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Book Review

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BOOK REVIEW

FINAL JUDGMENT, by Dina Kaminskaya. New York: Simon and Schuster 1982. Pp. 364.

MARK J. LOEWENSTEIN

In her book, *Final Judgment*, Dina Kaminskaya describes her experiences as a criminal defense lawyer in the Soviet Union. Ms. Kaminskaya was involved in several well publicized political trials during the 1960's and spoke freely to Western journalists stationed in Moscow. This involvement eventually led to her expulsion from the Soviet Union in 1979. Given this background, one might expect a political book highly critical of the Soviet Union and its legal system. This expectation is only partially satisfied, however, because Ms. Kaminskaya has not written an expose on the Soviet legal system or an attack on the Kremlin. Rather, Ms. Kaminskaya has written a book of more universal appeal: she discusses her background, the Soviet bar and judicial system and several criminal trials, both political and nonpolitical, in which she served as defense counsel.

By broadening the subject matter of the book, the author tried, I believe, to de-emphasize the political trials in which she participated. The first case she describes is a nonpolitical one, which she refers to as "The Case of the Two Boys."

In this matter, Ms. Kaminskaya represented one of two young teenagers charged with the rape and murder of a fourteen year old classmate. The description of this case is the lengthiest in the book and reveals a good deal about Soviet justice and the people who administer it. The investigation of the crime was badly mishandled and, as a result, two innocent young men were brought to trial. After two convictions and a rare third trial by the Supreme Court of the Russian Republic, the defendants were acquitted. The description of the case serves as a convenient showcase for Ms. Kaminskaya's considerable skills as an advocate and for her view that "the judicial system in the Soviet Union does work," a somewhat startling conclusion in light of her experiences as a defense attorney in political trials.

The section of the book recounting her political cases starts with a somewhat perplexing account of her involvement in the defense of

Yulii Daniel who, along with Andrei Sinyavsky, was charged with spreading anti-Soviet propaganda in violation of the criminal code. The defendants had published works of fiction outside of the Soviet Union without official permission. This seemingly blameless conduct was, in the mid-1960's, of considerable significance because it represented an act of open defiance, unknown prior to Stalin's death in 1953 and rare in the interim. Since the objectionable manuscripts were fictional, the defendants' moral position was unassailable, especially in literary circles. Thus, the Sinyavsky-Daniel case became a *cause celebre* both within and outside of the Soviet Union.

Ms. Kaminskaya reveals that even before she was asked to represent Daniel, the morality of his actions appealed to her. Of equal importance, she believed that his conduct was clearly legal. Neither she, nor her husband (also a lawyer), hesitated when asked to represent the defendants. Her husband was, however, denied "access," which means that the Communist Party would not grant him the privilege of representing political defendants. She then became Daniel's attorney, but was somehow removed from the representation on the eve of trial. She describes how she was pressured to withdraw from the case, her resistance to that pressure and her resentment against the responsible individual. She does not, however, tell us why, or exactly how, she was removed from the case. In any event, the removal was apparently against her will.

The Sinyavsky-Daniel case was the author's earliest experience in a political case and that is probably why she discusses it first. It turns out, in retrospect, that the Sinyavsky-Daniel case is logically discussed first for another reason: it is the least shocking of the injustices the author recounts in her political trials. Denying a person the counsel of his choosing is a mild injustice compared to the abuses the author found in her later cases.

Her first client in a political trial was Vladimir Bukovsky, who has since gained fame in the West. Bukovsky and several others took part in a peaceful public demonstration protesting the imprisonment of certain Soviet dissidents. Like the Sinyavsky-Daniel case, this case had a great deal of appeal. The defendants planned a peaceful and lawful demonstration; if the defendants were found guilty, then any public demonstration could be found unlawful. Since this conclusion ran contrary to Ms. Kaminskaya's understanding of the law, she strongly believed in her client's case. Nevertheless, Bukovsky and his co-defendants were all found guilty. Bukovsky was imprisoned; his two co-defendants were given suspended sentences and released. This sentence, Ms. Kaminskaya observes (speculates?), was dictated to

the court by the highest authorities in the Communist Party with the approval of the KGB.

In recounting the Bukovsky trial and other trials, Ms. Kaminskaya describes the coercive interrogation of defendants by prosecutors, the prejudice of the judges against the defendants, the falsification of transcripts, judicial acquiescence and complicity in perjury, and the subservience of the judiciary and the prosecution to the dictates of the Communist Party. She seemed convinced that the outcome of each political case, including the sentences for the defendants, was decided by the Communist Party before the trial began and, for various reasons, the presiding trial judge and appellate judges dutifully followed those dictates. If Ms. Kaminskaya truly believed this (and there is no reason to doubt it), one wonders how she could have any respect for the Soviet judicial system or why she would willingly participate in political trials. I find this latter question most intriguing, particularly because these political cases appeared to be very arduous and fraught with risk for the lawyer who offended the Communist Party in the course of the trial.

Ms. Kaminskaya suggests at one point that she represented dissidents out of a sense of professional responsibility. Undoubtedly more was involved, because a sense of professional responsibility might also compel one to refuse to participate in a case in which the outcome was predetermined. Despite her protestations to the contrary, I suspect that Ms. Kaminskaya possessed a bit of the dissident spirit herself. She represented the dissidents, despite the hardships, for the same reason the dissidents defied Soviet authorities and were willing to pay the very onerous consequences: in each case the individual's morality compelled the action. Just as Vladimir Bukovsky could not remain silent when his colleagues were imprisoned, and Larisa Bogoraz had to voice objection to the Soviet invasion of Czechoslovakia, Ms. Kaminskaya's morality obligated her to take up the defense of these dissidents. She admits as much when she says, early in the book:

The Soviet dissidents whom I defended were neither terrorists nor extremists. They were people struggling, within the law, to induce the state to observe legitimate human rights. I believed they were fighting, openly and from a sense of duty, for something that we lawyers must fight for in the very nature of our profession. In defending them I felt that I

too was in some degree taking part in that struggle.¹

Later in the book, when reflecting on her career, Ms. Kaminskaya is more militant:

I believe the greatest evils in these post-Stalin years are perpetrated not by villains and hatchetmen but by collaborators and appeasers. The psychiatrists, for instance, who subject sane people to torture by psychiatry are probably not sadists with an irresistible urge to make people suffer. They are simply in a position where they either obey orders or are fired. Judges are faced with the same choice. All of us — lawyers, judges, doctors — have chosen professions that give us the right to make decisions affecting the fate of our fellow human beings. And if we neglect our professional duty to the detriment of those who are dependent upon us, we should not be in the profession.²

The line is thus drawn. Within the Soviet system, those who act out of a sense of morality pass the line and are dissidents.

In representing dissidents, Ms. Kaminskaya answered the highest calling of our profession. She worked tirelessly in their defense because she felt it was their due. If the Party was intent on convicting them, so be it. But before the verdict was announced, she was determined to prove to those present, whether the trial was open to the public or not, that her clients deserved to be acquitted. The record would be made. She could do no more.

Final Judgment is not a great book. It is not well written and contains little beyond the author's recollections and observations. At the same time, however, it is a marvelous story of courage, duty and morality. It serves as an important compliment to the literature of Soviet dissidents, providing insight into the judicial process that led to their incarcerations. Finally, the book is an inspirational account of a lawyer's practice. The reader is left with a deep respect for the author's devotion to our profession and for the role lawyers can play even under the most adverse of circumstances.

1. D. KAMINSKAYA, *FINAL JUDGMENT* 49 (1982).

2. *Id.* at 171.