thwarts them for the sheer literary sake of endearing himself to Western audiences or, as with some Western pop icons of recent decades, to thumb his nose at authority. A disrupting presence, Rostnikov battles the entrenched government representatives because they threaten him or his family, not because he is an ideologically-motivated counterculture renegade. Porfiry is an apparently uncompli-

93. STUART M. KAMINSKY, *BLACK KNIGHT IN RED SQUARE* 18 (1984).

cated man, much like Toby Peters, but where his superior officers, either in the police department or in the KGB, play a complicated game, Rostnikov has the moral stamina and intellectual capacity to rival their own byzantine inventiveness. Unlike the Western police or politicians in some other works of modern popular culture, the government, for Rostnikov, is not represented by foolish, ineffectual theorists, to be contrasted by the street-smart, all-knowing pragmatic detective. Rostnikov's encounters are with antagonists of equal intellect and insight; their agenda may be antonymous to his own, but neither Rostnikov nor his readers would make the mistake of underestimating their abilities or the threat posed by the same.

These encounters, almost always verbal exchanges across an office desk, yield brilliant dialogues of shading and nuance, in which the participants seem to be speaking in code, and as much is decided by the superior official's decision as to whether or when Rostnikov is permitted to be seated, as it is by what either speaker actually says.

Toby Peters, he of the ready wisecrack and equally ready six-shooter, allowed his rebellion to flower by challenging the police department and, ultimately, by resigning from it. Rostnikov's challenges are perforce more stilted and subtle. He can no more patently disagree with his superiors than he can resign from his job.

The closest Rostnikov came to complete disassociation was his scheme to give life to the dreams of his Jewish wife, Sarah, of emigrating from the Soviet Union. When this fell through, Rostnikov was left only with his careful, deliberate determination of doing his job and safeguarding his family. His wife and their son, Joseph, are almost always at risk, whether it be the vague threat of action being taken because of Sarah's religion, or the actualized threat of a reassignment of Joseph to Afghanistan. It is this more than any physical danger to Porfiry Rostnikov that lends the novels their air of intrigue, fear, paranoia, and dramatic tension.

Subsequent to the beginning of the series, Rostnikov has suffered professional disgrace and personal sorrow, the latter occasioned by fear over Joseph's transfer to the front, and the former by his demotion from the office of the Procurator General to the less prestigious MVD.

Rostnikov had recently been transferred "on temporary but open-ended duty" to the MVD, the police, uniformed and nonuniformed, who directed traffic, faced the public, and were the front line of defense against crime and for the maintenance of order. It had been a demotion, the result of Rostnikov's frequent clashes with the . . . KGB. Before the demotion, Rostnikov had been a senior in-

spector in the office of the Procurator General in Moscow Too often, Rostnikov's path had crossed into the territory of the KGB which is responsible for all political investigations and security. The KGB, however, could label anything from drunkenness to robbery as political.⁹⁴

Or, as Kaminsky relates elsewhere: "It wasn't that Rostnikov was a troublemaker. Far from it. It was simply a matter of the KGB's being involved in so much that it was difficult to avoid them."⁹⁵ His demotion meant, in part, that on one case he was lumbered with a representative of the procuracy supervising his investigation.⁹⁶

The characters in Ed McBain's paradigmatic 87th Precinct novels have, throughout the decades, matured and developed into three-dimensional individuals with problems and pleasures which occasionally form an unrelated backdrop to the crimes under investigation by the officers of the precinct. To that extent, the characters have become familiar companions to the series' readers, who eagerly await the next installment of what may feel like a romantic serial, to learn whether Detective Bert Kling's romance with Detective Eileen Burke has met a fate similar to that of all of Kling's historically disastrous romantic entanglements,⁹⁷ or whether Detective Steve Carella and his deaf-mute wife, Teddy, are still blissfully happy.

More often, however, these personal triumphs and tragedies are skillfully interwoven in McBain's plots. The Kling-Burke relationship, for example, is at risk because of a case in which Detective Burke⁹⁸ suffered a traumatizing rape while acting as a decoy to catch a rapist in the area. Even where these personal aspects of a police officer's life, depicted in the books, are extraneous to the criminal investigations of the precinct, they are pertinent simply by virtue of their irrelevance; that is, they are reflective of the difficulty of living a normal, civilian life in a police officer's "off-duty hours."

The quotation marks parallel the point McBain seems to be mak-

94. STUART M. KAMINSKY, *A COLD RED SUNRISE* 18 (1988).

95. STUART M. KAMINSKY, *A FINE RED RAIN* 3 (1987).

96. STUART M. KAMINSKY, *A COLD RED SUNRISE* 24 (1988).

97. See Ed McBain's 87th Precinct novel, *Ice*, for a description of how Detective Bert Kling lost his first love, Claire, in a fatal bookstore shooting, and later his wife, Augusta, to another man. ED MCBAIN, *ICE* 101-05 (1983).

98. McBain enjoyed an inside joke in *Ice* where Burke makes passing reference to Raquel Welch, who portrayed a female police officer temporarily assigned to the 87th Precinct in the Burt Reynolds movie, "Fuzz". *Id.*

ing, though it cannot necessarily be inferred that it is anything so heavy-handed as the "message" of the books: For police officers in the real-life world McBain seems to be depicting, there is nothing as clear-cut as "off-duty." This generates the dysfunctional relationships in the lives of the detectives, and the way their personal lives seem so inextricably entwined with their professional world.

This theme is replicated resoundingly in the Porfiry Rostnikov police procedurals. Nowhere is it sounded as palpably as in the life of Rostnikov himself, where every move in his cat-and-mouse game with his superiors ripples in his would-be personal, that is to say family, life.

Rostnikov's two associates in the police department, Sasha Tkach and Emil Karpo, are unlike Rostnikov in that they represent two extremes: Tkach is the naive innocent, bright though occasionally ineffectual; young enough in age and appearance to have been used to impersonate a student, he has a wife and infant who form the focus of his life, even to the extent of his occasionally trying to include his wife in his work.

For Sasha, there is no political subtext, no intrigue, no sinister antagonists for him to outmaneuver. It might be said, however, that he enjoys this blissful ignorance only because, and to the extent that, Rostnikov, his superior number, serves as a buffer between Sasha and the political elements at work.

Emil Karpo, nicknamed "The Vampire," is at the other end of the spectrum. He is a gaunt and frightening personality, wholly and disconcertingly devoted to his police work. That devotion is unsettling to the more balanced Rostnikov; where Rostnikov, in self-defense perhaps, must occasionally keep his work on his mind even when at home, Karpo goes home each day to work on his professional journal, in which he keeps records of all his cases. Karpo's belief in the system which he represents is absolute; he is humorless, obsessed, strong, devoutly loyal and fearless, as in this scene:

"And you like your work," said Rostnikov.

"I am satisfied that within the parameters of our system and the reality of human fallibility I perform a worthwhile societal function," Karpo said.⁹⁹

Rostnikov's skepticism is equally baffling to Karpo:

Though he had been much decorated and had nearly lost both his life and leg in the war against the Axis, Rostnikov had never, since

99. STUART M. KAMINSKY, *THE MAN WHO WALKED LIKE A BEAR* 59 (1990).

Karpo had known him, displayed the slightest revolutionary zeal or interest in politics. And yet Rostnikov was known to be the most effective and relentless criminal investigator in Moscow. It was a constant puzzle for Karpo but one he tried not to address. To even consider it was a distraction from his duty.¹⁰⁰

Sasha's eagerness and youthful innocence may be his prime assets, Rostnikov's his agile intellect, but for Karpo it is his stubborn, even obstinate fealty to Communist ideals. Sasha never ponders the state's corruption—he is too busy coping with his struggling new family—and Rostnikov battles it daily for his integrity and survival, but it is for Karpo the bane of his existence.

Emil Karpo was a police inspector. He had his duty, and his duty was clear, as clear as the law. If others evaded the law, moved around it, teased its corners, corrupted it, it would not deter him from his duty. Compassion would lead to destruction. The law was all there was, the law and the State, which created the law. There was no morality, only law.¹⁰¹

Where Karpo is aware on a certain level of the weaknesses in the system, Sasha seems to deal with it only in the inconveniences of food and housing shortages. It is not communism Karpo abhors but the current inability to implement it with the perfection its principles merit.¹⁰² Sasha, on the other hand, seems perpetually troubled by a vague sense of uneasiness or occasional depression, which the books lightly suggest may be inspired by the current malaise in the system, or frustration by the limitations imposed by political considerations.

b. The Role of Police Procedurals in Humanizing Police

Two of the chief themes which characterize and typify police procedurals are the accurate replication of the routine procedure employed by police officers and, as natural corollary, the boredom, even tedium, of that daily procedure. In that respect, police procedurals, as "slice of life" dramas may be seen as stark contrasts to the "lone wolf" private investigator type of mystery, in which the hero is all that one expects of a hero in current pop culture, large part rebellious antihero,

100. *Id.* at 60.

101. *Id.* at 117; *see also id.* at 165.

102. *Id.* at 232 (suggesting a new crisis of faith).

isolated, inventive, quirky, creative, and romantically attractive.

In police procedurals, the "heroes" are seen as prosaic, plebeian working stiffs, working within the system, for whom their job is just a paycheck, who solve cases slowly and stolidly, dependent on their partners and their opposite numbers within different branches of the local and other law enforcement networks. Their lives are exciting only when they err in following procedure, and when they are in danger, it is not perceived by the reader as the thrilling escapades of an adventurous romantic hero, but rather as the terrifying risk of what is normally a mind-numbingly boring job. The reader is not meant to enjoy a vicarious adventure, because they can too closely identify with the middle-class prole punching the clock, who stumbles into a deadly hazard.

Where McBain's chronicles of the 87th Precinct are lauded for their verisimilitude, in Kaminsky's police procedurals the average reader is at a loss to gauge the accuracy and realism in which the American author depicts the Soviet police system. The plodding steps which Rostnikov and his associates follow to solve their cases seem legitimately routine, but we are only now, and only slowly, gaining some familiarity with the reality which Kaminsky is attempting to portray. Like the detectives at the 87th Precinct, Rostnikov and his men are perceived as heroic only in the sense that, because they are not glamorous men of daring, their achievements and triumphs are the stuff of the virtuous but unexceptional common man, and all the more impressive for that.

Western perception of the so-called Soviet "police state" is that there prevails a presumed state of paranoia among the citizens against the government and, by implication, its representatives. If forced to articulate the source of the terror, most Westerners would probably name the KGB, seen as the enforcers of repressive government's arbitrary "system" of law.

Enlightened, or given one's perspective, naive jurists and laypersons in the East and West alike might point in rebuttal to the existence of a Western-style Soviet Constitution, penal code, court system, and system of legal representation, which seemed to incorporate an almost recognizable guarantee of due process. All these elements, as they were revealed to Westerners, seemed to disprove or at least contradict the suspicions.

The Rostnikov books provide a credible compromise viewpoint tending to suggest that the reality is somewhere in between: There *was* a repressive, capricious, authoritarian, official presence, and there *was* a familiarly mundane set of rules and implementers or watchdogs of

those rules, the KGB and the police, respectively. Both coexisted, uncomfortably, not side by side so much as one shadowing and haunting the other. Rostnikov, more than his two subordinates, epitomizes the haunted police department.

Police procedurals are most effective to the extent that they are successful in personalizing while demystifying the police. Kaminsky achieves this in his Rostnikov books as well as McBain does with his 87th Precinct series, though it is a far more extraordinary accomplishment for Kaminsky. Some westerners are predisposed to discredit the essential humanity of their local police, but the inherent bias toward, and even fear of, police officers in a communist country runs far deeper. Their police are seen here as being indistinguishable from the political system, charged with enforcing not a criminal justice system for their protection but a repressive political regime.

Where local police are scorned in the West, it is because they are perceived as implementing an essentially just system in an unjust way. Police in a communist state are deprecated by Westerners because the criminal justice system is viewed as intrinsically flawed, or corrupt. What the Rostnikov books manage to do is to shed light on the distinction between Soviet law and Soviet politics; there *is* a line between police and state in the so-called *police state*. Kaminsky is not so noticeably ingenuous, or disingenuous, as to suggest that the two systems—criminal justice and political—do not impact on each other to the citizens' detriment, but the books manage to reveal a line between what is to most Westerners a blurred bifurcation.

In humanizing the members of a police department, authors of police procedurals manage a precarious balance in making the officers: likeable characters, in some way sufficiently ingratiating that the readers will cheer for them, care about them, identify with them, but not idolize them as unbelievably flawless; sufficiently amiable that the readers will enjoy following them about their daily business, but not happy or shallow enough for the reader to gloss over their tedious, depressing, and unremittingly unrewarding work; and part of a team that generally gets results without meshing smoothly, where its members are not interchangeable but neither are they so independent or indispensable that they would be better off working outside.

That last ingredient is what distinguishes the denizen of police procedurals from his fictional cousin, the "lone wolf" private investigator, who is idiosyncratic enough to function chiefly if not solely outside

any official system.¹⁰³ The characters in police procedurals must be seen as poignantly human, flawed individuals, much as we see ourselves, placed in tense and involving, but not unbelievable or sensational, life-threatening situations, and prevailing by tapping astonishing resources of heroism within themselves.

In a very real sense, the genre is able to provide its readers with a point of reference for their local police systems. The system thereby is given a face and a name, or several faces and names; never mind that those names and faces are fictitious. Police procedurals succeed only to the extent that they are credible simulations of real life. The characters must seem, feel and sound real for the plot to have any meaning. Unlike most other "thrillers," police procedurals are not devoured because they provide a fantasy adventure life for their readers; they are instead valued because they recreate a different type of tedium, because, with apologies to Hannah Arendt, they depict the "banality of evil."

Readers of police procedurals will then substitute the 87th Precinct's Steve Carella or Meyer Meyer for the phrase "police officer," and see three dimensions, shades of grey, substance and texture where once they would only have seen a one-dimension, essentially inhuman cog in the System. Some readers can even go further and substitute these fleshed-out fictitious human beings for "police department," determining that, arguably, there is no system other than, or greater than, the sum of the individuals comprising that system.

The Soviet police procedurals of Stuart Kaminsky have two additional obstacles toward achieving a similar goal: First, the political system imposes a layer of danger and deception on the functioning of these individuals; however admirable and approachable the officers' instincts and intentions, the KGB is only too likely to thwart these, potentially distancing the would-be do-gooder police from their citizens and readers. Second, the daily life of an Eastern-bloc country is so alien and hidden from us that an author is hard-pressed to achieve the sense of intimacy and routine.

Kaminsky scales both hurdles admirably. He injects the same degree of detail and *hamishness* into the lives of his Soviet police officers that he does with Toby Peters' Hollywood existence half a century ago, whether by describing Toby's subsistence on Depression-era private investigator's fees by eating cold cereal for dinner, or grimly recounting Sasha Tkach's queuing for bare essentials on endless, perhaps pointless

103. *But see infra* notes 109-19 (discussing Martin Cruz Smith's policeman who functions, notwithstanding his employment, in just such an antiheroic role).

lines. Kaminsky thereby manages to make the reader feel the characters' hunger, pain, fear, frustration—and rare exhilaration—so palpably that we can experience the enmity of the KGB as a threat *external* to the Soviet police officers, than that as linked to, or aligned with, the police. The Soviet police are identified with as victimized or terrorized by the KGB; the KGB is enemy to the police as to the citizen, and the reader is enabled to identify with the police as with the citizens.

To this end, Kaminsky uses the KGB to provide a large measure of the dramatic tension, even overshadowing the villainy of the criminals being sought and investigated. While the KGB remains an intimidating, powerful adversary, the police become the reader's heroes rather than the puppets of the antagonists or persecutors. Once Kaminsky has convinced us, to our colossal astonishment, that the Soviet police are human beings as well as police officers, it is a small leap of faith to reach the understanding that human beings doing ordinary jobs are the same the world over.

c. Rostnikov's Police and Perestroika

Kaminsky's later Rostnikov novels make frequent references to the recent changes in the Soviet Union. "Yes, things had changed recently. People talked of . . . democratization, but those things could change back again with a bullet, a quiet coup."¹⁰⁴ Kaminsky paints the general public as frustrated with the economic problems resulting from *perestroika*,¹⁰⁵ including new crimes, as described by Rostnikov's supervisor in the militia:

Criminals are preying on newly formed cooperative businesses. Street fighting among rival gangs of youths has reached murderous levels right in our city. Some people have claimed that General Secretary Gorbachev's political and social reforms, which have relaxed state controls, are to blame for this grave new crime wave.¹⁰⁶

But along with the negative changes came hopeful new signs of impending reforms in the Soviet criminal justice system: In a conversation with Rostnikov, his supervisor, known as "The Wolfhound," a man with largely ceremonial duties unlike the work Rostnikov was permit-

104. STUART M. KAMINSKY, *THE MAN WHO WALKED LIKE A BEAR* 20-21 (1990).

105. *Id.* at 32, 34, 88.

106. *Id.* at 44.

ted to perform as part of the procuracy,¹⁰⁷ has the following to say about the reforms:

I am permitted an investigative staff, your staff, consisting of personnel who are not wanted in other departments but, for reasons I cannot always fathom, are too valuable simply to dismiss. We are permitted to function, investigate as long as we remain harmless, unthreatening to other investigative bodies My political future is suddenly very promising, Porfiry Petrovich. If I—we—do not stumble. If the reforms continue, we may emerge with more than a ceremonial image¹⁰⁸

By the end of *Bear*, Rostnikov has again wrested a measure of triumph from his superiors and his two chief professional antagonists—the KGB and the criminals he is investigating. To say he has thwarted the criminals *or* the KGB would overstate the case.

3. Martin Cruz Smith's Arkady Renko Novels

a. *Renko as an Existential Hero*

Martin Cruz Smith has written two novels featuring Arkady Renko, a once-and-future Chief Inspector with the Procurator's Office. Where Porfiry Rostnikov is middle aged, with a bad leg and the descriptive sobriquet of "The Washtub," Arkady Renko is young and handsome, slightly disheveled but nonetheless a dashing romantic figure, a loner betrayed by his wife.

Martin Cruz Smith's Arkady Renko series, while nominally police procedurals in that its central figure is a police officer, treat that figure as sympathetic as he exists in a state of alienation from the militia. He is sympathetic, therefore, only insofar as he is estranged from his official status; by the sequel to *Gorky Park*, Arkady Renko's estrangement is complete: He is "exiled" aboard the eponymous freighter, *Polar Star*.

It is this characteristic which distinguishes Smith's books from novels both about Soviet police and American police; that is, Kamin-sky's procedurals bear greater resemblance to McBain's 87th Precinct novels than to Smith's two books, despite their settings. Smith's work falls rather within the subgenre of "lone wolf" detective novels, the Chanderlesque antihero popularized in cinema by Humphrey Bogart.

107. *Id.* at 27, 41.

108. *Id.* at 154.

While Smith's and Kaminsky's books both reflect extensive research, and take pains to familiarize the reader with their unusual setting, Smith's seem to use that setting as exotic backdrop for a tale of alienation and disaffection from authority. Kaminsky, on the other hand, treats the role of the Soviet militia almost as a character in itself.

Renko, even more than Rostnikov, serves as existential hero, alienated as Soviet policeman because he is forced to operate without rules, like any private detective functioning outside the law, or more technically, within a set of illogical, unreasonable, arbitrary or corrupted rules. Like a private detective "wannabe," Arkady is forced to devise his own moral code because of that set of illogical or corrupted rules that comprise his job.

"Even Pribluda [Renko's KGB nemesis] should know that Gorky Park was for recreation, not education The lesson was cold, too old, pointless. It wasn't justice as Arkady had come to expect and detest."¹⁰⁹

"Arkady had few illusions about his work. He was senior homicide investigator, a specialist in murder in a country that had little well-organized crime and no talent for finesse."¹¹⁰

In three years as a deputy investigator and two years as chief investigator, [Renko]d encountered fewer than five homicides that rose above childlike stupidity, or following which the murderer hadn't presented himself or herself to the militia drunkenly boastful or rueful. The Russian murderer had great faith in the inevitability of his capture, all he wanted was his moment onstage. Russians won wars because they threw themselves before tanks, which was not the right mentality for a master criminal.¹¹¹

On one level it is Renko's alienated nature that enables him to find a solution to the riddles posed to him: in *Gorky Park*, three literally faceless bodies are found in the park; in *Polar Star*, the body of a young woman is caught in one of the ship's fishing nets.

However, Renko's disaffection does not provide him with anything like a way out of his maze. His sense of alienation quite literally renders him dysfunctional as a police officer. "Under the guise of pretense, without his will, a real investigation was taking shape."¹¹² Indeed, he

109. MARTIN CRUZ SMITH, *GORKY PARK* 37-38 (1986).

110. *Id.* at 10.

111. *Id.* at 26-27.

112. *Id.* at 70.

will be robbed of his position because of who he is, what he does.

In *Gorky Park*, he was given a case on which he did not want to work, and in which he felt himself a pawn. It is a perfect symbol of his sense of weightlessness and lack of control. "[R]enko felt strangely light—light of [his wife], light of home, slipping out of an orbit that had been his life, falling away from gravity."¹¹³ By recognizing his own sense of powerlessness, Renko is both empowered and impotent:

There remained one more intriguing possibility: that the investigator himself had discovered—by accident, the way a man passes a mirror and suddenly notices he is unshaven, his overcoat worn at the collar—how shabby his work was. Or worse, how pointless. Was he a chief investigator or a processor of the dead, an adjunct of the morgue, his paperwork the bureaucratic substitute for last rites? A small point that, and merely indicative of socialist reality (after all, only Lenin Lives!).¹¹⁴

In the sequel, *Polar Star*, this sense of lifelessness and powerlessness will be reaffirmed. As the sequel opens, Arkady Renko has suffered a far more decisive fall from grace than Porfiry Rostnikov's mere demotion. Because of his unorthodox actions in *Gorky Park*, or because of his nature, Arkady was dismissed from the procurator's office for lack of political reliability, for what he flippantly refers to as "doing my job."

Renko is told by the political officer; i.e., KGB representative, on the eponymous Soviet factory ship on which he now labors, "You have no home, no place to go."¹¹⁵ Thus *Polar Star* retains Renko's sense of rootlessness, of *rulelessness*. Confused as to the changed nature of his relationship with Major, now Colonel, Pribluda of the KGB, Renko ruminates: "It was as if everyone traveled the world in the dark, never knowing where he was going, blindly following a road that twisted, rose and fell. The hand that pushed you down one day helped you up the next. The only straight road was . . . what?"¹¹⁶

There is, though, in *Polar Star*, the promise of hope, of redemption for Arkady.

[I]sn't this what Arkady did, hide? First in the deep faraway of the

113. *Id.* at 92.

114. *Id.*

115. MARTIN CRUZ SMITH, *POLAR STAR* 25 (1989).

116. MARTIN CRUZ SMITH, *GORKY PARK* 102 (1986).

psycho ward. Then, after Pribluda revived him, in Siberia and on the ship, carrying on inert and semidead . . .? Now, asleep in his narrow bunk, he asked himself, *Wouldn't it be good to be alive again?* [The murder victim] had swum back. Maybe he could, too.¹¹⁷

This promise may be attributed to Soviet political changes. Comrade Hess is a "fleet engineer" on the *Polar Star*.¹¹⁸ The term, Renko determines, is a euphemism for naval intelligence; Hess is responsible for turning the tide against the KGB and in favor of Arkady in the murder investigation, "There is more than one mission," Hess tells the KGB officer. At that remark, "There was a pause," Smith reflects, "as if the entire ship had veered in a new direction."¹¹⁹ The book ends, too, with a sense of optimism:

"You know, on the radio they're starting to refer to you as *Investigator* Renko, whatever that suggests."

"It could mean anything," Arkady said."

"True."

In *Gorky Park*, however, Renko has a great deal to say about the conflict between militia and KGB, as personified by himself and Major Pribluda.

The major might . . . start with a little joke, establishing a fresh, more amiable relationship, perhaps describing their current misunderstanding as purely institutional. After all, the KGB was maintained out of fear. Without enemies, outside or within, real or imagined, the whole KGB apparatus was pointless. The roles of the militia and the prosecutor's office, on the other hand, were to demonstrate that all was well.¹²⁰

b. *Comparisons between the Renko and Rostnikov Series*

Martin Cruz Smith uses the KGB in *Gorky Park* and *Polar Star* as antagonists, much as a corrupt or simply hostile police department in the "lone wolf" detective novels set in the United States. In the Kaminsky books, however, it is the byzantine nature of the Soviet police, as it relates to the Soviet state, represented by militia superiors and the

117. *Id.* at 105-06 (emphasis in original).

118. *Id.* at 87

119. *Id.* at 89.

120. *Id.* at 91.

KGB, that lends Rostnikov's employment its special poignancy.

A character like Emil Karpo could not exist in the United States, nor would he fit neatly into a Smith list of *dramatis personae*. One similarly gets the impression that Rostnikov would not have become the person he is without the treacherous path he has learned to tread in the Soviet militia. Only Sasha Tkach, almost a Bert Kling clone, could slip into an Ed McBain novel, but he is too complex a character for one to imagine him as one of Arkady Renko's colleagues. In *Gorky Park*, as in most of the lone wolf subgenre, the protagonist is sympathetic because he is alone; often he achieves this solitude and alienation through the plot device of a murdered partner. Indeed, Renko loses his only helpful associate, Pasha Pavlovich, early in *Gorky Park*, perhaps to achieve just this effect.

Renko bears the trappings of existential angst befitting a late 20th Century antihero, but the doom and gloom seem more romantic trappings *de rigueur* in the classic lone wolf detective fiction than the political, Kafkaesque fatalism or hopelessness with which Kaminsky manages, seemingly effortlessly, to imbue his series. The humor in existential anxiety has always lain just beneath—sometimes even *on*—the surface of great existential literature from *Waiting for Godot* to *Metamorphosis*. From two men waiting for an entire play for someone who never arrives, someone who may never exist, to a man who turns into a giant insect: The difference between the two lies in the difference between reality and fantasy. Maybe the truest humor derives not from injecting unbelievable twists into real life situations, but from lampooning what we are made to see in the irrational nature of reality as we know it and live it every day.

Kaminsky's Rostnikov series is the perfect vehicle for just such a goal, for two reasons: first, because cops are known to see more "reality" in one week than most of us can expect to encounter in our entire lives. Maybe they see reality at its ugliest, but in some ways they also get to see, and experience, reality, or life, at its fullest, and at its most impressive—heroism and camaraderie at its finest. Second, by setting his series in the Soviet Union, even if he had no political agenda, Kaminsky had an opportunity to present life, or reality, at its most absurd. Not unreal—somewhere between Kafka and the Twilight Zone, maybe—but eminently believable.

It must be remembered that credibility is the *sine qua non* of the authentic police procedural. Kaminsky manages to blend what we don't know about the Soviet Union—a place traditionally shrouded in mystery, illuminated only by images of a system in which due process as

we know it is twisted beyond recognition by an oppressive legal "order." It is a place we fear both because of what we know, and because of what we don't know. Kaminsky grounds his books in the requisite prosaic routine while not compromising—in fact, heightening—that fear.

The more we learn, the more terrified we become, and this is only the background of the books, almost but not quite separate and apart from the murder that is colorably the plot of the novels. We grow more frightened because the system is a way of life from which the heroes—the cops—will never be free. This is the classic stuff of existentialism as much as of police procedurals: The system is never subverted, but is rather used to triumph over the wrongdoer.

Occasionally a cop in the 87th Precinct might stray from the straight and narrow, might even bend the rules, but the system itself isn't portrayed as malevolent. At worst, slow or awkward, ironically misused, but not inherently malign. Rostnikov and his colleagues triumph despite the system—not by extricating themselves from it (that would be akin to extricating oneself from reality)—but by learning to adapt to the absurdity and thereby exploit it.

Porfiry Rostnikov plays the system better than his superiors (though we always get the uneasy feeling that his is only a temporary victory, holding the enemy at bay for a fleeting triumph); Sasha ignores it with the naivete of ignorance and the purity of youth; the Vampire survives because in his devotedly single-minded tunnel-vision, he credits the system with the genuineness and nobility of his own set of rules. Karpo would never believe us if we told him he was thinking for himself. He blindly perceives that he is serving the system, but in truth he is investing it with his own sense of justice.

Does the doublespeak of that system genuinely contain the values that Karpo serves? We take our cue from Rostnikov, the most enlightened of the trio, who shows us that even with the somewhat more evolved and still loyal party members in the police, the system (reality, from an unpolitical view, or the USSR, from a political reading) is absurd and dysfunctional. Not unreal, but all the more frightening because it is real. And, or at least until recently, because it bore indications of permanence.

Police function hampered by the weight of hopelessness and despair—the more intelligent, or aware or evolved or sensitive the personality, the greater the despair. In the Smith books, as well as in the Rostnikov series, a reader used to this sadness/frustration is left to wonder only if it is the existential *angst* standard in detective novels in

the classic mode, or borne of a more political *ennui*.

Kaminsky's series, like most police procedurals, is something of an ensemble piece, affording the reader more than one character to study and compare. With Smith's lone wolf or "cowboy" hero/antihero, we are left to question whether his sensibilities epitomize the author's ideal or his opinion as to the audience's ideal (i.e., highly aware, intelligent, sensitive to life's irony, bitterness, hopelessness, injustice, etc.)

Where hopelessness is a result not just of bureaucracy's muddle of red tape, but a political agenda, it is potentially that much more essential than the protagonist despair. But should he allow that despair to render him compliant, or wholly dysfunctional, the reader's sympathies are likely to pall.

Professional rivalries, bickering and infighting take on a life-or-death seriousness: In the Kafkaesque—or Orwellian—world where a wrong word to the wrong person could cost not just one's professional standing but one's freedom or even one's life, ruffling a colleague's feathers is risk-taking of almost self-destructive proportions.

Here again, Arkady, the more Chandleresque antihero, is dramatically required to sabotage his career, while Rostnikov is able, in a less glamorous, more plebeian fashion, to maintain the balance of power, occasionally stumbling and losing ground, but forfeiting a battle in order to return another day to fight again. If he is the less romantic of the two men, Rostnikov is closer to the mold of Western police procedural protagonist, more credible or convincing because his victories and defeats are almost always minor, and almost always temporary.

Surviving the occasional risks of their jobs and catching the wrongdoers whose crimes form the plot of these novels may not seem minor in theory, but these accomplishments are smaller in scope than are usually featured in novels. Renko's battles are fought against a backdrop of good and evil; Rostnikov is harassed and beleaguered, threatened and endangered, but his triumphs are more subtle, sounded in a cryptic dialogue or political double-entendres, in which even the conversants may not know for days who got the better of whom. Kaminsky occasionally supplies the obligatory chase or showdown, but the real dramatic tension lies in what is said, and not said, rather than in what is done. It provides a far more subtle and enduring gratification of an intellectual and visceral nature.

B. *The Militia in Western Films*

Martin Cruz Smith's novel, *Gorky Park*, was made into a film in

1983 by Orion Pictures, starring William Hurt as Chief Investigator Arkady Renko, and also featuring Lee Marvin, Brian Dennehy, and Joanna Pakula.¹²¹ The film is only sporadically faithful to Smith's plot,¹²² but entirely consistent with his mood and characters.

William Hurt affected a jarringly inconstant English accent, perhaps to distinguish his character from the other American actors portraying Americans, and to align himself with the British actors portraying Russians. Aside from that distracting note, Hurt admirably captures the iconoclastic melancholy of Smith's Renko.

The movie neglects the complex relationship of Renko and Pribluda so well treated in Smith's novel, but otherwise is faithful to the competitive nature of procuracy,¹²³ militia and KGB. When Renko first begins his investigation, and demands of Pribluda a reason for the latter's presence on the scene, Pribluda explains that "the KGB decides what interests KGB."

The character of Renko in Dennis Potter's screenplay and Hurt's interpretation is true to the character in the novel. Renko is openly rebellious, disaffected, a man who has something to prove and nothing to lose: the archetypal "private eye." His hostility toward everyone but his trusted colleague Pasha is palpable. He is combative with the pathologist, with witnesses, and most significantly, with the KGB. This antagonism is a luxury Porfiry Rostnikov cannot afford, or will not allow himself.

Renko is compared with his father, the war hero General Renko, a man considered neat and tidy, as contrasted with Renko's patent disheveled lifestyle. The prosecutor cautions Renko: "Your father was just as insolent, but he could afford to be. He was good at his job."¹²⁴

The film's Renko is almost a man without a sense of self, a man able to solve the case by assuming the identity, however fleetingly, with the initially anonymous victims, and then with the killer. Without being as firmly grounded (not to say earthbound) as, for example, Inspector Porfiry Rostnikov, Renko is able to be changed by the investigation

121. The film was produced by Gene Kirkwood and Howard W. Koch, Jr., and directed by Michael Apted with a screenplay by Dennis Potter based on Smith's book.

122. The character of KGB officer Major Pribluda dies in the movie but not in the book, in which the two men ultimately gain respect and something like friendship for each other. Also, the movie omits Renko's trip to New York.

123. Here, as in the novel, the procurator is called a "prosecutor," and in the novel, the Procurator General, the "Prosecutor General."

124. Major Pribluda will later acknowledge to Renko that the prosecutor erred in underestimating Arkady's abilities.

in a way Rostnikov never is. Rostnikov has nothing to prove and a great deal to lose. Smith's novel accentuates the point by giving Renko a wife and having him forfeit that wife.

Renko, the true existential hero, is aware of the tragic, hopeless nature of his reality, and therein lies his despair. When asked by a friend what he is "up to," Arkady replies, "Saving a life."

"Whose?" he is asked.

"Mine," he responds. "I'm on a case that reeks of KGB involvement."

Renko is only too aware of his being "set up," but he suspects the wrong man. "Lies are not freedom," Renko tells Irina, the woman he comes to love, and it is his existential self-honesty, or his inability to avoid confronting the truth, that is his downfall and his salvation.

The film adds a particularly pointed observation of the nature of Soviet justice when Arkady tells a forensic expert of the need to investigate, notwithstanding the danger in his society of knowing the truth: "Too many people in our society . . . disappear . . . into the chasm . . . between what is said and what is done." Lies are not freedom, but truth is a little like death, a point made more explicitly in *Polar Star*.

From the sublime to the ridiculous, the credibility of Western films' portrayal of the Soviet police took a downward turn in the 1988 movie, *Red Heat*.¹²⁵ The movie, part mismatched buddy film, part fish-out-of-water caper, starred Arnold Schwarzeneger as militia Captain Ivan Danko, paired with James Belushi as the Chicago police department's Detective Sergeant Art Ridzik. The two are teamed to locate an escaped Soviet criminal in Chicago.

The film began with a comic book opening, a fight scene complete with kung-fu-type heightened sound effects for the punches landed. The opening credits featured equally discouraging bastardized cyrillic lettering (e.g., the backwards "R", which is pronounced "ya" in Russian, stood instead for the English letter "R").

This was not an auspicious beginning if credibility and accuracy were chief values. The film itself, while not unentertaining, did not improve with time. Captain Danko was a humorless, forbidding figure, at least in the first hour or so of the film, but less because of his uniform than because of Danko's stoic personality—and the physical presence of the actor portraying the Soviet officer. Indeed, bearing out the im-

125. A Carolco-Lone Wolf-Oak film, directed by Walter Hill, produced by Walter Hill and Gordon Carroll, with a screenplay by Harry Kleiner, Walter Hill and Troy Kennedy Martin from a story by Walter Hill.

pression that the humorlessness was not a function of his nationality or profession was the fact that other Soviet militiamen, e.g., Danko's Russian partner, felt comfortable telling jokes.

Schwartzneger's character's motivation was prime "lone wolf" material, avenging the death of his partner. The entire film, however, seemed calculated to inject every Western stereotype of Soviet society: Danko criticized pornography on the hotel television as "capitalism" (the correct phrase should've been "capitalist decadence," but the point was made). Danko was also portrayed as a brilliant chess player; while this might be imagined a fleeting reference to the mental fencing prevalent in Kaminsky's novels, it turns out instead to be no more than the use of another Russian stereotype.

Danko is asked by Peter Boyle's character, a police commander and Ridzik's supervisor, "How do you Soviets deal with all the tension and stress?" The answer, predictably, is "Wodka." Even though Danko appears to develop a sense of humor as the film progresses, it seems to be attributable to his contact with Belushi rather than an inherent character trait we are only beginning to glimpse.

Nor are the KGB omitted in the parade of Soviet stereotypes. Captain Danko, as he works with Belushi, manages to "hold out" on the KGB's representative, who is described in pointed euphemism as a "liaison officer" from Washington, D.C. The political commentary continues:

Danko: "Chinese had way [of dealing with criminals]. Take all drug dealers, line them up, shoot them in back of head."

Ridzik (regretfully): "Nah, never work here. Fucking politicians would never go for it."

Danko: "Shoot them first."

Schwartzneger's character is not, however, without compassion. At one point in the film, he shoots out a door lock to let a relatively innocent young woman escape. Nor is Belushi, the representative of the American police, idealized. Ridzik is argumentative, foul-mouthed, bigoted and overly emotional, in sum, "a good cop, and a total expert at fucking up." He describes a group of blacks as a "basketball team," a racist stereotype. Yet it is Belushi's character who is seen as "teaching [Danko] a sense of humor."

In sum, while mildly entertaining, *Red Heat* may be considered a worthwhile entry in the category of Western media's depiction of Soviet police only until one recalls the far superior treatment given the topic by *Gorky Park*.

C. *The Soviet Police in American Television*

Two recent television programs purport to document a slice of Soviet life in portraying their police at work. The first of the two is an episode of the Fox network program, *Cops*. It was first televised in July 1989, and rebroadcast early this year.

The episode, "Cops in Russia," was taped over sixteen days in Moscow and Leningrad by an American-Soviet film crew, reportedly "for the first time in history, thanks to *glasnost*." The program began its coverage with the Soviet Militia Training Academy, showing police recruits at jogging, morning exercises, martial arts class, combat course and dress inspection. The training appears rigorous, as might be expected of any police academy, but the scene ends with an unattributed voice-over claiming that, "In my personal opinion, only a real man can be a cop."

The program returns after commercial break with a Leningrad morning May Day celebration. The voice-over describes the widespread Soviet alcohol problem, exacerbated on holidays when people are inclined to celebrate. "The problem of alcoholism in this country is a very great social problem; and the task of the militia is to help the people get rid of this social evil," the speaker notes in Russian-accented voice.

We are next taken to a drunk-tank in the Central District of Leningrad, where we see a young man being removed from restraints in a chair used specifically for that purpose. The man is obviously debilitated and subdued, and when removed from the chair, is unable to stand on his own. As he is returned to the holding room, the voice-over dutifully reports that the other inmates are claiming that the young man had been beaten before placed in the restraining chair. A few moments later, we see another man, drunk and boisterous, being placed in a similar chair.

The closest the program gets to political commentary comes after a street patrol in the same Central District. A woman, victimized by burglary of the savings she had intended to use to buy a new mattress, complains of life in the Soviet Union: "All the world . . . knows that the Soviet people have only . . . all these achievements and they have no . . . they have nothing in their shops and they can buy nothing, practically."

The program follows the police in a shopping district investigation of sales fraud, and to the Nevsky District to apprehend a black marketeer. We are shown a glimpse of the police station, where sus-

pects are detained, its central dispatch, where emergency information is collected. The station appears much like any other metropolitan police station.

A surprising view of the Soviet mindset is provided when the militia raid a suspected drug house. The police have to break down the door, and when they question the man inside as to why he declined to open the door for them, his reply is that he was not obligated to open the door inasmuch as he is entitled to his privacy. This writer expected the suspect's next protest to be, "This is a free country, isn't it?"

As it happens, the son of the man arrested in that house helped the militia locate narcotics in a wardrobe. The boy, apparently ten or eleven years old, told the police that he had telephoned the police several times to report his father, but that no investigating officers ever appeared.

The program then follows the officers to a crackdown on motorcycle gangs, where gang members, who refused to pull over for the police, were forced by the police to a checkpoint (where the police check citizens' internal passports). When asked why the gang members would not pull over, they replied, "'Cause they felt like it, and the police are full of crap."¹²⁶

This typifies the rather singular lack of fear or intimidation of the militia. Later, when a pair of "lovebirds, maybe" in a parked car are questioned by the police during a rooftop surveillance of suspicious cars, the two in the car shut and lock their doors and drive away, with two police officers attempting to jump onto the roof of the car. The suspects are soon apprehended, however, and when one of the officers demanded the girl turn over the keys to her car, she proclaims, "I won't, you have no right." The officer replies that he certainly does have a right, and that citizens must produce their papers for the police. The girl is noticeably underwhelmed, although the officer returns her keys only to allow her to drive herself and the officer to the police station.

While the "Cops" episode offers no explicit commentary or narrative, in allowing the events to speak for themselves, it makes a point quite eloquently. What we see seems strikingly familiar, but not familiar in that it is what one expected to see: It is familiar in the sense that it parallels what Americans see in their own streets and see on the streets of other cities on other episodes of "Cops."

126. Courtesy of the translator/narrator.

The second of the two television programs on Soviet police is a June 1990 episode of the CBS news show *48 Hours* entitled "Moscow Vice", featuring a visit to the Soviet Union by members of the San José Police Department. The visit included a trip to Moscow, where the American police officers reported that it was not the heavy-handed police state they imagined.

The Soviet police had a different perspective on changes in their country. "Fear of the policeman is gone,"¹²⁷ one militia officer reported rather mournfully, notwithstanding the existence of the internal passport system, *i.e.*, the remnant of the police state. Another officer commented that the "police state is in a state of disrepair." This is entirely consistent with the rather brazen attitude of citizens toward the militia witnessed in the "Cops in Russia" episode.

According to the Soviets interviewed on *48 Hours*, there is concern that the internal changes will bring increasing crime, leading in turn to a backlash and renewed repression.¹²⁸ One officer reported that the shortage of housing left "no room for reason." This viewer was reminded of Inspector Rostnikov's colleague, the young Sasha Tkach, struggling to rid his cramped household of his mother.

The only other political commentary in *48 Hours* touched on the operations of the Organized Crime Unit. A Soviet policeman noted that the Unit can now focus on local extortionists or protection racketeers functioning in cooperatives; those criminals prey on legitimate businesses, but more lately also on black marketeers who are taking up the slack when state-run liquor stores fold.

It is noteworthy that both of the two television programs limited their coverage of Soviet police to nonpolitical crimes. In that sense, viewers were exposed only to the types of police activity paralleling that of American police. To what extent this accurately reflects the Soviet criminal justice system is discussed below, in the context of the activity of Soviet police in both political and nonpolitical cases.

127. However, a satirical cartoon from the Soviet magazine *Krokodil* depicts a woman reassuring a man about the shadowy figures approaching their window: "Relax, it's not the police, it's just burglars." *SOVIET HUMOR* (1990) (by the editors of *Krokodil* magazine).

128. *48 Hours* (CBS television broadcast of June, 1990).

IV. ACCURACY OF WESTERN MEDIA'S PORTRAYAL OF MILITIA

A. *The Apologists' Controversy*

One final area of discussion which should be briefly considered is the treatment accorded the Soviet criminal justice system in another form: the area of both primary and secondary legal authority. A battle was waged in legal periodicals as to the reliability of the portrait of the Soviet legal system in texts and treatises written by Westerners, who may be said to have brought the Soviet legal system to the Western scholar.

It has been questioned whether those scholars who have been responsible for most if not all of Westerners' knowledge of the Soviet system have painted an inaccurately rosy picture. The question tends to hinge on the difference between the law on the books of the Soviet legal system and the law as practiced in the Soviet Union.

A chronic problem for scholarship about any legal culture is the question of how the "law on the books"—the official, published sources of law—correspond to the "law in practice," the way life is actually governed Law in practice is undoubtedly closer to law on the books in a society like that of the United States [than in developing countries], which traditionally has a high public level of legal consciousness and a press that is free to expose deviations from the letter of the law. Even in America, of course, the congruence is less than complete.

Distinguishing the law on the books from the law in practice is especially difficult—yet indispensable—in considering a society like that of the USSR, where propaganda is a pervasive part of daily life. State and Communist Party agencies supervise the dissemination of information and ideas in the Soviet Union, including official legal materials, and ensure that what is disseminated reflects well on the State and the Party. To be sure, propaganda and the publication of lies are scarcely unique to Communist statecraft, but propaganda is peculiarly prominent in the folkways of the Communist movement and its institutions. *In the Soviet Union, moreover, there is little internal check on the propaganda output, because the government has a monopoly of the means of communication and prohibits independent publication. A healthy measure of skepticism, therefore, is surely appropriate toward whatever is published under such a regime, including official legal materials.*¹²⁹

129. Marnion Schwarzschild, *Variations on an Enigma: Law in Practice and*

The difference between the law on the books and the law in practice in the Soviet Union seemed to come down to one prime factor: the Communist Party as embodied by the enforcement or vigilance of the KGB. "Perhaps the most difficult difference [between American and Soviet legality] for the American to grasp is the role of the Communist Party in legal affairs."¹³⁰ Professor John Hazard,¹³¹ the author of those words, reviewing Dina Kaminskaya's book, *Final Judgment*, notes that some similarities exist between the American and Soviet regard for the rule of law:

Every American lawyer knows that social and political pressures are brought to bear on the administration of justice under some circumstances in the United States Political machines in the United States may dominate the process of selection of judges and district attorneys, but they have no propaganda apparatus at their disposal as does the Soviet security police, the K.G.B. Most significantly, American political machines are always subject to an opposition party, weak though it may sometimes be, and the press is not controlled.¹³²

Professor Hazard describes "three basic points of contrast" between the American and Soviet systems: the increased role of political authorities; the heightened considerations of state security, "and, most importantly, the unique presence of the Communist party color[ing] the entire legal system."¹³³

Also, "the Soviet judiciary, while nominally independent, actually adhere[d] to governmental and Party directives on penal policy, a fact not startling in light of the control that the Party has over the selection of judges."¹³⁴

That same author added, in "defense" of the Soviet system:

Law on the Books in the USSR, 99 HARV. L. REV. 685, 686 (1986) (emphasis added) (footnotes omitted).

130. John N. Hazard, *An Insider's View of the Soviet Legal System*, 84 COLUM. L. REV. 271 (1984).

131. "The mainstream of Anglo-American scholarship about Soviet Law is fairly represented by Professor John Hazard . . . [and] by professor William Butler." Schwarzschild, *supra* note 129, at 687 (the author apparently did not intend the remark as a compliment).

132. Hazard, *supra* note 130, at 271-72.

133. *Id.* at 271.

134. Dina Kaminskaya, *My Life as a Soviet Defense Attorney*, 82 MICH. L. REV. 902, 903 (1984).

[A]lthough one might reasonably argue that criminal procedures in most western countries . . . are substantially fairer because of their greater protections for the defendant, such a claim necessarily assumes that conviction of the innocent is a greater evil than absolution of the guilty. Most in the West probably agree that it is, but the fact that Soviet jurisprudence may take the opposite view need not ineluctably lead to the moral condemnation of Soviet society.¹³⁵

The author *does*, however, condemn the Soviet Union for the “systematic suppression of political dissent.”¹³⁶ Although the commentator acknowledges the existence of political abuse in Western countries, including the United States, he points out that the Soviet Union, given its repression of free expression, was far more successful at it than any of its Western counterparts.¹³⁷

As Professor Hazard points out, even Soviet attorney Kaminskaya’s book does not depict the Soviet legal system “as a farce.” Rather, “she draws a line between the trials for common crimes and those for political opposition.”¹³⁸ Professor Hazard goes on to characterize this distinction as bringing the Soviet leadership in line with the Tsars, “who, like all Emperors, feared for the safety of their regimes and of their persons, and reserved for themselves the prerogative of ruling by decree when they spied a political crisis.”¹³⁹

Chris Steele Perkins, a London-based photojournalist, was allowed virtually unprecedented access to the inside workings of the police and prisons in the Soviet Union. Perkins explains why he believes he was given such access: “[B]ecause it suited the Soviets; it gave them a chance to confirm a manifestation of glasnost, and no doubt it was intended to dispel the image powerfully etched in the western mind of the gulag and a relentless, ever-present KGB.”¹⁴⁰

But Perkins admits he “did not see anything of the KGB [or] political prisoners,”¹⁴¹ and he remains skeptical if optimistic about what he has been shown: “Of course, I hadn’t seen it all. People must still rely on the evidence of dissidents and others for details of the worst of the Soviet penal system. But why was I allowed to see any of it? Per-

135. *Id.* at 903.

136. *Id.* at 904.

137. *Id.* at 904-05.

138. Hazard, *supra* note 130, at 272.

139. *Id.*

140. Fletcher, *Small Steps Towards Reform*, NEWSDAY, July 16, 1989, at 8.

141. *Id.*

haps because glasnost is a reality. The Soviet system may truly be reforming."¹⁴²

To determine whether that sanguine view is accurate, it is necessary to turn to the sources Perkins himself acknowledges to be the authorities: political dissidents.

B. *The Role of the Soviet Police in Political Crimes*

In keeping with the caveat raised in the preceding section, it is now incumbent on the author to sound a cautionary note to the analysis of media's treatment of the Soviet police. It would be disingenuous to discuss, at any length, the role of the Soviet Union's police without addressing the role of the militia—and indeed, that of the entire Soviet criminal justice system—in political cases.

In this context, it behooves us to consider the rule of law itself in the Soviet system. How much of what was discussed above, with regard to the checks and balances and due process, is in effect a true picture of the Soviet criminal justice system? In other words, how much of what was on the books was in the streets and in the courts of the Soviet Union?¹⁴³

As indicated above, this is not a new question. Academic and scholastic battles have been waged over alleged apologists for the Soviet legal system, scholars who, in bringing knowledge of the Soviet legal system to the West, have been charged with bringing over only a misleading glimpse of Soviet law in theory, rather than accurate insight into what is Soviet law in practice. On one point most scholars seem to agree: Soviet law in practice approached Soviet law in theory in most areas¹⁴⁴ but one. That one exception, that potentially abrogates the

142. *Id.* at 15.

143. The legally trained Gorbachev is seen as being instrumental in efforts to institutionalize the rule of law in the Soviet Union, a process in-line with that of "democratization." S.B. Goldberg, *A More Perfect Union Part I: A Lawyer in Moscow*, A.B.A. J., Oct. 1990, at 60.

144.

[T]he legal system and machinery of justice in the Soviet Union—which in its outward structure and functioning was derived largely from the French system—grinds in an entirely different manner when it deals with an ordinary transgression, that is, not one involving the state as a politico-economic institution per-se. In the former case, adjudication will be effected by the tribunals involved in roughly the same manner known throughout the world; but in the latter, law becomes the political organ of state power, the instrument of the class that constitutes the regime of the land, a mere

rule, is the political case, the so-called "crimes against the state." In this area of the law, the Soviet criminal justice system failed miserably. This point of view is reflected not only in the words of the system's victims, e.g., Natan Sharansky's autobiography *Fear No Evil*, but also in the works of some of its accused apologists and even its practitioners.

It is in this sphere that one has to consider the gap between Soviet law on the books and in practice, and to wonder whether the cause of that gap is the perhaps diminishing but formerly preeminent role of the KGB, or something more elusive, something attributable to the Soviet Union as a "police state." Whether the ebbing dominance of the Communist Party,¹⁴⁵ leading to a changing role of the KGB to focus on foreign crimes rather than domestic, will bring the ideal of Soviet criminal justice, as codified, closer to the reality of criminal justice as practiced in *all* cases in the Commonwealth, is something still to be determined.¹⁴⁶

Perhaps one of the most striking aspects of the Soviet criminal justice system for an American is what seems to be a curious admixture of due process and lawlessness, for lack of a better word, in its application. While the latter term only approximates the meaning intended, it serves better than "arbitrariness" or "capriciousness."

For one gets no impression of anything arbitrary or haphazard in the experiences documented by Natan Sharansky in his autobiographical *Fear No Evil*. A Westerner indoctrinated in the idea, not to say mythology, of the "evil empire" is hard pressed to fathom the depths of the byzantine mechanism of Soviet criminal justice. One expects, and indeed feels gratified by, reports of psychological abuse. It is the documentation of the orderly procedures implementing the Soviet criminal code that strike a Westerner as aberrant or inconsistent.

It is in this context that I feel compelled to highlight, however briefly, the bifurcation of the Soviet criminal justice system. The operations of the Soviet police prosaically, if artfully and gracefully, depicted by Kaminsky, and more sharply (though with no less melancholia) by Martin Cruz Smith, focus on crimes other than treason or espionage. For those two crimes, as Sharansky describes, it is the KGB rather

adjunct of state power in pursuit of conformity within Soviet society.

ABRAHAM, *supra* note 55, at 287.

145. See *supra* notes 72-76 and accompanying text (discussing reforms relating to "telephone justice").

146. Mikhail Gorbachev was a law school classmate of Dina Kaminskaya. See generally KAMINSKAYA, FINAL JUDGEMENT (1985).

than the investigating prosecutor (or procurator, as the position is called in the Soviet Union) who calls the shots.

Yet even in this somber context, in which the KGB rather than the militia serves the police function of investigation and arrest, a Westerner is still surprised by the combination of the dominance of the rule of law and the more Kafkaesque chess game¹⁴⁷ of psychological mind games, or investigation by calculated and manipulative interrogation.

In other words, there were still procedures to be followed in the Soviet system of criminal justice, procedures paralleling and even in some instances exceeding the Western concept of due process.¹⁴⁸ It would be disingenuous, however, to overestimate the force and effect of these mechanisms as they apply to the crimes of espionage and treason. It is nonetheless noteworthy to a Westerner, or more specifically to an American, when the rules bearing an eccentric resemblance to our own system of civil rights and due process rear their collectively incongruous head amidst an Orwellian setting of double-talk and double-dealing.

There has been some word of changes in the area of political crimes in the latter years of the Soviet Union. George P. Fletcher, a Beekman Professor of Law at Columbia Law School, noted the following upon his return from a month-long study of the Soviet legal system:

Soviet criminal justice is evolving, but some trends are apparent. Before Gorbachev, the bureaucracy relied heavily on the crimes of possessing anti-Soviet literature and parasitism as techniques for dissent. Anyone who had a Hebrew grammar at home or a copy of Solzhenitsyn in his pocket might land in a prison camp for at least three years. Refuseniks who were fired and could not find substitute employment were prosecuted as parasites. *These measures have virtually disappeared, and I was told that the number of political prisoners has dwindled.*¹⁴⁹

But for the accuracy of this assessment, perhaps we should let the words of two recent political prisoners speak for themselves: First, Lev Timofeyev, a Soviet economist and author imprisoned from 1985 to 1987 for "anti-Soviet agitation and propaganda":

147. Both Kaminsky's and Sharansky's books use the game of chess as a metaphor for ideological conflict.

148. *48 Hours* (CBS television broadcast of June, 1990 airing California police officer's views on due process).

149. Fletcher, *supra* note 140, at 11.

When a Soviet *zek*, or prisoner, has a little free time (which rarely happens), he loves to try to figure out how many of us there are—all the prisoners, labor camp inmates, exiles, etc., throughout the USSR . . . [A]ccording to these estimates, it appears that there are at least 10 million of us. The majority of the prisoners were arrested “for violating the internal passport regimen . . .” or for “economic crimes . . .” There are separate labor camps for political prisoners, the majority of whom are writers, journalists and other critics of the regime

[When I was in prison], I did not experience hatred toward the jailers and camp officials, nor do I experience hatred now toward those who searched me and kept me under guard; who seized my notes; who forced me into cells and workshops; who clanged shut the bolts and locked me behind heavy doors. I was tormented when they deprived me of warm clothing and did not let me sleep; when they confiscated my letters and did not permit me to see my wife and children.

But now, when I write about them, I feel a deep loathing. Because they are all still at their jobs, alive and well. They are an enormous army, with complete power over millions of prisoners. *Is it so easy to speak of changes in my country? How will those changes ever happen for us?*¹⁵⁰

Also, Natan Sharansky, released after nine years in a Soviet prison, speaks eloquently about his encounter with the Soviet criminal justice system: “At some level,” Sharansky notes, “every Soviet citizen lives in fear of the consequences of his actions, for he knows there is no presumption of innocence on the part of the KGB. That is what makes interrogations so sinister.”¹⁵¹ Thus, references in the novels discussed above and in the television documentaries to the lack of fear and intimidation among the Soviet people for the militia do not take into account the terror held for the KGB.

Sharansky speaks, too, about the difference between the treatment he received as a political dissident and that of suspects and prisoners in nonpolitical cases, as when Sharansky discusses his last cell mate in Lefortovo, a nonpolitical swindler: “He was unfamiliar with the KGB, and viewed them with respect and fear. But he also had a highly developed curiosity, and listened eagerly as I told him about my own experiences with the KGB, both before and after my arrest.”

150. *Id.* at 13.

151. NATAN SHARANSKY, *FEAR NO EVIL* 35 (1989).

Lefortovo [an investigative prison where Sharansky was held] is no police station: officially, fists aren't permitted here, and they don't yell at you. True, they can torture you with the cold and hunger of the punishment cell, but even there they address you formally

Years later, in a prison camp, I learned that I had been one of the lucky ones. As they led me down the deathly silent corridors of Lefortovo, I had no idea that next to the freight elevator was a room lined with rubber. If "state interests" demanded it, and if the KGB was certain that Western public opinion had no interest in their victim, they would bring him here, where the beatings were carried out by the very same officers who addressed me so politely¹⁵²

To a reader of Kaminsky's novels, who has thus been exposed to the KGB's mental "chess matches," Sharansky's description of KGB interrogations seem familiar:

Where they had once used force, the KGB now preferred to engage you in long conversations, which often lasted the whole day The point of these incessant interrogations was twofold: first, to create an aura of legitimacy to mask what was still a legal farce, and, second, to induce you to reveal as much information as possible, even if it was already known to the investigators.¹⁵³

Most pointedly, however, Sharansky details his experience with the difference between law on the books and law for political dissidents. For example, when Natan Sharansky and friends were arrested, prior to his ultimate arrest: "It soon became clear that these were preventive arrests, although such arrangements are against the law in the Soviet Union and are never admitted to."¹⁵⁴

The KGB directly informed Sharansky of the results he would incur by failing to follow the KGB program and accept their proffered defense counsel: "Although the KGB doesn't participate in the trial, the court certainly takes us into consideration. I'm telling you clearly; if you agree to accept the lawyer we give you, you won't be given the death sentence."¹⁵⁵

Sharansky was steadfast:

152. *Id.*

153. *Id.* at 36.

154. *Id.* at 85.

155. NATAN SHARANSKY, *FEAR NO EVIL* 171-72 (emphasis in original).

I . . . knew very well that the KGB firmly controlled the choice of lawyers admitted to 'their' cases. Only a lawyer with KGB clearance was permitted to participate in political trials, although the need for such clearance wasn't mentioned in any law. Moreover, lawyers who went too far in the defense of their clients had been known to lose their clearance.

Obviously, no serious lawyer would dare to defend my position, as this would mean exposing the fabrications of the KGB. Instead, he would try to 'reestablish the truth' by trying to show that the actions attributed to me were committed by other members of our group, and that I was the unwitting victim of more experienced Zionist provocateurs.¹⁵⁶

Finally, Sharansky describes the impact of international opinion on the excesses of the KGB. When granted the liberties of exchanging notes with his mother, Sharansky tells us, "I hoped it was because of the international commotion over my case, and that the demand to permit a lawyer of my choice to defend me was so strong that the KGB was forced to show some signs of legality."¹⁵⁷ Sharansky describes in his book the period of anxious optimism in 1983, when the "*zeks*" (prisoners) awaited the results of the Madrid conference, where it was hoped Soviet concessions to Western opinion would result in improved human rights protections for the prisoners. But the "fragmentary information" that reached Sharansky and the other *zeks* seemed dismal parallel to Helsinki's promised, but unrealized, guarantees. "Prison is the most sensitive barometer of change, and *in prison nothing had changed.*"¹⁵⁸

Those words were written, or published, in 1988; Lev Timofeyev's were published in 1989. In 1992, Westerners must still wonder: In prisons in the Commonwealth, has anything changed?¹⁵⁹

156. *Id.* at 172

157. *Id.* at 174.

158. *Id.* at 364.

159.

One night in December 1988, in a hotel in the Russian city of Perm in the Urals, I saw Gorbachev speaking on TV, from the United Nations. He said that there were no longer any political prisoners in the Soviet Union.

But the next morning I visited Perm 35, a prison camp four hours by car from Perm. The men named above were still in the camp, as were other political prisoners.

Now almost all the old political prisoners are out; some new ones have been taken from republics trying to break free of the Soviet Union. Most

C. *The Soviet Police in Soviet Detective Fiction*

Edward Topol is a star in a relatively small constellation, that is, the field of Soviet mystery writers with Western exposure. Topol, a Soviet emigré now living in Ontario and Florida, adds to Soviet detective fiction an element neglected in Kaminsky's books and treated from a different perspective in Smith's: sex.

While Smith treats romance from the point of view of a male militia officer, specifically, Arkady Renko, Topol's first-person narrator is a female militia officer, policewoman Anna Kovina, militia lieutenant and "CID Investigator."

To this author, the main virtue of Topol's body of work is the illumination it casts upon the relationship between the militia and the KGB, as perceived by a Soviet emigré writing in the voice of a policewoman:

On the whole, relations between us in the militia and the KGB are pretty complicated; there's rivalry. They think they're the elite, the white bone and blue blood of national security; their pay and allowances are way above ours. *But we know who does the basic everyday dirty work, looking after law and order in the country.* Especially in Siberia, . . . , where the government has mobilized more than a million workers over the last few years . . . to develop the gas fields and construct the Siberia-Western Europe gas pipeline. Along with them, naturally, came drifters and profiteers, prostitutes and other criminal elements from all over the country, every one of them after a fast arctic ruble. Drunken brawls and knife fights in restaurants and workingmen's hostels, murders over women, fistfights in dance halls with fatal consequences, poaching in the taiga, gang rapes, under the influence of liquor or not; add to that narcotics, unreported syphilis, prostitution, speculation in furs and fruit—that's the criminal dungheap we have to rake over day after day. *The lily-white hands of the KGB, of course, keep well away.*¹⁶⁰

of the former prisoners still fight Gorbachev—some from seats in the parliaments of the departing republics.

Mikhail Kazachkov remains imprisoned. I think that he infuriated somebody in the KGB by trying to talk to me from the windows of a "hospital ward" where he and other militant prisoners were locked away during my visit.

A.M. Rosenthal, MIAMI HERALD, Oct. 17, 1990, at A15, col. 3.

160. EDWARD TOPOL, RED SNOW 10 (1986) (emphasis in original).

V. CONCLUSION

How accurate, then, were the pictures of the Soviet criminal justice system that were presented in Kaminsky's and Martin Cruz Smith's novels? Were the documentaries of "Cops in Russia" and "48 Hours" truly nonfictional, and if accurate, did they present the full story?

With rare exception,¹⁶¹ the research in the novels was impeccable, the presentation accurate and verifiable. While Kaminsky's tone differed drastically from that in *Gorky Park* and *Polar Star*, both authors successfully conveyed the conflict between the different bodies charged with implementing the law of criminal investigation, that is, the procuracy, the militia, and the KGB. Both series of novels also addressed, with admirable credibility and accuracy, the extent to which the KGB itself determines its own jurisdiction.

This authority on the part of the KGB, for determining which cases involving aspects of state security, is responsible for not only much of the novels' dramatic tension but also for imbuing the reader with a sense of the gap between "law on the books" and "law in reality," the gap attributable to political crimes more than to any sinister sensibilities in a so-called "police state." Far from exonerating the Soviet criminal justice system, the novels (and, to a lesser extent, the films) vilify this discrepancy: the tough cases making bad law, in effect.

The fact that both "48 Hours" and "Cops in Russia" completely sidestep the political cases, and, in turn, the role of the KGB in criminal investigations, renders them critically deficient. Unlike the meticulously comprehensive fiction of both Kaminsky's series and Smith's two Arkady Renko books, the television "documentaries" are therefore misleading and distorted tunnel-vision portraits of the Soviet militia. Even the somewhat melodramatic and even laughable portrayals in *Red Heat* at least pay lip-service to the militia-KGB dichotomy, though bordering on and, yes, crossing over into the realm of caricature.

Thus, in conclusion, the Western media of detective novels and film manage to convey with impressive accuracy the nature and role of the militia within the Soviet criminal justice system and the Soviet so-

161. *A Cold Red Sunrise* discusses the seven-year term of the Procurator General as "the longest term of any Soviet official." STUART M. KAMINSKY, *A COLD RED SUNRISE* 17 (1988); see also, STUART M. KAMINSKY, *A FINE RED RAIN* 2 (1987). But see STUART M. KAMINSKY, *BLACK KNIGHT IN RED SQUARE* 15 (1984) (where the Procurator General is in her second ten-year term); see also note 59 and accompanying text.

ciety as a whole. Most notably, the works of Kaminsky and Smith effectively bridge the gap between pre- and post-*glasnost* and *perestroika*, and confront the extent to which these changes had and had not brought comparable reforms in the criminal justice system.

Although the Rostnikov and Renko series inform the readers of the role of the KGB in hamstringing the militia, they too stop short of confronting directly the issue of the other gap, that between political and nonpolitical cases. Both series come admirably close, in depicting KGB control over what constitute political cases within KGB jurisdiction, but neither has yet done more than acknowledge the existence of the realm of the political dissident in the Soviet criminal justice system.¹⁶²

This author is hasty to add that this deficiency does not mitigate the tremendous accomplishment of either series in portraying, with remarkable verisimilitude, the nature of that system. Kaminsky's work in particular has succeeded in capturing the complex relationships of the governmental entities which administer criminal justice in the Soviet Union, and this reader for one looks forward to a more comprehensive treatment of the subject in his future entries in the Rostnikov series.

The question for west and east alike is what changes will be wrought in the criminal justice system in the new Commonwealth. As noted above, crime and nationalist fervor are both on the increase in Russia, for example. There is concern that the need to control those elements will lead to an erosion of the burgeoning reforms. There is growing evidence that the desire for law and order, not to mention economic salvation, may be empowering the "enemies" of reformists like Boris Yeltsin,¹⁶³ the Communist Party, the military and the nationalist extremists. While the dissolution has brought new hope and sanguine improvement in east-west relations, some are skeptical:

Warnings of a coming dictatorship have been as common in Moscow this winter as street-corner complaints about high prices. Down through Russia's history, authoritarianism has been the rule, reform and democracy the rare—and brief—exception. For that reason alone, the odds seem to dictate that President Boris Yeltsin's efforts to install a new system will founder and the strong hand will follow. Even Yeltsin has raised the specter. "I have faith

162. Kaminsky's *Death of a Dissident* (1981) does, however, focus on the murder of a political dissident.

163. Carney, *supra* note 18, at 32.

in our reforms But if they fail, I can already feel the breath of the Redshirts and Brownshirts on our necks.”¹⁶⁴

164. *Id.*